

DIGITAL SEQUENCE INFORMATION ON GENETIC RESOURCES

Paper by the co-leads of the contact group

I. Draft recommendation submitted by the Co-leads

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

Recalling decision 14/20 and the request to make recommendations to the Conference of the Parties at its fifteenth meeting on how to address digital sequence information on genetic resources in the context of the post-2020 global biodiversity framework,

Having considered the outcomes of the extended Ad Hoc Technical Expert Group on digital Sequence information on genetic resources and *acknowledging* the information arising from the informal activities on digital sequence information on genetic resources carried out at the request of the Co-Chairs of the Working Group on the Post-2020 Global Biodiversity Framework (CBD/WG2020/3/4 annexes II and III),

1. *Recognizes* the importance of digital sequence information on genetic resources for the three objectives of the Convention which are mutually supportive, and its relevance in the context of the post-2020 global biodiversity framework;

2. *Invites* Parties, other Governments, indigenous peoples and local communities, relevant stakeholders and organizations to continue contributing towards the resolution of divergent views through informal exchanges and consultations that can add to the body of knowledge regarding benefit-sharing from the use of digital sequence information on genetic resources in the context of the post-2020 global biodiversity framework;

3. *Takes note* of the summary of views on areas of potential convergence and apparent divergence, prepared by the co-leads and annexed to this recommendation,

4. *Recognizes* that further work needs to be carried out to help resolve divergent views and *requests* the Co-Chairs of the Working Group with the support of the Executive Secretary, and without prejudice to the decision that the Conference of the Parties might make in their first session scheduled for October, to:

(a) Invite submissions from Parties and observers on possible approaches, options or modalities to address DSI under the Convention and in the context of the post-2020 global biodiversity framework;

(b) Update the analysis of policy approaches, options or modalities, and identify a set of criteria, contained in CBD/WG2020/3/5, drawing upon, inter alia, the submissions referred to in paragraph 4 (a) above;

(c) Undertake an assessment of those policy approaches, options or modalities, making use of the criteria and identifying potential advantages and disadvantages of each;

(d) Establish a friends of the co-leads group to guide and support the development of the work stated in paragraphs 4 (a) to (c); and submit their report to the co-chairs of the Working Group

[.....]

II. Potential elements of a draft recommendation to the Conference of the Parties

**Noting that the text below has not been negotiated nor agreed. It rather represents a collection of views formulated by Parties, indigenous peoples and local communities and observers*

[[The Open-ended Working Group on the Post-2020 Global Biodiversity Framework *recommends* that the Conference of the Parties at its fifteenth meeting adopt a decision along the following lines:

The Conference of the Parties,]

Recalling [relevant elements] of decisions XIII/16 and 14/20, [recognizing that DSI arises out of the utilization of genetic resources and is directly and highly relevant to art 16.1 and 17 of the Convention],

[*Recognizing* that digital sequence information on genetic resources is not within the scope of the Convention on Biological Diversity because it is not within the meaning of genetic resources in Article 2 of the Convention and therefore requires an innovative approach for its solution,

Recalling that the term digital sequence information on genetic resources is not appropriate and therefore requires an appropriate alternative term,

Recalling decision, *CBD/COP/Decision/14/20*, paragraph 6, which distinguishes the utilization of genetic resources from the use of digital sequence information on genetic resources,]

[*Determining* to enhance access and benefit-sharing provisions and systems in order to contribute to [create] an ambitious and transformative resource mobilization strategy for the post-2020 global biodiversity framework,]

[*Further determining* to create a practical system to ensure fair and equitable sharing of the benefits arising from the use of digital sequence information on genetic resources and associated traditional knowledge,]

1. [*Welcomes*][*Takes note of*] the outcomes of the meeting of the Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources as contained in annex I of CBD/WG2020/3/4 [while *recognizing* the need to continue working on those aspects that [could] link digital sequence information on genetic resources with associated traditional knowledge];

2. [*Takes note of* the information summarized in annexes II and III of CBD/WG2020/3/4, arising from the informal activities on digital sequence information on genetic resources carried out at the request of the Co-Chairs of the Working Group, including:

- (a) The listing of potential policy options;
- (b) The listing of potential criteria for assessing policy options;
- (c) The range of views made during the informal online consultation];
- (d) [The scope and options for terminology to describe digital sequence information on genetic resources]

3. [*Recognizes* the intrinsic relation between genetic resources and digital sequence information on genetic resources [as well as the scope of bioinformatic tools in the design and creation of new digital sequence information on genetic resources elements that are created artificially]] [*Recognizes* that digital sequence information on genetic resources are an intrinsic part of genetic resources.][*Recognizes* that digital sequence information on genetic resources are not genetic resources as defined in the Convention on Biological Diversity and in the Nagoya Protocol][*Recognizes* that digital sequence information on genetic resources [forms part of genetic resources and] requires access to a physical genetic resources [initially]]];

4. [*Recognizes* that access to and utilization of digital sequence information on genetic resources is useful for research relating to conservation and sustainable use of biodiversity, food security, health and other important sectors including commercial application resulting in commercial products;][*Recognizes* that the generation of, access to, analysis and use of digital sequence information on genetic resources can have a positive effect on the conservation and sustainable use of biodiversity, human, animal and plant health and food security;]

5. *Recognizes* that any approach on digital sequence information on genetic resources [which mechanism has been agreed by Parties] [must be based on modalities of access following regulations, limits and in the context of rights-based approaches, in particular the rights of Mother Earth and the rights of indigenous peoples and local communities][should [facilitate access to digital sequence information on genetic resources and support scientific research and innovation based on digital sequence information on genetic resources][support open access to digital sequence information on genetic resources and facilitate scientific research and innovation;] not [prevent][restrict free and open] access to digital sequence information or [significantly] hinder scientific research and innovation];

5alt.5quinquies [*Recognizes* the need for a global standard or policy approach that [regulates access to digital sequence information on genetic resources][encourages open [but not necessarily free] access to digital sequence information on genetic resources] and promotes significant scientific research and innovation related to digital sequence information on genetic resources] [taking into account reasonable limitations, precautionary measures and safeguards];

5alt2. [*Recognizes* that any approach to address digital sequence information on genetic resources should not prevent access to digital sequence information;]

5alt3/5sexies [*Recognizes* that any approach to address digital sequence information on genetic resources should support open access to data, and promote the open science model and should not negatively affect scientific research and innovation;]

5alt4. *Recognizes* that any approach to address digital sequence information on genetic resources [[may][must] include terms and conditions for benefit sharing on open access and other databases holding digital sequence information;]

5alt5. *Recognizes* that any approach to address digital sequence information on genetic resources should [provide for the special status of pathogens of pandemic potential;]

5bis. [*Recognizes* that open access to digital sequence information on genetic resources in public databases constitutes a benefit for all stakeholders;]

5ter. [*Recognizes* that any approach to further address digital sequence information on genetic resources needs in principle to lay within the legal framework of the Convention on Biological Diversity. Approaches that go beyond the legal framework of the Convention would first require a mandate for its revision;]

5quater. [*Recognizes* that the technical capacity to generate, access and use digital sequence information on genetic resources is still low in most developing countries and therefore the "benefits of having open-access" are not fairly or equitably available to all;]

6 [*Recognizes* that open access does not necessarily means free and unrestricted access and that it is needed legal certainty for the fair and equitable sharing of benefits arising out the utilization of digital sequence information on genetic resources;]

7. *Recognizes* that benefits arising from the use of digital sequence information on genetic resources should be shared fairly and equitably [considering modalities of access based on regulations, limits and rights-based approaches, in particular the rights of Mother Earth and the rights of indigenous peoples and local communities] [with the countries that [initially][originally] provide the genetic resource from which the digital sequence was obtained, and *recognizes* that the free, prior informed consent of indigenous peoples and local communities is relevant to access to digital sequence information on genetic resources [where they have the established right to grant access to digital sequence information on genetic resources] in equal conditions] [tagging genetic resources with the information of the country of origin of the resource used to obtain the digital sequence information on genetic resources is fundamental. This should be realized through the collaboration with database platforms with the research institutions and digital sequence information on genetic resources holders from diverse data banks, is important to achieve

traceability and to assure that this information is presented and it be public or available, when private digital sequence information on genetic resources holders][according to national circumstances];

8. [*Recognizes* that sharing of the benefits arising from the use of digital sequence information on genetic resources through a [clear] global multilateral benefit-sharing mechanism can make a significant contribution to resource mobilization and thereby contribute to conservation and sustainable use;][*Recognizes* that the global multilateral benefit sharing mechanism, complementary to the bilateral one, can make a significant contribution to share benefits from the use of digital sequence information on genetic resources [through a global multilateral haring mechanism], resource mobilization and thereby contributes to conservation and sustainable use. Benefits should be shared directly with the providers of the genetic resources from which originated digital sequence information on genetic resources, including indigenous peoples and local communities;]

9. [*Decides* to further review the efficiency and efficacy of the current modality including how digital sequence information on genetic resources is currently used, and further *considers* the concept and scope of digital sequence information on genetic resources [that traceability of digital sequence information on genetic resources] and who are the main beneficiaries from its use;] [including relations to derivatives, biological resources and traditional knowledge;]

10. *Considers* that [there are several possible [modalities][approaches] for [access and] benefit-sharing [and it is necessary to continue with the analysis of the implications of each of them]

11. [*Further considers* that all possible modalities should:

- (a) Preserve open access to digital sequence information on genetic resources from databases;
- (b) Be practical, easily implementable, efficient and cost-effective, i.e., it should generate more benefits than costs;
- (c) Ensure that benefits generated will contribute to the conservation and sustainable use of biodiversity in support of the sustainable development goals;
- (d) Ensure legal certainty;
- (e) Be future-proof to allow technological developments to be addressed;
- (f) Be adaptable to the requirements of other access and benefit-sharing instruments, including possible future instruments;]
- (g) [Respect the rights of Mother Earth and the rights of indigenous peoples and local communities;]
- (h) [Ensure that the socioeconomic and digital divide between developed and developing countries is not increased;]

11*alt.* [*Further considers* that any approach to further address digital sequence information on genetic resources needs to take into account in particular the following criteria:

- (1) The open access to digital sequence information on genetic resources in public databases
- (2) Legal certainty
- (3) Practicability
- (4) A multilateral approach
- (5) A favorable cost-benefit ratio
- (6) The support of innovation based on digital sequence information on genetic resources
- (7) The contribution to sustainable use and conservation of biodiversity]

12. [*Recognizes* that indigenous peoples and local communities should be the primary beneficiaries of financial benefit sharing for digital sequence information on genetic resources because of their pivotal role in conservation and sustainable use of biodiversity;]

13. *Acknowledges* that capacity-building [and technology support] is relevant and [further capacity to access, use, generate and analyze digital sequence information on genetic resources is needed in many countries][necessary for addressing digital sequence information on genetic resources] [and must deliver against the needs identified][and *recognizes* the relevance of associated traditional knowledge related with the utilization of genetic resources and digital sequence information on genetic resources, as well as the importance of indigenous peoples and local communities in the preservation, maintenance and generation of these resources] [, including culturally appropriate capacity-building for indigenous peoples and local communities, women, and youth and all stakeholders]. [In addition, the implementation capacity-building, including through technology transfer in mutual collaboration, is necessary to be enhanced and facilitated. This, could take the form of research collaboration including further research and/or development and innovation involving digital sequence information on genetic resources, training, knowledge platform, technology co-development and more;]

13alt. *Acknowledges* that [the provision of financial resources, technology transfer and capacity-building are relevant and necessary for addressing digital sequence information on genetic resources;]

13alt2. *Acknowledges* that [technical and scientific cooperation and] capacity building [is][are] relevant and necessary for addressing digital sequence information on genetic resources [and recognizes the relevance of associated traditional knowledge related with the utilization of genetic resources and digital sequence information on genetic resources, as well as the importance of indigenous peoples and local communities in the preservation, maintenance and generation of these resources]

16. [*Decides*, in the exercise of their sovereign rights over genetic resources, to establish a multilateral benefit-sharing- mechanism, to operate as follows:

(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 [at least] 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 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;]

17. [*Requests* the Executive Secretary, in consultation with all Parties and the Global Environment Facility, to prepare options for national legislative, administrative or policy measures to implement the multilateral benefit-sharing system and to report back to the Conference of the Parties at its sixteenth meeting.]]

ANNEX I

CO-LEADS' SUMMARY ON DRAFT POTENTIAL AREAS OF CONVERGENCE AND OF APPARENT DIVERGENCE ON DIGITAL SEQUENCE INFORMATION ON GENETIC RESOURCES

1. The present summary has been prepared by the co-leads of the contact group on item 5, Ms. Lactitia Tshitwamulomoni (South Africa) and Mr. Gaute Voigt-Hanssen (Norway), based on the input received from the delegates during the contact group's second session held on 26 August 2021 from 11:00 am to 2:00 pm EST (Montreal time). It is a synthesis of the views on potential areas of convergence and of apparent divergence on digital sequence information on genetic resources (DSI), prepared in view of facilitating possible further work and consideration of this topic at the resumed session of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework (GBF). The elements are presented below in no particular order.
2. All Parties acknowledged the importance of adopting a post-2020 global biodiversity framework, and many acknowledged that digital sequence information on genetic resources would need to be reflected in the text of the framework. Many expressed the view that the global biodiversity framework should offer a solution to address DSI.
3. Views seemed to converge on the fair and equitable sharing of the benefits arising from the use of DSI, though suggested or preferred options, approaches or modalities to benefit-sharing varied greatly.
4. Parties acknowledged the important role of indigenous peoples and local communities in considering benefit-sharing from the use of DSI.
5. Many recognized the importance of ensuring legal certainty for both users and providers of DSI.
6. Parties acknowledged the importance of DSI for scientific research and innovation, the contribution of DSI to the conservation and sustainable use of biodiversity, and the importance of DSI for human, animal and plant health.
7. Many noted the importance and/or contribution of DSI to achieving the Sustainable Development Goals.
8. There was also a clear convergence of views supporting the need for and importance of capacity-building for all stakeholders, based on needs, regarding the generation, analysis and use of DSI.
9. With regard to areas of apparent divergence, the co-leads noted a divergence of views regarding access to DSI, whether it should be open, free, restricted or unrestricted, regulated or unregulated. Furthermore, as mentioned above, while there seemed to be a potential area of convergence on the fair and equitable sharing of the benefits arising from the use of DSI, there was an apparent divergence on the options, approaches or modalities of such benefit-sharing. Further work on options, approaches or modalities to ensure the fair and equitable sharing of benefits arising from the use of DSI could be envisaged prior to the resumed session of the Working Group.

ANNEX II

TEXT PROPOSALS RELATED TO DSI IN THE POST-2020 GLOBAL BIODIVERSITY FRAMEWORK

Text proposals related to document CBD/WG2020/3/3 - First draft of the post-2020 global biodiversity framework

<i>CBD/WG2020/3/3, p. 5-7</i>	<i>Text proposals and amendments</i>
<p>Goal C The benefits from the utilization of genetic resources are shared fairly and equitably, with a substantial increase in both monetary and non-monetary benefits shared, including for the conservation and sustainable use of biodiversity.</p> <p>Milestone C.1 The share of monetary benefits received by providers, including holders of traditional knowledge, has increased.</p> <p>Milestone C.2 Non-monetary benefits, such as the participation of providers, including holders of traditional knowledge, in research and development, has increased.</p>	<p>Goal C The benefits from the utilization of biodiversity/biological resources (genetic resource, DSI and associated traditional knowledge) are shared fairly and equitably, with a substantial increase in both monetary and non-monetary benefits shared, including for the conservation and sustainable use of biodiversity.</p> <p>Milestone C.1 The share of monetary benefits received by providers of biodiversity/biological resources, genetic resources and DSI, including holders of traditional knowledge, has increased.</p> <p>Milestone C.2 Non-monetary benefits, such as technical and scientific cooperation with the participation of providers of biodiversity/biological resources, genetic resources and DSI, including holders of traditional knowledge, in research and development, has increased.</p>
<p>Target 13. Implement measures at global level and in all countries to facilitate access to genetic resources and to ensure the fair and equitable sharing of benefits arising from the use of genetic resources, and as relevant, of associated traditional knowledge, including through mutually agreed terms and prior informed consent.</p>	<p>Target 13. Measures at global and national level established and implemented in all countries to facilitate access to genetic resources and DSI and to ensure the fair and equitable sharing of benefits arising from the use of all biodiversity/biological resources, genetic resources, DSI and, as relevant, of associated traditional knowledge, including through mutually agreed terms and free prior informed consent in accordance with the provisions of the Nagoya Protocol and the CBD and other relevant international instruments.</p>

Text proposals related to document CBD/WG2020/3/INF/2 - Proposed monitoring approach and headline, component and complementary indicators for the post-2020 global biodiversity framework

<i>CBD/WG2020/3/INF/2, p. 12</i>	<i>Text proposals and amendments</i>
<p>13.1.1. Number of permits or their equivalents for genetic resources (including those related to traditional knowledge) by type of permit</p>	<ul style="list-style-type: none"> • Number of permits granted • Number of ABS Agreements in place • Trends in sharing of monetary and non-monetary benefits by users • Establishment of global multilateral benefit sharing mechanism • Funds received and disbursed by the GMBSM