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**To:** Secretariat <[SECRETARIAT@cbd.int](mailto:SECRETARIAT@cbd.int)>

**Subject:** Comments on the discussion document on the post-2020 global biodiversity framework

Dear Dr Palmer,

Greetings.

Here I am offering a few brief comments which I shall be glad to elaborate on in future.

1) At the outset we should clearly define the purpose of the strategic plan. Is the purpose to give a boost to the implementation of the treaty? Is it to selectively choose articles from the treaty for the promotion of implementation and sidestep the rest? While we are engaged in discussing the implementation of the SP, are we excused from discussing the implementation of the whole treaty? Are we to review the implementation of the SP and not the whole treaty? In other words, are we opening the treaty for renegotiation?

2) As a negotiator in the CBD INC, I recall the hard negotiations we had in creating a treaty that balanced along the North-South and conservation-development axes. By selectively picking articles for promotion through the SP, I am afraid, we are undoing this fine balance. The SP (Post-2020 GBF) should cover all operative articles of CBD therefore. If the purpose is to promote certain themes then we have enough number of Thematic Programs.

3). Some of the articles neglected in the 2011-20 SP are crucial to the developing countries, and the SP and the Aichi Targets have therefore distorted the CBD text. Examples:

On the v crucial Article 15 the Aichi Targets of the SP simply speaks about the promotion of the Nagoya Protocol, no mention of the quantitatively measurable subsection requiring developed countries to 'legislative, administrative or policy measures' as per Article 15.7

No mention of Article 16 on tech transfer on preferential and concessional terms; nor 'legislative, administrative or policy measures' taken in this respect as per Article 16.3 nor cooperation on IPR as per Article 16.5 .

Further, no examination of the issue of liability and redress for damage to biodiversity caused by other countries as per Article 14.2, and the protocol to be developed in this respect.

No promotion of research in developing countries as per Article 12.b and 15.6, no review of info available at all on the number of such research works undertaken as prompted by CBD Article 10.c on customary practices is very crucial, one of the concepts that helped make CBD into a new paradigm in the domain of MEAs, but ignored in the SP.

4). There are people who push the unfounded argument that CBD is not a legally binding treaty- eg. Swiss govt had it on its website, later on removed; it was printed so in a CBDS document submitted to the meeting of the Expert Group on Biodiversity for Development (I was a member, raised the issue at the Dehradun meeting and it was subsequently withdrawn- ref Mr Ravi Sharma at the Secretariat). The fact is that the CBD has the same legal status as NPT, but weakened in enforcement by those countries who are not happy with some of the provisions that they think would harm their economies. And there has been a progressive decline in the negotiation capacity of developing countries since the days the CBD has come into force. Having said that I would like to underscore the point that CBD is legally binding while the SP is not, it only 'urges' the Parties. Therefore it is important to remain focused on the enforcement of the CBD and no SP should substitute or overtake it. In other words the Post -2020 instrument

should be a tool to promote the implementation of all the operative articles of the treaty.

5) The post-2020 GBF should also set a target for the CBD COP. It should finally begin to address its statutory function of reviewing the progress of implementation of the Convention. Reviewing the progress of implementation of the Convention is not just about capacity building issues, but even more important are issues of non-compliance and infractions. One may look at CITES to see how this function of COP is effectively performed by an MEA COP. The only issue of infraction addressed by a COP body, the Bureau, was the LOHAFEX ocean fertilization case involving the govts of Germany and India, to the best of knowledge.

With the best regards

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