



COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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

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REVIEW OF THE DRAFT SURVEY OF ACCESS AND BENEFIT- SHARING COUNTRY MEASURES ACCOMMODATING THE DISTINCTIVE FEATURES OF GENETIC RESOURCES FOR FOOD AND AGRICULTURE AND ASSOCIATED TRADITIONAL KNOWLEDGE

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I. INTRODUCTION

1. The Commission on Genetic Resources for Food and Agriculture (Commission), at its Seventeenth Regular Session, recalled that its Multi-Year Programme of Work (MYPOW) foresees a review of its work on access and benefit-sharing (ABS) for its Eighteenth Regular Session and requested its Secretary to prepare, for review by the Commission's intergovernmental technical working groups (Working Groups) an up-to-date survey of existing legislative, administrative and policy approaches, including best practices, for ABS for the different subsectors of genetic resources for food and agriculture (GRFA) and traditional knowledge associated with GRFA held by indigenous peoples and local communities, with the aim of identifying typical approaches and lessons learned from their implementation, as well as challenges and possible solutions.¹

2. The Commission requested the Team of Technical and Legal Experts on Access and Benefit-sharing (ABS Expert Team), as established at its Fourteenth Regular Session, to contribute to the preparation of the draft survey and, after the review of the document by the Commission's intergovernmental technical working groups, to convene for the sole purpose of reviewing and providing technical and legal inputs to the document. The Commission requested the ABS Expert Team to work electronically and to meet once for three days, subject to the availability of funds.

3. This document provides some background information on the Commission's work on ABS and gives a brief overview of the draft *Survey of access and benefit-sharing country measures accommodating the distinctive features of genetic resources for food and agriculture and associated traditional knowledge* (Survey). The draft Survey is given in document CGRFA/TTLE-ABS-5/21/Inf.2. The document further reports the comments received from the Commission's Working Groups, Working Group Members, regional groups and individual ABS Experts, for consideration by the ABS Expert Team. The Commission also requested its Secretary to invite Members and observers to provide inputs on the different deliverables related to access and benefit-sharing, including the draft Survey. These inputs are contained in document CGRFA/TTLE-ABS-5/21/Inf.3.

II. BACKGROUND

4. The Commission has a longstanding history of dealing with access to GRFA and the fair and equitable sharing of benefits arising from their utilization. Created by the FAO Conference in 1983 to monitor the operation of the International Undertaking on Plant Genetic Resources for Food and Agriculture, for more than two decades the Commission has played a key role in the global governance of plant genetic resources (PGR). In 1993, following the adoption of the Convention on Biological Diversity (CBD), the Commission initiated the revision of the International Undertaking that resulted, in 2001, in the adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty), the first legally binding international instrument for ABS for genetic resources. At its Tenth Regular Session in 2004, when the Treaty had just entered into force, the Commission, whose mandate, in the meantime, had been broadened to cover all GRFA, recommended "that FAO and the Commission contribute to further work on access and benefit-sharing, in order to ensure that it move in a direction supportive of the special needs of the agricultural sector, in regard to all components of biological diversity of interest to food and agriculture."² Since then, the Commission has addressed issues related to ABS for GRFA at each of its sessions.

5. Having agreed, in 2007, on the importance of considering ABS in relation to all components of biodiversity for food and agriculture, the Commission considered arrangements and policies for ABS for GRFA at its Twelfth Regular Session in 2009. It took note of a series of background study papers on the use and exchange of GRFA in the different sectors of animal, forest, aquatic, microbial

¹ CGRFA-17/19/Report, paragraph 19.

² CGRFA-10/04/REP, paragraph 76.

and invertebrate genetic resources³ and decided to agree on the text of a resolution addressing the then ongoing negotiations under the CBD of an international regime on ABS. The resolution, subsequently adopted by the FAO Conference, stressed the special nature of agricultural biodiversity and invited the Conference of the Parties to the CBD to allow for differential treatment of different sectors or subsectors of genetic resources, of different GRFA, of different activities and of the different purposes for which activities are carried out.⁴

6. Following 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* (Nagoya Protocol) in 2010, the Commission established an Ad Hoc Technical Working Group on Access and Benefit-sharing for Genetic Resources for Food and Agriculture. It was mandated to identify relevant distinctive features of the different subsectors of GRFA requiring distinctive solutions. The Group was also given the task of developing options that would guide and assist countries in developing legislative, administrative and policy measures that accommodate these features.⁵

7. In response to the report of the Ad Hoc Technical Working Group, the Commission initiated, in 2013, the development of explanatory notes to the distinctive features of GRFA, as identified by the Ad Hoc Technical Working Group.⁶ In addition, the Commission decided to replace the Ad Hoc Technical Working Group by the Team of Technical and Legal Experts on Access and Benefit-sharing (ABS Expert Team), consisting of two representatives from each region, to prepare, in consultation with the Working Groups, *Elements to Facilitate Domestic Implementation of Access and Benefit-sharing for Different Subsectors of Genetic Resources for Food and Agriculture* (ABS Elements).⁷

8. In 2014, the ABS Expert Team participated in relevant sections of the meetings of the Working Groups and provided inputs to their discussions. Considering the lessons learned from each of the subsectors and drawing on a body of submissions by Members and observers, studies, reports and other inputs prepared since 2009, including the results of a multi-stakeholder expert dialogue,⁸ the ABS Expert Team prepared the ABS Elements, while noting that “[d]eveloping and implementing ABS measures is a work in progress and so is the development of these ABS Elements.”⁹ In 2015, the Commission and the Conference welcomed the ABS Elements and, noting “the complementarity between the work of the Commission and the Nagoya Protocol in regard to access and benefit-sharing for genetic resources,” invited countries to consider and, as appropriate, make use of the ABS Elements.¹⁰

9. The Commission also requested its Working Groups to develop, in collaboration with the ABS Expert Team, subsector-specific elements for ABS. In 2016, the Commission’s Working Groups, including the newly established Ad Hoc Working Group on Aquatic Genetic Resources, considered the elaboration of subsector-specific ABS elements.¹¹

³ Background Study Paper No. 42: *Framework study on food security and access and benefit-sharing for genetic resources for food and agriculture*; Background Study Paper No. 43: *The use and exchange of animal genetic resources for food and agriculture*; Background Study Paper No. 44: *The use and exchange of forest genetic resources for food and agriculture*; Background Study Paper No. 45: *The use and exchange of aquatic genetic resources for food and agriculture*; Background Study Paper No. 46: *The use and exchange of microbial genetic resources for food and agriculture*; Background Study Paper No. 47: *The use and exchange of biological control agents for food and agriculture*.

⁴ FAO Conference Resolution 18/2009.

⁵ CGRFA-13/11/Report, *Appendix D.1*.

⁶ See CGRFA-15/15/Inf.10.

⁷ CGRFA-14/13/Report, paragraph 40.

⁸ Background Study Paper No. 59: *Access and Benefit-Sharing for Genetic Resources for Food and Agriculture – Current Use and Exchange Practices, Commonalities, Differences and User Community Needs - Report from a Multi-Stakeholder Expert Dialogue*.

⁹ ABS Elements, paragraph 25.

¹⁰ CGRFA-15/15/Report, paragraph 22; C 2015/REP, paragraph 52.

¹¹ CGRFA-16/17/10, paragraphs 17–19; CGRFA-16/17/12, paragraphs 25–28; CGRFA-16/17/15, paragraphs 23–26; CGRFA-16/17/18, paragraphs 22–24.

10. In 2017, the Commission, in response to the reports of the ABS Expert Team and the Working Groups, agreed to produce “non-prescriptive explanatory notes describing, within the context of the ABS Elements, the distinctive features and specific practices of different subsectors of GRFA, to complement the ABS Elements.”¹² As an early step in the ensuing process, the Commission Secretariat convened in 2018, in collaboration with the Secretariats of the Treaty and the CBD, the International Workshop on Access and Benefit-Sharing for Genetic Resources for Food and Agriculture¹³ to facilitate exchange of information, experiences and views and, more specifically, generate outputs for elaboration into the non-prescriptive explanatory notes.¹⁴ The open-ended workshop was attended, *inter alia*, by representatives of the Commission’s Working Groups, the ABS Expert Team and a small group of seven regionally representative experts for micro-organism and invertebrate GRFA, which subsequently collaborated in the preparation of draft explanatory notes, for consideration by the Commission.

11. At its last session, in 2019, the Commission welcomed the explanatory notes and requested FAO to disseminate in future the ABS Elements with the finalized explanatory notes.¹⁵ The ABS Elements with Explanatory Notes were published at the end of 2019 and are available online in all UN languages.¹⁶

III. SURVEY OF ACCESS AND BENEFIT-SHARING COUNTRY MEASURES ACCOMMODATING THE DISTINCTIVE FEATURES OF GENETIC RESOURCES FOR FOOD AND AGRICULTURE AND ASSOCIATED TRADITIONAL KNOWLEDGE

12. In response to the Commission’s request, the Secretariat commissioned a survey of ABS country measures accommodating the distinctive features of GRFA and associated traditional knowledge to Griffith University, Australia, for review by the Working Groups and the ABS Expert Team.¹⁷ The survey involved a search for ABS measures in databases of all United Nations member countries and examined the administrative, policy and/or legislative ABS measures or draft laws of 47 countries that directly or indirectly accommodate distinctive features of GRFA and/or traditional knowledge associated with GRFA (TKGRFA). It also involved a systematic quantitative literature review for research trends and gaps across geographical scales and GRFA subsectors.

13. The survey comprises a baseline desktop review of legislation, policy and literature. It provides a review of how countries address the distinctive features of GRFA and TKGRF based on the letter of their ABS legislative, administrative and policy measures rather than on how these are implemented in practice. It does not aim to provide a complete picture of all relevant ABS country measures, nor does it analyse the state of implementation, the challenges involved and possible solutions to these challenges. Instead, the survey aims to provide a typology of the diverse approaches countries have chosen in addressing ABS for GRFA and TKGRFA. The survey provides country examples both of measures that explicitly provide for some kind of special treatment for GRFA and of measures that do not exclusively apply to GRFA but may be particularly relevant for their use and exchange. However, the survey did not address legislative acts or policies that address aspects of ABS but are not specifically labelled as “ABS”.

14. The survey 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 TKGRFA; (4) benefit-sharing relating to GRFA and TKGRFA; and (5) monitoring and compliance.

¹² CGRFA-16/17/Report Rev.1, paragraph 25.

¹³ FAO. 2018. *Proceedings of the International Workshop on Access and Benefit-sharing for Genetic Resources for Food and Agriculture*. Rome. (also available at <http://www.fao.org/3/CA0099EN/ca0099en.pdf>).

¹⁴ CGRFA-17/19/3.2/Inf.3.

¹⁵ CGRFA-17/19/Report, paragraph 16.

¹⁶ FAO. 2019. *ABS Elements: Elements to facilitate domestic implementation of access and benefit-sharing for different subsectors of genetic resources for food and agriculture – with explanatory notes*. Rome. (also available at <http://www.fao.org/3/ca5088en/ca5088en.pdf>).

¹⁷ CGRFA/TITLE-ABS-5/21/Inf.2.

Institutional arrangements

15. The survey identified as the most common institutional approach the single-agency responsibility for ABS. Environmental or science authorities often serve as single competent national authorities (CNA). In a minority of countries, authorities with a primary focus on food, forest and/or agriculture act as single CNA. In other countries, the institutional responsibility for ABS measures is shared between different authorities depending on the type or intended use of the genetic resources. Various countries with shared responsibilities for ABS measures have established coordination mechanisms, for example one-stop-shops or committees, to coordinate ABS activities across sectors and stakeholders.

Access to and utilization of genetic resources for food and agriculture

16. Many ABS measures distinguish between different categories of genetic resources and different types of intended activities in relation to the resources, and apply different authorization procedures to them.

Categories of genetic resources

- Some ABS measures only apply to uses of genetic resources accessed after the ABS measure entered into force, others also to new or continuing uses of resources collected or accessed before the ABS measure entered into force.
- Access is usually granted by countries providing genetic resources that are the “country of origin” of such resources. The survey identified different ways in which ABS measures define the circumstances in which genetic resources are considered to have developed “distinctive properties” in a specific country, which qualify the country as the “country of origin” of the genetic resource.
- Many ABS country measures do not seem to distinguish between privately and publicly held genetic resources, implying that they apply to both, including, for example, privately held breeding materials.
- Most ABS measures reviewed are confined in their scope to genetic resources, i.e. the use of biological resources for their *genetic* qualities. Other ABS measures cover biological resources more broadly but may narrow the scope under other provisions, such as excluding those used for purposes of culture or consumption.
- Most ABS measures exclude, in one way or the other, GRFA managed under special multilateral ABS arrangements, such as the Treaty. Some ABS measures exclude whole categories of GRFA, such as domesticated plant species, fish, forestry or livestock genetic resources, or GRFA that are subject to intellectual property protection.

Intended activities

- ABS measures usually address genetic resources for their “utilization”, i.e. “research and development on the genetic and/or biochemical composition of genetic resources (...)”¹⁸ The use of agricultural products for sale or human consumption therefore often falls outside the scope of ABS obligations because “utilization” is not intended, or because it is explicitly excluded from the scope of ABS measures.
- While it will often be difficult to distinguish between food/feed and non-food/feed agricultural products (given that the ultimate use of a product will often be unknown at the research and development phase), some ABS measures seek to make that distinction and provide different procedures for them.
- Some ABS measures make a distinction between commercial and non-commercial research and some provide for specific procedures for situations where the intended use changes. There is no uniform definition of “commercial,” and some ABS measures exclude GRFA or related activities, such as breeding, through the definition of “commercial”.

¹⁸ Nagoya Protocol, Article 2(c).

- Some ABS measures provide for exemptions or simplified procedures for specific activities, such as taxonomic research, conservation, animal/plant-health purposes, exchange of genetic resources within and among local indigenous peoples and local communities (IPLCs), or among farmers and exchanges within research networks.

Authorization procedures

- In many countries, the same authorization procedures apply to GRFA and TKGRFA as any other genetic resource or traditional knowledge. While ABS measures of many countries reflect the Treaty and contain special provisions for PGR, few ABS measures have special arrangements for other subsectors of GRFA.
- Most ABS measures require prior informed consent (PIC) at the time of access and/or utilization and/or transfer (export) of genetic resources. However, an alternative approach is to require only registration initially, i.e. at the time of collection or research; benefit-sharing requirements kick in when benefits are actually generated.
- Some ABS measures provide for simplified procedures, for example in the form of a simple notification, where access is sought for specific purposes, for example for conservation purposes or in emergency situations relating to human, animal or plant health, or for food security in the case of threats to the life and health of humans, animals or plants. Some laws provide for fast-track processes for specific categories of users, for example locals and growers and cultivators of biodiversity, including IPLCs.
- Some ABS measures prescribe standard terms and conditions for mutually agreed term (MAT) for genetic resources, including GRFA.
- A largely unexplored field are framework authorizations that include, for example, a whole range of genetic resources. However, ABS measures of some countries allow for framework agreements, which may facilitate long-term collaborations, including benefit-sharing.
- The key finding from the survey is that there is no one-size-fits-all approach to accommodating GRFA and TKGRFA under authorization procedures and that further research is needed to determine their practical effects and whether options differ across subsectors.

Access to and utilization of traditional knowledge associated with genetic resources for food and agriculture

17. While ABS measures often treat access to and utilization of TKGRFA similarly to GRFA, the survey identified specific requirements or considerations some ABS measures apply uniquely to traditional knowledge.

- ABS measures differ as to the approaches to defining the scope of traditional knowledge; traditional knowledge may be broadly associated with, for example, genetic resources, biological resources, ecological knowledge. Some ABS measures allow the custodians of traditional knowledge to define the traditional knowledge.
- Different approaches exist as to how the correct traditional knowledge-holder may be identified.
- Some ABS measures apply specific procedures to traditional knowledge, including TKGRFA.
- Procedures for involving IPLCs in granting access to traditional knowledge associated with GRFA are diverse. In many countries, they are still under development.
- An increasing number of protocols/guidelines at local, national and international levels exist, that explain the meaning of free, prior and informed consent within a cultural context.

Fair and equitable sharing of benefits

18. ABS measures vary significantly as to the scope and overall design of benefit-sharing obligations for genetic resources and traditional knowledge, the procedures foreseen for reaching MAT and the level of formality required for the agreement.

- Some ABS measures leave it up to the CNA to determine the modalities of benefit-sharing on a case-by-case basis as part of the access permit. Other ABS measures are more prescriptive in that they define minimum benefit-sharing requirements.

- Some ABS measures exempt from benefit-sharing obligations certain categories of users, for example farmers; others provide for simplified benefit-sharing procedures for GRFA research.
- Model contractual clauses, codes of conduct, guidelines or best practices, including for benefit-sharing, have been developed for various subsectors of GRFA, in particular plant and micro-organism GRFA.
- Some ABS measures address situations that may typically arise in the case of GRFA and TKGRFA, for example where the beneficiaries cannot be clearly identified or where there are multiple beneficiaries. Few ABS measures address the role of intermediaries in relation to ABS obligations.
- While ABS measures usually do not provide for GRFA-specific benefit-sharing rules, some ABS measures explicitly identify “non-monetary” benefits relevant to GRFA, such as: research directed towards food, health and livelihood security; training; and exchange of GRFA within or between communities to sustain food or livelihood systems. Benefit-sharing may also take place in the form of collaborations and partnerships.
- With the exception of the Multilateral System of Access and Benefit-sharing (MLS)¹⁹ and the Pandemic Influenza Preparedness (PIP) Framework²⁰, no multilateral benefit-sharing mechanism for ABS for genetic resources has been established. Discussions on the need for and modalities of such a benefit-sharing mechanism under the Nagoya Protocol are ongoing.²¹

Monitoring and compliance

19. ABS measures usually aim to monitor and enhance transparency about the “utilization of genetic resources.” So-called checkpoints are established to collect or receive information related to the legal status of genetic resources. Certificates of compliance are issued to prove that genetic resources have been accessed in line with the domestic ABS measures of the country that provided them.

- While the types of checkpoints vary between countries, some countries have checkpoints that are directly relevant to research, development and commercialization of GRFA, including agricultural, forestry and biocontrol institutions.
- The ABS measures of relatively few countries require that genetic resources and traditional knowledge used within their jurisdictions have been accessed in accordance with PIC and that MAT have been established, as required by the domestic ABS measures of the other party.

Conclusion

20. Countries have broad scope to accommodate the distinctive features of GRFA within their ABS frameworks. ABS measures for GRFA and TKGRFA may be designed, coordinated and streamlined to address ABS for GRFA and associated traditional knowledge in a way that reflects the particularities of GRFA and TKGRFA, their importance for food security and the relevance of related research and development to a country. Various ABS measures demonstrate the increased awareness of policy-makers and administrators of the implications ABS may have for agricultural research and development and of the need for ABS measures to accommodate the distinctive features of GRFA and facilitate agricultural research and development. There is, however, still room to better adapt ABS measures to the distinctive features of GRFA and TKGRFA. As stated in the ABS Elements, “developing and implementing ABS measures is a *work in progress*.”

21. A compilation of regulatory mechanisms used in ABS country measures to address specific features of GRFA and TKGRFA may serve as a toolbox for policy and decision-makers. The ABS Elements could be complemented by concrete specific country examples and, as countries have gained more experiences, relevant lessons learned by countries in implementing these mechanisms. These experiences could inform a future report on the effects of ABS measures on the utilization and conservation of GRFA and TKGRFA and the fair and equitable sharing of benefits.

¹⁹ <http://www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/overview/en/>

²⁰ <https://www.who.int/initiatives/pandemic-influenza-preparedness-framework>

²¹ see CBD/NP/MOP/DEC/3/13.

IV. COMMENTS RECEIVED

22. As requested by the Commission, the Commission's Working Groups reviewed the draft Survey at their (virtual) sessions, held during the first semester of 2021. The Working Groups took note of the draft Survey, which they considered a comprehensive and useful compilation of existing ABS measures accommodating the distinctive features of GRFA. The Working Groups provided recommendations on how the results of the survey could complement the ABS Elements; individual members of the Working Groups, regional groups and Members of the ABS Expert Team provided further comments, as given below and in the *Appendix*.

Sources of information

23. Reference was made to the Interim National Reports on the implementation of the Nagoya Protocol provided by 98 countries to the ABS Clearinghouse. Countries were invited to report if, in the development and implementation of ABS legislation or regulatory requirements they had considered the importance of genetic resources for food and agriculture and their special role for food security as provided in Article 8 (c). It was recommended to screen these report to identify countries that have specific ABS measures for GRFA.

24. It was further stressed that the Survey should recognize the crucial role of the ABS Clearinghouse for in the implementation of the Nagoya Protocol, as the work carried out on both fora should be mutually supportive.

25. The question was raised how and on the basis of which criteria the 47 countries has been selected whose ABS measures are analysed by the Survey and why among the 47 countries selected were countries that had decided not to establish access measures.

Coverage of policy measures

26. It was noted that there is little mention of policy measures in the draft Survey. This gap could lead readers to the conclusion that many countries do not have ABS-relevant measures at all when in fact they do. Some countries, for example, address ABS measures through property and contractual laws which may provide for informed consent and sharing of benefits, although they do not include specific ABS wording. Other measures, such as permits and permissions for access to biodiversity on public and indigenous lands, are also types of informed consent and may set out benefit-sharing terms. There are also a range of guidelines, principles, research protocols and codes of conduct that may have relevance to genetic resources for food and agriculture. Furthermore, particular collections and programmes have procedures and policies in place for receiving and sharing biodiversity for food and agriculture, such as an "Attestation of Lawful Acquisition" that must be completed before a donation is received into a national collection.

27. It was recommended that:

- (i) the Survey should to the extent possible include country policies that are relevant to but do not specifically mention ABS or use ABS terminology;
- (ii) this information can be obtained through interviews with relevant country contacts;
- (iii) at the very least the document should acknowledge that policy measures are missing and provide an explanation as to why (i.e. only literature was reviewed)."

Scope of ABS measures

28. The Commission's Working Group on Animal Genetic Resources for Food and Agriculture (WG AnGR) noted that some countries do not restrict access to their genetic resources, exclude GRFA from the scope of their ABS measures or apply special provisions to ABS for (specific subsectors) of GRFA.²²

²² CGRFA/TITLE-ABS-5/21/Inf.6, paragraph 27.

Exemptions of genetic resources for food and agriculture

29. It was recommended to expand Box 10 of the Survey (page 38) by further examples of specific exemptions of genetic resources for food and agriculture, as part of the analysis of the implementation of Article 8c of the Nagoya Protocol. In this context, reference was made to the information provided by the ABS Clearinghouse.

Compilation of specific examples of ABS measures

30. The Working Group on Forest Genetic Resources (WG FGR) recommended that the Commission consider, “at some stage” a revision of the ABS Elements, with a view to reflecting specific examples of ABS country measures that accommodate the distinctive features of GRFA and/or TKGRFA.²³ The WG AnGR²⁴ and the Working Group on Aquatic Genetic Resources for Food and Agriculture²⁵ (WG AqGR) recommended that the Commission request the Secretariat to develop an annex to the ABS Elements²⁶ reflecting specific examples of ABS country measures that accommodate the distinctive features of GRFA and/or TKGRFA, for review by the Working Groups and the Commission. The Working Group on Plant Genetic Resources for Food and Agriculture (WG PGR) recommended that the Commission request the Secretariat to develop a stand-alone document that could be annexed to the ABS Elements, reflecting specific examples of ABS country measures that accommodate the distinctive features of GRFA and/or traditional knowledge associated with genetic resources for food and agriculture (TKGRFA).²⁷

ABS measures on “Digital Sequence Information”

31. The WG AqGR recommended that the ABS Elements annex reflecting specific examples of ABS country measures should also include measures “that address “digital sequence information” (DSI).²⁸ Similarly, the WG PGR noted that the proposed stand-alone document that could be annexed to the ABS Elements “may include measures that address ‘digital sequence information’ for GRFA, for review by the Working Groups and the Commission.”²⁹

32. In discussing DSI, the WG AnGR recommended that the ABS Elements be complemented by an annex on “DSI” reflecting common practices and experiences with how “DSI” on GRFA is generated, accessed and used.³⁰

V. GUIDANCE SOUGHT

33. The ABS Expert Team is invited to review the draft Survey taking into account the comments received.

²³ CGRFA/TTLE-ABS-5/21/Inf.4, paragraph 23.

²⁴ CGRFA/TTLE-ABS-5/21/Inf.6, paragraph 28.

²⁵ CGRFA/TTLE-ABS-5/21/Inf.5, paragraph 29.

²⁶ FAO. 2019. *ABS Elements: Elements to Facilitate Domestic Implementation of Access and Benefit-Sharing for Different Subsectors of Genetic Resources for Food and Agriculture with Explanatory Notes*. Rome. 84 pp. Licence: CC BY-NC-SA 3.0 IGO. (also available at <http://www.fao.org/3/ca5088en/ca5088en.pdf>).

²⁷ CGRFA/TTLE-ABS-5/21/Inf.7, paragraph 41.

²⁸ CGRFA/TTLE-ABS-5/21/Inf.5, paragraph 29.

²⁹ CGRFA/TTLE-ABS-5/21/Inf.7, paragraph 41.

³⁰ CGRFA/TTLE-ABS-5/21/Inf.6, paragraph 33.

APPENDIX
SPECIFIC COMMENTS

Chapter	Page	Paragraph	Line	Original text	Proposed amendment	Comment
General						This literature survey method does not cover all the literatures or reports. For example, any of the projects supported by the Benefit-Sharing Fund operating under the Treaty are not stipulated by the domestic law of a particular country. Thus, these reports are not listed in the REFERENCES.
EXECUTIVE SUMMARY	7	2	1–2	2. The survey involved a search for ABS measures in all United Nations member countries and examined the administrative, policy and/or legislative measures or draft laws of 47 countries.	2. The survey involved a search for ABS measures in all United Nations member countries and examined the administrative, policy and/or legislative measures or draft laws of 47 countries with measures relevant to the elements explored in the survey.	The reasons why 47 of the UN member countries were selected for inclusion were supplemented from the information provided on p. 15.
EXECUTIVE SUMMARY	7	2	2–4	It also involved a systematic quantitative literature review for research trends and gaps across geographical scales and GRFA subsectors.	It also involved a systematic quantitative literature review in English for research trends and gaps across geographical scales and GRFA subsectors.	Added to clarify the scope of the survey, since only literature written in English was included.
EXECUTIVE SUMMARY	8	10	9	(e.g. Japan)	Delete	The Government of Japan does not require PIC for access to genetic resources in Japan.

Chapter	Page	Paragraph	Line	Original text	Proposed amendment	Comment
						Chapter 3 of the Guidelines only encourages to conclude a contract between the provider and the user. It is not "ABS obligations".
INTRODUCTION BACKGROUND LITERATURE REVIEW	15–21					The text itemization should be reviewed. The following is a proposal for itemization. - Introduction - Background - Purpose of the survey - Methodology - Limitations - Structure of the report
INTRODUCTION BACKGROUND LITERATURE REVIEW	15–21					Paragraph numbers to be added.
2.1.1	31	6	2	(e.g. Japan, 2017, Chapter 3)	Delete	The Government of Japan does not require PIC for access to genetic resources in Japan. Chapter 3 of the Guidelines only encourages to conclude a contract between the provider and the user. It is not "ABS obligations".
Box 5	32			(e.g. Japan)	Delete	Same as above
4.6	61	1	7–8	Discussions are ongoing about establishing similar mechanisms for specific (sectors of) genetic resources (Schloen, Louafi and Dedeurwaerdere, 2011; Louafi and Schloen 2013), genetic	There is also some discussion about establishing similar mechanisms for specific (sectors of) genetic resources (Schloen, Louafi and Dedeurwaerdere,	A neutral description method that reflects the diversity of views involved in the relevant discussions is required.

Chapter	Page	Paragraph	Line	Original text	Proposed amendment	Comment
				resources that are outside the scope of the Nagoya Protocol (African Group Submission, 2012) or genetic sequence information (Lawson, Humphries and Rourke, 2019a).	2011; Louafi and Schloen 2013), genetic resources that are outside the scope of the Nagoya Protocol (African Group Submission, 2012) or genetic sequence information (Lawson, Humphries and Rourke, 2019a)	
4.6	61	2	11–13	These and other examples such as genetic resources of untraceable origin in <i>ex situ</i> collections make a case for considering a global multilateral benefit-sharing mechanism to accommodate the distinct features of GRFA.	<i>Delete</i>	Since there are various discussions about a global multilateral benefit-sharing mechanism, including its necessity, it is not necessarily appropriate to describe under what circumstances it is case for considering. If relevant descriptions are to be made, it should be objective, with background citations.
4.7	61-62	2	2–4	Discussions on multilateral systems (in contrast to the bilateral approach of benefit sharing between the provider and user) that would apply to GRFA beyond PGR are ongoing.	There is also some discussion related to the need for a multilateral system (as opposed to a bilateral approach where benefits are shared between providers and users) to be applied to GRFAs other than PGR.	A neutral description method that reflects the diversity of views involved in the relevant discussions is required.