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07/02/2024 No. 271-08/190

Ministry of Natural Resources  
and Environmental Protection  
of the Republic of Belarus

## Recommendations

The Institute of Genetics and Cytology of the National Academy of Sciences of Belarus acted as the Implementing Agency for the UNESCO foreign grant Project No. 2240116046 "*Capacity Building for the Safeguarding of Traditional Knowledge Associated with Genetic Resources and Legal Regulation of Access to It in the Republic of Belarus*" (hereinafter referred to as "the Project") under the UNESCO Participation Programme for 2022-2023.

The goals and objectives of the Project are consistent with the Article 7 "*Access to Traditional Knowledge Associated with Genetic Resources*" and 12 "*Traditional Knowledge Associated with Genetic Resources*" of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity (hereinafter referred to as "the Nagoya Protocol"). They also relate to the issues of revival, preservation and development of national cultural traditions.

As a result of the Project implementation, an analysis of the current situation and legal regulation in the field of traditional knowledge associated with genetic resources was carried out, and recommendations were developed for human capacity building for the safeguarding of traditional knowledge and the development of a legal basis for the regulation of access to it.

Considering that on January 31, 2024, the House of Representatives of the National Assembly of the Republic of Belarus adopted, in its 2nd reading the draft Law of the Republic of Belarus "On Genetic Resources Management", the Institute of Genetics and Cytology of the National Academy of Sciences of Belarus submits the above recommendations for information sharing and use in the development of subordinate normative legal acts and measures to fulfill the commitments of the Republic of Belarus under the Nagoya Protocol.

Annex: 1 copy on 4 pages.

Director

P. M. Morozik

# **Recommendations for the Safeguarding of Traditional Knowledge Associated with Genetic Resources and the Development of a Legal Basis for Regulating Access to It**

The UNESCO Foreign Grant Project

*“Capacity Building for the Safeguarding of Traditional Knowledge Associated with Genetic Resources and Legal Regulation of Access to It in the Republic of Belarus”* (hereinafter referred to as “the Project”) No. 2240116046 under the UNESCO Participation Programme for 2022-2023.

Article 8J of the *UN Convention on Biological Diversity* emphasizes that a country that has ratified it “*shall, subject to its national legislation, respect, preserve and maintain the knowledge and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity; promote their wider application with the approval and involvement of the holders of such knowledge, as well as encourage equitable sharing of benefits.*”

*The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the UN Convention on Biological Diversity* (hereinafter referred to as “the Protocol”) enshrines the concept of “traditional knowledge associated with genetic resources”). Pursuant to Article 12, a country that has acceded to the Protocol shall take into consideration the norms of customary laws and traditional practices of local communities with respect to traditional knowledge associated with genetic resources and create conditions for benefit-sharing of such knowledge. The Protocol provides general guidelines, leaving it up to each country to decide on the form of their implementation.

An analysis of the legislation of the Republic of Belarus shows that the legal concept of “traditional knowledge associated with genetic resources” is not used, except for the international treaties and protocols that become part of national legislation. Thus, the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, which Belarus has also ratified, “*recognizes the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion.*”

Enshrining the concept of “traditional knowledge associated with genetic resources” in the Law of the Republic of Belarus “On Genetic Resources Management” may, in

the long term, become a basis for the development of legal norms regulating access to such knowledge, as well as the reflection of the specifics of traditional knowledge in other areas of legislation, e.g. related to the issues of the preservation of intangible cultural values (*the Culture Code of the Republic of Belarus*), protection of intellectual property rights etc.

The formation of the concept of “traditional knowledge associated with genetic resources” in national legislation is associated with difficulties regarding the definition of the subject – the holder of such knowledge. Thus, in the Republic of Belarus, local communities are not identified as rights holder subjects; there is no customary law, joint protocols, or other joint practices and procedures, which, in turn, is decisive for fixing the concept of “traditional knowledge.”

Traditional knowledge associated with genetic resources may represent a new object (item) of intellectual property. The most obvious specifics that distinguish traditional knowledge from other objects of intellectual property are the differences with respect to right holders. For example, if in the case of an invention or a trademark there is always a clearly defined person who becomes the main recipient of the benefits from the existence and exploitation of the object, then in the case of traditional knowledge the holder of such knowledge is the widest possible range of persons. The documents of the World Intellectual Property Organization identify indigenous peoples or local communities as the holders of traditional knowledge associated with genetic resources. In Belarus, these functions are held by a local community.

The safeguarding of traditional knowledge associated with genetic resources suggests that such safeguarding is not limited in time; that the maximum preservation of the knowledge about the use of plants to maintain the health of humans and domestic animals accumulated by the local population is provided. It is obvious that existing instruments created for the protection of intellectual property and already enshrined in the legislation of the Republic of Belarus cannot fully ensure this. On the agenda is the development of a special mechanism for the legal protection of traditional knowledge associated with genetic resources.

The development of a legal act regulating ethical issues in the field of access to genetic resources and benefit-sharing, including provisions on access to traditional knowledge associated with genetic resources, may also be considered essential. Article 20 of the Nagoya Protocol states that “*Each Party shall encourage the development, update and use of **voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.***” Since the scope of the Nagoya Protocol is genetic resources and associated traditional knowledge and biotechnology, it is logical to be guided by ethical and bioethical standards when developing conduct guidelines. With regard to the holders of traditional knowledge associated with genetic resources, this is primarily recognizing the existence of a separate layer of knowledge that brings benefits from its utilization,

and access to it must be carried out on a legal basis that ensures the fair and equitable sharing of benefits.

In Belarus, the issue of deriving benefits from the possession of traditional knowledge has not only material, but also a status aspect. An urgent task is to cultivate a respectful attitude both towards traditional knowledge associated with genetic resources and its holders in Belarusian society.

Taking into account the analysis of international approaches to the preservation of traditional knowledge associated with genetic resources, in the Republic of Belarus, it is recommended to develop interdepartmental liaison at the state level (in the field of culture, environmental protection, tourism, education, intellectual property etc.) in order to conduct cross-cultural research in the field of intangible cultural heritage, including certain traditional knowledge and practices associated with genetic resources, and on their basis to develop a general policy for its safeguarding, protection of intellectual property rights of its holders (communities, groups and individuals).

What is left on the agenda is liaison with the Ministry of Culture regarding amendments to the Culture Code of the Republic of Belarus, other normative legal acts regarding determining the status of traditional knowledge holders in the cultural context and their rights' protection. As one of such measures, it is proposed to single out, in the Culture Code of the Republic of Belarus, a chapter on intangible cultural heritage and introduce provisions on its safeguarding (following the example of archaeological heritage), since this type of heritage differs significantly from other categories in the context of the criteria for its identification, the specifics of its safeguarding and use.

Scientific institutions are expected to pool efforts on detecting, identifying, inventorying and digitalizing traditional knowledge and practices associated with genetic resources based on cross-cultural research and the involvement of related communities, groups and individuals, as well as an expert community in these processes.

When developing measures to enhance the efficiency of implementation of legislative measures in the field of conservation of traditional knowledge associated with genetic resources, it is recommended, at the republican and local levels, to strengthen liaison in the Region between environmental and cultural authorities to achieve the goals as follows:

\* ensuring recognition, enhancement of the role and respect for traditional knowledge related to agriculture, animal husbandry, fishing, hunting, food production and storage, traditional cuisine, as well as associated customs, which will also contribute to strengthening the country's food security;

\* promoting scientific research aimed at studying traditional knowledge associated with genetic resources and its implications for sustainable development;

\* taking into account the interests of local communities when planning economic and business activities in the areas where traditional farming, fishing or other traditional practices continue to exist.

In the modern world, where globalization and unification are felt more and more acute every year, traditional knowledge in general and traditional knowledge associated with genetic resources are not just certain knowledge passed on from generation to generation, but, first of all, an effective tool for conserving biological, cultural and social diversity. Traditional knowledge is, in fact, an integral part of the social and cultural sphere, the basis that unites the representatives of one nation.

New data and new materials not only encourage the formulation of new theoretical problems, but also create the basis for the practical, applied use of accumulated knowledge.

Knowledge about the flora and fauna and their use by humans creates a reliable foundation both for ethnopharmacology, agriculture, and foodways, and for describing the mythopoetic picture of the world of traditional society. Attention to traditional knowledge fully fits into modern ecological concepts of relevance in the dialogue between man and nature, where nature is considered as an equal actor in the co-evolution of man and life on Earth.

*\*Unofficial translation.*