



environmental affairs

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Mr. Braulio Ferreira de Souza Dias

Executive Secretary

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Dear Mr. de Souza Dias

SUBMISSION OF VIEWS ON DECISION NP-1/10: THE NEED FOR AND MODALITIES OF A GLOBAL MULTILATERAL BENEFIT SHARING MECHANISM (GMBSM) (ARTICLE 10 OF THE NAGOYA PROTOCOL)

Bioprospecting in South Africa is associated with indigenous plants, animals and to some degree with microbes and the associated traditional knowledge. On the plants side, the majority of medicinal plants documented so far are to be found along the subtropical eastern part of the country, with many of these species occurring also in the northern part of the countries. The highest incidence of plant endemism in the country is the Cape Floristic Region where the lowest proportion of the flora is utilized. This reflects historical human settlement patterns and man's familiarity with the usefulness of these plants. Although, South Africa has extremely rich floral diversity, when it comes to medicinal plants, many of these occur also to the northern part of Africa, and are used traditionally by other cultural groups or the same cultural groups across borders (e.g. San and *Hoodia*). South Africa views that bioprospecting of 'South Africa's plants, animals and microbes and associated traditional knowledge will likely often lead to the need for a multilateral benefit-sharing mechanism, whether they are accessed for example in Namibia, Kenya or South Africa. When thinking about other key species such as *Aloe ferox* and *Pelargonium sidoites*, it is known that these species occur also in Lesotho, a neighbouring country to South Africa. Although a bilateral approach may be adopted for Lesotho, a multilateral scenario will often arise on other species

(e.g. baobab). South Africa aligned its views with the African Region and feels that the GMBSM will be essential to South Africa, because it is one of the most promising routes through which benefits will be returned by international businesses.

Many of the issues raised in decision NP-1/10 arise from situations where a provider country has not instituted domestic legislation or regulatory measures, and they appear as if some Parties are looking for ways to continue utilizing genetic resources and associated traditional knowledge while the provider countries are still working on their domestic legislation or regulatory measures. Although South Africa has legislative tools in place, South Africa views this ongoing engagement on GMBSM beneficial to its current plans to amend its legislation. It is a good time for South Africa to reflect on how the GMBSM could serve South African interests at an international level. Below are the views provided:

AREAS FOR FURTHER EXAMINATION		VIEWS
(a) Whether or not there is a need for a Global Multilateral Benefit Sharing Mechanism (GMBSM).	Global Multilateral Benefit Sharing	Yes. The GMBSM will assist Parties in ensuring that benefits derived from the commercial utilization of GR and TK, occurring outside the normal bilateral approach are also shared.
(b) Whether there is sufficient experience with implementation of the Protocol to determine whether such a need exists.	Implementation of the Protocol	Although the equivalent of the GMBSM under the IPTGRFA is apparently hardly used, it is South Africa's view that due to the complexities of access and PIC relating to GR and TK, the GMBSM will be used extensively. An issue relating to whether there is sufficient experience or not should not be a focus for the discussion until the mechanism is piloted.
(c) Whether the utilization of genetic resources without Prior Informed Consent (PIC) would entail benefit sharing obligations that could be met through a GMBSM.	Prior Informed Consent	Because in multilateral situations the user country involved may be faced with the huge complexity of dealing with different ABS regulations in different countries, it will be far easier for them to transfer funds to a GMBSM and allow the provider countries to sort out who gets what, and how they get it.
(d) Whether a Party's decision not to require PIC (e.g. under Art. 6(1) of the Protocol) or to waive PIC (e.g. under Art. 8 of the Protocol) can constitute situations for which it is not possible to grant or obtain PIC in the context of Article 10.	PIC	Not relevant to Article 10, however the Party concerned may choose to utilize GMBSM in this case.
(e) Whether benefit sharing requirements are waived when a Party has decided not to require PIC or has waived PIC.	Benefit sharing requirements	No, the GMBSM could be utilized to receive benefits directed towards conservation and sustainable use of GR.
(f) Whether there is no requirement for benefit sharing when mutually agreed terms are not required or have not been established.	Mutually agreed terms	The GMBSM provides innovative solutions for benefit sharing outside the mutually agreed terms which are predominantly bilateral in their nature.
(g) Whether the absence of ABS legislation or regulatory requirements in a Party due to lack of capacity or lack of governance means that PIC for access to genetic resources is not required and there is no obligation to share benefits. In the context	ABS legislation or regulatory requirements	Not relevant to Article 10. However, the establishment of a GMBSM may enable the user countries that wish to comply with the spirit of the Convention on Biological Diversity (CBD) and the Nagoya Protocol on ABS

AREAS FOR FURTHER EXAMINATION	VIEWS
<p>of Article 10, whether such instances would constitute situations for which it is not possible to grant or obtain PIC.</p>	<p>but find that there are no ABS regulations in the provider country to comply with. However, this approach will require consent from the Party involved. It is important to also note that not all Parties would see this as an ethical or acceptable approach. Therefore, intensive negotiations on the practicalities are envisaged, in order to establish the modalities of the GMBSM.</p>
<p>(h) Whether the absence of measures in a Party to implement Article 7 of the Protocol means that PIC for access to traditional knowledge associated with genetic resources is not required and there is no obligation to share benefits. In the context of Article 10, whether such instances would constitute situations for which it is not possible to grant or obtain PIC.</p>	<p>Not relevant to Article 10. However, the establishment of a GMBSM may enable the user countries that wish to comply with the spirit of the Convention on Biological Diversity (CBD) and the Nagoya Protocol on ABS but find that there are no ABS regulations in the provider country to comply with. However, this approach will require consent from the Party involved. It is important to also note that not all Parties would see this as an ethical or acceptable approach. Therefore, intensive negotiations on the practicalities are envisaged, in order to establish the modalities of the GMBSM.</p>
<p>(i) Whether a genetic resource that is found in more than one Party constitutes a transboundary situation in the language of Article 10 (even if it is possible to identify the source of the genetic resource) or whether the bilateral approach should be applied if a genetic resource is found in more than one Party and it is possible to identify the source of the genetic resource. In the latter case, whether the bilateral approach or a GMBSM could be fair and equitable.</p>	<p>This will depend on the level of complexity of the regulatory requirements of the Parties involved; both approaches could apply in the latter case.</p>
<p>(j) Whether traditional knowledge associated with a genetic resource that is found in more than one Party constitutes a transboundary situation in the language of Article 10 (even if it is possible to identify the source of the genetic resource) or whether the bilateral approach should be applied if traditional knowledge associated with a genetic resource is found in more than one Party and it is possible to identify the source of the genetic resource. In the latter case, whether the bilateral approach or a GMBSM could be fair and equitable.</p>	<p>This will depend on the level of complexity of the regulatory requirements of the Parties involved; both approaches could apply in the latter case.</p>
<p>(k) Whether Article 11 of the Protocol is sufficient to respond to transboundary situations.</p>	<p>No. Article 11 is a voluntary provision encouraging Parties to seek collaboration around shared GR and TK. It will work only in certain straightforward situations, but will be very difficult to implement in other more complex cases.</p>

AREAS FOR FURTHER EXAMINATION	VIEWS
<p>(l) Whether a GMBSM should address the sharing of benefits arising from the utilization of:</p> <p>(i) Genetic resources in ex situ collections in relation to transboundary situations or for which it is not possible to grant or obtain PIC;</p> <p>(ii) Genetic resources in ex situ collections used for purposes for which PIC was not granted and for which it is not possible to grant or obtain PIC;</p> <p>(iii) Genetic resources in areas beyond national jurisdiction or whether this issue falls within the competence of the United Nations General Assembly;</p> <p>(iv) Genetic resources in the Antarctic Treaty area; and</p> <p>(v) Traditional knowledge associated with genetic resources that is publicly available and where the holders of such traditional knowledge cannot be identified or for which it is not possible to grant or obtain PIC.</p>	<p>(l) Whether a GMBSM should address the sharing of benefits arising from the utilization of:</p> <p>(i) Yes.</p> <p>(ii) Yes</p> <p>(iii) Yes</p> <p>(iv) Yes</p> <p>(v) Yes. Especially in situations where the TK was recorded long ago from different groups that can no longer be traced directly to a modern community. The exact modalities will need to be negotiated with inputs from TK holders.</p>

Yours sincerely



Ms Nosipho Ngcaba
Director-General

Department of Environmental Affairs

Letter signed by: Dr Moscow Marumo

Designation: Chief Director: Biodiversity Economy and Sustainable Use

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