

DSI and Article 8(j) Working Groups Highlights: Tuesday, 14 November 2023

The inaugural meeting of the *Ad Hoc* Open-ended Working Group on benefit-sharing from the use of digital sequence information (DSI) on genetic resources took place in the morning and afternoon, followed by the Contact Group on the development of a new programme of work and institutional arrangements for the Working Group on Article 8(j), with delegates working late into the night.

Opening of the Working Group on DSI

Chair Ning Liu, China, opened the meeting, highlighting the tasks at hand: to further develop and operationalize the multilateral mechanism for benefit-sharing from DSI, including a global fund. He encouraged delegates to grasp this “opportunity to make history together.”

David Cooper, Convention on Biological Diversity (CBD) Acting Executive Secretary, emphasized that the multilateral mechanism and global fund are integral to the Kunming-Montreal Global Biodiversity Framework (GBF). He expressed hope that deliberations lay foundations for a practical system, noting their relevance to other fora, including the World Health Organization (WHO) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

SWITZERLAND, for Australia, Canada, Japan, New Zealand, Norway, the Republic of Korea, the UK, and the US (JUSSCANNZ), stressed that the solution must: provide legal certainty for users; facilitate implementation; support research and innovation, including with open access to DSI through public databases; and be compatible and mutually supportive with other international legal obligations and instruments. He cautioned that an approach requiring DSI tracking and tracing is impractical.

Cambodia, for ASIA-PACIFIC, urged focus on the global fund, governance, and relation to other systems. She noted DSI-related benefits’ potential as an additional funding source and underscored the need to associate the modalities of the global fund with the GBF Fund. She called for transparency, accountability, and a focus on provisions for capacity building.

Argentina, for the LATIN AMERICAN AND CARIBBEAN GROUP (GRULAC), expressed support for a hybrid system that considers national access and benefit-sharing (ABS) measures, and recognizes the rights of Indigenous Peoples and local communities (IPLCs). She pressed that a successful DSI solution should not diminish developed countries’ obligations under CBD Article 20 (financial resources).

Spain, for the EU, stressed that the evaluation and identification of modalities must align with the agreed principles in Decision 15/9 on DSI on genetic resources, referring to equitable benefit-sharing, based on open access to data.

Namibia, for the AFRICAN GROUP, stressed that contributions to the global fund should come from at least 1% of all biodiversity-related commercial sales. She underscored that the disbursement of funds should support country-specific allocations, biodiversity conservation, and IPLCs. She suggested that the global fund should operate under the financial mechanism of the Convention.

The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) urged for a robust, transparent, and flexible multilateral mechanism, which recognizes the relationship of IPLCs with biodiversity. The THIRD WORLD NETWORK (TWN) stressed that “open access” does not mean “free access,” and underscored that a distribution mechanism should not be based solely on competitive project financing. The CBD WOMEN’S CAUCUS called for a gender-responsive approach.

The INTERNATIONAL CHAMBER OF COMMERCE suggested that the mechanism be exclusively multilateral, flexible, universally applied, and include physical genetic resources and DSI. The DSI SCIENTIFIC NETWORK highlighted the harmonization of a single set of rules for benefit-sharing across all UN fora.

Organizational Matters

Delegates adopted the provisional agenda (CBD/WGDSI/1/1) and organization of work (CBD/WGDSI/1/1/Add.1). Angela Lozan (Moldova) was elected rapporteur. Delegates established a Committee of the Whole, co-chaired by Martha Mphatso Kalemba (Malawi) and William Lockhart (UK), to guide discussions.

Committee of the Whole

Co-Chairs Kalemba and Lockhart opened the session, noting the need to find innovative solutions to address biodiversity loss.

The Secretariat introduced document CBD/WGDSI/1/2/Add.2/Rev.1, containing an executive summary compiling lessons learned from other international funding mechanisms. The Secretariat further introduced CBD/WGDSI/1/2, outlining key points for consideration by the Working Group, and highlighted the meeting of the Advisory Committee on Resource Mobilization in September 2023.

The Co-Chairs invited interventions on the issues for further consideration contained in the annex to CBD Decision 15/9.

On **contributions to the fund and disbursements**, Namibia, for the AFRICAN GROUP, stressed that a main objective for the mechanism and fund should focus on assistance to developing parties. She reiterated that contributions to the global fund should come from at least 1% of all biodiversity commercial sales.

CÔTE D’IVOIRE underscored the need to establish both bilateral and multilateral mechanisms with funds to support least developing countries and IPLCs, and that the distribution of funds should be based on geographic origin. The DEMOCRATIC REPUBLIC OF THE CONGO urged for clear disbursement modalities following a needs-based approach, with special allocations, including to developing countries and Indigenous Peoples.

CHINA urged developing a common understanding of benefit-sharing based on national priorities, using a balanced and cost-effective approach to develop the multilateral mechanism. INDIA stressed that benefit-sharing should be triggered upon commercialization, supporting using the origin of genetic resources as one of the criteria for benefits’ disbursement.

BRAZIL, supported by Indonesia, called for adequate triggering points to increase benefits and underscored the need for information on geographic origin of genetic resources, acknowledging technical challenges related to tracking and tracing. They stressed that DSI-related obligations should not

dilute developed countries' responsibilities under the Convention. GUATEMALA suggested that the triggering points for benefit-sharing are identified on a case-by-case basis and fall under the authority of individual parties.

SAUDI ARABIA and the UNITED ARAB EMIRATES (UAE) supported the development of a fair and equitable multilateral mechanism. The UAE highlighted the role of academia and called for needs-based disbursement. KUWAIT suggested adopting a flexible mechanism that supports DSI-related capacity development and technology transfer.

NORWAY suggested that the fund be primarily based on contributions from the private sector, with IPLCs as main beneficiaries. The REPUBLIC OF KOREA noted the agreement to develop a mechanism on benefit-sharing arising from DSI, despite their opinion that DSI fall outside the scope of the CBD.

CANADA underscored that the mechanism should not: hinder conservation research and innovation; rely on tracking and tracing requirements; and infringe on existing rights, including those of Indigenous Peoples. JAPAN noted the need for better understanding on the value of DSI use and on approaches for revenue generation, to contribute to legal certainty for domestic implementation. SWITZERLAND emphasized that the multilateral mechanism should mirror how DSI is used in practice. The US highlighted the need for transparency and accountability in the disbursement of funds.

The IIFB emphasized that all seven sociocultural regions of IPLCs must be served by the DSI fund. The INTERNATIONAL INDIGENOUS WOMEN'S FORUM noted the potential of benefit-sharing for contributing to eradicating extreme poverty and biopiracy, among other threats.

On **non-monetary benefit-sharing**, NAMIBIA, SAUDI ARABIA, CÔTE D'IVOIRE, ESWATINI, EGYPT, SUDAN, and MOROCCO stressed that non-monetary benefit-sharing should focus on strengthening national capacities related to DSI and innovation.

COLOMBIA emphasized that the implementation of the mechanism should be subject to each country's national legislation. INDIA noted that the multilateral mechanism needs to promote the creation and development of national databases. The MALDIVES stressed the need for enhanced capacity-building. OMAN drew attention to technology transfer.

SWITZERLAND, supported by the African Group, highlighted the need to include all relevant stakeholders, and underscored the centrality of capacity building and development, and of technical and scientific cooperation. The UK encouraged considerations on how a global facility could direct non-monetary benefits and capacity building.

The AFRICAN GROUP, NEW ZEALAND, and NORWAY suggested that the disbursement of both monetary and non-monetary benefits be directed to support conservation and sustainable use of biodiversity, following a needs-based approach. The US highlighted access to data through publicly accessible databases.

IIFB drew attention to the support for IPLCs' languages and values, and the improvement of land rights and land tenure security, among other non-monetary benefits.

On **governance**, BRAZIL expressed concerns on placing the DSI fund under the Global Environment Facility. INDIA called for using an existing mechanism, such as the GBF Fund. INDONESIA emphasized that the global fund should be separate from the GBF Fund.

SERBIA highlighted principles of open science and the need to protect traditional knowledge and IPLCs' role. ZIMBABWE supported open research, access to data, knowledge sharing, and a fair benefit-sharing mechanism, respecting national sovereignty. MOROCCO highlighted security and legal aspects of exchanges related to DSI and protection of intellectual property rights. FIJI underscored the need to ensure a fair, equitable, and transparent mechanism.

SAUDI ARABIA and the UAE urged for a clear mechanism that supports innovation and research. JORDAN stressed the need to respect IPLCs' rights and for a specialized benefit-sharing mechanism on DSI, aligned with national legislation.

CANADA, supported by Japan and Switzerland, suggested developing a voluntary approach with strong incentives.

ARGENTINA stressed that the mechanism should not focus on mobilizing voluntary contributions.

The US underlined that a flexible, voluntary mechanism has the best potential to deliver a workable solution for DSI-related benefit-sharing.

TWN underscored the need to place certain disclosure and transparency requirements on the users of DSI and databases.

On **relation to other approaches and systems**, BRAZIL stressed that the multilateral mechanism, including hybrid approaches, should not undermine national ABS systems. ARGENTINA emphasized that the multilateral mechanism must be harmonious with the Nagoya Protocol and complementary to national ABS measures. COLOMBIA urged that the mechanism and definitions of "country of origin" are coherent with existing intellectual property rights regimes.

SWITZERLAND urged coherence with other international ABS mechanisms. INDIA stressed that existing national systems operating under bilateral approaches using free, prior, and informed consent and mutually agreed terms, should be prioritized over the multilateral approach.

BENIN urged that the multilateral mechanism aligns with the Nagoya Protocol's categorizations of "provider" and "user" countries, also analyzing issues of retrospection, such as existing DSI and databases. MOROCCO suggested reflecting DSI-related provisions in the Nagoya Protocol through a specific article.

The AFRICAN GROUP urged that deliberations future-proof the mechanism and ensure timely operationalization, supporting extending its scope to include biological resources. MAURITIUS called for facilitating a process for the operationalization of the DSI mechanism at the national level.

TWN cautioned against having a common system for DSI across multiple fora, given that sector-specific concerns need to be addressed.

Concluding the initial round of interventions, a Contact Group, co-facilitated by Salima Kempnaer (Belgium) and Nneka Nicholas (Antigua and Barbuda) was established to continue deliberations on Wednesday, on the basis of a non-paper to be developed by the Co-Chairs alongside the Secretariat.

Contact Group on the Development of a New Programme of Work and Institutional Arrangements for Article 8(j)

The Contact Group resumed deliberations in the afternoon, under the guidance of Co-Chairs Lucy Mullenkei (Indigenous Information Network) and Matilda Wilhelm (Sweden). Participants maintained Monday's slow and steady pace, exchanging on whether to: establish a permanent subsidiary body; extend the Working Group; or work to fully integrate the new programme of work across the Convention. Despite strong opinions voiced both in favor and against establishing a new, permanent subsidiary body, delegates converged on the importance of ensuring the meaningful integration, participation, and contributions of IPLCs across the Convention. Deliberations continued late into the evening.

In the Corridors

The opening day of the much-awaited inaugural meeting of the Working Group on DSI left participants with mixed feelings. Many noted increased mutual understanding, following the complex negotiations at COP 15 last December. Several highlighted the spirit of cooperation permeating the meeting, encouragingly noting that a solution, despite challenges, is within grasp.

Others were less optimistic. They pointed to persistent diverging opinions on key elements of the DSI benefit-sharing mechanism, and their feeling that the opening plenary session, and discussions under the Committee of the Whole, reiterated those differences rather than offering pragmatic solutions. DSI discussion veterans reflected on the COP 15 deliberations that led to the Working Group's establishment, but were not able to set out a clear programme of work for further deliberations. With substantive, detailed discussions expected to take place in the established contact group on Wednesday, most delegates agreed that "time is not on our side," with more intersessional meetings likely needed to reach consensus on a DSI mechanism prior to COP 16, scheduled for the end of 2024.