

DSI Working Groups Highlights: Friday, 17 November 2023

The Working Group on benefit-sharing from the use of digital sequence information (DSI) on genetic resources continued its deliberations. The Committee of the Whole (CoW) met in the morning and afternoon to focus on substance, addressing a conference room paper (CRP) on possible elements of a multilateral mechanism for benefit-sharing from the use of DSI on genetic resources, including a global fund. In the evening, delegates met in a Contact Group, focusing on process and the way forward.

Committee of the Whole

CoW Co-Chair Martha Mphatso Kalembe, Malawi, opened the session, thanking the Contact Group Co-Chairs and participants for their hard work and perseverance.

Contact Group Co-Chair Nneka Nicholas, Antigua and Barbuda, reported that the group held three productive sessions. She highlighted that, following initial exchanges, a revised non-paper was prepared and discussed, noting that the CRP (CBD/WGDSI/1/CRP.1) was prepared on this basis.

CoW Co-Chair William Lockhart, UK, highlighted that the CRP is structured around areas of convergence and those requiring further discussions. He clarified that the final outcome will be annexed to the meeting's report.

On areas of potential convergence on **contributions to the fund** (cluster A), delegates addressed an element highlighting the achievement of Target 19 (increase the level of financial resources from all sources) and Goal D (means of implementation) of the Kunming-Montreal Global Biodiversity Framework (GBF), not diminishing international obligations under Article 20 (financial resources) of the Convention on Biological Diversity (CBD).

The EU, supported by NORWAY, AUSTRALIA, SWITZERLAND, and JAPAN, highlighted the need for financial resource mobilization for GBF implementation, adding that “the fund does not affect parties’ obligations as established in Article 20.” South Africa, for the AFRICAN GROUP, reiterated that contributions should come from a 1% levy from commercial sales of biodiversity-related products.

CHILE and ARGENTINA proposed reference to the third CBD objective (fair and equitable benefit-sharing). ARGENTINA suggested reference to Article 20.2 (obligations of developed

countries), with NORWAY noting that “if we go down that rabbit hole,” then reference to Article 20.1 (obligations of all countries) should also be included.

Brazil, for the LATIN AMERICAN AND CARIBBEAN GROUP (GRULAC), suggested adding a footnote to note that the elements outlined are non-exhaustive and parties may wish to consider additional elements in line with the annex of CBD Decision 15/9 (DSI on genetic resources). He further stressed, supported by the EU and SWITZERLAND, that numbering the provisions “is not intended to set hierarchy or precedence among items.”

SWITZERLAND noted that such a footnote will reopen the whole discussion. The EU proposed stating that elements provide a non-exhaustive list to consider as priorities in future discussions, with parties retaining the right to raise and consider additional elements.

On the proportionality of contributions, the EU, supported by NORWAY, emphasized that “benefits to be shared should be proportionate to revenue generated from the use of DSI,” rather than to contributions to the fund. NORWAY stressed the fund should be open to all contributions, including philanthropic donations.

BRAZIL supported proportionality, suggesting language acknowledging the need for further discussions on the term. EGYPT and SOUTH AFRICA opposed language that determines benefit-sharing in proportion to the revenue generated from DSI use, stressing that benefits must be shared fairly and equitably, with contributions proportionate to revenue from commercialization. JAPAN proposed focusing on “profit” rather than “revenue.”

Co-Chair Lockhart noted that the element will be moved under those needing further discussions.

On voluntary contributions to the fund, Co-Chair Lockhart noted a suggestion by ARGENTINA to reflect that such contributions “should be accepted and could be incentivized.” ARGENTINA and CHILE highlighted the importance of not prejudging decisions on whether the system for the multilateral mechanism and fund will be fully voluntary, mandatory, or a combination of the two. CHILE requested language noting that the nature of the system is not yet decided, and the EU acknowledged the merit of such a disclaimer.

ARGENTINA, supported by INDONESIA, suggested that “voluntary contributions, over and above monetary benefit-sharing obligations, may be accepted and incentivized.” INDIA proposed referring to “unconditional” voluntary contributions.

Co-Chair Lockhart suggested splitting the element and moving text specifically addressing incentives to the list of elements requiring further discussion, which INDONESIA and TOGO supported. The UK and CANADA pointed to an existing “further discussions” element on possible incentives for voluntary contributions, and ZIMBABWE and TOGO stressed that these two elements should be addressed together.

Co-Chair Lockhart proposed language, which JAPAN refined, whereby “in all scenarios, voluntary contributions to the fund should be accepted and incentivized.” JAPAN, AUSTRALIA, the EU, the UK, CANADA, MOROCCO, SWITZERLAND, UGANDA, and the DEMOCRATIC REPUBLIC OF THE CONGO (DRC) expressed their support. ARGENTINA accepted this amendment on the condition of adding language to reflect and clarify the mandatory aspect of benefit-sharing.

Following informal consultations over lunch, AUSTRALIA reported that divergent opinions remain, and that the element on incentivizing voluntary contributions should be moved to elements for further discussion. JAPAN lamented that “some parties do not understand the legal status of decisions of the meetings of the Conference of the Parties (COP) under the Convention.”

Co-Chair Kalemba invited general reflections on elements relating to contribution to the fund that require further discussion. Parties continued deliberations mainly on: payment for access to DSI on genetic resources; agreed classes of products; and the contributions by donors or governments to the fund for its initial capitalization, including the issue of a potential 1% levy on all commercialized products. BRAZIL, supported by the EU, the UK, AUSTRALIA, and others, suggested deleting the criteria related to payment for access to DSI on genetic resources. MOROCCO, supported by INDONESIA, TOGO, and ALGERIA, opposed this, proposing that DSI users should contribute to the fund.

On the contribution to the fund from all commercialized agreed classes of products, JAPAN, supported by BRAZIL, the EU, TOGO, and INDIA suggested deleting reference to “agreed classes,” underscoring lengthy procedures and time constraints.

On the contribution to the fund for its initial capitalization, BRAZIL, supported by others, suggested adding governments to donors to maximize sources contributing to the fund.

Following debate, some parties suggested streamlining the text of certain elements, and proposed further discussion on others, including on the deletion of payment to access, as well as whether establishing a legally binding mechanism requires a new treaty.

On **disbursement of the fund** (cluster B), many delegates supported directing funding towards the conservation and sustainable use of biodiversity and the implementation of national biodiversity strategies and action plans but disagreed that this should be done “in particular in developing countries.” JAPAN, supported by SWITZERLAND, proposed deleting the reference to developing countries, stressing that all countries are potential providers and users of DSI. BRAZIL and JORDAN opposed this

deletion, with BRAZIL highlighting unequal capacities among parties.

Following lengthy discussions, BRAZIL, supported by JORDAN, ZIMBABWE, UGANDA, CUBA, TOGO, EGYPT, the MALDIVES, and COLOMBIA, reiterated the need for specific reference to developing countries, stressing that this language already constitutes a compromise. NORWAY, supported by the MALDIVES and MAURITIUS, suggested including least developed countries and small island developing states. MOROCCO called for a clear, transparent approach that avoids subjective interpretations.

CANADA and AUSTRALIA suggested streamlining the element on funding direction with an element on various factors that could be used to determine the level of funding allocated. Co-Chair Lockhart invited them to refine their idea and submit a concrete proposal.

CANADA and AUSTRALIA further suggested moving an element on allowing the fund to allocate funding to Indigenous Peoples and local communities (IPLCs) in all regions, in particular in developing countries, from the cluster on governance to this one.

JAPAN, supported by CANADA, CÔTE D’IVOIRE, UGANDA, ALGERIA, EGYPT, NORWAY, and AUSTRALIA, noted that funding directed towards the achievement of relevant Sustainable Development Goals (SDGs) might be too broad, suggesting narrowing the element’s scope to CBD or biodiversity-related objectives. JORDAN preferred “GBF-related objectives.” TOGO proposed prioritizing CBD and GBF objectives, followed by relevant SDGs. The EU stressed that referring to CBD and GBF objectives is “restating the obvious,” and proposed, supported by UGANDA, reference to “other biodiversity-related priorities.” NAMIBIA and ALGERIA stated that “other related priorities” is unclear, with CÔTE D’IVOIRE suggesting its deletion.

Among the factors to determine the level of funding allocated, BRAZIL proposed referring to “self-identified” IPLCs’ needs and, with INDIA and ALGERIA, deleting a reference to “nature-based economy.” NAMIBIA and others opposed the inclusion of the “level of development of the country” and EGYPT sought clarifications. NAMIBIA, BRAZIL, INDIA, and others suggested deleting “the ability of the project to absorb the relevant funding.” NORWAY reiterated the need for timely utilization of funds in concrete projects. CANADA, supported by AUSTRALIA, proposed referring to needs-based funding, which BRAZIL opposed. Co-Chair Lockhart noted these elements were moved to the section for further discussion.

On whether countries with access and benefit-sharing (ABS) legislation that requires benefit-sharing from DSI on genetic resources held in public databases would be eligible to receive funding from the multilateral mechanism, the EU noted that Thursday’s discussion addressed whether DSI held in public databases should have any conditions attached to access. JAPAN and SWITZERLAND, opposed by AUSTRALIA, proposed to delete “held in public databases,” arguing it unnecessarily narrows the scope.

Regarding whether funding allocations should include the geographical origin of DSI on genetic resources, which could be possible without the use of tracking and tracing, JAPAN expressed concern about using geographical origin as a criterion. BRAZIL noted the difference between the geographical origin of genetic resources and that of DSI, and highlighted the need for further discussion on tracking and tracing, suggesting either deleting the reference or transferring it to another cluster. CANADA, supported by AUSTRALIA, proposed language to clarify a provision noting that “much DSI on genetic resources was at this time geotagged to the global North.”

On **non-monetary benefit-sharing** (cluster C), SWITZERLAND, supported by AUSTRALIA, NORWAY, and the EU, noted that there is no need for a platform or facility for capacity development, technology transfer, and scientific cooperation, and called for a specific strategy on capacity-development needs. EGYPT, BRAZIL, and INDONESIA opposed, highlighting the long-term strategic framework for capacity-building and development adopted at COP 15 (Decision 15/8, on capacity-building and development and technical and scientific cooperation), and reiterated the need for a platform as part of the existing CBD framework. BRAZIL suggested replacing language on a “facility” with reference to “platforms.” INDIA proposed adapting and tailoring capacity-building initiatives according to specific needs of parties and IPLCs. The EU noted that referring to a multitude of entities is helpful and suggested merging the envisaged platform or facility with the existing framework under the CBD, including Decision 15/8. The UK referred to the already established regional centers under Decision 15/8, proposing to embed them in DSI work on capacity development. AUSTRALIA proposed linking biodiversity conservation and sustainable use to the capacity-building strategy.

On achieving equity in research relationships as a goal of capacity development, Algeria for the AFRICAN GROUP noted it requires further discussion. ARGENTINA, supported by AUSTRALIA, and opposed by ALGERIA, suggested fostering research collaboration between developed and developing countries. CÔTE D’IVOIRE suggested merging elements on national priorities for capacity building and institutional capacity building.

Deliberating on the list of possible criteria for the sharing of non-monetary benefits, EGYPT, Algeria for the AFRICAN GROUP, the PHILIPPINES, CÔTE D’IVOIRE, COLOMBIA, JAPAN, CHILE, and BRAZIL provided suggestions on the need for undertaking further analysis on the capacity gap between countries, and for further clarifications, including on “capacity” and the types of institutions being assessed. Co-Chair Kalemba moved these criteria to elements requiring further discussion.

On the element addressing work to facilitate capacity-building and development on DSI, delegates engaged in lengthy deliberations without concluding on a way forward with the text. BRAZIL, NORWAY, the EU, TOGO, the UK, INDONESIA, EGYPT, and JAPAN provided comments and debated amendments to the text, including on: concerns on the legal certainty and direction of the work intended; queries on

the scope and contributions of the work on capacity building and development in relation to existing relevant Convention frameworks or to other frameworks, including the Nagoya Protocol; the need to define the frameworks that are referred to; preventing any prejudging of tasks that are yet to be agreed; the importance of significantly increasing the scale of this work; and including technology transfer as a key component of the work.

Delegates moved this element under those requiring further discussion, and Co-Chair Kalemba encouraged Brazil, the EU, and other interested parties to engage in informal discussions, with a view to develop language enabling convergence on this text at a later session.

The element on the target beneficiaries of capacity-building was also moved to elements requiring further discussions.

Following support from the EU, AUSTRALIA, NORWAY, the UK, and JAPAN, the element on ways in which non-monetary benefits are already being shared, reflecting an amendment proposed by BRAZIL, was agreed to be retained under elements of potential convergence, reading: “there are many ways in which non-monetary benefits are already being shared, and the future sharing of non-monetary benefits should take into account lessons learned from those experiences.”

ARGENTINA underscored that discussions during the Contact Group had converged on deleting the use of DSI as a trigger point for monetary benefit-sharing (cluster A) and including it as a trigger point for non-monetary benefit-sharing instead. The EU welcomed further discussions on the practicalities of applying the use of DSI as a trigger point for non-monetary benefits.

BRAZIL, supported by the EU, NORWAY, and AUSTRALIA, proposed a new element a list of possible options on non-monetary benefit-sharing, which was included under elements requiring further discussion. The DSI SCIENTIFIC NETWORK and the INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY, supported by CANADA, suggested additions for inclusion in the proposed list.

BRAZIL suggested removing the element on the need for further discussions on non-monetary benefit-sharing to consider outcomes from the meeting of the Ad hoc Technical Expert Group (AHTEG) on DSI held in 2020. The EU, NORWAY, the RUSSIAN FEDERATION, and AUSTRALIA opposed, underscoring the critical nature of this document as a baseline for discussions on DSI prior to COP 15. The RUSSIAN FEDERATION suggested engaging in discussions with the academic and research sector to explore new areas that could be incorporated in capacity-building activities. AUSTRALIA, supported by the UK, suggested moving the element to those requiring further discussions. The DSI SCIENTIFIC NETWORK further underscored the importance of the AHTEG in informing discussions, including those of the Contact Group.

Delegates placed the element under those requiring further discussions.

The UK suggested deleting an element on the potential modalities of the capacity-sharing platform or facility, noting that the relevant “convergence” element refers to the regional centers established in Decision 15/8, and that the modalities

of those regional centers are directed to the Subsidiary Body on Implementation. Algeria, for the AFRICAN GROUP, and AUSTRALIA opposed its deletion, stressing the need to further consider more options.

The EU, supported by AUSTRALIA, suggested a compromise to integrate this element into the language of two others (on the system for capacity development, technology transfer, and technical and scientific cooperation; and on the work to facilitate such activities) that were moved to elements requiring further discussion. AUSTRALIA, supported by the UK, proposed a textual amendment to avoid any prejudgment on the modalities. The UK further emphasized the need to avoid “reinventing the wheel.”

Delegates moved these elements to ones requiring further discussion.

On **governance** (cluster D), delegates discussed elements on: the strategic principles guiding the multilateral mechanism; the global fund operating under the supervision and guidance of the COP; and the governing body, including party representatives.

CANADA and the EU drew attention to the Global Environment Facility (GEF) operating as the financial mechanism for the GBF, noting that the host of the DSI fund should fulfil the relevant criteria. BRAZIL, supported by the DRC and INDONESIA, reiterated their opposition to the GEF hosting the fund. NORWAY reserved its position, noting there is no conclusion on whether the GEF is the appropriate host. ARGENTINA noted that the paragraph should be moved to the section of elements in need of further discussion.

On supervision and guidance of the COP for the fund’s operation, BURKINA FASO suggested adding a reference to the Convention and its Protocols. AUSTRALIA, the UK, JAPAN, and SWITZERLAND opposed adding reference to the Protocols, noting that not all CBD parties are parties to the Protocols and that the mechanism is to be established under the Convention. INDONESIA stressed that the mechanism is under the CBD and the Nagoya Protocol. UGANDA drew attention to the Nagoya Protocol COP serving as the meeting of the Parties (COP/MOP) Decision 4/6 (DSI on genetic resources), by which the parties to the Protocol endorsed the process established in CBD Decision 15/9, and requested the DSI Working Group to also report to COP/MOP 5 of the Nagoya Protocol.

Regarding the strategic principles, INDIA, opposed by the EU and SWITZERLAND, proposed to delete references to specific paragraphs of Decision 15/9. ARGENTINA cautioned against “picking and choosing” which decisions are referenced. BRAZIL, supported by ARGENTINA, suggested adding references to CBD Article 15 (access to genetic resources) and Nagoya Protocol Article 5 (fair and equitable benefit-sharing). The EU noted that with the proposed addition, the paragraph should be moved to areas for further discussion.

On party representatives in the governing body, INDIA suggested including a reference to providing fair and equitable representation to developing countries and, opposed by UGANDA, megadiverse countries. Co-Chair Lockhart proposed relocating the amended provision to the section of elements requiring further discussion.

Discussions will continue on Saturday on the basis of a revised CRP.

Contact Group on Benefit-Sharing from the Use of DSI on Genetic Resources

Co-Chair Lockhart opened the meeting on elements on which there is a need for further discussion, particularly in light of the study commissioned in CBD Decision 15/9. The study aims to analyze and model the extent to which a multilateral mechanism for benefit-sharing from the use of DSI, and any other options the Ad Hoc Open-ended Working Group may decide, meet the relevant criteria included in paragraphs 9 and 10 of CBD Decision 15/9. He presented the structure for further work through three steps: information sharing including webinars; setting up an informal advisory group to provide opportunity for technical discussion among parties, IPLCs, and stakeholders; and informal consultations facilitated by the CoW Co-Chairs through holding a series of regional consultations, with the commissioned study open for peer review by parties.

The EU and others supported the proposed structure and emphasized the need for an inclusive process with wide participation. NORWAY suggested inviting experts from health and agriculture ministries. JAPAN raised concerns that DSI is a multi-stakeholder issue at the national level, and participation will require more than one participant per party. BRAZIL and others stressed the challenges of participation from developing countries, and particularly of IPLCs, in virtual events, and encouraged parties to allocate resources for an in-person meeting. The next meeting of the Working Group on DSI is scheduled for August 2024 in Montreal, Canada.

In the Corridors

“How does it feel to witness the birth of a new line of work for the CBD?” a delegate asked, following the morning session of the penultimate day of the Working Group on DSI’s inaugural meeting. “Well, at this stage, it looks less like a newborn and more like a troubled teenager,” another responded, reflecting the complexity of the negotiations.

Most delegates seem to agree that discussions during the week have progressed satisfactorily, given the stage of development of the multilateral mechanism for benefit-sharing from DSI on genetic resources and the many controversial issues around such a mechanism. Still, with areas of divergence outnumbering those of convergence on almost every facet of the mechanism, including contributions to the DSI fund, fund disbursement, non-monetary benefit-sharing, and governance, all participants agree that the Working Group has its work cut out for it. With time running out before COP 16, the intersessional period will be very busy if a meaningful outcome is to be agreed. In positive news, a reviving environment of cooperation experienced during the week’s deliberations shows that, despite different priorities, national interests, and expectations, consensus is within reach.

The *Earth Negotiations Bulletin* summary and analysis of the Article 8(j) and DSI Working Groups will be available on Wednesday, 22 November 2023 at bit.ly/CBD_Geneva