

Geneva, 12 August 2024.

End Inequitable DSI Extraction from Developing Country Genetic Resources & Secure Benefit Sharing Aspirations with Accountable CBD DSI Database

To

Ms. Martha Mphatso Kalemba and Mr. William Lockhart

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

Ms. Astrid Schomaker

Executive Secretary of the Convention on Biological Diversity

Parties to the Convention on Biological Diversity participating in the 2nd Meeting of the Ad Hoc Open-ended Working Group on Benefit-sharing from the Use of Digital Sequence Information on Genetic Resources

Your Excellencies,

We, the undersigned civil society organisations, write this letter to express our profound concerns regarding the negotiations in the Ad Hoc Open-Ended Working Group on Benefit-sharing from the Use of Digital Sequence Information (DSI) on Genetic Resources, and in particular regarding the proposed elements for the draft recommendation as contained in the Annex of document CBD/WGDSI/2/2.

In our view, the proposed elements regrettably take an unreliable and incomplete approach to benefit sharing from the use of the DSI from “public databases”. The phrase “public databases” is used in a casual manner without identifying the specific attributes that make a public database. Important questions as to the ownership and governance of such databases, data access or data processing agreements, user conditions for access and benefit sharing, cyber-biosecurity standards, their role and relationship with international legal frameworks such as the Convention on Biological Diversity (CBD) and its Parties etc. are left unaddressed in the proposed elements. At the same time, the proposed elements suggest that all Parties should refrain from putting in place national measures that require the sharing of benefits arising from the use of DSI available in public databases.

Further, the Co-Chair’s proposed elements do not suggest any measures to hold public databases accountable, for operating in a manner that supports and promotes compliance with internationally accepted principles and standards pertaining to access and benefit sharing as well as with various national and international access and benefit sharing regimes. Nor do the elements suggest the creation of a DSI database that will be accountable to the CBD and its

Parties and that will cooperate with civil society organizations and other relevant stakeholders in exercising vigilance regarding digital biopiracy.

Thus, the Co-Chair's proposed elements appear to be only conducive to the views of the E.U., developed countries and their private sector entities that seek to limit fair and equitable sharing of benefits from the use of DSI to non-obligatory measures. We are concerned that the Co-Chairs are inadvertently backing the very same DSI sharing practices that have for decades been instrumental in undermining the rights of the country of origin of genetic resources, indigenous peoples and local communities, peasants, small scale farmers or food producers.

The current unaccountable DSI sharing practices raise several significant issues:

First, although DSI derived from genetic materials is regularly shared through the "public" databases, these databases do not assume any responsibility for ensuring the DSI made available is from legitimately accessed genetic materials and that the data submitters have obtained prior informed consent from the providers of the genetic material to publicly share the DSI from their material.

Second, several of these databases allow access to DSI on an anonymous basis, making it non-viable to secure fair and equitable benefits from the users of DSI. These databases are reluctant to generate obligations on the users of DSI to share benefits, and in all foreseeable circumstances, they will continue with these practices. Hence the CBD should recognize the limitations of these databases.

Third, these databases, contrary to what is often imagined, are not operating under a global and perpetual mandate to provide open access to DSI to all users. They do not undertake any responsibility in the event of full or partial discontinuity of services. They also reserve the right to unilaterally suspend or terminate access, and have done so in the past. Cases of discriminatory practices in providing access options and user interfaces have been reported. The CBD multilateral mechanism is not likely to be in a position to secure access for those who are denied access or to provide remedies to the persons, or States, who are discriminated against.

Fourth, as these databases provide anonymous access, there are also biosecurity concerns, including concerns relating to "dual use" or unmonitored "gain of function"¹ research, and possible bioterrorist attacks on human health, and food systems.

Fifth, the practices of these databases undermine the sovereign rights of the country of origin. For example, DSI generated from genetic resources obtained using the standard material transfer agreement under the multilateral system of the International Treaty on Plant Genetic

¹ Research that genetically alters an organism in a way that may enhance the biological functions of gene products.

Resources for Food and Agriculture (ITPGRFA) have been made [available to all users](#), exceeding the permissions contained in the agreement that limits purposes for which the shared genetic materials can be used.

Finally, the current DSI sharing practices raise jurisdictional problems making legal remedies difficult for the country of origin and/or genetic material providers in case of possible infringements of their rights and/or terms of use. Most of these databases are located in developed countries and in most cases will apply laws of developed countries in dispute resolution.

It is highly regrettable that the proposed elements fail to address these concerns despite repeated submissions calling for good data governance in a manner respectful of rights enshrined under the CBD, Nagoya Protocol and in line with the unanimously adopted UNESCO Recommendation on Open Science 2021.

A future CBD multilateral mechanism must not contribute to the legitimization of such practices leading to inequitable extraction of DSI from developing countries to developed countries, including by unaccountable entities. Unfortunately, the proposed elements perpetuate the existing inequitable and unaccountable practices, instead of adopting measures to curb the same. We are equally concerned that a decision based on the proposed elements will send the wrong messages to other international fora, such as FAO and WHO, which are also currently working on the issues relating to access to DSI and benefit sharing, thereby compromising equitable access to global public goods for public health and food security.

Even more concerning is the Co-chair's suggestion that all Parties should refrain from putting in place national measures that require the sharing of benefits arising from the use of DSI available in public databases. This compromises the sovereign rights of the country of origin to establish its own national database and seek fair and equitable benefits from users of such databases.

For the above-mentioned reasons, we call upon Parties to recognize that the current practices of DSI sharing are not consistent with the CBD, Nagoya Protocol and UNESCO Recommendation on Open Science 2021.

We also call upon Parties to establish a CBD DSI database that is accountable and committed to operationalizing the key principles and standards of the CBD and in particular to secure fair and equitable benefit sharing. Such a database can act as the central repository for DSI for the CBD multilateral mechanism as well as an interim National Database for those developing countries that lack national capacities, through which they can share DSI with users and collect benefits directly.

At a minimum, the CBD DSI database should require registration of all users wanting access, provided they have agreed to the terms of use as determined by the CBD Parties including the

sharing of monetary and non-monetary benefits in a fair and equitable manner. Users should also agree not to share DSI with unregistered users.

We believe such a database is instrumental to securing fair and equitable benefit sharing, ending inequitable extraction of DSI from developing country genetic resources while also guaranteeing access to DSI for all researchers and users without discrimination.

Sincerely,

Global

- 1 Development Alternative with Women for a New Era (DAWN)
- 2 FIAN International
- 3 Fundación Víctimas Vulnerables Mujeres Afro Independientes (FUNVIMUFROIN)
- 4 Mujer MRKH · Ninfas de Rokitansky
- 5 People's Health Movement (PHM)
- 6 People's Medicine Alliance (PMA)
- 7 Public Services International (PSI)
- 8 Society for International Development (SID)
- 9 Third World Network (TWN)

Regional

- 10 European Network for Ecological Reflection and Action (Ecoropa)
- 11 Health Action International Asia Pacific (HAI-AP)
- 12 Southeast Asia Regional Initiatives for Community Empowerment (SEARICE)

National

- 12 AbibiNsroma Foundation, *Ghana*
- 13 Acción Internacional para la Salud, *Peru*
- 14 AIDS and Rights Alliance for Southern Africa (ARASA), *Namibia*
- 15 Assistance to Families and Migrants, *Cameroon*
- 16 Asociación Santa Micaela, *Peru*
- 17 Association Burkinabé d'Action Communautaire (ABAC ONG), *Burkina Faso*

- Association de Lutte contre les Violences faites aux femmes et aux filles Extrême Nord
- 18 Cameroun (ALVF-EN), *Cameroon*
 - 19 Association For Promotion Sustainable Development, *India*
 - 20 Bajinilovo Navaka Family Group, *Fiji*
 - 21 Bangladesh NGOs Network for Radio and Communication, *Bangladesh*
 - 22 Bioscience Resource Project, *United States*
 - 23 Build Peace and Development, *Democratic Republic of Congo*
 - 24 Cancer Alliance, *South Africa*
 - 25 Centre for Agroecology Water and Resilience at Coventry University, *United Kingdom*
 - 26 Confédération générale autonome des travailleurs en Algérie (CGATA), *Algeria*
 - 27 CNETZERO RDC, *Democratic Republic of Congo*
 - 28 Community And Family Aid Foundation, *Ghana*
 - 29 Coordinadora Nacional Campesina Eloy Alfaro, *Ecuador*
 - 30 Crisis Home KL, *Malaysia*
 - 31 Data bStream World, *Australia*
 - 32 Development Aid from People to People, *Zambia*
 - 33 EcoNexus, *United Kingdom*
 - 34 Equidad de género, ciudadanía, trabajo y familia, *Mexico*
 - 35 FIAN, *Indonesia*
 - 36 FSP Farkes Reformasi, *Indonesia*
 - 37 Fundación IFARMA, *Colombia*
 - 38 Global Humanitarian Progress Corporation (GHPC), *Colombia*
 - 39 Indonesia for Global Justice (IGP), *Indonesia*
 - 40 Instituto Runa, *Peru*
- International Centre for Humanitarian Actions Networking and Grassroots
- 41 Empowerment, *Côte d'Ivoire*
 - 42 IT for Change, *India*
 - 43 Malaysian Food Sovereignty Forum, *Malaysia*
 - 44 Marama NI Navaka Association, *Fiji*
 - 45 Nexus Research Coop, *Ireland*
 - 46 Nigerian Women Agro Allied Farmers Association, *Nigeria*
 - 47 Ongd AFRICANDO, *Spain*
 - 48 Prayas Centre for Health Equity, *India*

- 49 Productive Organization for Women in Action, *Belize*
- 50 Reacción Climática, *Bolivia*
- 51 ReFocus Consulting, *Canada*
- 52 Réseau Accès aux Médicaments Essentiels, *Burkina Faso*
- 53 Salud y Fármacos, *United States*
- 54 Sandvik Health Empowerment Foundation, *Nigeria*
- 55 Sankalp Rehabilitation Trust, *India*
- 56 Save our Seeds, *Germany*
- 57 Small Farmers' Movement, *Brazil*
- 58 Society for Alternative Media and Research, *Pakistan*
- 59 Suruwat, *Nepal*
- 60 The Soil Solution, *Gambia*
- 61 Uganda Peace Foundation, *Uganda*
- 62 Wemos, *Netherlands*
- 63 Women, Law and Development (MULEIDE), *Mozambique*
- 64 Working Group on Intellectual Property (GTPI), *Brazil*
- 65 Yolse, Santé Publique et Innovation, *Switzerland*