

Cali, Colombia, 21 October–1 November 2024

Agenda item 9

Digital sequence information on genetic resources

## **Digital sequence information on genetic resources**

### **President' text**

*The Conference of the Parties,*

*Recalling* Decisions 15/4 and 15/9,

*Noting* recommendation 2/1 from the Ad Hoc Open-ended Working Group on Benefit-sharing from the Use of Digital Sequence Information on Genetic Resources,

*Noting further* the relevant discussions on digital sequence information on genetic resources and related issues in other UN bodies such as the International Treaty on Plant Genetic Resources for Food and Agriculture, the World Health Organization, and the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction,

*Recognizing* that the approach to the fair and equitable benefit sharing from the use of digital sequence information set out in the present decision is without prejudice to national access and benefit sharing measures and does not affect the rights and obligations of any Party deriving from any existing international agreement,

*Acknowledging* the vital role of digital sequence information on genetic resources, and open access to digital sequence information on genetic resources, in scientific research and sustainable development,

*Recognizing* the importance of the fair and equitable sharing of benefits arising from the use of digital sequence information on genetic resources to achieving Goal C and Target 13 of the Kunming-Montreal Global Biodiversity Framework,

*Acknowledging* the United Nations Declaration on the Rights of Indigenous Peoples,

*Recognising* the vital role that Indigenous Peoples and local communities play in the conservation and sustainable use of genetic resources,

*Acknowledging* that in some world views, all natural genetic information belongs to Mother Earth,

1. *Adopts* the modalities for operationalizing the multilateral mechanism for the fair and equitable sharing of benefits from the use of digital sequence information on genetic resources, including a global fund, as set out in the annex to the present decision;

2. *Decides* that the global fund will be known as the Cali Fund.

3. *Decides* to further explore, in the context of paragraph 7 of decision 15/9 and the annex to the present decision, possible additional modalities for the fair and equitable sharing of benefits from the use of digital sequence information on genetic resources, including those that take products and services into account;

4. *Also decides* to explore possible new tools and models, such as databases, for making digital sequence information on genetic resources publicly accessible in a transparent and accountable manner;

5. *Invites* Parties, other Governments, indigenous people and local communities and relevant organizations to submit views on the issues referred to in paragraphs 2 and 3;

6. *Requests* the Executive Secretary, subject to the availability of resources, to:
  - (a) synthesize the views submitted further to paragraph 4 above;
  - (b) commission a study to examine options for making digital sequence information on genetic resources publicly accessible in a transparent and accountable manner;
  - (c) submit the synthesis of views and the study to the Subsidiary Body on Implementation for consideration at its sixth meeting;
7. *Requests* the Subsidiary Body on Implementation to consider the synthesis of views and the study and to make recommendations to the Conference of the Parties at its seventeenth meeting on:
  - (a) possible additional modalities for the fair and equitable sharing of benefits from the use of digital sequence information on genetic resources; and
  - (b) possible tools and platforms, such as databases, for making accessible digital sequence information on genetic resources in a transparent and accountable manner.

## **Annex**

### **Modalities for operationalizing the multilateral mechanism for the fair and equitable sharing of benefits from the use of digital sequence information on genetic resources, including a global fund**

1. The multilateral mechanism for the fair and equitable sharing of benefits from the use of digital sequence information on genetic resources covers digital sequence information on genetic resources:
  - (a) That is made publicly available, in compliance with national legislation, where applicable;
  - (b) That is not subject to mutually agreed terms established at the time of access to the genetic resources from which the digital sequence information on genetic resources is derived, unless those terms allow for the making of the digital sequence information freely available; and
  - (c) For which the fair and equitable sharing of benefits on the use of digital sequence information on genetic resources is not provided for by other international agreements on access and benefit sharing, except if those instruments choose the multilateral mechanism for that purpose.
2. All users of digital sequence information on genetic resources under the multilateral mechanism should share benefits arising from its use in a fair and equitable manner.
3. Users of digital sequence information on genetic resources in sectors that directly or indirectly benefit from its use in their commercial activities should contribute a proportion of their profits or revenue to the global fund, according to their size. Entities which on their balance sheet dates exceed at least two out of three of the criteria (total assets: USD 20 million; Sales: USD 50 million; Profit: USD 5 million) averaged over the preceding three years, should contribute to the global fund one percent of their profits or 0.1 percent of their revenue, as an indicative rate. In light of the first review of the mechanism at the eighteenth meeting of the Conference of the Parties, the Conference of the Parties may consider whether to adjust this threshold. An indicative list of sectors to which such users may belong is contained in enclosure A.
4. Entities active in the sectors listed in enclosure A that provide information to demonstrate that they do not directly or indirectly use digital sequence information on genetic resources may be exempted from the provisions of paragraph 3.
5. All users of digital sequence information on genetic resources should share non-monetary benefits in a fair and equitable manner, as appropriate. Non-monetary benefit sharing is complimentary to the provisions regarding monetary benefit sharing included in these modalities.
6. Non-monetary benefit sharing should support self-identified capacity needs and priorities including, inter alia, capacity building for the generation of, access to and use and storage of digital sequence information on genetic resources, as well as the self-identified needs of indigenous peoples and local communities, including women and youth within those communities. The sharing of non-monetary benefits builds on ongoing activities and will be facilitated through the long-term strategic framework of the Convention on Biological Diversity for capacity-building and development and its mechanism to strengthen technical and scientific cooperation in support of the Kunming-Montreal Global Biodiversity Framework.
7. The sharing of non-monetary benefits will be facilitated through an existing clearing house under the Convention, which will primarily provide information on demand for capacity-building needs, knowledge exchange, and the showcasing and reporting of ongoing non-monetary benefit-sharing activities.
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needs, knowledge exchange, and the showcasing and reporting of ongoing non-monetary benefit-sharing activities.

9. Public databases, academic, and public research institutions are not expected to make monetary contributions to the global fund.

10. Entities operating databases, and tools and models dependent on digital sequence information on genetic resources, that make digital sequence information on genetic resources publicly available should:

(a) Make information on the multilateral mechanism for the fair and equitable sharing of benefits arising from the use of digital sequence information on genetic resources available to those accessing their databases, and underline that generating monetary benefits from the use of digital sequence information on genetic resources accessed through the database may require the sharing of those benefits through the multilateral mechanism;<sup>3</sup>

(b) Inform those submitting data of the requirement to comply with applicable national and international access and benefit-sharing obligations;

(c) Require the provision of information on the country of origin of the genetic resources from which digital sequence information was derived, where known, as well as, when appropriate, biocultural metadata associated with the genetic resources from which the digital sequence information was derived, including indicating the use of traditional knowledge associated with genetic resources and its origin or source;

(d) Be consistent with open access to data, taking into consideration the principles of findability, accessibility, interoperability and reusability (FAIR), of collective benefits, authority to control, responsibility and ethics (CARE), and of transparency, responsibility, user-focus, sustainability and technology (TRUST) to data governance, as well the recommendations set out in section III of the United Nations Educational, Scientific and Cultural Organization *Recommendation on Open Science*;

(e) Request that those submitting digital sequence information on genetic resources indicate that it is not subject to any restrictions which prohibit its sharing.

11. Parties funding, sponsoring or hosting sequence databases should ensure that entities operating such databases take measures to ensure the effective implementation of the present decision and other relevant future decisions of the Conference of the Parties.

12. Other governments funding, sponsoring or hosting sequence databases are encouraged to ensure that entities operating such databases will take measures to ensure the effective implementation of the present decision and other relevant future decisions of the Conference of the Parties.

13. Parties and non-Parties are invited to take administrative, policy or legislative measures, consistent with national legislation, to incentivise contributions from users in their jurisdiction to the global fund in line with the modalities of the multilateral mechanism.

14. Contributions to the global fund are expected to be made directly, but may be made through a national authority. Receipts will be issued at the point of contribution to the global fund.

15. On presentation of the benefits or revenue that the contribution is based upon, and when such contribution is in line with the modalities of the multilateral mechanism, they are considered to have fairly and equitably shared monetary benefits arising from the use of digital sequence information on genetic resources under the multilateral mechanism and will receive a certificate accordingly. Such a certificate excludes the user from any expectation to share further monetary benefits from the use of digital sequence information on genetic resources.

16. Contributions to the global fund additional to those provided for in the paragraphs above are encouraged.

17. Funding in the global fund should be allocated in a fair, equitable, transparent, accountable and gender-responsive manner.

18. Funding should support the realization of the objectives of the Convention, in particular the conservation and sustainable use of biodiversity, including through the delivery of activities described in national biodiversity strategies and action plans, contribute to scientific research on biodiversity, benefit indigenous peoples and local communities, including women and youth within those communities, and support the building of capacity in accordance with Article 16 of the Convention, to generate, access, use, analyse and store digital sequence information on genetic resources according to capacity needs. In the event that any other intergovernmental fora decide to make use of the multilateral mechanism to share the benefits from the use of digital sequence information on genetic resources, the funding should also support the realization of their objectives.

19. At least half of the global fund will be set aside to support the self-identified needs of indigenous peoples and local communities, including women and youth within those communities, in all countries, but especially developing countries, in particular least developed countries, small island developing states and economies in transition, through direct payments through institutions identified by indigenous peoples and local communities or through government, according to national circumstances. In addition, up to 10 per cent of the fund may be specifically set aside by the Conference of the Parties to support technical development, ensuring that all Parties, but especially developing country Parties, in particular least developed countries, small island developing states and economies in transition, have access to the tools and expertise necessary to fully participate and benefit from digital sequence information on genetic resources.

20. Funding will be allocated taking into account the overall level of funding available in the global fund and an indicative list of criteria, as set out in enclosure B. A formula will be determined by the Conference of the Parties at its seventeenth meeting on the basis of the work of a group established with the terms of reference provided in enclosure C.

21. Funding to Parties will be disbursed through direct allocations to countries, as described in paragraph 20. Each recipient Party is invited to designate or establish, as appropriate, a national entity, such as a national biodiversity fund, to receive funds and to distribute them in a transparent way to support the activities described in paragraph 18. Such entities may allocate resources on the basis of projects developed through a country-driven or community-driven process and should be accountable for ensuring the funds are used for the purposes for which they are distributed in a transparent manner. They should operate according to internationally accepted fiduciary standards, and provide reports on the activities undertaken by the fund and their impacts. Recipient Parties, at their own discretion, may alternatively designate an international, regional or subregional entity to fulfil those functions.

22. The fund will be administered by the United Nations through the United Nations Multi-Partner Trust Fund Office, in accordance with decisions of the Conference of Parties, and under the authority of and accountable to the Conference of Parties.

23. The multilateral mechanism and its fund will operate according to the principles of inclusivity, equity and transparency.

24. The multilateral mechanism must respect the rights of indigenous peoples and local communities, including women and youth within these communities.

25. Where Parties put in place national measures on access and benefit-sharing from digital sequence information on genetic resources, they are invited to align them with the multilateral mechanism, such that there is no duplication of expectations to share the benefits arising from the use of digital sequence information on genetic resources under the multilateral mechanism.

26. The multilateral mechanism will be implemented in a way that is mutually supportive of and adaptive to other international access and benefit-sharing instruments on digital sequence information on genetic resources, to avoid the stacking of obligations and, where appropriate, to

streamline processes. Other international access and benefit-sharing instruments are invited to collaborate with the multilateral mechanism and where appropriate, to streamline processes. The provisions of the mechanism will not affect the rights and obligations of any Party deriving from any existing international agreement.

27. The multilateral mechanism, including the global fund, will operate under the authority and guidance of and be accountable to the Conference of the Parties. To support the Conference of the Parties in its role as the governing body of the mechanism, a steering committee is established with the terms of reference and composition in enclosure D, under the guidance of the Conference of the Parties. A Secretariat with the terms of reference in enclosure E is established to serve the steering committee and to support the functioning of the mechanism. The operations of the multilateral mechanism will be financed by the global fund.

28. The effectiveness of the multilateral mechanism, including the global fund, will be reviewed by the Conference of the Parties at its eighteenth meeting and at its every second subsequent meeting against the principles established in decision 15/9, taking into consideration the factors set out in enclosure F and a methodology to be adopted by the Conference of the Parties at its seventeenth meeting, noting also the relevance of the global reviews of the collective progress in the implementation of the Kunming-Montreal Global Biodiversity Framework due to be conducted for the seventeenth and nineteenth meetings of the Conference of the Parties further to decision 15/6.

29. The review will also be informed by the relevant indicators of the monitoring framework for the Kunming-Montreal Global Biodiversity Framework, including the headline indicators for Goal C and Target 13 and a binary indicator for Target 13.

30. In the light of the review described in paragraph 28, the Conference of the Parties will consider at its eighteenth meeting any adjustments necessary to improve the effectiveness and efficiency of the multilateral mechanism, including the global fund, with respect to the fair and equitable sharing of benefits arising from the use of digital sequence information on genetic resources.

**Enclosure A: Indicative list of sectors that may directly or indirectly benefit from the use of digital sequence information on genetic resources**

1. Sectors that may directly or indirectly benefit from the use of digital sequence information on genetic resources include:
  - (a) Pharmaceuticals;
  - (b) Nutraceuticals (food and health supplements);
  - (c) Cosmetics;
  - (d) Plant and animal breeding;
  - (e) Biotechnology;
  - (f) Laboratory equipment associated with the sequencing and use of digital sequence information on genetic resources, including reagents and supplies;
  - (g) Information, scientific and technical services related to digital sequence information on genetic resources including artificial intelligence.
2. The present list will be kept under review, taking particular note of the International Standard Industrial Classification of all Economic Activities (ISIC), Central Product Classification (CPC) and corresponding regional or national codes.

## **Enclosure B: Indicative list of criteria for funding allocation**

- Biodiversity richness, and other biodiversity-related criteria for which data is readily available at the national level.
- The geographical origin of the genetic resources from which digital sequence information in the database was derived (noting that this data is currently often incomplete or unrepresentative).
- Level of national development and capacity needs for the conservation and sustainable use of biodiversity, taking into account the circumstances of developing countries, in particular the least developed countries and small island developing States and those with economies in transition, and of indigenous peoples and local communities



## **Enclosure C: Terms of reference for the Ad-hoc Technical Expert Group on Allocation Methodology**

1. The Group on Allocation Methodology is to provide technical advice and guidance on remaining and unresolved issues relating to the disbursement of funds from the global fund established in decision 15/9 (para. 16) and on the basis of paragraph [xx] of decision 16/--. In particular, the Group will develop an allocation methodology for disbursing funding from the global fund for consideration by the Conference of the Parties at its seventeenth meeting, based on the criteria established in enclosure B.
2. The Group will comprise 10 technical experts nominated by Parties, 7 experts nominated by representatives of indigenous peoples and local communities from the seven sociocultural regions and 4 experts from relevant organizations. The Executive Secretary, in consultation with the Bureau, will select experts on the basis of nominations received from Parties, taking gender and the relevant technical expertise of the candidates into account and applying the procedure for avoiding or managing conflicts of interest set out in decision 14/33.
3. The Group may draw on existing expertise and liaise with relevant organizations, as appropriate, in the execution of its mandate.
4. Subject to the availability of financial resources, the Group will meet, as needed, to ensure the timely provision of advice and will, wherever possible, meet back-to-back with other relevant meetings. Where possible, the Secretariat will use available means of electronic communication to reduce the need for in-person meetings.

## Enclosure D: Terms of Reference of the Steering Committee

- Functions of the Steering Committee Provide oversight of the operations of the Fund host, ensuring that the fund disburses monies according to the Modalities established by Conference of the Parties at its sixteenth meeting.
- Guide the operations of the secretariat of the multilateral mechanism.
- Report to and, and provide advice to, the Conference of the Parties.
- Develop a methodology for review by Subsidiary Body for Implementation and to be adopted by the Conference of the Parties at its seventeenth meeting for the review of the effectiveness of the multilateral mechanism, including the global fund, with indicators, where appropriate, for the factors to be considered in the review as described in enclosure D, taking account of the relevant indicators of the monitoring framework of the Kunming-Montreal Global Biodiversity Framework.

### Composition of the Steering Committee

The oversight body would comprise of:

- Representatives of Parties, with equal geographical representation of the UN regions,
- Representatives of indigenous peoples and local communities,
- Representatives of stakeholders from civil society, academia/entities operating public databases, and the private sector.
- Representatives of UN organizations

An option for the composition of the group is provided in the table below.

The Steering Committee is established by the Conference of the Parties. Members of the Steering Committee will be selected according to established procedures on the basis of nominations from Parties and observer groups. The Chair of the Group will be designated from among the members of the Committee representing Parties to the Convention.

The Steering Committee would meet in person and virtually as necessary. Decision making of the oversight body would be through consensus of the members.

### *Composition of the Committee*

#### Option for the composition of the Steering Committee:

Members (25)	Chair (appointed from among Parties)	1	
	Parties (regional representative)	15	3 per region
	Indigenous peoples and local communities	7	1 per sociocultural region
	UN organizations*	2	
Observers (6)	Civil society, scientific institutions, private sector	6	2 per category

\*Because the MPTF is designated as the host entity, a minimum of two UN agencies are required in the establishment of the fund, as per the MPTFO standard operating procedures.

## **Enclosure E: Function of the Secretariat**

The Secretariat of the Multilateral Mechanism supports the functioning of the multilateral mechanism, including the global fund, in line with decisions of the Conference of the Parties as the governing body of the mechanism, and as guided by the Steering Committee. Specifically, the Secretariat would:

- Prepare periodic reports and analysis on the contributions to the global fund on the basis of information provided by the host institution of the Fund
- Prepare periodic reports and analysis on the use of the fund, on the basis of information provided by recipient entities
- Service meetings of the Steering Committee
- Undertake any other tasks as determined by the Conference of the Parties, as the governing body of the mechanism

## **Enclosure F: Factors to be considered in the review**

- (a) Amount of funds mobilized through the global fund, in total and disaggregated by contributors and recipients (countries, and indigenous peoples and local communities, and women and youth within these communities);
- (b) The indicative list of sectors, as provided in enclosure A, taking the experience of the multilateral mechanism and new technical and commercial developments into account;
- (c) Summary information on the activities supported by the fund;
- (d) Assessment of the scope of the non-monetary benefits facilitated by the multilateral mechanism and its alignment with the self-identified needs of beneficiaries;
- (e) An assessment of the efficiency of the multilateral mechanism, including the global fund, taking into account the costs of its operations and the suitability of the trigger for monetary contributions;
- (f) An assessment of the contribution of the multilateral mechanism to the realization of the three objectives of the Convention on Biological Diversity – and the implementation of the relevant goals and targets, and cross-cutting considerations<sup>5</sup> of the Kunming-Montreal Global Biodiversity Framework, and cross-cutting considerations;
- (g) An assessment of the effectiveness of the multilateral mechanism in providing legal certainty to providers and users of digital sequence information on genetic resources;
- (h) Information on any interactions between the multilateral mechanism and any national access and benefit sharing arrangements;
- (i) Any available information on monetary benefits shared through the multilateral mechanism and under national access and benefit-sharing measures;
- (j) Information on any implications of the operation of the multilateral mechanism on the rights of indigenous peoples and local communities, including women and youth within these communities;
- (k) Information on any implications of the operation of the multilateral mechanism on the operations of public databases on digital sequence information on genetic resources, in particular with respect to open access, as well as any implications on research and innovation, including potential implications for data governance including indigenous data governance
- (l) Information on the interactions and any synergies between the operation of the multilateral mechanism and other multilateral access and benefit-sharing instruments;
- (m) A review of the interaction between the multilateral mechanism and any existing national measures for access and benefit-sharing on digital sequence information on genetic resources;
- (n) Any factors relevant to, subject to national circumstances, the feasibility on a case-by-case basis of the voluntary extension of the multilateral mechanism to genetic resources at a later date;
- (o) Information on new and emerging technologies that are relevant to the operation of the multilateral mechanism;
- (p) Information on any implications of the operation of the multilateral mechanism on the operation of public databases on digital sequence information on genetic resources, including potential implications for data governance and measures taken by entities operating such databases pursuant to paragraph 9 of the annex;
- (q) Information on the measures taken by Parties pursuant to paragraph 10 of the annex.
- (r) Information on the functioning of the allocation formula.