

AFRICAN GROUP SUBMISSION

on

The need for and modalities of a Global Multilateral Benefit-Sharing Mechanism (Article 10)

Prepared for the Second Meeting of the Intergovernmental Committee for the Nagoya Protocol (ICNP 2)

1) INTRODUCTION

This document responds to a request from the CBD Secretariat (SCBD/ABS/VN/SG/77099 dated 1 August 2011) for submissions in preparation for ICNP 2. It presents the preliminary views of the African Group on the need for and modalities of a global multilateral benefit-sharing mechanism (GMBSM or “mechanism”) as envisaged in Article 10 of the Nagoya Protocol (NP), which is to be discussed at ICNP 2 in accordance with annex II of COP Decision X/1.

2) NEED FOR A GMBSM

The idea that the International Regime on ABS must have a multilateral dimension in addition to the basic bilateral PIC and MAT model has long been part of the African Group’s thinking, prompted in part by the continent’s need to deal with genetic resources (GR) and associated traditional knowledge (ATK) that today occur in transboundary situations due to arbitrary national borders established during colonial times. Text in this regard submitted by Africa at ABSWG7 eventually became – in slightly modified form – Article 11 of the NP, which provides that Parties shall endeavour to cooperate where the same GR and/or ATK are found within their territories. ***Establishing a GMBSM will assist Parties to discharge (at least some of) their obligations under Article 11 at a reasonable transaction cost and without needing to deal with every instance on a case-by-case basis.***

Africa has also consistently promoted the idea that the ABS Regime must have the widest possible scope, at least when it comes to benefit-sharing. This is

based on the African view that the three objectives of the CBD are inter-related in a very specific way: benefit-sharing provides the incentive for sustainable use, and sustainable use is the only proven way to secure conservation. Africa is further of the view that it is a perversion of the third objective of the CBD, and indeed of the Objective of the NP, to hold that benefit-sharing is always and necessarily symmetrical to access derived from the PIC of a Party. The language of CBD Article 1 and NP Article 1 is quite unambiguous in this regard when it states: "... including by appropriate access...". It is obvious that there must be some form of access before there can be benefits, but the obligation to share benefits is not dependent in every case on PIC having been granted for such access. ***Establishing a GMBSM will help to ensure that benefits derived from utilisation occurring outside the usual bilateral ABS model also contribute to achieving the objectives of the CBD.***

When benefits arise from GRs utilised without PIC (because, for example, they have been accessed from areas beyond national jurisdiction where no Party has the authority to grant PIC, or from the jurisdiction of a Party that decided not to create a national system for granting PIC, or before the CBD entered into force) such utilisation will nevertheless be subject to the monitoring and compliance systems Parties to the NP are obliged to create. ***Establishing a GMBSM will assist Parties to discharge their obligation under Article 9 to encourage providers and users to direct benefits towards conservation and sustainable use.***

3) MODALITIES OF A GMBSM

The GMBSM is envisaged to be ***funded by users of GR and TK***, with the funding applied to supporting the sustainable use and conservation of biodiversity globally. Users of GRs from ex situ collections might also welcome such a mechanism, as it would help to clarify the legal status of such utilisation. A ***"user pays" GMBSM*** is potentially one of the "innovative financial mechanisms" foreseen in the 2011-2020 Strategic Plan of the CBD.

Regarding institutional arrangements, Africa ***supports investigating the available administrative option in more detail*** but proposes that decision-making about how to allocate and use GMBSM funds be guided by an

independent international governing body constituted according to the usual regionally balanced UN formula. Africa furthermore favours an arrangement that would keep administrative costs as low as possible, so that most of the GMBSM's income can be directed towards supporting sustainable use and conservation.

Africa sees a potential role for ***independent scientific advice to be provided to the governing body*** about global funding priorities to be supported by the GMBSM.

4) WAY FORWARD

Africa supports the ***rapid creation of a pilot-phase GMBSM*** that Parties can include in their national ABS legal systems from the start as part of domesticating the NP. The need for a more formal legally binding instrument can then be assessed later as part of the first review of the NP.

Africa proposes that a ***drafting group be created*** to draft a COP/MOP decision creating the GMBSM and that this decision be presented for ***adoption at NP COP/MOP 1.***