Mainstreaming access and benefit sharing in agricultural Research and Development: a workshop for researchers, practitioners and policy makers in selected African countries and organizations

International Livestock Research Institute campus, Addis Abeba

21-24 November 2022

Workshop Report prepared by Isabel López Noriega and Christian Tiambo

Contents

Introduction

The workshop *Mainstreaming access and benefit sharing in agricultural Research and Development: a workshop for researchers, practitioners and policy makers in selected African countries and organizations* was held at the International Livestock Research Institute (ILRI) in Addis Ababa from the 21st to the 24th of November 2022.

The workshop was co-organized by the African Union Commission, ILRI and the CGIAR Genebank Initiative, and funded by the CGIAR Genebank Initiative.

It brought together about 35 participants from national and international research organizations, regional and continental intergovernmental organizations, national ministries of environment and agriculture, private sector and farmers' associations. The list of participants can be found in Annex 1 of this report.

The objectives of the workshop were:

- Raise awareness about the role of ABS in reaching pan-African objectives of sustainable agricultural development, food security and climate change adaptation.
- Facilitate exchange of experiences in implementing ABS systems
- Raise the profile of ABS procedures for reaching development objetives
- Identify examples of how organizations have mainstreamed compliance with national ABS measures
- Identify challenges for parties and brainstorm on potential solutions.
- Exchange views on ABS for digital sequence information (DSI), taking into account practitioners' actual use of DSI and ongoing international level consideration of the issue.
- Initiate or strengthen dialogue between practitioners and national policy makers about guiding principles for mainstreaming ABS in agricultural research and development,
- Advance the development of AUC template for material transfer agreement.
- Advance on the consideration of ABS issues within concrete initiatives, including the Consortium Agreement on genomic reference resource for African cattle and the African Network of Animal Germplasm Biobanks

The workshop agenda included the main following topics:

- Setting the scene on ABS in Africa
- ABS in agricultural research and development projects
- Guiding principles for mainstreaming ABS in agricultural research and development
- The African Union Commission template of Material Transfer Agreement

This report is organized according to these topics.

The complete agenda can be found in Annex 2 of this report.

Opening Ceremony

Calling the meeting to order was made by Siboniso Moyo, Deputy Director General for ILRI. This was followed by a welcome address by Namukolo Covic, ILRI Director General's Representative to Ethiopia, who expressed her gratitude to the persons involved in the organization of the workshop, highlighting the relevance of the discussion around access and benefit sharing (ABS) to nutrition and food security, other challenges facing the food security, including climate change, and loss of biodiversity, and the need for use of high productive and locally adapted crop and livestock seed and to diversify the food basket in Africa, while riding on the national and international instruments.

Beatrice Egulu, Policy Officer, Department of Agriculture, Rural Development, Blue Economy and Sustainable Environment of the African Union Commission (AUC), reiterated the need for the group to assist the AUC in understanding the ABS policy issues-subject too complex for the politicians and needs breaking down to simple terms. She echoed the need to work together in capacity building and strategic partnership, and stressed on the review and finalization of the Member States template of Material Transfer Agreement (MTA) supported by AUC as a great expected output from this workshop.

Isabel Lopez Noriega, Legal Specialist at the Alliance of Bioversity International and CIAT, recalled to the participant that ABS is at the core of the CGIAR Genebank Initiative and that in the next few years work on ABS in collaboration with national partners will increase. She also reminded participants about the Conference of the Parties of the Convention on Biological Diversity (CBD) that will take place in Montreal at the end of this year, and the need to raise the profile of agricultural research for development and strategic positioning it in the global agenda.

Christian K. Tiambo, Scientist ABS Officer at CTLGH/ILRI, presented the workshop objectives. This was followed by the participants' introductions and a group photo.

Setting the scene on Access and Benefit Sharing (ABS) in Africa

The first part of the workshop aimed at reviewing the implementation of ABS systems in Africa, including experiences from various stakeholders, country officers, ILRI and the Plant Genetic Resource Center of the Southern Africa Development Community (SADC).

Panel discussion: *Genetic resources and climate change adaptation and food security*

A panel including the following participants and facilitated by Isabel was set up to talk about the importance of genetic resources for agricultural development, food security and climate change adaptation.

- Abdulrazak Ibrahim (Forum for Agricultura Research in Africa, Secretariat of the African Seed and Biotechnology Programme (FARA-ASBPP Secretariat)
- Abel Teshome Gari (ILRI genebank)
- Everline Okoth (farmer from Kabudi community seedbank, Kenya)
- Evans Ochuto (farmer from Vihiga community seedbank, Kenya)

- Sharon Tsigadi (Farmers' choice, Kenya)
- Onismus Chipfunde (Zimbabwe Ministry of Environment)

During their interventions, the panellist indicated that they are involved in diverse local initiatives such as:

- Local communities' conservation of indigenous germplasm and environment
- Advising farmers and communities on the types of plants usable to combat climate change
- Practical action and capacity building in specific agroecologies to manage land degradation; bio-pesticide making etc
- Facilitation of access to quality seeds; seed market to support genetic resources conservation and use; use of biotech tools; countries' management of disaster
- Distributing imported animal genetic resources to farmers; better material; feedback from farmers on performance
- Guiding governments in distribution of relevant germplasm to the suitable areas where they can perform better;
- Helping farmers identify germplasm adapted to their local conditions and working closely with CGIAR Centers like CIMMYT and CIAT on variety selection.

The panel discussion revealed that all these stakeholders address the same issues and work towards similar objectives; various stakeholders have very specific experiences and have generate best practices, but the absence of coordination and collaboration, and sometimes deficits in some critical areas, constitute major obstacles, raising the need to improve and harmonize seed systems across Africa, including within the African Continental Free Trade Agreement. The discussions also highlighted the need to harness the potential of new technologies and the "capacity to do science ourselves" to sustainably conserve and use genetic resources and drive industry competitiveness and benefits to farmers.

Other topics raised or debated during the panel session included:

- Orphan crops breeding and access to germplasm
- Need not to infringe the sovereignty of countries;
- How do farmers benefit?
- Technology transfer
- The capacity of countries to trace the introductions

- Harmonize biosafety regulations to benefit more countries.
- Cost of accessing superior germplasm;
- National policies affecting livestock industry
- Lack of information to the community genebanks: eg GMO issues not well explained
- Better communication from research to the farmers so that they can make an informed decision.
- Existence and efficiency of extension services and their challenges
- Fragmentation across Africa and at national level
- Technologies not always aligned to new challenges.
- Externally funded research agendas

Futhi Magalula, Programme Officer at the Centre for Coordination of Agricultural Research and Development for Southern African (CCARDESA) had prepared a presentation on CCARDESA's work in the area of climate change adaptedion and food security. Futhi's presentation was not delivered at the workshop, but we include it in this report since it contributes to describing the context in which ABS takes place.

Towards climate change adaptation and food security

Poster session

During the poster session, participants visited the posters and interacted with the posters' presenters. The posters showcased ABS practices in Cameroon, Ethiopia, Kenya, Uganda, and the ABS process flowchart as applied for animal genetic resources at ILRI.

The posters are available at the following links:

ABS compliance for animal genetic resources at ILRI

ABS in Cameroon

ABS regulatory pathway in Uganda

Actions' flows for ABS at ILRI

Basic facts regarding the adoption and implementation of ABS measures in Ethiopia

Ghana ABS application flowchart

Kenya's implementation of the Nagoya Protocol and the Plant Treaty

Presentations

The Convention on Biological Diversity and its Nagoya Protocol. Review of basic concepts and emerging issues. Hartmut Meyer, ABS Initiative

Hartmut's presentation focused on the concept of ABS, how it has been treated in international law before the CBD and in the CBD, and how the Nagoya Protocol aims to reinforce benefit-sharing by creating a ABS monitoring system.

Link to Hartmut's presentation

Access and benefit-sharing under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Olivier Rukundo, ITPGRFA Secretariat, and Isabel Lopez Noriega

Olivier and Isabel talked about the multilateral system of ABS under the ITPGRFA and its results in terms of amounts of materials being exchanged under the system and the amounts of funds disbursed by the benefit sharing fund. They provided an overview of the negotiations for the enhancing of the multilateral system and some remarks about how digital sequence information (DSI) has been addressed by the governing body of the ITPGRFA.

Link to Olivier's presentation

SADC Guiding Principles for the mutually supportive implementation of the Nagoya Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture. Justify Shava, Director of the Center for Plant Genetic Resources of SADC.

In his presentation Justify drew participants' attention to the risk of gene banks becoming museums, with very little use of the store genetic material, some of the reason being lack of funding to exploit resources, lack of collaborations and countries' excessive protection of their genetic resources. He called for a more inclusive approach to ABS and the use of genetic resources, with genebanks not being so much guardians of the resources but rather promoting their utilization. He mentioned the possibility of adopting new models of conservation of plant genetic resources where public and private organizations share responsibilities, and where there is much more inter-ministerial and inter-departamental collaboration in issues related to conservation, use and ABS.

Link to Jusitfy's presentation

Measures adopted by countries to facilitate administrative procedures related to ABS and for mutually supportive implementation of the Nagoya Protocol and the Plant Treaty, focusing on aspects that are relevant for agricultural research. Hartmut Meyer

Hartmut presented characteristics that make ABS systems friendly for agricultural research and development. He also presented good practices adopted by some countries' regulations for ABS implementation, and provided the example of Benin for its one point entry system, and Bahamas, where the whole ABS procedure can be done online.

Link to Hartmut's presentation

Measures adopted at institutional level to integrate ABS obligations in compliance procedures. Ephy Khaemba, Manager, Research compliance and Environment Health and Safety at ILRI; Eva Kathambana, Legal Counsel at ILRI; and Josephat Otieno, Environment Occupational Health & Safety Officer.

Josephat Otieno presented the procedures and tools that ILRI applies for obtaining access permits and other related agreements for the use of animal genetic resources. Among the procedures, he highlighted the mapping of providers and partner users. Among the tools, he talked about ILRI MTA templates. Josephat enumerated the various processes and agreements that are involved in, or related to ABS compliance, from ethical reviews to export permits.

Link to Josephat's presentation

Following Josephat's presentation, questions and answers covered the following aspects:

- Challenges involved in ABS process:

In ILRI's experience, ABS procedures can lead to delays, to the point that activities cannot be implemented and funds have to be sent back to donors. Access permits require minimum three months. In order to complete the process, continuous follow up with authorities and partners is required. Sometimes there is no clarity about who is the leading agency. Renewals of access permits can take long time, but often depends on the quality of the research reports.

Normally in countries where there is an ABS framework in place, procedures are easier. Templates also help much.

- The kind of agreements ILRI obtains.

Through the processes described by Josephat, ILRI gets access permits which often involve access to genetic resources. They are ABS agreements that are certified through international certificates of compliance.

Experiences obtaining access to traditional knowledge

Just one permit was obtained in the past in Kenya, from one pastoralist community. It involved sharing research results back with the community.

- Sharing ILRI templates

ILRI compliance team can share the template once they have approval to share them the permission from senior management.

- Strategies for reaching all relevant actors

The mapping of relevant governmental agencies at national and local levels helps identify the focal persons who can help negotiate with partners. National and local governments usually facilitate communication between ILRI as a user and farming communities, often through focal group discussions.

- Harmonization of ABS compliance mechanisms across CGIAR Centers

Work is in progress to harmonize approaches, but ILRI's work with animal genetic resources is quite unique. Most centers operate with plant genetic resources under the Plant Treaty's multilateral system.

ILRI genebank policies and standard operating procedures for ensuring compliance. Alice Muchugi

Alice Muchugi provided an overview of the material conserved in IRLI forage genebank and the work that is being carried out within the genebank.

She explained that the genebank's work to ensure compliance with ABS obligations is very much related to the implementation of a quality management system in the genebank. The genebank's quality management system seeks to ensure compliance with four types of policies and rules: international conventions, international standards on technical aspects, CGIAR and ILRI policies, and European Union regulation.

Link to Alice's presentation

ABS in agricultural research and development projects and initiatives

The second part of the workshop aimed at sharing experiences related to ABS in the context of particular research and development projects.

Presentations on projects and initiatives involving strong ABS component

Consortium Agreement on genomic reference resource for African cattle. Christian Tiambo

The consortium agreement on genomic reference resource for African cattle aims to ease the genotyping and collation of genetic data of African cattle. Initially under the consortium, ILRI had bilateral agreements with each partner. Each partner was seen as a data provider, while ILRI was considered the data user. This approach had obvious limitations, since only ILRI had access to all the data that

was being pooled under the consortium. The consortium agreement will much better reflect the multilateral nature of the initiative and will facilitate the flow of information among members. Thirteen countries are currently involved in the consortium, and many of the participant organizations share livestock genetic data coming from previous and ongoing projects.

Link to Christian's presentation

After Christian presentation, questions from the participants touched on the following issues:

- Obstacles for getting the consortium agreement adopted

The main obstacles derived from the fact that partners have different understandings of the legal terms and also of the objectives of ABS in general. Also the limited legal capacity in some of the organizations delayed advances with the agreement, which took two years to be drafted.

- Usefulness of consortium agreements

Multilateral ABS agreements among partners in a consortium have the potential to facilitate things for countries, particularly those that have not established ABS systems and are in a kind of legal limbo. The multilateral ABS agreement can ensure compliance even when ABS laws are absent.

Establishment of the African Network of Animal Germplasm Biobanks and Regional Animal Resources Seed Centres of Excellence. Christian Tiambo and Mary Mbole-Kariuki,

In the absence of Mary Mbole-Kariuki (focal point of Animal Resource Seed Centers of Excellence under the African Bureau of Animal Resources - AU-IBAR), Christian made a presentation on the African Network of Animal Germplasm Biobanks.

Christian explained that the project "Strengthening the Capacity of African Countries to Conservation and Sustainable Utilization of African AnGR (2013-19) established five regional gene banks in Botwsana, Burkina Faso, Cameroon, Tunisia and Uganda. Together with the establishment of genebanks, the project looked at ensuring the linkages between genebanks and databanks, which is a process that is still ongoing. Results from this work are a Memorandum of Understanding; Standard Operating Procedures; legal and administrative guidelines for the movement of animal genetic materials, and a Material Transfer Agreement. Most recent work has focused on converting the regional genebanks into Africa Union Animal Resources Seed Centres of Excellence, with a broader mandate that includes the development and implementation of continental cryoconservation programmes, training of stakeholders, supporting the sharing of animal genetic resources across the continent and advancing the harmonization of seed regulatory frameworks in Africa. The network of Centers of Excellence has an

ambitious plan for 2023 in order to fulfill its mandate. This plan includes the establishment of a continental back up center (for both genetic resources and related data) at the Panafrican Regional Vaccine Center.

Link to Mary's presentation

Following Mary and Christian presentation, the following issue was addressed:

- Data sharing in the network

Some regional banks are more willing or capable to share data than others. Contributions to databanks are uneven.

Exchange of traditional varieties for release and multiplication under the Open Access Seed project in Kenya, Uganda and Tanzania. Desterio Nyamongo and John Wasswa

Desterio Nyamongo and John Wasswa talked about a recently finalized project called the Open Source Seed project which took place in Kenya, Uganda and Tanzania with the support of the Plant Treaty's benefit sharing fund. The impact of climate change motivated the genebanks of these countries to share landraces that they maintained with farmers and evaluate these landraces with them. Through this process farmers were able to select good varieties that can be multiplied and shared at the local level, and also released and commercialized at the national level. The landraces were exchanged among countries with the Plant Treaty's Standard Material Transfer Agreement, which does not allow the recipients to release and commercialize the variety as such. For this reason, the project's national coordinators are currently in discussions for coming up with an appropriate ABS agreement that will give each other ability to release the traditional varieties obtained from the other countries in their own countries.

Small groups' discussion around challenges to implement ABS in AgR&D and possible solutions

Following the presentations, the participants split in four small groups to talk about: 1) challenges that researchers, practitioners, farmers and ABS officers face in the context of agricultural research and development; and 2) possible approaches to address ABS issues that arise in the context of agricultural research and development. The following questions were given to the small groups to guide their discussions:

Challenges	Possible approaches
· How much do national ABS systems facilitate the use of genetic resources for research and development in the agricultural sector? · Do national ABS rules take into consideration the needs and	· Do countries and regional organizations need to adopt a more inclusive approach to ABS? · How can ABS contribute to national goals related to agricultural development and food security?

characteristics of the agricultural sector? · Are genetic resources and uses that fall under the multilateral system of the ITPGRFA clearly differentiated in national laws? · Do agricultural research and development organizations have enough awareness about ABS? Have they developed robust compliance mechanisms? · What challenges do plant and livestock researchers face when following ABS procedures? Where are the biggest obstacles? · Do national ABS systems effectively facilitate the sharing of benefits arising from research with national stakeholders who conserve crop and livestock genetic resources, and specially with farmers? · Are there consultative processes and bodies that facilitate the involvement of stakeholders from the agricultural sector in the development and revisions of ABS procedures?	· Is there interest in harmonizing ABS procedures at the subregional and regional levels for agricultural research and development? · What approaches and tools are useful for agricultural research and development organizations to be better prepared for ABS? · What benefits arising from agricultural research are most useful for those who conserve genetic resources (specially farmers)? How to ensure that these benefits are shared with them? · What institutional arrangements can be done at the national level to ensure more coordination among different authorities dealing with ABS, and among authorities and the agricultural sector?

The following bullet points summarize the reflections that emerged in the four groups:

<u>Challenges:</u>

- Limited awareness among research organizations.
- Various authorities are involved in ABS process. Poor communication and coordination among them. This slows down the process.
- In some countries PGRFA under the Plant Treaty's multilateral system are not differentiated.
- Benefit-sharing through national system is sometimes absent. In particular, little feedback is given to farmers once research is done.
- No coordination and synergies among authorities.
- Officers lack enough knowledge on ABS
- Lack of harmonization among national ABS laws.
- Delays in permits
- Lack of a leading institution which can coordinate.
- Limited international fora to discuss ABS issues related to AnGR.

- Lack of standardization of ABS for AnGR.
- Digitization of GR. What challenges does it create?

Possible solutions:

- Inter-ministerial/departmental committees for ABS.
- National PGR committees.
- Electronic permits.
- Documentation of genetic resources existing in a country and dissemination of this information to local communities in local languages is also a form of benefit-sharing from research activities.
- Another form of benefit-sharing is collaboration between national genebank and local seedbanks for restoration of lost varieties.
- Ethiopia is a nice example of all ABS centralized in one organization. It deals with both
- Organizations being made aware about existing ABS rules. In Ethiopia for example they organize open days for stakeholders to speak about ABS.
- BSF: TORs ensure inclusion of farmers in projects.
- Benefits from research take many forms. They can be shared with farmers: capacity building, research findings that are of relevance to them.
- Need for a more inclusive approach to ABS.
- Harmonization of ABS processes at subregional and regional level
- Create a fora for exchange of information on AnGR.
- Raise awareness of the importance of ABS for food security.
- Harmonize legal frameworks
- Single-window system/digital platform
- Consortium of institutions where one takes a coordinating role on ABS issues.
- Single research permit instead of various permits (access, research, etc.). And just one fee instead of various fees (one for each permit).
- Appoint a department/agency as leader/ coordinator.
- One Health concept as a useful home to connect ABS with other national policies?

Guiding principles for mainstreaming ABS in agricultural research and development

The third part of the workshop aimed to develop at set of principles for mainstreaming ABS in agricultural research and development. The guiding principles are meant to be as a reference for improving national ABS systems and for inspiring the work on ABS under African Union programmes.

Presentation on integrating ABS in the African Seed and Biotechnology Programme

Abdulrazak Ibrahim, officer at the Forum for Agricultural Research (FARA) and secretary of the African Seed and Biotechnology Programme (ASBP) presented the ASBP and how ABS processes, mechanisms and tools serve the purposes of the programme, other pancontinental initiatives and ultimately the Sustainable Development Goals. Under the ASBP 55 countries and a wide range of regional and international organizations have joined forces to establish effective and efficient seed systems and enhance the application of biotechnologies and methodologies within the seed sector. A ten year plan defines the objectives and work areas of the programme, whose implementation is supported by specialized working groups. Abdulrazak committed to include the outputs of this workshop in the agenda of the next meeting of the ASBP Steering Committee, and to make them available to the relevant working groups.

Link to Abdulrazak's presentation

Abdulrazak's presentation led to questions and answers on the following topics:

- Countries' contributions to the vision and the content of the ASBP ten year plan

Countries inputs are channeled through international and regional organizations involved in the programme.

- Implementation of the ASBP

AGRA and other funders provide funds for implementation. On the technical side, national technical groups coordinate implementation.

- Involvement of national genebanks

Some national genebanks learn about the ASBP for the first time at the workshop. Mechanisms need to be explored for them to be kept in the loop, either through the national technical groups and the programme working groups.

- Monitoring and evaluation

Data for monitoring and evaluation are very limited. For example understanding progress towards the milestones included in the Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods has been very much imperiled by the lack of good data. The same data limitation applies to data on genetic resources that are conserved ex situ and in situ. These data are very difficult to collect.

- Informal seed systems in the ASBP

The programme has an inclusive approach and seeks to improve informal seed systems together with formal ones. It can rely on country and regional experiences. For example SPGRC is studying ways to recognize and/or register

farmers' varieties. In Uganda, a new schedule for registration of farmers' varieties is being prepared.

Small groups' discussions on draft guiding principles for mainstreaming ABS in agricultural research and development

Participants split in three groups and discussed a draft of guiding principles guided by the following questions:

- What fundamental principles are missing?
- What principles are too ambitious?
- What needs to be changed in the wording of the principles?
- In what contexts would they be useful and could they be adopted? Are there concrete opportunities in the near future?
- Who could champion them in such contexts?
- What inputs would be necessary to apply them? What kind of resources?

The Guiding Principles can be found in Annex 3 of this report. This version addresses most of the proposals that the small groups made. One of the groups proposed that the principles be condensed into five. Since this proposal required considerable re-writing of the principles and there was not time to discuss how this should be done, the proposal has not been incorporated into this version.

The following bullet points summarize further reflections and proposals from the groups in relation to the guiding principles:

- The principles are particularly useful for countries that are in the process of domesticating the Nagoya Protocol and the Plant Treaty.
- The African Union, through FARA, should be the main champion of these guiding principles. FARA can promote their adoption by countries through the ASBP and other pan-African programmes. For this, the principles will be included in the agenda of the next ASBP platform and committee, scheduled to take place in Cameroon in December.
- At national level, several focal points would need to be engaged in the consideration of the principles: CBD, ABS, Plant Treaty focal points. With the initiative and support of the AU, a more supportive environment can be created around these people, so that they can champion initiatives like this one all the way up to their Ministers.
- In addition to this bottom-up approach (from technical people and ABS officers to Ministers), regional economic communities such as SADC can channel ideas from the African Union to ministerial levels.
- For all this to happen, funds are necessary. Among other sources, funding from private institutions should be explored.

- Follow up workshops could be organized in the next couple of years to assess progress in the refinement and adoption of the principles at regional and national levels.

Before proceeding to the last part of the workshop the participants visited ILRI forage genebank, guided by Alice Muchugi, genebank manager.

The African Union Commission (AUC) template of Material Transfer Agreement

The fourth and last part of the workshop was dedicated to the review of the draft template for MTA developed under the auspices of the African Union Commission.

John Mulumba, director of plant genetic resources at the Uganda National Agricultural Research Organization, presented the draft template MTA that a working group working under the auspices of the African Union Commission has developed in the last months, and highlighted aspects that deserved further thinking and definition from his point of view.

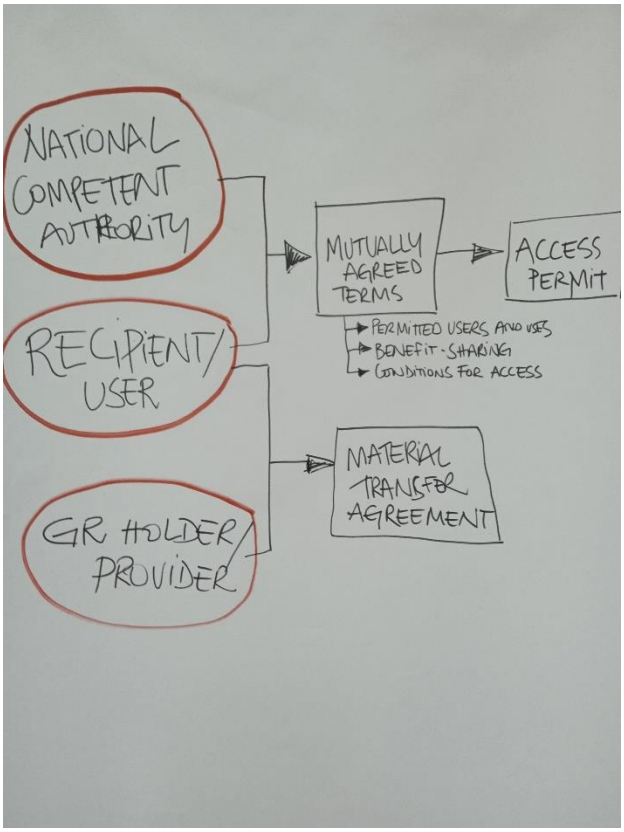
Three small groups worked on different sections of the template MTA and proposed revisions based on the following criteria:

- Appropriateness – all possible material transfers?
- Completeness- relevant articles included
- Consistency – no contradictions across articles
- Relevancy of article text
- Alignment with international instruments
- Non-contradictory to common practice (e.g. in contractual law etc.)
- Durability – surviving the test of time

- Enforceability
- Adaptability – easy to be changed to fit in different contexts, for different users and uses

Back in plenary, the groups shared their revisions. A common message from all three groups was that the scope of the template MTA should not overlap with other documents that are involved in the ABS process. The template MTA includes elements that are more adequate in a Mutually Agreed Terms (MAT) document, in particular provisions related to benefit-sharing. To avoid confusion and respect the usual order of agreements in the ABS process, these elements should not be included in the template MTA.

A simple diagram showing actors and agreements that are frequently involved in the ABS process was proposed to participants as a reflection of the discussion. It is to be noted that the chronology of events and legal documents in bilateral ABS agreements may vary from case to case and may not always be as reflected in the diagram.



Various participants shared views on if and how the template MTA should address ownership over genetic resources, and property rights over derived material. Other issue that was raised during the discussion was how to define biological resource when the material that is being transferred has not been identified yet, for example when it is a sample of soil. The appropriateness of requiring providers

and recipients to share a copy of the material that is being transferred with a national or regional genebank was also discussed.

John Mulumba closed the session explaining that the final version of the template MTA is planned to be validated by March 2023. He encouraged the workshop participants to keep working together on ABS issues for the benefit of Africa.

The template MTA is included in Annex 4. It shows the edits that were proposed by all the small groups, with comments and additions in green and red color respectively.

Closure of the workshop

Before the closing speech by Boni Moyo, Hartmut Meyer shared with participants thoughts about the ways forward and shared news about a soon starting initiative funded by GIZ with potential to work with various African institutions.

Boni Moyo thanked everyone for the very active participation, and recognized the enormous work done by ILRI administration and support staff for the organization of the workshop.

Annex 1: Workshop participants

Country	Organization	Name
Botswana	Ministry of Agriculture, Department of Agricultural Research	Utlwanang MORERI
Cameroon	Ministry of Environment, Protection of Nature and Sustainable Development	Aurélie TAYLOR DINGOM
Ethiopia	Ethiopian Biodiversity Institute	Fikremariam GHION
Ethiopia	Ethiopian Institute of Agricultural Research	Nahom MESFIN
Ethiopia	Ethiopian Institute of Agricultural Research	Dejene MESFIN
Ethiopia	National Animal Genetic Improvement Institute	Asrat TERA DOLEBO
Ghana	Council for Scientific and Industrial Research - Plant Genetic Resources Research Institute	Daniel ASHIE KOTEY
Ghana	Veterinary Services	Reginald NAARTEY
Kenya	Ministry of Environment and Forestry	Joyce IMENDE
Kenya	Kenya Agriculture and Livestock Research Organization	Desterio Ondieki NYAMONGO
Kenya	Kenya Animal Genetic Resource Centre (KAGRC)	Roselyne WAMBUGU
Nigeria	National Centre for Genetic Resources and Biotechnology	Sunday ALADELE
Nigeria	National Centre for Genetic Resources and Biotechnology	Ronke BOLATITO

Uganda	National Council of Science and Technology	Beth MUTUMBA
Uganda	National Research Organization	John MULUMBA
Zimbabwe	Ministry of Lands, Agriculture, Fisheries, Water and Rural Resettlement	Onismus CHIPFUNDE
Ethiopia	African Union Commission	Beatrice EGULU
Ghana	Forum for Agricultural Research in Africa	Abdulrazak IBRAHIM
Zambia	SADC Plant Genetic Resource Center	Justify SHAVA
Botswana	Centre for Coordination of Agricultural Research and Development for Southern Africa (CCARDESA)	Futhi MAGAGULA
Kenya	Africa Biogenome Project	Sally Katee MUENI
Ethiopia	ILRI	Alice MUCHUGI
Ethiopia	ILRI	Abel TESHOME
Kenya	ILRI	Christian K. TIAMBO
Kenya	ILRI	Ephy KHAEMBA
Kenya	ILRI	Josephat OTIENO
Kenya	ILRI	Eva KATHAMBANA
Kenya	ILRI	Chris JONES

Kenya	ILRI	Siboniso MOYO
Kenya	Farmers Choice Ltd	Sharon TSIGADI
Kenya	Vihiga Community Seedbank	Evans OCHUTO
Kenya	Kabudi Commuity Seedbank	Everline OKOTH
Germany	ABS Capacity Development Initiative	Hartmut MEYER
Spain	Alliance of Bioversity and CIAT	Isabel LOPEZ NORIEGA
Germany	Global Crop Diversity Trust	Nora CASTAÑEDA

Annex 2: Agenda

Day 1, November 21

Setting the scene

Morning

Agenda		Who	Process
8.30	Registration	All	
9.00	Welcome	Namukolo Covic, ILRI AUC Director TBD Isabel López, Genebank Initiative	
9.10	Workshop objectives	Isabel López	
9.20	Introductions	All	
9.35	International ABS framework (including emerging issues, mainly DSI)	Secretariat of the Convention on Biological Diversity Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture	Presentations followed by Q&A: - ABS under the CBD and the Nagoya Protocol: main concepts, level of implementation by countries in Africa, international supporting tools, recent issues: DSI. Tauko Shikongo, CBD Secretariat - ABS under the International Treaty on Plant Genetic Resources for Food and Agriculture: main concepts, level of implementation by countries in Africa, international supporting tools, recent issues. Secretariat of the Plant Treaty -TBC
10.35	Coffe/Tea break		
11.00	Genetic resources, ABS, climate change adaptation and food security	Diverse group of speakers and all participants	Panel composed by: - Abdulrazak Ibrahim (FARA-ASBPP Secretariat) - Abel Teshome Gari (ILRI genebank) - Everline Okoth (farmer from Kabudi community seedbank)

			and/or Evans Ochuto (farmer from Vihiga community seedbank) Kenya - Sharon Tsigadi (Farmers' choice, Kenya) - Onismus Chipfunde (Zimbabwe Ministry of Environment) - Sheila Clare Butungi (Uganda Ministry of Agriculture) Each panel member will be required to answer some questions in relation to the agenda item. Their responses will be followed by Q&A and discussion with all participants.
12.30	Lunch		

Afternoon

Agenda		**Who**	**Process**
14.00	National ABS regimes and ABS aspectsF in regional and subregional initiatives	· National ABS focal points · Plant Treaty focal points · Directors of Veterinary Services · Representatives from regional organizations	Poster session. Participants move around freely visiting the posters. Posters' authors stand by the posters and make short presentations using the posters as the basis. There will be whiteboards and sticky notes next to each table for participants to write down their comments/feedback as they visit each poster. Back in plenary participants share impressions. Poster: ABS system in Cameroon and implications for agricultural research. Aurelie Taylor Poster: Roadmap to operationalization of Nagoya protocol in Ethiopia. Implications for the agricultural research sector. ABS guidelines and challenges in relation to non-Annex 1 PGRFA. Fikremariam Ghion and Melese Maryo

			Poster: Steps towards the implementation of the Nagoya Protocol and the Plant Treaty in Ghana. Daniel Ashye Kotey and Reginald Naartey. Poster: Kenya's implementation of Nagoya Protocol and the Plant Treaty: Implications for the agricultural research sector. How does Kenya deal with non-annex 1 materials held by ICRAF. Joyce Imende and Desterio Ondieki Nyamo Poster: Uganda's ABS regime, including procedures for exchanging germplasm under the Plant Treaty's multilateral system. PIC requirements for working with farmers in large projects. Beth Mutumba Poster: Integrating ABS in the African Seed and Biotechnology Programme. Abdulrazak Ibrahim Posters: Action Flows for ABS and ABS compliance for Animal Genetic Resources. Christian Tiambo
15.30	Coffe/Tea break		
16.00	Good practices for ABS implementation	· Justify Shava, SADC · Hartmut Meyer, ABS Capacity Development Initiative · ILRI compliance officer · ILRI legal expert · ILRI genebank manager	Presentations followed by Q&A: - Measures adopted at the sub-regional level to facilitate mutually supportive implementation of the Nagoya Protocol and the Plant Treaty: the SADC Guiding Principles. Justify Shava - Measures adopted by countries to facilitate administrative procedures related to ABS and for mutually supportive implementation of the Nagoya Protocol and the Plant

			Treaty, focusing on aspects that are relevant for agricultural research. Hartmut Meyer - Measures adopted at institutional level to integrate ABS obligations in compliance procedures. Ephy Khaemba and Eva Kathambana - ILRI genebank policies and standard operating procedures for ensuring compliance. Alice Muchugi
17.00	Closure of the day		

Day 2, November 22

ABS in agricultural research projects

Morning

Agenda		Who	Process
9.00	ABS related issues and challenges in particular research and development initiatives	Experts involved in selected initiatives	Short presentations on: - Consortium Agreement on genomic reference resource for African cattle. Christian Tiambo, ILRI - African Network of Animal Germplasm Biobanks and Regional Animal Resources Seed Centres of Excellence. Mary Mbole-Kariuki, focal point ARSCoE and AU-IBAR - Exchange of traditional varieties for release and multiplication under the Open Access Seed project in Kenya, Uganda and Tanzania. Desterio Nyamongo and John Wasswa
10.00	Challenges in the implementation of ABS in research projects	All	Small group discussions: - Diverse small groups talk about challenges that researchers, practitioners, farmers and ABS officers face in the context of agricultural research and development. Guiding questions will be prepared in advance for the small groups. - Each group summarizes the challenges in cards - Each group presents its cards - Discussion in plenary
11.00	Coffe/Tea break		

11.30	Principles and approaches to address challenges	All	Small group discussions: - Same groups as for challenges talk about possible approaches to address ABS issues that arise in the context of agricultural research projects. - Each group comes up with principles and approaches that can inform actions by researchers, ABS officers, farmers, etc. - Each group presents its cards - Discussion in plenary
13.00	Lunch		

Afternoon

ILRI staff party

Day 3 – November 23

Guiding principles and model provisions for mainstreaming ABS in agricultural research and development

Morning

Agenda		Who	Process
9.00	Guiding principles for effectively dealing with ABS issues in agricultural research and development	Isabel López or TBC	Presentation of draft guiding principles for better integration of ABS in agricultural research and development, based on previous day discussions.
9.30	Discussion around guiding principles, and their possible adoption at organizational, national and regional levels	All	Small groups' work: Participants split in groups to: · discuss the guiding principles based on some guiding questions · identify ways in which guiding principles can be integrated in their respective programmes - including the working groups on PGRFA Management, DVS, Research, Breeds/Variety Development and Seed production, and Animal Seed of the African Seed and Biotechnology Programme of the AU. · develop roadmaps for integrating guiding principles in their work.
11.00	Coffe/Tea break		
11.30	Discussion around guiding principles, and their possible adoption at organizational, national and	All	Reports back from small groups and general discussion

	regional levels		
12.30	Lunch		

Afternoon

Agenda		**Who**	**Process**
14.00	African Union Commission for Material Transfer Agreement for genetic resources	National expert involved in the development of template	Presentation of AUC template of MTA. John Mulumba Wasswa
14.30	ILRI experience using MTA templates	Compliance and legal officers	Presentation of ILRI experience. Ephy Khaemba and Eva Khatambana
15.00	Discussion on African Union Commission MTA template	All	Small groups' work: Participants split in small groups to discuss MTA template with the purpose of: · Identifying gaps · Modify them · Exchange views on when and where they could be used Guiding questions will be prepared in advance.
15.30	Coffe/Tea break		
16.00	Discussion on African Union Commission MTA template	All	Continuation of small groups' work
17.00	Closure of the day		

Day 4 – November 24

Guiding principles and model provisions for mainstreaming ABS in agricultural research and development (cont.)

Morning

Agenda		Who	Process
9.00	Discussion on African Union Commission MTA template	All	Report back from small groups and discussion in plenary
10.00	Dialogue on follow up actions for the finalization of the MTA template	All	
11.00	Coffee break		
11.30	Pending issues and closure of the meeting		
12.30	Lunch		

Afternoon

Agenda
14.00-17.00 Bilateral meetings as needed

Annex 3: Guiding principles for mainstreaming ABS in agriculture research and development

Addis Ababa, 23 November 2022

Principle 1: A more inclusive approach to ABS is necessary in the context of agricultural R&D. More inclusive means that:

- it embraces broader objectives of food security;
- it seeks a wider use of genetic resources and a wider sharing of benefits;
- it engages a wider range of stakeholders, both as users and beneficiaries, including women, youth, disabled and other sensible groups;
- it seeks to support partnerships for research and development; and
- it aims at standardizing rules and procedures across countries.

Principle 2: Genetic resources for food and agriculture have special characteristics. Their use and exchange for research and development purposes deserve special ABS considerations.

Possible practical approaches:

- Differentiated ABS systems for GRFA
- PGRFA under the multilateral system of the International Treaty on Plant Genetic Resources for Food and Agriculture exempted from national ABS rules and treated in accordance with the multilateral system rules.
- ABS conditions tailored for facilitated exchange of genetic resources and information within agricultural research consortia

Principle 3: Access and benefit-sharing systems must not remain isolated. They must be mainstreamed in national, regional and continental policies on research and development, and to food security objectives.

Possible practical approaches:

- ABS policies and rules placed under, or connected to the Ministry for Science and Technology.
- Inter-ministerial/departmental committees

Principle 4: Coordination among ministries and agencies dealing with ABS is necessary for effective implementation

Possible practical approaches:

- A unique organization takes care of ABS procedures for all types of GR, uses and users
- When several agencies are involved, one of them is appointed as the leader for ABS issues related to GRFA.

Principle 5: Compliance with ABS rules requires consultations and raising awareness among research organizations and among national authorities.

Possible practical approaches:

- National committees on PGR and AnGR for food and agriculture involving public and private research organizations as well as relevant

governmental agencies.

Principle 6: Research organizations and consortia must adopt standard operating procedures that ensure ABS compliance

Possible practical approaches:

- Investment in specialization of human resources
- Development and adoption of institutional policies and procedures
- Fora and networks for exchange of experiences

Principle 7: Simple and clear procedures for ABS facilitate the use of genetic resources for research and development

Possible practical approaches:

- Single-window system for all types of GR, uses and users. Coordination among agencies involved in ABS takes place "behind the window".
- Online system for processing permits and MTAs
- Research permits, access permits and other applicable permits are unified under one single permit
- Mentorship and capacity building programmes for users and providers

Principle 8: The design and implementation of ABS systems require funds

Possible practical approaches:

- Fees collected from research users at the time of access (multiple fees should be avoided).
- Generation and dissemination of information about the value of genetic resources and the potential of ABS systems to attract investments in the form of capacities, technologies and funds.

Principle 9: Harmonization of ABS rules and procedures across countries should be sought

Possible practical approaches:

- National working groups submit draft proposals for harmonization to national ministries, which take discussions at the regional level through regional networks. Proposals are then presented to African Union for implementation.
- The proposals for harmonization include templates for access permits, mutually agreed terms and material transfer agreements, covering among others intellectual property right issues
- Useful precedents can be used as a reference, in particular harmonization of biosafety laws

Principle 10: National authorities and agricultural researchers must seek the sharing of monetary and non-monetary benefits arising from research with farmers and local communities

Possible practical approaches:

- Institutionalization of benefit-sharing arrangements that include benefits being shared with farmers (through adoption of national guidelines)
- National authorities facilitate the engagement of local communities in the

PIC process and in research and development programmes.

- Local communities are involved in projects funded by the Plant Treaty's multilateral benefit sharing fund.
- National authorities promote the results of research among local communities: varieties at a subsidized price; research results translated into local languages and disseminated.
- Incentive mechanisms for research organizations to share benefits with local communities

Annex 4: Draft template of Material Transfer Agreement

Note: proposed deletions are showed as ~~strikethrough~~ text; proposed additions are in red color; comments are in green color.

TEMPLATE

***DRAFT* MATERIAL TRANSFER AGREEMENT FOR BIOLOGICAL RESOURCES**

Comment: This is not a traditional MTA but an agreement with substantial benefit sharing clauses, more resembling a MAT / ABS contract, restructure the title when the agreement is ready and can be put into relation with national procedures.

Comment: The document feels like an MTA that combines provisions of PIC & MAT because it is talking about access and it should be addressing transfer of material. What you access is not what you are likely to transfer, you cannot combine provisions for access and transfer i.e. you are accessing blood and want to transfer DNA. This approach looks at it from the SMTA approach. It would work well for crops and Annex 1 but is limiting for AnGR.

Comment: It may be good to circulate the template together with a explanatory note that clarifies where the template is expected to be used, i.e. what would be the chronology of permits and agreements (e.g. in the case seed are going to be collected from on farm/in situ, a collecting permit would be obtained first, and once the materials have been collected, the national authority would sign the MTA specifying the actual materials that are transferred).

Comment: DSI should have it's own template because it has its own different legal provisions

THIS AGREEMENT is made on this ……day of ……between [Name of institution, Legal establishment status, Full address] hereinafter referred to as [PROVIDER]

And

……[Name, legal status, Full address] hereafter referred to as [RECEPIENT]

This Agreement governs ~~access to~~ the transfer of biological resources for their utilization between……[PROVIDER] and…… [RECIPIENT]. In countries with national ABS legal frameworks, this agreement needs to recognise the national ABS documents (PIC, MAT, ABS Permit) ~~and is subject to the grant of an Access Permit from (the National competent authority on ABS) which Access Permit is an integral part of this agreement.~~

WHEREAS, PROVIDER will provide to…… [RECIPIENT] access to the biological resources described in [ANNEX 1 HERETO] for their utilisation;

WHEREAS, ……. [RECIPIENT] desires to utilize the biological resources to ……. [INSERT NON COMMERCIAL OR COMMERCIAL PURPOSE] as indicated in the application and ensure the sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization ~~*e.g.,* conduct research and/or development on their genetic and/or biochemical composition];~~

Comment: This is text taken from the CBD, this inclusion would include non-commercial and commercial applications under this agreement

and

WHEREAS, . . . (*INSERT other preambular clauses as maybe deemed necessary*)

NOW THEREFORE, in accordance with applicable national (and international) laws, and in consideration of the mutual obligations and covenants herein contained, the Parties agree as follows:

1.0 DEFINITIONS/TERMS
"APPLICATION" means a written formal request to the PROVIDER for permission to access and utilize biological resources;

"Associated Knowledge" Comment: Associates with what? Where is the difference to the second term? Why does it leave out "traditional"? and "Knowledge Associated with Biological Resources" mean the specific knowledge, innovations and practices described in the Application;

"Biological resources" includes genetic resources, organisms or parts thereof, ~~populations, or any other component of ecosystems, including ecosystems themselves, with actual or potential use or value for humanity~~;

Comment: Under this agreement only the first two objects will be transferred, no ecosystems etc.

"Genetic Resources" means genetic material of actual or potential value,

"Genetic Material" means any material of plant, animal, fungi, protozoa, chromista, bacteria and viruses containing functional units of heredity;

"Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity;

Digital sequence information is understood as described in the Application.

Comment: This is not a good way to define DSI, but since there is no accepted definition, how can it be captured better under definitions?

"Genetic Material" means any material of plant, animal, microbial or other origin containing functional units of heredity;

"Genetic Resources" means genetic material of actual or potential value, their derivatives including Digital sequence information;

"Third Party" means any person or institution other than the Provider, the Recipient and any collaborator under this agreement.

[*Note: Please customise add/ delete the definition of terms in accordance with the needs of a particular application*]

2.0 TERMS AND CONDITIONS

2.1 Conditions for access to Biological Resources and their utilisation

Access to biological resources under management and control/ stewardship of PROVIDER shall be subject to the following conditions:

Comment: The MTA should include a provision stating that the provider has the necessary rights to provide the material. Would a definition of PROVIDER and RECIPIENT be appropriate or necessary in this regard?

a) The RECIPIENT will access and utilize the Biological Resources only as stated in the application;

b) Access or utilisation of micro-organism incidentally carried on or in the Biological Resources is expressly prohibited.

c) The RECIPIENT undertakes ~~not~~ to utilize the biological resources and/or associated knowledge ~~other than~~ specified in Annex 1 for the following uses ~~specified in Annex 1 unless~~:

- XXXXX
- XXXXX
- XXXX

Comment: Annex 1 is the list and description of materials agreed upon for access/use and NOT about the permitted uses. The intended uses should be specified in this article.

c) *bis* The RECIPIENT undertakes not to utilize the biological resources and /or associated knowledge for other uses unless:

(i) a written consent of PROVIDER is obtained and this Agreement has been revisited and revised, as appropriate; or

(ii) a new application has been filed and approved.

d) The RECIPIENT cannot claim ownership and proprietary rights over the Biological Resources and/or associated Knowledge accessed under this agreement ~~shall remain the property of PROVIDER~~;

Comment: The PROVIDER may not be the owner of the resources. What matters here is that the RECIPIENT does not claim ownership/obtain property rights.

e) The PARTIES shall at all times abide by relevant National laws on access to Biological Resources and their utilisation; in the event of changes in National laws, this agreement shall be varied accordingly.

Comment: We suggest that this provision be deleted. Private agreements should not be revised every time that the law changes. This would go against general principle of not retroactive application of new laws. The agreement has a termination clause. It is at that point that the agreement can be revised to accommodate possible revisions in the law.

f) [*add other specific conditions including possible restrictions or exclusions from scope of the exact utilisation of the material, as well as milestones and timelines as deemed fit*]
[Note:

1. *Consider whether access is exclusive/non-exclusive, i. e. whether the accessing Party may have exclusive rights to access and utilize the biological resources and/or associated knowledge for a specific purpose or whether PROVIDER may give similar rights to other potential users and on what terms or circumstances.*
   Comment: This aspect should definitively be addressed in the agreement.
2. *Also consider whether it is a single, multiple or recurring supply. In this regard, PROVIDER should advise about the source of the first supply and the specific requirements for the supply chain taking into consideration sustainable collection methods, quality, time frames etc.)].*
   Comment: To be included only in case of multiple supply.

2.2 Benefit sharing arrangements

The benefits arising from the utilisation of the Biological Resources and/or Associated Knowledge as well as subsequent applications and commercialisation shall be shared fairly and equitably, in accordance with *the [INSERT APPLICABLE LAWS eg. National Environment laws, National ABS laws and any other applicable law(s)].*

Comment: It is necessary to specify with whom the benefits will be shared. With the provider? With a national benefit-sharing fund? With third parties who are not included in the agreement but can benefit: research organizations, local communities, etc

Subject to the paragraph above;

a) Benefits shall be monetary and non-monetary as guided by the list in annex 2;
   Comment: Possibilities for monetary benefit sharing: 1) Flat fee at the point of access; 2) Royalty on final commercial products, which may vary depending on the level of incorporation of the genetic resource that has been accessed. This is common in crop and animal breeding.
b) Parties shall agree on the timing for the delivery of different benefits and the phases of the benefit-sharing scheme.
c) Parties commit that all or part of the benefits accruing from the implementation of this agreement shall be used to strengthen the conservation of biological diversity and the sustainable use of its components

2.3 Third Party Transfer

The RECIPIENT undertakes not to transfer the Biological Resources, ~~their derivatives~~ and/or Associated Knowledge to a Third Party, without the written authorization of PROVIDER working in collaboration with the National Competent Authority on ABS.

Comment: We think that extending this obligation to derivatives is too much. We suggest that it be deleted.

Any third-party transfers under this article shall be subject to obtaining a new PIC and MAT from PROVIDER for new utilisations that were unforeseen at the time of access. The term 'transfer' includes to export, sell, give, provide or pass on.

2.4 Change of intent of utilisation and new utilisation

Subject to Article 2.1 c) *bis* of this agreement, any change in utilisation whether non-commercial or commercial shall require new written consent from PROVIDER. The terms of such change of intent or new utilisation shall be subject to a separate agreement between the involved parties.

Comment: This article could be deleted if 2.1 c) bis is accepted.

Comment: Need to be consistent, are we saying a separate agreement or PIC&MAT?

3.0 Intellectual Property Rights

The RECIPIENT shall not claim any intellectual property rights (IPR) over the Biological Resources in the form received;

The RECIPIENT may obtain IP rights on derived and/or foreground intellectual property on condition that the RECIPIENT recognises PROVIDER as the owner of the background intellectual property and acknowledged in the publications

Comment: The definition of IP needs to established. What is background/foreground IP?

Comment: Include definition of 'derived'.

or wishes to obtain intellectual property rights on research results, products, processes, such act shall be treated as change in utilisation under Article 2.4 of this Agreement and shall be subject to PIC and MAT.

In the event the RECIPIENT wishes to commercialise or obtain intellectual property rights on research results or, products, processes, such act shall be treated as change in utilisation under Article 2.4 of this Agreement and shall be subject to PIC and MAT~~, the derived and/or foreground intellectual property, shall be treated as change in utilisation under Article 2.4 of this Agreement and shall be subject to PIC and MAT~~.

Any future agreements between the PROVIDER and the RECIPIENT authorizing claims for IPRs will include a provision obliging the RECIPIENT or its successor in title to disclose in the claim the origin of the Genetic Resources and/or Associated Knowledge utilised in developing the intellectual property claimed.

Comment: As a team, we thought that this provision should be removed, however we would need more explanation on the intended purpose

Provisions on background IP, formulae for determining ownership of new IP, allocation of responsibility for IP applications, maintenance and defence

Comment: In the event that the recipient wants to commercialize, it will be subject to a new agreement

4.0 Confidentiality and Non-Disclosure

The PARTIES agree to maintain confidentiality on . . . [Define subject matter]. [*Note: Confidentiality and non-disclosure clauses may be used as means to require the recipient of information to keep it confidential, such as information concerning source of GR associated TK or know how, which may be used in gaining access to GRs for evaluation purposes, developing a research collaboration etc. Such clauses generally limit the purposes for which such information can be used.*]

Notwithstanding the foregoing, Confidential Information may be disclosed to the extent required by any applicable law or regulation of any governmental authority having jurisdiction over any of the Parties, with appropriate efforts made to maintain confidentiality

Comment: We need to introduce the idea of Non-disclosure agreement/confidentiality agreement

The RECIPIENT agrees not to publish or otherwise place in the public domain any information about the Genetic Resources and/or Associated Traditional Knowledge without prior written ~~authorization~~ notification from the PROVIDER.

Publication and Reporting requirements

Comment: A clause on publication to be considered with more details and clear timelines. Merge publication and reporting requirements clause.

The RECIPIENT undertakes to provide a ~~written~~ progress project report to the PROVIDER in [*fill in relevant language*] in accordance with [*if applicable, insert domestic access and benefit-sharing legislative, administrative, policy or regulatory requirements; otherwise identify basic requirements in this Agreement*].

Comment: A template for this reporting needs to be suggested for consistency

The report will include, but need not be limited to, the following information for the reporting period [*list e.g., content, frequency, confidentiality*].

~~Reporting shall be done according to the following time schedule: [*insert timeline or table*] in accordance with [*if applicable, insert domestic access and benefit-sharing legislative, administrative, policy or regulatory requirements*]~~

Comment: Clause on publication then comes after the reporting requirements

RECIPIENT agrees not to publish or otherwise place in the public domain any information about the Genetic Resources and/or Associated Traditional Knowledge without prior written notification authorization from the PROVIDER

5.0 Warranties/ representations

Genetic Material(s) [is/are] understood to be experimental in nature. The PROVIDER extends no warranties of any kind, expressed or implied. The PROVIDER will take no responsibility whatsoever for any damages, resulting from Genetic Material(s), *e.g.,* due to misuse or neglectful handling. The RECIPIENT will indemnify and keep the PROVIDER harmless from any claim, action, damage, or cost, deriving from or in connection with the RECIPIENT's use of the received Genetic Material(s).

Comment: Are we using the term biological or genetic materials? (We transfer genetic material and not biological material) - The heading speaks about biological materials.

6. Termination ~~Non-Compliance~~ and Breach of Agreement

The Parties agree to implement this agreement in good faith. Where there is breach the areas of non-compliance shall be settled in accordance with the dispute settlement mechanisms of this agreement.

Comment: This clause is not necessary

Settlement of Disputes

In the event of any dispute under this Agreement between RECIPIENT and PROVIDER, the Parties agree to make attempts in good faith to negotiate the resolution of any disputes that may arise under this Agreement. If the Parties are not able to resolve a dispute within a period of [XX] months, such dispute shall be finally settled by an arbitrator. The designation of the arbitrator shall be mutually agreed between the Parties.

The RECIPIENT acknowledges that he/she is acting as a duly authorised representative of the institution he/she represents, and that the terms of this Agreement shall be binding on all present and future employees of his/her organisation, for as long as this Agreement remains in force.

Comment: Move this clause to the general clauses.

~~If the Parties are not able to resolve any dispute within a period of [XX] months, such dispute shall be resolved before the [DISPUTE RESOLUTION BODY/COURT] as the only competent body for resolving disputes arising under this Agreement and in accordance with [XXX]. [Insert applicable Law; Jurisdiction]~~

Comment: Remove because we are recommending arbitration suggested in the first paragraph and this is a repetition

7.0 Duration ~~and Termination of the Agreement~~

Comment: Seperate the clauses, combine 6 and 7, 7 should be duration

This Agreement, unless terminated as provided herein, shall be effective from the date of execution/signature and is valid for [number of years/months] until [termination date]. [needs to be in line with the ~~permit~~ provisions of the national legal ABS framework]

Comment: Reference to the permit is not possible because the permit comes after the agreement has been signed. Also, the permit can expire when the MTA is still in force. Multiple permits under one MTA are a possibility.

Either PARTY may terminate this Agreement with immediate effect by a written notice to the other PARTY if the other PARTY is in breach of any provision of this Agreement and (if it is capable of remedy) the breach has not been remedied within 60 days after receipt of the written notice specifying the breach and requiring its remedy.

Upon expiration or termination of the Agreement and upon request of the PROVIDER, the RECIPIENT agrees to (i) return any remaining genetic resources, organisms or parts thereof, derivatives ~~Genetic Material~~, Comment: This needs to be consistent with the definitions, all tangible material should be included here and (ii) return all documents and other tangible items containing or representing confidential information provided by the PROVIDER, and all copies thereof.

Comment: Consider the option of destruction.

The following paragraphs shall survive termination of this Agreement: [detailed list, which should include *e.g.,* benefit-sharing clauses, confidential information]

Provide for use of products and/or technologies after the time frame of the agreement (obligations that outlive the MTA, …. *i.e.* at the expiry of this agreement……)

8.0 Compliance and monitoring

Comment: Compliance with what, isn't this captured in Art. 6? Monitoring the access, details are described in the ABS Permit or the MAT, the authority responsible for the permit of the providing parties in the MAT are responsible for this monitoring. Monitoring the utilisation, user is sending research reports, publications, IPR documents. Monitoring the benefit-sharing, provider keeps record on benefits shared, depending on the national legal ABS framework, also informs the CAN. The entities involved in monitoring benefit sharing have to be determined according to the national system

Comment: with the proposed changes, Compliance is covered in the clause of termination and breach.

No text

9.0 General

This Agreement, and rights and obligations hereunder, shall not be assigned or transferred, directly or indirectly, in whole or in part, by either Party, without the prior written consent of both Parties, which may be given or withheld at each Party´s sole and absolute discretion;

Modification of this Basic ABS Agreement must be approved in writing by the Parties to this Agreement [and notified to the CNA]. [if CNA is not the PROVIDER]

This Agreement and the Parties' rights and duties outlined above shall be interpreted under the law of [insert country].

This Agreement constitutes the entire agreement and understanding between the Parties concerning the subject matter hereof. It merges with and supersedes all previous agreements and understandings between the Parties.

Sign: ……

[INSERT NAME]

PROVIDER

Date: ……

[Note: *Only the CEO or officer specifically authorised by the CEO can sign this agreement*]

Witness 1:

Sign: ……

NAME OF THE WITNESS FOR PROVIDER [Head National Genebank]

Comment: Why is it the genebank? Does this imply that the biological resource under this MTA comes from genebanks? What if a country has no national gene bank?

Date: ……..

Sign: ……

Witness 2:

Sign: ……

NAME OF THE WITNESS FOR PROVIDER [LEGAL COUNSEL]

Date: ……..

Sign: ……

Comment: Are witnesses really necessary?

[INSERT NAME OF PERSON AUTHORISED TO SIGN ON BEHALF OF THE RECIEPIENT]

NAME OF THE RECIPIENT

Witness 1:

Sign: ……

NAME OF THE WITNESS FOR PROVIDER [Head National Genebank]

Date: ……..

Sign: ……

Witness 1:

Sign: ……

NAME OF THE WITNESS FOR THE RECIPIENT

Date: ……..

Sign: ……

Witness 2:

Sign: ……

NAME OF THE WITNESS FOR THE RECIPIENT

Date: ……..

Sign: ……

Annex 1: List and description of materials agreed upon for access and/or use

Annex 2: List of potential benefits that parties may agree upon

The parties shall be guided by the list below to make decisions on which benefits are appropriate for negotiation. Parties are advised to be as specific as possible on agreed upon benefits and timelines.

Monetary benefits

a) Access fees/fee per sample collected or otherwise acquired;
b) Up-front payments;
c) Milestone payments;
d) Payment of royalties;
e) Licence fees in case of commercialization;
f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
g) Salaries and preferential terms where mutually agreed;
h) Research funding;
i) Joint ventures;
j) Joint ownership of relevant intellectual property rights.

Non-monetary benefits

a) Sharing of research and development results;
b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the provider country;
c) Participation in product development;
d) Collaboration, cooperation and contribution in education and training;
e) Admittance to ex situ facilities of genetic resources and to databases;
f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilisation of biological diversity;
g) Strengthening capacities for technology transfer;
h) Institutional capacity-building;
i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
j) Training related to genetic resources with the full participation of providing Parties, and where possible, in such Parties;
k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
l) Contributions to the local economy;
m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in provider countries;

n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
o) Food and livelihood security benefits;
p) Social recognition;
q) Joint ownership of relevant intellectual property rights.