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OPEN-ENDED WORKING GROUP
ON THE POST-2020 GLOBAL
BIODIVERSITY FRAMEWORK

Fourth meeting
Nairobi, 21-26 June 2022
Agenda item 5

DIGITAL SEQUENCE INFORMATION ON GENETIC RESOURCES

Draft recommendation submitted by the Co-Chairs

The Open-ended Working Group on the Post-2020 Global Biodiversity Framework,

Recalling recommendation 3/2 of the Working Group on the Post-2020 Global Biodiversity Framework,

Acknowledging that the Informal Co-Chairs' Advisory Group will undertake further work prior to the fifteenth meeting of the Conference of the Parties,

Recommends that the Conference of the Parties at its fifteenth meeting adopt a decision drawing on the elements in the annex to this recommendation.

Annex

ELEMENTS FOR THE DECISION

[[Reaffirming the sovereign rights of States over their natural resources and according to the provisions of the Convention,]

Recalling decision 14/20,

[Noting that some Parties have adopted domestic measures that regulate access to and use of digital sequence information on genetic resources as part of their access and benefit-sharing frameworks,

Also noting multiple approaches taken to addressing digital sequence information in domestic measures,]

Mindful of the work since the fourteenth meeting of the Conference of the Parties on the scope and definition of “digital sequence information on genetic resources” and, in particular, the report of the Ad Hoc Technical Expert Group,

[Recognizing also that [digital sequence information on genetic resources [results] [may result] from utilization] [genetic information is an intrinsic part] of genetic resources,]

[Recalling the Multilateral System of Access and Benefit-Sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture developed in harmony with the Convention,]]

[Decides to address digital sequence information on genetic resources in the context of the post-2020 global biodiversity framework by [...];]

[Recognizes the need [to develop, in a timely manner,] [of] a practical approach [to [ensuring] [ensure] [facilitated access to genetic resources and to digital sequence information on genetic resources and] the fair and equitable sharing of the benefits arising from the [use] [utilization] of digital sequence information on genetic resources] [with a view to identifying] [and for] a solution to [the fair and equitable sharing of benefits from] digital sequence information on genetic resources [in line with the key points in paragraph 5 of recommendation 3/2 of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework];]

[Agrees as follows:]¹

- (a) [Take measures to] encourage more deposits of data;
- (b) Use of tags indicating the [country [or region] [or place] of] origin of [and providing] the genetic resources from which digital sequence information was generated for new submissions to [and existing digital sequence information in] [public] [all] databases;
- (c) Provide legal certainty and clarity for providers [of genetic resources from which digital sequence information on genetic resources is [obtained] [generated]] and [for] users of [that] digital sequence information on genetic resources;
- (d) Be efficient, feasible and practical[, be] [[and] effective in [ensuring] [enabling appropriate access to and] fair and equitable sharing of benefits] arising out of the use of digital sequence information on genetic resources and generate more benefits, including both monetary and non-monetary, than costs;
- (e) Be adaptable to future technology changes;
- (f) [A solution on fair and equitable sharing of benefits from the [utilization] [use] of digital sequence information should] be mutually supportive of [and adaptable to] other [relevant] access and benefit-sharing instruments;
- (g) [Urge Parties to take actions to promote] [Promotion of] research and innovation and technical and scientific cooperation, capacity-building and technology transfer [to developing countries [under fair and most favourable terms] [as specified in Article[s] 16 [and 18] of the Convention] [upon mutually agreed terms]] [and increased mobilization of resources] for the purpose of conservation and sustainable use of biodiversity;
- (h) [Respect and protect] the rights of indigenous peoples and local communities over their traditional knowledge associated with genetic resources [and take into account their role as stewards of biocultural, biological and genetic diversity;]
- (i) [Recognizes that] the monetary and non-monetary benefits arising from the use of digital sequence information on genetic resources should be used to support conservation and sustainable use of biodiversity and [inter alia] benefit indigenous peoples and local communities;
- (j) [Recognizes that] the monetary [and] [or] non-monetary benefits arising from the use of digital sequence information on genetic resources [must be shared in a fair and equitable way and] [that are shared] should be used to support conservation and sustainable use of biodiversity [as well as sustainable development] and [inter alia] benefit indigenous peoples and local communities[, as applicable];
- (k) [[Agrees that] “digital sequence information [on genetic resources]” [is constituted of] [information on] [sequences and chemical structures on] [annotated sequences of] [DNA, RNA,

¹ The following elements are numbered for ease of reference.

[proteins, epigenetic modifications,² metabolites,] [and other macromolecules, [derivatives]] and recognizes the relevance of associated information [particularly traditional knowledge];]

(l) [“Digital sequence information” is any information in [electronic] [any] format that results from “utilization of genetic resources”];]

(m) [Any solution on digital sequence information on genetic resources needs in principle to lie within the legal framework of the Convention. Solutions which lie outside the scope of the Convention on Biological Diversity would first require revision of the Convention;]

(n) [Access to [pooled] [pools of diverse] digital sequence information on genetic [resources] [diversity] in public databases supports research and innovation and therefore remains open [and unrestricted] [as per current [best [available] scientific] practices [and international standards]], [subject to provisions to ensure] [while addressing challenges related to] benefit-sharing and the protection of traditional knowledge associated with genetic resources, as necessary and appropriate [in order to not hinder [responsible] research and innovation [and fair and equitable sharing of outcomes of such research and innovation] [, [inter alia for] public health and food security] and be consistent with open [science principles] [access to data];]

(o) [Digital sequence information on genetic resources is made publicly available;]

(p) [The pooling of data [from different databases] benefits research and innovation and brings mutual benefits to the research and database communities [although open data in itself is not a means to ensure benefit-sharing];]

(q) [Relevance of [tracking and] tracing may depend on the approach taken to address digital sequence information[, for example, for hybrid approaches];]

(r) [Users of digital sequence information must inform the country [of origin or providing country] prior to accessing in case of both commercial and non-commercial use;]

(s) [Tracking and tracing could be [used] [useful] for limited specialized subsets of digital sequence information on genetic resources [but is currently not feasible technically or financially at a large scale [and could also lead to a significant environmental footprint]];]

(t) [Be consistent with international human rights and obligations;]

(u) [The Convention on Biological Diversity [could] provide a framework for a solution on the fair and equitable sharing of benefits from the [utilization of genetic resources in the form] [use of] of digital sequence information;]

(v) [A solution on digital sequence information on genetic resources is likely to include a multilateral mechanism (for example, a multilateral fund). There are various views regarding the benefits of a solely multilateral system versus a hybrid system (i.e. multilateral with limited bilateral exceptions) and regarding the need for mixed models of funding or governance for such systems;]

(w) [The most efficient and effective way of sharing benefits is through a multilateral benefit-sharing mechanism;]

(x) [[In the event that the fifteenth meeting of the Conference of the Parties fails to agree on a solution for benefit-sharing on digital sequence information,] encourages Parties to safeguard their sovereign rights over genetic resources by explicitly including measures to control access to digital sequence information in their national legal, administrative and policy measures taken pursuant to Articles 3 and 15 of the Convention on Biological Diversity as well as the Nagoya Protocol;]

² CBD/DSI/AHTEG/2020/1/3, section 2.3.3.

(y) [[Notes that] some Parties have adopted domestic measures that regulate the access to and use of digital sequence information on genetic resources as part of their access and benefit-sharing frameworks;]

(z) [Recognizes that the [solution] [practical approach] referred to in paragraph [--] above [may] [shall] include the establishment of a multilateral benefit-sharing mechanism as described in [the appendix to] this decision[, as a contribution of resource mobilization for the implementation of the post-2020 global biodiversity framework, and hereby decides to establish a multilateral benefit sharing mechanism as described in decision 15/--];]

(aa) [Decides to establish a [multi-stakeholder] [intergovernmental] dialogue for cross-sectoral coordination on matters related to digital sequence information on genetic resources [, inviting, in addition, multi-stakeholder and international organizations,] [in particular matters related to capacity-building for and technology transfer for developing countries] with [cooperation of] relevant international organizations [and academic institutions[, scientific communities and industries]] associated with digital sequence information, with a view to promoting consistency, including regarding terminologies, as appropriate, across relevant treaty bodies and international legal norms, while keeping within the bounds of the respective mandates and instruments of each organization [that does not run counter to the objectives of the Convention and its Protocols];]

(bb) [Requests the United Nations General Assembly to establish an intergovernmental committee to negotiate a legally binding instrument governing access to and benefit-sharing for digital sequence information on genetic resources;]

(cc) [Decides that the mandate of the extended Ad Hoc Technical Expert Group established under decision 14/20 should be renewed to discuss the diversity of issues in relation to digital sequence information on genetic resources, including the outcomes of the multi-stakeholder dialogue referred to in paragraph [--] of this decision, and requests the Ad Hoc Technical Expert Group to submit its recommendations for consideration to the Conference of the Parties at its sixteenth meeting;]

(dd) [Broad stakeholder participation in a policy formulation process for a complex issue such as digital sequence information on genetic resources is critical to allow for pragmatic understanding of the range of views, perspectives and interests so as to move closer to a potentially pragmatic policy solution taking into account the interest of those affected. Continued multi-stakeholder dialogue will also be important for the effective implementation of any solution.]

[Appendix to the decision recommended to the fifteenth meeting of the Conference of the Parties

PROPOSALS FOR MULTILATERAL AND HYBRID APPROACHES FOR BENEFIT-SHARING FROM THE USE OF DIGITAL SEQUENCE INFORMATION ON GENETIC RESOURCES

A. Proposal for the establishment of a multilateral benefit-sharing mechanism

1. A multilateral benefit-sharing-mechanism may operate as follows:³

(a) Each developed-country Party shall, in accordance with Articles 20 and 15.7 of the Convention, take legislative, administrative or policy measures, as appropriate, to ensure that 1 per cent of the retail price of all commercial income resulting from all utilization of genetic resources, traditional knowledge associated with genetic resources or digital sequence information on genetic resources is shared through the multilateral benefit-sharing mechanism to support the conservation and sustainable use of

³ The inclusion of this suggested option is without prejudice to discussions at the Conference of the Parties and is not intended to indicate any preference among potential options/solutions.

biological diversity, unless such benefits are otherwise being shared on mutually agreed terms established under the bilateral system;

(b) All monetary benefits shared under the multilateral benefit-sharing mechanism shall be deposited in a global biodiversity fund operated by the Global Environment Facility, as the financial mechanism of the Convention, and this global fund shall also be open for voluntary contributions from all sources;

(c) The global biodiversity fund shall be used, in an open, competitive, project-based manner to support on-the-ground activities aimed at the conservation of biological diversity and the sustainable use of its components, in line with the ecosystem-based approach, carried out by indigenous peoples, local communities and others, in pursuit of spending priorities identified from time to time by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services through scientific assessments.

2. The Executive Secretary would be requested, in consultation with all Parties and the Global Environment Facility, to prepare options for national legislative, administrative or policy measures to implement a multilateral benefit-sharing system and to report to the Conference of the Parties at its sixteenth meeting.]

B. Possible approaches for a hybrid solution on access and benefit-sharing arising out of the use of digital sequence information on genetic resources

1. Possible approaches for a hybrid solution on access and benefit-sharing arising out of the use of digital sequence information on genetic resources are reflected in doc CBD/WG2020/3/INF/8 paragraphs 40 (a) and (b)
