



First meeting Ad Hoc Open-ended Working Group on Benefit-sharing from the Use of Digital Sequence Information on Genetic Resources

November 14-18, 2023 - Geneva, Switzerland

Statement on behalf of the International Indigenous Forum on Biodiversity (IIFB) delivered by Katie Lee Riddle.

I speak on behalf of the International Indigenous Forum on Biodiversity.

Foundations

Article 8(j) of the Convention requires approval and involvement of IP and LCs for any access to TK in all circumstances. Nagoya Protocol also requires FPIC for access to TK associated with genetic resources. We agree that the use of FPIC should be interpreted in line with the tripartite definition. The generation of DSI from genetic resources acquired from the territories Indigenous peoples and local communities requires FPIC before it can be deposited in DSI databases and should be regulated by principles of data governance.

The foundation for a long term solution on DSI is to create conditions for a robust, transparent and flexible approach that recognises the diversity of interests of Parties, Indigenous Peoples, and local communities and others. It must recognise the unique relationship that Indigenous Peoples and local communities have with biodiversity, and their conservation and diversification of genetic diversity - past, present and future.

This can be created through two practical steps:

- Firstly, establishing a *foundational requirement* that DSI must be deposited with databases and repositories that participate in the mechanism. This will create basic conditions for trust, provide legal certainty and generate substantive benefits;
- Secondly, the identification of a set of basic terms and conditions to give participants choices when sharing DSI. This should not assume that DSI will go into the public domain.

Open and Responsible Data Governance

Basic terms and conditions of use must be combined with measures to promote ethical Open and Responsible Data Governance.

- Any DSI obtained through FPIC must be deposited into databases linked to the Mechanism.
 - We agree with Australia on item 5 that we use the terminology free, prior and informed consent (FPIC) to be interpreted, as contained in the tripartite definition in the Mo'otz Kuxtal Voluntary Guidelines.
- Strengthening DSI data governance is complementary to these ongoing practices of funding research projects and infrastructures. In line with the UNESCO Recommendation on Open Science and the OECD recommendation on enhancing access to and sharing of data, a core principle is that data sharing arrangements should be “*as open as possible to maximise the benefits to society and as closed as necessary*” to protect legitimate public and private interests, and we believe this extends to include respect and safeguards for the rights of IPs, LCs, Women and Youth, including direct impacts on their lands, waters and territories and for projects that impinge on their rights and interests.
- The FAIR principles are widely recognised as good practice in open research and innovation and the complementary CARE principles consider the needs and values of IPs and LCs. This is also promoted by the UNESCO Recommendation on Open Science.



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- We call attention to the potential synergies between DSI data governance, and the efforts towards responsibility in the research and innovation sector more broadly. Many Parties such as the EU, the UK, Australia and Canada already support Open and Responsible Data Governance in their funding policies. Some examples include Article 19 of the EU Regulation 2021/695 establishing Horizon Europe, European Research Council Ethics Guidance, the UK Research and Innovation Policy on the Governance of Good Research Practice, the Canadian Tri-Agency Framework and the Australian Code for the Responsible Conduct of Research.
- Additional measures of particular importance include providing measures to associate provenance metadata for species that are socio-economically and culturally significant, as defined by IPs and LCs, such as Traditional Knowledge and Biocultural Notices and Labels. This should be encouraged for all databases, including those linked to the Mechanism and those that may be in the future

The Global Fund Mechanism

- Regarding the governance of the fund, the participation of IPs, LCs, and stakeholders should be integral to the design, management, priority setting and governance of the fund.
- Trigger points for contributions to the fund should stem from multiple revenue generation measures. This should be seen as part of the Resource Mobilisation Strategy to support implementation of the GBF such as Target 21.
- Disbursement of funds needs to be fair, equitable, transparent, practical, secure, and directly accessible for IPs and LCs across all 7 socio-cultural regions, ensuring their full and effective participation.

Issues For Further Consideration

- The fear of fraudulent metadata creation should not outweigh the need for safeguards in the first place. Mechanisms for verifying metadata provenance should be maintained, as affirmations of accuracy upon input, and the requirement for associated contact details, needs to be submitted alongside the data input in accordance with existing veracity controls.
- The relationship between ownership, property rights and potential as well as actualised intellectual property rights pertaining to DSI should be further investigated to ensure the operability of the GMBSM and ABS as a whole.
- We propose that an ATHEG body should be conformed to ensure the continuity and consistency to DSI implications to the relationship of IPs and LCs to biodiversity, and GRs with Associated Traditional Knowledge.
- We acknowledge the need to develop safeguards to ensure sustainable flow of benefits and ensure the successful implementation of Open and Responsible Data Governance.
- The development of this Mechanism, in accordance with decision 15/9 does not preclude options for bilateral agreements between parties.
- There should be space for discussion of ethical considerations and practices notwithstanding the absence of any requirements for ethical guidance in this process