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Date: 27th September 2019

To: Dr. Christiana Paşca Palmar
The Executive Secretary
Convention on Biological Diversity
E-mail: secretariat@cbd.int

Subject: SUBMISSION OF VIEWS AND INFORMATION OF THE AFRICAN GROUP OF NEGOTIATORS ON BIODIVERSITY IN RELATION TO DECISION NP-3/14 ON ARTICLE 4, PARAGRAPH 4, OF THE NAGOYA PROTOCOL

Your Excellency,

As you are well aware, the African Union Commission as the Secretariat of the African Group of Negotiators on Biodiversity has been facilitating discussions on the outcomes of the Fourteenth Conference of the Parties and the meetings of the Parties to the respective Protocols.

As such in response to the notification referenced: SCBD/NPU/DC/VN/KG/RKi/87806 requesting for the submission of views and information, the Commission wishes to submit the attached document compiled by the African Group on Article 4 paragraph 4 of the Nagoya Protocol on Access and Benefit Sharing on the subject of Specialized International ABS Instruments.

I take this opportunity to renew to you the assurance of my highest considerations.

Yours Sincerely,

Mr. Hambani Masheleni
Officer-in-Charge
Department of Human Resources
Science and Technology

RESPONSE TO NOTIFICATION Ref.: SCBD/NPU/DC/VN/KG/RKi/87806 IN
RELATION TO A CALL FOR SUBMISSION OF VIEWS AND INFORMATION
FURTHER TO DECISION NP-3/14 ON ARTICLE 4, PARAGRAPH 4, OF THE
NAGOYA PROTOCOL

*Submitted by the African Group of Negotiators on Biodiversity-Ad Hoc Group
on Article 4, Paragraph 4 of the Nagoya Protocol*

27 September 2019

In a notification dated February 25, 2019, the CBD Secretariat, pursuant to decision NP-3/14, paragraph 2, invited Parties and other Governments to submit:

- (a) Information on how specialized international access and benefit-sharing instruments are addressed in their domestic measures; and
- (b) Views on the potential criteria contained in the study (summarized in the Annex to decision NP-3/14), taking into account Article 4, paragraphs 1 to 3, of the Protocol.

This paper represents the African Group's response to this invitation, focusing on the ***potential criteria***. The African group is of the view that the following points should be taken into consideration in the proposed potential criteria:

- Recognition of the sovereign right of every Party to recognize any other specialized International ABS instrument in respect to specific genetic resource covered by the specialized international ABS instrument so long as it is consistent with and does not defeat the objectives of the CBD and the Nagoya Protocol on ABS;
- Recognition of the provider countries, indigenous peoples and local communities, and compliance measures on its elements for ensuring legal certainty;
- Caution that the proposed potential criteria should not provide provisions that will weaken the legally-binding provisions under the Nagoya Protocol on ABS;
- Explicit provisions on issues of indigenous peoples and local communities, prior informed consent and Mutually Agreed Terms ;

- Inclusion of information sharing mechanism and clarification on whether the relevant information would be made available through the ABS Clearing House of the Nagoya Protocol or each specialized international ABS instrument would have a similar tool;
- Recognize that there might be sectors and situations for which the bi-lateral model of the Nagoya Protocol may not be ideal and hence reassert that most of such instances may be resolved through the effective establishment of a global multilateral benefit sharing mechanism;
- Provision that emphasises mutual supportiveness and existence of no hierarchy between the Nagoya Protocol on ABS and other specialised international ABS instruments; and
- Lastly, whilst recognizing the relevance of the notion of '*lex specialis*' that there is a need to include provisions on the management and control measures against potential fragmentation of international ABS instruments and avoid legal uncertainties. In this regard, the African Group is of the view that the proliferation of international ABS instruments may have deleterious effects on national implementation, coordination and accountability.

Where a specialized international ABS instrument applies, "the Nagoya Protocol does not apply for the Party or Parties to the specialized instrument in respect to the specific genetic resource covered by and for the purpose of the specialized instrument." The African Group recognises this paragraph that the Nagoya Protocol does not simply incorporate other ABS instruments but, rather, functions as the prevailing regime operating in the absence of specialized ABS instruments that meet certain conditions. The objectives of the CBD and the Nagoya Protocol can therefore provide a basis for the development of criteria for the identification of specialized ABS instruments.

Among the other bodies where mutually supportive implementation is mentioned is the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA/the Treaty), the FAO Commission on Genetic Resources for Food and Agriculture, and the WHO (Pandemic influenza preparedness framework and its benefit sharing system).

With regards to specialized international ABS instruments currently the most common one that most African countries are parties to is the Treaty. The special nature of agricultural biodiversity and its distinctive features are acknowledged in the Protocol including its multilateral system that is acknowledged to have been developed in harmony with the CBD. Where plant genetic resources destined for food and agriculture are concerned (including for purposes of research, breeding and training for food and agriculture) the Treaty's multilateral system of benefit sharing mechanism applies and most African Parties' domestic measures provide for access to be facilitated and regulated simply by the provisions of the Treaty. However the African Group is also of the view that the rework of the Treaty's multilateral system that is currently underway may also exemplify that specialized instruments do not ultimately always result in in better outcomes.

In this regard hence the fundamental value of an international specialized instrument on ABS is evident to ensure legal certainty on applicable rules and translation of those rules into domestic measures. Domestic measures on ABS are and will be informed by frameworks agreed and discussed at international levels should there be specialized fields that are considered outside the scope of the Nagoya Protocol.

Hence at this juncture the African region wishes to place emphasise on discussions and agreements on clear criteria that will determine international instruments to be considered specialized and hence fall outside the scope of the CBD and its Nagoya Protocol.