

# Benefit-Sharing in the area of Land, Food and Agriculture

### Agrobiodiversity

- CBD Decision V/5 Agricultural biological diversity: review of phase I of the programme of work and adoption of a multi-year work programme**

The management of agricultural biodiversity involves many stakeholders and often implies transfer of costs and benefits between stakeholder groups. It is therefore essential that mechanisms be developed not only to ensure stakeholder decision-making, but also to facilitate their genuine participation in decision-making and in the sharing of benefits.

Identify and promote possible improvements in the policy environment, including benefit-sharing arrangements and incentive measures, to support local-level management of agricultural biodiversity and incentive measures, to support local-level management of agricultural biodiversity
- CBD Decision VI/5 Agricultural biological diversity: International Pollinator Initiative**

Identify and promote possible improvements in the policy environment, including benefit-sharing arrangements and incentive measures, to support local-level management of pollinators and related dimensions of biodiversity in agricultural production. This could include:
 
  - How existing or new certification schemes might contribute to the conservation and sustainable use of pollinator diversity
  - Strengthen national institutions to support taxonomy of bees and other pollinators, through, inter alia, 10) Registration of data through capacity-building and benefit-sharing
- CBD Decision VIII/23: cross-cutting initiative on biodiversity for food and nutrition**

Conserving and promoting wider use of biodiversity for food and nutrition – Activity 3.16 Integration of benefit-sharing objectives into national and international frameworks dealing with biodiversity for food and nutrition, as appropriate, taking into account existing benefit-sharing systems

All States should... make swift progress towards the implementation of farmers' rights, as defined in article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture and consider expanding the lists of crops subject to the Multilateral System of Access and Benefit-Sharing (MS), contained in Annex 1 to the Treaty, in order to ensure the full and fair and equitable sharing of benefits arising as envisaged in the Convention on Biological Diversity to indirect and multilateral support for agrobiodiversity enhancement. States not yet parties to the International Treaty should consider joining it

It is therefore vital that the negotiations leading to such agreements comply with a number of procedural requirements of the local communities and farmers concerned. Such requirements could be: adequate benefit-sharing, and that the agreements themselves take into account human rights which could be negatively impacted by such measures

In order to highlight the consequences of investment on the enjoyment of the right to food, impact assessments should be conducted prior to the completion of the negotiations on (a) local employment and incomes, disaggregated by gender and, where applicable, by ethnic group; (b) access to productive resources by local communities, including peasants and smallholder farmers; (c) the arrival of new technologies and investments in infrastructure; (d) the environment; (e) the use of water resources; and (f) genetic erosion, and (g) access, availability and adequacy of food. Only through such impact assessments, which should include a participatory dimension, can it be ensured that the contracts providing for the lease or sale of land will distribute the benefits equitably between the local communities, the host State, and the investor

Farmers (generally through their organizations and private investors may establish joint ventures, with each party contributing in cash or in kind. Such business models ensure, in theory, that both sides are equal partners and are co-owners of the project. Both sides hold equity shares in the joint venture, while sharing their individual legal status and sharing in profits or losses, made by the joint venture. Such models, including those that are based on land lease, are not necessarily new. However, negotiators should be aware of the benefits (whether profit is reinvested or distributed as dividends) and to improve access to credits and other farm-related services

Article 15(2): In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudicial, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

The State must guarantee that the Saramakas will receive a reasonable benefit from any development, investment, exploration or extraction plan within their territory

In the present context, the right to obtain "just compensation" translates into a right of the members of the Saramaka people to obtain state in the benefits made as a result of a restriction or deprivation of their right to the use and enjoyment of their traditional lands and of forest natural resources necessary for their survival

Benefit sharing may be understood as a form of reasonable equitable compensation resulting from the exploitation of traditionally owned lands and of those natural resources necessary for the survival of the Saramaka people

Indians, as beneficiaries of the development process, were entitled to an equitable distribution of the benefits derived from the mine project. The African Commission agrees that the failure to provide adequate compensation and benefits, or provide suitable land for grazing indicates that the Respondent State did not adequately provide for the Indians in the development process.

States should develop and publicize policies covering the use and control of land, fisheries and forests that are ratified by the public sector and should strive to develop policies that promote equitable distribution of benefits from State-owned land, fisheries and forests. States should take into account the tenure rights of others and anyone who could be affected should be included in the consultation process consistent with the principles of consultation and participation of their Guidelines

Responsible investments should do no harm, safeguard against displacement of legitimate tenure rights holders and environmental damage, and should respect human rights. They should strive to further contribute to policy objectives, such as poverty eradication, food security and sustainable use of land, fisheries and forests. ... provide benefits to the country and its people, including the poor and most vulnerable

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO)

### Right to Food

**Reporteur on the Right to Food report: "Seed policies and the right to food: enhancing agrobiodiversity and encouraging innovation"** Report presented to the United Nations General Assembly (64th session) (A/64/170)

**Reporteur on the Right to Food report: "Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge"** Report presented to the Human Rights Council (A/HRC/13/33/Add.2)

**Reporteur on the Right to Food report: "Towards more equitable value chains: alternative business models in support of the right to food"** Report presented at the 66th Session of the United Nations General Assembly (A/66/262)

**ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries**

**Inter-American Court of Human Rights, Saramaka Case**

**African Commission on Human and Peoples' Rights, Communication 2762/2003 on Endorois, case**

**FAO International Undertaking on Plant Genetic Resources**

**CBD Decision III/11 and Work Programme on Agricultural Biodiversity**

### Genetic Resources

**International Treaty on Plant Genetic Resources for Food and Agriculture**

**ITPCR Resolution 1/2006: Funding Strategy**

**ITPCR Resolution 2/2006: Standard Material Transfer Agreement**

**ITPCR Resolution 2/2013: Implementation of the Funding Strategy**

**FAO International Undertaking on Plant Genetic Resources**

**CBD Decision III/11 and Work Programme on Agricultural Biodiversity**

**Treaty Text**

Article 10(2): In the exercise of their sovereign rights, Parties agree to establish a multilateral system, which is efficient, effective, and transparent, which to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, in a complementary and mutually reinforcing basis

Article 13(1): Parties recognize that facilitated access to plant genetic resources for food and agriculture which are included in the Multilateral System constitutes a major benefit of the Multilateral System and agree that benefits arising therefrom shall be shared fairly and equitably in accordance with the provisions of this Article

Article 13(2): Parties agree that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly and indirectly, to farmers in all countries, especially developing countries, and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture

Article 13(3): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(4): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(5): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(6): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(7): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(8): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(9): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(10): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(11): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

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Article 13(14): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(15): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(16): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(17): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(18): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(19): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Article 13(20): Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body

Benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should be used for the conservation and sustainable use of Plant Genetic Resources for Food and Agriculture

The Governing Body... Adopts annexes on: Priorities for the Use of Resources under the Funding Strategy (The initial priorities will be the priority activity areas of the rolling Global Plan of Action, for further development by the Governing Body; Use of Resources under the Direct Control of the Governing Body; Eligibility Criteria; Use of Resources under the Direct Control of the Governing Body; Operational Procedures; Information and Reporting Requirements under the Funding Strategy

Invites users of material received under the SMTA to make voluntary contributions to the Multilateral System, and to share the non-monetary benefits arising from the use, including commercial, of plant genetic resources for food and agriculture fairly and equitably, through the exchange of information, access to and transfer of technology, and capacity building, taking into account the Priority Activity Areas in the rolling GFA

In the case that the Recipient Commercializes a Product that is a Plant Genetic Resource for Food and Agriculture... where such Product is not available without restriction to others for further research and breeding, the Recipient shall pay a fixed percentage of the Sales of the Commercialized Product into the mechanism established by the Governing Body for the purposes, in accordance with Annex 2 to this Agreement (1.1 % of the Sales of the Product or Products less 30%)

In the case that the Recipient commercializes a Product that is a Plant Genetic Resource for Food and Agriculture... when that Product is available without restriction to others for further research and breeding, the Recipient is encouraged to make voluntary payments into the mechanism established by the Governing Body

The Recipient shall make available to the Multilateral System, through the information system provided for in Article 17 of the Treaty, all non-confidential information that results from research and development carried out on the Material, and is encouraged to share through the Multilateral System non-monetary benefits (especially identified in Article 13.2 of the Treaty that result from such research and development)

The Recipient may opt as per Annex 4, as an alternative to payments under Article 6.7, for the following system of payments: a) The Recipient shall make payments at a discounted rate during the period of validity of the option... b) The payments to be made are independent of whether or not the Product is available without restriction

Adoption of revised operational procedures for the use of resources under the direct control of the GB Policy on conflict of interest and related standards of conduct for the benefit-sharing fund

Considering that it is the responsibility of governments to undertake such activities as are needed to ensure the exploration, collection, conservation, maintenance, evaluation, documentation and exchange of plant genetic resources (in the interests of all mankind)... and to ensure the equitable and unrestricted distribution of the benefits of plant breeding

This Undertaking is based on the universally accepted principle that plant genetic resources are a heritage of mankind and consequently should be available without restriction

The CBD Conference of the Parties 1) decides to establish a multi-year programme of activities on agricultural biological diversity in the area of benefit sharing, to promote the fair and equitable sharing of benefits arising out of the utilization of genetic resources; and which, in support of the implementation of ongoing initiatives of the work programme, progress and plans in the field of agrobiodiversity, will have the following components: - i) The sharing of experiences and the transfer of knowledge and technologies

