Mandate of the Special Rapporteur on the right to food

Ref.: OL OTH 143/2025
(Please use this reference in your reply)

6 November 2025

Dear Mr Kopse,

I have the honour to address you in my capacity as Special Rapporteur on the right to food, pursuant to Human Rights Council resolution 58/10.

I am an independent human rights expert appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. I am part of the special procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. I am sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information I have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, I would like to bring to your attention, in your capacity as Chair of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) information I have received concerning **the potential negative impact of the use of Digital Sequence Information (DSI) on Plant Genetic Resources for Food and Agriculture (PGRFA) on Farmers' Rights to save, exchange and sell their farm-saved seed as set out in the preamble and in article 9 of the ITPGRFA. This issue also has implications for the right to adequate food and potentially, for the sovereignty of States over their plant genetic resources for food and agriculture.**

These developments may also affect the enjoyment of the right to adequate food in countries that are Parties to the Treaty, whose populations may be indirectly impacted by the potential negative consequences that may arise.

I would also appreciate it if you could share this letter with the Members of the ITPGRFA Governing Body Bureau and all Contracting Parties to the Treaty, ahead of the meeting of the ITPGRFA Governing Body to be held in Lima, Peru, from 24 to 29 November 2025, as well as with Ministers of Agriculture and their delegates

involved in the High Level Segment organised by the Government of Peru.

During the upcoming meeting of the ITPGRFA Governing Body in Lima (24-29 November 2025), the Contracting Parties will discuss possible amendments to the Multilateral System (MLS) governing facilitated access to and benefit-sharing from PGRFA.

The current negotiation texts do not ensure that DSI derived from PGRFA is brought under the scope of the Treaty. This could, in turn, risk weakening farmers' and peasant's rights protections by turning the ITPGRFA into a potential facilitating tool for misappropriation (more commonly also referred to as 'biopiracy') by corporations, contrary to the spirit of the Treaty.

The absence of clear rules on DSI under the Treaty, and in the national legislation of Contracting Parties, may enable private entities to obtain intellectual property rights over digital representations of PGRFA contained in the MLS. This situation could undermine the facilitated access to those PGRFA and the equitable sharing of benefits, and limit farmers' traditional practices, particularly in developing countries, when the same DSI are contained also in their seeds (to be considered PGRFA under development).

DSI is simply the digitised representation of the genetic parts or components of PGRFA, which are not patentable under the Treaty if they come from the MLS (article 12.3d). This view is shared by most of the signatories to the Treaty. However, I am also aware of the position of a smaller number of Contracting Parties, less eager to bring digital sequence information on PGRFA under the Treaty rules and deal with that consistently in their national legislation.

For some developed countries in particular, DSI are not genetic components of non-patentable PGRFA, but "products of research" freely accessible on the Internet through public databases for the past decade in violation of MLS rules on facilitated access, and could be patented as long as they correspond to genetic traits of commercial interest. The powerful software used by multinational corporations cross-reference the immense DSI databases and the many publications on farmers' and small breeders' knowledge about the traits of commercial interest in PGRFA, in order to identify such associations. Their geneticists describe a patentable technical process likely to incorporate these traits into new commercial seeds, and intellectual property laws then prohibit farmers and small seed growers – who have supplied their seeds and knowledge to the MLS – from continuing to use them if they contain DSI patented through this process.

Misappropriation of digital information or 'biopiracy' is a growing trend. As the Treaty is not equipped with legal provisions, which would allow to track and trace the movement of PGRFA accessed through its Multilateral System and subsequently digitised, genetic traits of seeds coming from the MLS are increasingly covered by patents on DSI, as demonstrated by a recent study[1] by the Consultative Group on International Agricultural Research (CGIAR). As mentioned, those genetic traits are contained in seeds stored in the ITPGRFA Multilateral System, cultivated in farmers'

[1] https://openknowledge.fao.org/server/api/core/bitstreams/ca13c268-f7d1-4259-acf5-99333c35f968/content

fields, or might be selected in the future without the use of any patentable technical process. Therefore, patents on DSI are already compromising the facilitated access to the MLS and making illegal what farmers have been doing for centuries and what is protected under the provisions of the Treaty, namely the conservation, exchange, and sale of their farm-saved seeds.

This issue is of primary concern for peasants and Indigenous Peoples organisations, especially considering the recent decision 16/2 of the Conference of the Parties to the Convention on Biological Diversity (CBD). This decision established a voluntary mechanism for sharing the benefits arising from the use of digital sequence information on genetic resources, de-linking DSI from physical genetic resources and therefore bypassing the ITPGRFA prohibition on claiming any intellectual property rights (IPRs), and the Free Prior and Informed Consent of the Indigenous Peoples that is mandatory for accessing them under the CBD.

I wish to recall that the ITPGRFA is the application of the Convention on Biological Diversity to plant genetic resources for food and agriculture contained in its Multilateral System. Access and benefit sharing arising from the use of these PGRFA are governed by a different set of rules and the CBD cannot and should not attempt to regulate access to or use of these PGRFA, their parts or genetic components, including the digital sequence information they contain. Therefore, CBD's recent decision on DSI, which led to the creation of the Cali Fund at the COP16, should only apply to genetic resources that are not included in the Treaty's Multilateral System.

The Cali Fund is a new global fund established by CBD COP as part of the Multilateral Mechanism for the Fair and Equitable Sharing of Benefits Arising from the Use of Digital Sequence Information on Genetic Resources. Its purpose is to ensure that companies that profit from the use of DSI contribute to conservation projects and support local and indigenous communities around the world. Since the resolution creating the mechanism does not contain binding provisions, there is a growing concern that this fund is unlikely to match the expectations conferred upon it.

Moreover, I see a strong risk that such a voluntary mechanism set up under the CBD could potentially encroach upon the Treaty's jurisdiction, relegating it to uselessness and causing the loss of all its relevance, with damaging consequences to its core principles on Farmers' Rights, and more generally to the full enjoyment of the right to food. I am also convinced that those risks could be mitigated if the Governing Body of the ITPGRFA, adopted a firm stand on the issue, followed by concrete measures to protect the Multilateral System from the misuse and misappropriation of its resources by the seed industry, bringing DSI of PGRFA under its scope and reaffirming Contracting Parties sovereignty over plant genetic resources for food and agriculture contained in the MLS.

These developments may also have significant implications for the realization of the right to adequate food, as recognized in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* and elaborated in general comment No. 12 of the Committee on Economic, Social and Cultural Rights, which affirms that access to productive resources, including seeds, is an essential element of this right. In addition, they raise concerns under the *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)*, particularly articles 19 and 20,

which recognize peasants' rights to seeds, to maintain, control, protect, and develop their own genetic resources and traditional knowledge, and to participate in decision-making related to biodiversity and agricultural systems.

In my thematic report on seeds and farmers' rights (A/HRC/49/43, 2022), I underscored that seed systems lie at the heart of the right to food and the sustainability of agricultural biodiversity. In that report, I urged States and the international community to recognize, support and reward smallholder farmers, peasants and Indigenous Peoples as stewards of seed systems for all humankind, and to ensure that their traditional seed practices are protected from legal and technological restrictions.

Ensuring that the use of Digital Sequence Information does not undermine these rights and responsibilities is therefore essential to upholding States' human rights obligations and to safeguarding the integrity of the International Treaty on Plant Genetic Resources for Food and Agriculture.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. What the Governing Body of the Treaty is doing to investigate the potential conflict of jurisdiction between the Multilateral Mechanism (MLM) for facilitated access and the sharing of benefits arising from the use of DSI under the Convention on Biological Diversity and the MLS under the ITPGRFA.

2. What steps are being considered by the Governing Body to ensure that voluntary mechanisms such as the MLM and the Cali Fund do not undermine the legally binding obligations embedded in the Treaty and undermine national sovereignty over PGRFA.

3. How the Governing Body is assisting the Contracting Parties to address this issue in their national legislation, namely, to prevent the extension of the scope of patents granted on technical processes to MLS PGRFA, their genetic parts or components, including the DSI contained therein.

4. Has the Governing Body or any Contracting Party undertaken a study assessing the impact of free access to DSI without prohibition of claiming any intellectual property or other rights on Farmers' Rights and the right to food? If so, what measures are being considered to mitigate identified risks?

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from you will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge you and all involved parties to reconsider the current proposal to change the rules for facilitated access and benefit-sharing until Contracting Parties have more understanding of the potential negative impacts of this

process.

Please accept, Excellency, the assurances of my highest consideration.

Michael Fakhri
Special Rapporteur on the right to food