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# Typical ABS Scenarios

Multi-Stakeholder Expert Dialogue on Access and Benefit-Sharing for  
Genetic Resources for Food and Agriculture

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*Based on CGRFA Background study n°42,  
by Gurdial Nijar and al.*

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# Plan

## I. Conditions on access and benefit sharing

- Based on the “classical” framework envisaged under the Nagoya Protocol i.e. bilateral contract embedded within a national legal framework
- *Three stereotypes according to the degree of State intervention: Strong, Limited, Absent*

## II. Governance scenarios

- Processes of collective decision making on ABS rules and arrangements
  - *Three governance scenario : bilateral, network, multilateral*
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# Part I

# Conditions on ABS

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# Scope

| Absent  | Limited State intervention            | Strong State intervention                |
|---|---------------------------------------|--|
| No ABS legislation<br><br>Or<br><br>GRFA excluded | GRFA included with special conditions | GRFA included without special conditions |

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# Two types of approval requirements

## 1. Prior Informed Consent

*Process by which consent is sought and properly given*

## 2. Mutually Agreed Terms

*Agreement on ABS to be negotiated with the relevant stakeholders*

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# Criteria for scenario building

1. Access procedures
    1. Approving authorities
    2. Application procedures
    3. Specific approval conditions
  2. Benefit sharing terms and conditions in MAT
    1. Monetary BS
    2. Non-Monetary BS
  3. Additional terms and conditions
    1. Monitoring and tracking
    2. Compliance and dispute settlement
    3. Environmental impact assessment
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# Access Procedures

|                               | Limited State intervention   | Strong State intervention   |
|-------------------------------|--|---|
| <i>Approving authority</i>    | <p><b><u>Single</u></b><br/>Centralized system for applying for access to GR:</p> <ul style="list-style-type: none"> <li>■ Independent from the type of resource, type of use, type of requestor</li> <li>■ Depending on the type of resource, type of use or type of requestor</li> </ul>                                   | <p><b><u>Multiple</u></b><br/>Several authorities are involved and need to be consulted separately</p>  |
| <i>Application procedures</i> | <p><b><u>Simplified</u></b></p> <ul style="list-style-type: none"> <li>■ Reduced adm and access costs</li> <li>■ Limited timelines</li> <li>■ Specified PIC &amp; MAT procedures</li> <li>■ Low range of stakeholders from whom PIC must be obtained</li> <li>■ Low range of parties with whom to negotiate a MAT</li> </ul> | <p><b><u>Regular</u></b></p> <ul style="list-style-type: none"> <li>■ Important adm and access costs</li> <li>■ Unlimited timelines</li> <li>■ Unspecified PIC &amp; MAT procedures</li> <li>■ High range of stakeholders from whom PIC must be obtained</li> <li>■ High range of parties with whom to negotiate a MAT</li> </ul> |

# Access Procedures (cont'd)

|                                     | Limited State intervention  | Strong State intervention   |
|-------------------------------------|---|---|
| <i>Specific approval conditions</i> | <ul style="list-style-type: none"><li>n No specification of intended use</li><li>n No public information/participation before approval</li><li>n No extended information to be furnished with the application</li><li>n Standard/ model agreement set out for MAT</li><li>n No restriction on transfer to third parties</li><li>n No differentiated treatment between foreign and national citizen</li><li>n No specific requirement attached to the involvement of national counterparts</li></ul> | <ul style="list-style-type: none"><li>n Specification of intended use</li><li>n Public information/participation before approval</li><li>n Extended information to be furnished with the application</li><li>n No Standard/model agreement set out for MAT</li><li>n Restriction on transfer to third parties</li><li>n Differentiated treatment between foreign and national citizen</li><li>n Specific requirement attached to involvement of national counterparts</li></ul> |



# Benefit Sharing Conditions

|                                 | Limited State intervention   | Strong State intervention   |
|---------------------------------|--|---|
| <i>Monetary Benefit Sharing</i> | <p><b><u>Low</u></b></p> <ul style="list-style-type: none"> <li>■ No upfront or milestones payment</li> <li>■ Low royalties</li> <li>■ No additional monetary components (research funding, payment of salaries...)</li> </ul> | <p><b><u>High</u></b></p> <ul style="list-style-type: none"> <li>■ Several payment stages</li> <li>■ High royalties</li> <li>■ Additional monetary components</li> </ul>  |
| <i>Non-Monetary BS</i>          | <p><b><u>Few non-monetary BS mechanisms</u></b></p>  | <p><b><u>Multiple non-monetary BS mechanisms</u></b></p> <ol style="list-style-type: none"> <li><b>1. Exchange of information</b><br/><i>Sharing of research results and relevant information; Access to research data and collections; Acknowledgement of the origin of the genetic resource; Species inventories, including deposit of samples; Co-authorship of publications</i></li> <li><b>2. Access to and transfer of technology</b><br/><i>Recognition and/or co-ownership in IPRs; Participation of the access provider in the economic, social and environmental benefits accruing from the access; Access to products and technologies developed from the use of genetic resources or knowledge accessed</i></li> <li><b>3. Capacity building</b><br/><i>Participation of local institutions and/or personnel; Training; Donation of equipment to national institutions; Employment opportunity; Support for conservation; Recognition and promotion of TK or use; Location of production, research and development</i></li> </ol> |

# Additional terms and conditions

|  | Limited State intervention   | Strong State intervention   |
|--|--|---|
| <i>Monitoring and tracking</i>           | <ul style="list-style-type: none"> <li>■ Periodic status report</li> <li>■ Deposit of duplicate in case of in situ collection</li> </ul>   | <ul style="list-style-type: none"> <li>n Certificate of compliance</li> <li>n Disclosure of origin in IPR application</li> <li>n full traceability tools all along the chain</li> </ul>               |
| <i>Compliance and dispute settlement</i> | <ul style="list-style-type: none"> <li>■ Sanctions limited to breach of PIC and MAT requirement</li> <li>■ Name and shame</li> <li>■ Alternative dispute resolution (mediation)</li> </ul> | <ul style="list-style-type: none"> <li>■ Sanctions cover additional activities e.g false or misleading information in access application; failure to track, etc...</li> <li>■ Court of law</li> </ul> |
| <i>Environmental impact assessment</i>   | <ul style="list-style-type: none"> <li>■ None</li> </ul>   | <ul style="list-style-type: none"> <li>■ Impacts of the access activity on the conservation and use of biological resources and on biological diversity and the environment</li> </ul>                |

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# ABS legislation absent

- No state intervention on ABS at all
  - Case-by-case basis
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# Part II

# Governance

# scenarios

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## Three governance scenarios

- Scenario 1: Bilateral approach
  - Scenario 2: Network approach  
*“Club” at regional / international level*
  - Scenario 3: Multilateral / inter-governmental approach  
*Additional public layer of governance at regional / international level*
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## Scenario 1 : Bilateral approach

- ❑ Written or unwritten contract between two parties (countries, institutions or individual)
- ❑ ABS-law based or in the absence of ABS law
- ❑ Case by case or framework agreement

### *Examples:*

- *2 scientists or private breeders exchanging GR through a gentleman agreement*
  - *2 countries establishing a bilateral agreement which includes ABS specific arrangements*
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## Scenario 2 : Network Approach

- Framework agreement between more than 2 parties
- ABS-law based or in the absence of ABS law
- Club-like model according to :
  - Specific resources  
*and/or*
  - Specific user communities or uses  
*and/or*
  - Specific geographical area

*Ex1: European Culture collection standard MTA*

*Ex2: Code of conduct of the International Plant Exchange Network (IPEN) of Botanical gardens*

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## Scenario 3 : Multilateral Inter-governmental Approach

- International law on common criteria for ABS
  - ABS-law based or in the absence of ABS law
  - Create international agreement for:
    - Specific resources  
*and/or*
    - Specific uses or user communities  
*and/or*
    - Specific circumstances (emergency situation)
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## Scenario 3

*Ex : A Multilateral Treaty defining emergency situations in which some resources (ex pathogens) would be excluded (temporarily) from ABS legal framework*

*Ex: The International Treaty on Plant Genetic Resources for Food and Agriculture : no need of PIC and simplified (standardized) MAT*

*Ex: A Multilateral Treaty which creates an open access regime (no PIC and no MAT) but with a tax on products derived from GR : compensatory liability regime*

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*Thank you !*

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