
Assembly of First Nations

473 Albert Street, 9th Floor
Ottawa, Ontario K1R 5B4
Telephone: (613) 241-6789 Fax: (613) 241-5808
www.afn.ca



Assemblée des Premières Nations

473 rue Albert, 9ème étage
Ottawa, Ontario K1R 5B4
Téléphone: (613) 241-6789 Télécopieur: (613) 241-5808
www.afn.ca

Submission by the Assembly of First Nations

About Us

- The Assembly of First Nations is pleased to offer its views on cooperative procedures and institutional mechanisms to promote compliance with the Nagoya Protocol and to address cases of non-compliance. AFN will focus its submission on the importance of directly involving indigenous peoples in institutional mechanisms (compliance mechanisms).
- Specifically, the Parties should adopt mechanisms to allow indigenous peoples to assert Parties may be out of compliance, as well as to permit indigenous experts to assess those assertions and develop advice to bring Parties into compliance.
- The Assembly of First Nations is a national organization, based in Canada, dedicated to advancing the interests of First Nations. First Nations Chiefs from across Canada meet in Assembly to coordinate on issues of common concern, facilitate discussions and develop plans of action.
- The Environmental Stewardship Unit of the Assembly of First Nations provides scientific, technical and policy support to the AFN on environmental issues. The ESU works in a variety of program areas, including fisheries, species at risk, parks and forestry, climate change, nuclear waste management and conducts direct environmental health research in First Nations communities.¹
- AFN is committed to the promotion of state practices which support sustainable development, including the recognition of aboriginal and treaty rights. First Nations understand that the realization of sustainable development is complementary with the recognition of our inherent treaty and aboriginal rights.
- AFN reiterates its concerns, raised in a Joint Submission titled, “Nagoya Protocol on Access and Benefit Sharing: Substantive and Procedural Injustices relating to Indigenous Peoples’ Human Rights” and seeks to build on the submission in the context of promoting compliance and addressing cases of non-compliance.²

Summary

- Compliance mechanisms in Multi-lateral Environmental Agreements operate best where those stakeholders with the greatest interest in assuring compliance are able to access the compliance framework.³ Indigenous peoples; however, are rights-holders and therefore must have a full and effective participatory role.⁴

¹ <http://www.afn.ca/index.php/en/policy-areas/environmental-stewardship>

² On file with the author. Similar concerns were raised at the 10th Session of the United Nations Permanent Forum on Indigenous Issues, under agenda item 4(b) by AFNQL Chief and AFN Regional Chief Ghislain Picard. <http://www.international-alliance.org/PFII%202011%20-%20Nagoya%20Protocol%20Joint%20Statement%20FINAL%20-%20May%2019%2011.pdf>

³ Svitlana Kravchenko, “The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements” (2007) 18:1 Colo. J. Int’l Envtl. L. & Pol’y.

⁴ Draft Programme of Action for the Second International Decade of the World’s Indigenous People, GA Res. 59/174, UN GAOR, 60th Sess., UN Doc. A/60/270 (2005) at para. 9(ii). [Draft Programme]

Head Office/Siège Social

Territory of Akwesasne, RR#3, Cornwall Island, Ontario K6H 5R7 Telephone: (613) 932-0410 Fax: (613) 932-0415
Territoire de Akwesasne, RR#3, Ile de Cornwall K6H 5R7 Téléphone: (613) 932-0410 Télécopieur: (613) 932-0415

- The Nagoya Protocol directly implicates a range of indigenous rights, both in terms of the subject matter of the protocol and in the potential to reinforce recognition, protection and enjoyment of indigenous rights.
- A compliance mechanism should be accessible and transparent to indigenous peoples. Indigenous peoples should be able to assert that a Party is out of compliance with its obligations under the Protocol. If an assertion of non-compliance is validated, affected indigenous peoples should be involved in the development of measures to address cases of non-compliance.
- A compliance mechanism should make use of independent experts. Given the subject matter of the Protocol implicates indigenous rights; some of those independent experts should be nominated and approved by indigenous peoples.
- A compliance mechanism which is accessible by rights-holders may maintain a primary focus on compliance assurance, rather than solely remedies.

Participatory justice is an emerging principle of international environmental law

- The nexus between public participation, justice and the effectiveness of sustainable development was established in the Rio Earth Declaration in 1992. The Rio Declaration articulates several principles that are centrally relevant to the operation of the Convention on Biological Diversity.
- Principle 10 of the Rio Declaration states “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.” If states adopt domestic measures, then the indigenous peoples of that state should be involved in the promulgation and evaluation of those measures. This principle also applies to issues of compliance with the Convention, which are best handled in a transparent and participatory fashion at the international level.
- In 2002, the International Law Association developed the New Delhi Principles of International Law relating to Sustainable Development.⁵ Principle 5 of the New Delhi Principles is, “The principle of public participation and access to information and justice”.⁶
- The principle of participatory justice is also found in conventional law. For example, the intent of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) is to promote enhanced public participation in environmental decision making. The Aarhus Convention provides an international mechanism for individuals to submit information on the effectiveness of domestic implementation of obligations under the Convention.
- In addition to the Aarhus Convention, The North American Agreement on Environmental Cooperation provides a non-adversarial process for citizens or NGOs to assert, and a compliance body to investigate, whether a Party is failing to enforce its *domestic* environmental law.⁷ This mechanism is not focused on domestic implementation of any particular international commitment, but rather on whether existing domestic laws are effective.
- The United Nations Convention to Combat Desertification is currently undertaking a review of procedures with a view to enhancing, rather than limiting, input from all non-Parties.⁸

⁵ Environment and sustainable development - Letter dated 6 August 2002 from the Permanent Representative of Bangladesh to the United Nations and the Chargé d'affaires a.i. of the Permanent Mission of the Netherlands to the United Nations addressed to the Secretary-General of the United Nations, GA Res. 329, UNGAOR, 57th Sess., Annex, UN Doc. A/57/329 (31 August 2002).

⁶ AFN further notes that the World Bank and the International Finance Corporation have established compliance mechanisms which specifically contemplate direct public participation on identifying situations of non-compliance.

⁷ Commission for Environmental Cooperation, “Citizen Submissions on Enforcement Matters”, available online at: http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=210&BL_ExpandID=156

⁸ UNCCD decision 5/COP.9 “Revised Procedures for the participation of civil society organizations in meetings and processes of the United Nations Convention to Combat Desertification”, UN Doc. ICCD/COP(9)/18/Add.1. The UNCCD, like the CBD, specifically contemplates protection, promotion and application of traditional knowledge in the fulfillment of its mandate. See, for example, UNCCD at Art. 16(g), Art. 17(c) and Art. 18(2).

- These recent developments in international environmental law suggest a trend towards participatory justice, particularly in matters of compliance. Yet indigenous peoples hold established and recognized rights, which are particularly impacted by the Nagoya Protocol. As detailed in the Joint Submission, indigenous peoples were not sufficiently involved in the negotiation of the text to respect our status as rights-holders. In order to be both effective and consistent with the established and recognized rights of indigenous peoples, a level of involvement much greater than mere public participation is required.⁹

Effective implementation of the Protocol requires "full and effective participation" of indigenous peoples in the Compliance mechanism

- Principle 22 of the Rio Declaration articulates the importance of involving indigenous peoples in global efforts to achieve sustainable development and requires states to “enable their effective participation in the achievement of sustainable development.” This principle should be reflected in the compliance mechanism of the Protocol.
- Over the years, there have been over 60 references to the "full and effective participation" of Indigenous peoples in related decisions of the Conference of the Parties (COP). This standard is consistent with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other international human rights standards.
- This is the standard that should be used at all stages for processes relating to the Convention on Biological Diversity and Nagoya Protocol. It is also the standard that should apply to any compliance mechanism relating to indigenous peoples' rights.
- Indigenous peoples, as rights-holders, often have more detailed and more specialized information regarding implementation challenges experienced ‘on the ground’. They may also have innovative solutions to compliance issues based on experiences at the community, sub-national or national levels.
- Successful implementation of the Protocol is dependant upon full and effective participation by indigenous peoples and local community providers. For example, Article 12(2) explicitly requires the “effective participation” of indigenous peoples. Article 6 and Article 7 would require full and effective participation by indigenous peoples, if one is to secure their “prior informed consent”¹⁰. If Indigenous peoples do not have confidence in these measures, they will not participate in these processes and the obligations of the Protocol will remain unfulfilled.
- In a similar vein, if ‘mutually agreed terms’ are rendered unenforceable as a result of ineffective domestic measures, it is likely that indigenous peoples may lose confidence in the entire benefit sharing regime.
- A transparent and representative compliance mechanism will build confidence in the benefit sharing regime. Involving indigenous peoples in the operation of a compliance mechanism would likely address some of the ongoing concerns raised in the Joint Submission.
- The Expert Mechanism on the Rights of Indigenous Peoples recognizes the importance of full and effective participation of indigenous peoples in international processes, stating, “An appropriate goal is the full and direct participation of indigenous peoples in all international processes on matters that particularly concern them.”¹¹

Indigenous peoples and local community participation is reinforced by other international instruments

⁹ For example, the Draft Programme of Action, supra note 2 at para. 9(ii), which requires particular consideration of the indigenous right to free, prior and informed consent.

¹⁰ *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* at Art. 6(2), Art. 7.

¹¹ Expert Mechanism on the Rights of Indigenous Peoples, *Progress report on the study on indigenous peoples and the right to participate in decision-making*, UN HRC, 15th Sess., UN Doc. A/HRC/15/35 (23 August 2010) at para. 97. The Expert Mechanism specifically raised the importance of biodiversity negotiations because they have “a disproportionate impact on indigenous peoples and their territories”. The same is true for the operation of the compliance mechanism of the Nagoya Protocol.

- The Nagoya Protocol does not displace any other obligations of Parties.¹² This issue was raised in the Joint Submission at paragraph 29:
As affirmed in the *Convention and Protocol* [Convention, art. 22(1); Protocol, art. 4(1)], nothing in these instruments shall affect the obligations of Contracting Parties deriving from “any existing international agreement”. Such obligations would necessarily include respect and protection of human rights in a wide range of international agreements.
- The Nagoya Protocol is an international instrument which cannot be read in isolation of other international obligations of States.¹³ There are a number of issues founded in international instruments, which are relevant to the Protocol: including indigenous rights to lands and natural resources¹⁴; self-determination¹⁵; and protection and promotion of culture¹⁶.
- Some Conventions relevant to the operation of the Nagoya Protocol, particularly related to indigenous rights, include: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, International Labour Organization Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169), as well as several other regional human rights, environment or international trade instruments.¹⁷
- Where there are ambiguities in the Nagoya Protocol, Parties should look to other international commitments for preferred interpretations of the text, as well as preferred meaning consistent with their other obligations. AFN recognizes that international obligations and national circumstances may vary among Parties and that the flexibility accorded to Parties due to this variance does not excuse Parties from fulfilling all of their international obligations, particularly those related to human rights.¹⁸
- The Objective of the Nagoya Protocol (Article 1) is entirely consistent with these other rules, norms, principles and instruments of international law because it requires “fair and equitable sharing” of benefits and recognizes “all rights over those resources and technologies” that are the subject matter of the Protocol.
- The preambular language to the Protocol recalls the relevance of Article 8(j) to the Protocol. This relevance extends to rights that indigenous peoples have to lands, territories and resources, including genetic resources, pursuant to international human rights obligations of states.
- Other international mechanisms dealing with the rights of indigenous peoples demonstrate that it is the principle expressed by multilateral environmental agreements, rather than the specific language, that is persuasive when elaborating the rights of indigenous peoples. For example, the Special Rapporteur on the Rights of Indigenous Peoples of the Americas has written:
Although not specifically focused on the issue, other international treaties incorporate provisions that are relevant for indigenous peoples’ rights over their lands, territories and natural resources. Of particular pertinence is Article 8(j) of

¹² Nagoya Protocol at Art. 4(1). The UN General Assembly has long recognized interconnections between protection and promotion of human rights and protection of the environment. See, for example, GA Res A/RES/45/94 (14 December 1990). See also the related study; Special Rapporteur Fatma Zohra Ksentini, *Review of further developments in fields with which the Sub-Commission has been concerned human rights and the environment*, UN Doc. E/CN.4/Sub.2/1994/9 (6 July 1994).

¹³ Article 4(3). The UN General Assembly has long recognized interconnections between protection and promotion of human rights and protection of the environment. See, for example, GA Res A/RES/45/94 (14 December 1990). See also the related study; Special Rapporteur Fatma Zohra Ksentini, *Review of further developments in fields with which the Sub-Commission has been concerned human rights and the environment*, UN Doc. E/CN.4/Sub.2/1994/9 (6 July 1994).

¹⁴ U.N. Special Rapporteur Erica-Irene A. Daes, *Indigenous Peoples’ Permanent Sovereignty over Natural Resources*, E/CN.4/Sub.2/2004/30 (13 July 2004).

¹⁵ Common article 1 of the ICCPR and the ICESCR. The Article has been held applicable to indigenous peoples: *Case of the Saramaka People v. Suriname* (2007), Inter-Am. Cut. H.R. at para. 93.

¹⁶ ICCPR, Article 27.

¹⁷ For example, while not a human rights instrument, the UNESCO procedure available through Decision 104 EX/3.3 offers a relevant avenue to seek redress of rights relevant to the Nagoya Protocol.

¹⁸ For example, development of a park to enhance biological diversity is no shield to human rights violations occurring as part of that development. See Report of the Committee on the Elimination of Racial Discrimination, Sixtieth Session and Sixty First Session, UN Doc. A/57/18, paras. 304-305 (2002).

the Biological Diversity Convention (1992), which calls on States to respect, preserve and maintain “knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application” with the participation of these communities and for their benefit.¹⁹

- The Special Rapporteur on the Rights of Indigenous Peoples notes that the importance of the Convention on Biological Diversity for indigenous peoples extends beyond the elaboration of relevant legal principles relating conservation of biological diversity to the rights of indigenous peoples. Indigenous peoples have a stake in the implementation of the Convention.
The Biodiversity Convention’s implementation process is equally relevant for the protection of rights associated to indigenous peoples’ property over their lands, territories and resources. In 2004, the Conference of the Parties to the Convention adopted the “Akwé:Kon” Voluntary Guidelines for the conduction of cultural, environmental and social impact assessments in cases of projects to be developed in indigenous territories, including sacred sites.²⁰
- The United Nations Declaration on the Rights of Indigenous Peoples was carefully negotiated by indigenous peoples and states over a period of decades. The Declaration text was negotiated to be entirely consistent with contemporary understandings of international law as it applies to indigenous peoples.²¹
- The compliance mechanism of the Nagoya Protocol must be consistent with the United Nations Declaration on the Rights of Indigenous Peoples. This is true for general reasons noted above, but also because the UNDRIP is specifically noted as relevant in the preambular language of the Protocol.
- Article 11(2) of the Declaration states: that states shall provide redress mechanisms for “cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.”
- The Declaration also speaks to the importance of full and effective participation in the compliance mechanism and the importance of indigenous experts on measures to address situations of non-compliance. Article 18 of the Declaration states: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures”.
- Article 31(2) of the Declaration requires the development of “effective measures” to support the indigenous right to “maintain, control, protect and develop” traditional knowledge, “human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora”. The Nagoya Protocol supports these rights through proper implementation of, *inter alia*, Articles 15 and 16, which require effective measures. Proper implementation means implementation that is consistent with the rights of indigenous peoples, established through various international instruments, and articulated in the UN Declaration.
- Article 41 of the UNDRIP directs the Conference of the Parties and the Secretariat of the Convention, as an “international organization” to ensure that “Ways and means of ensuring participation of indigenous peoples on issues affected them shall be established.” AFN welcomes and appreciates all efforts to increase transparency and accessibility of the Convention on Biological Diversity. All implementation activities related to the Nagoya Protocol, including the compliance framework, should build on these efforts.
- Article 31(2) and Article 11(2), and their interactions with the Protocol, means indigenous peoples have a large stake in ensuring Party compliance with their obligations. Because Party compliance with the Protocol affects indigenous peoples’ rights, Article 41 means that indigenous peoples should be invited to participate in compliance procedures of the Nagoya

¹⁹ Inter-American Commission on Human Rights, *Indigenous And Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II. Doc. 56/09 at para. 17 (30 December 2009).

²⁰ *Ibid.*

²¹ See, for example, Alexandra Xanthaki, *Indigenous Rights and United Nations Standards Self-determination, culture and land*, (Cambridge University Press: New York, 2007) at pp. 105. “From its first article, the draft Declaration makes clear that its provisions are based on established international law norms”.

Protocol. Further states should mobilize resource to ensure the effective participation of indigenous peoples in a compliance mechanism for the Protocol.

- Both general rules of international law and the specific text of the Nagoya Protocol support the conclusion that the Protocol must be implemented in a fashion complementary to other relevant international obligations. Conveniently, many of these existing obligations have been condensed in the UNDRIP, although they are also sourced in several other instruments.
- If indigenous peoples cannot access a compliance mechanism under the Nagoya Protocol, it is likely that they will look to other compliance or redress mechanisms. If the compliance framework under the Protocol does not provide for adequate consideration of indigenous rights, AFN asserts that Article 4(3) of the Protocol may result in conflicting interpretations of state obligations. AFN is concerned that conduct that the Nagoya compliance mechanism would suggest is permissible, would be considered a human rights violation by, for example, the Committee on the Elimination of All Forms of Racial Discrimination.
- The purpose of Article 4(1) of the Protocol is to ensure that actions taken to comply with the Protocol do not violate existing international obligations of states, particularly obligations to recognize and implement indigenous rights.
- Due to our close relationship with the environment and our unique legal position within many states, indigenous peoples have an expert understanding of how human rights and environmental obligations interact. It is common for indigenous peoples organizations to develop linkages between environmental and human rights mechanisms. The result is increasing recognition of human rights, a more sustainable environment and increasing dignity for all humankind.

Indigenous Experts

- A compliance procedure should draw on indigenous experts from state nominations and from indigenous nominations. Indigenous nominations, once unheard of in the international community, are now made regularly within the United Nations.²²
- Indigenous experts should possess some degree of expertise in indigenous rights, as recognized specifically under international environmental law, as well as through other types of international instruments, for example human rights instruments and international trade instruments. This expertise is particularly important because compliance with the Protocol should not force a state Party into non-compliance with other international obligations.²³
- The operation of the Nagoya Protocol clearly implicates issues that will affect indigenous peoples, such as benefit sharing of indigenous genetic resources and associated traditional knowledge. Many First Nations have extensive experience with benefit sharing arrangements and have developed substantial expertise in the negotiation and enforcement of such arrangements. First Nations know how to make such systems work.

²² Alternatively, the procedure used through the Arctic Council, which guarantees indigenous peoples participate as equals with states, could be considered: “The category of Permanent Participation is created to provide for active participation of, and full consultation with, the Arctic Indigenous representatives within the Arctic Council. **This principle applies to all meetings and activities of the Arctic Council.**” [emphasis added] See Arctic Council website: <http://arctic-council.org/article/about>

²³ In the same vein, the Protocol should not force businesses into non-compliance with human rights norms. Note that the Nagoya Protocol is a business-related instrument. The Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises has stated:

10. States, when acting as members of multilateral institutions that deal with business related issues, should:
 - (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;

Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UN Doc. A/HRC/17/31 (21 March 2011).

Head Office/Siège Social

Territory of Akwesasne, RR#3, Cornwall Island, Ontario K6H 5R7 Telephone: (613) 932-0410 Fax: (613) 932-0415
Territoire de Akwesasne, RR#3, Ile de Cornwall K6H 5R7 Téléphone: (613) 932-0410 Télécopieur: (613) 932-0415

- Several First Nations in Canada have had a range of experiences in negotiating and implementing benefit sharing arrangements and other agreements directly with non-state actors, particularly in the extractives sector.²⁴ Often, these agreements include environmental monitoring agreements, in order to preserve First Nations cultural practices which depend on a pristine environment. Under the Nagoya Protocol, First Nations may be interested in benefit sharing agreements that include terms on the management and proper uses of traditional knowledge, to preserve cultural dignity and cultural integrity.
- Several First Nations have also developed policies and guidelines for access to genetic and traditional knowledge for the purposes of research, with an emphasis on maintaining control over the proper application of information provided to researchers.²⁵
- The experiences of First Nations in Canada, and indigenous peoples worldwide, with effective and practical experience in negotiating and enforcing benefit sharing agreements with various non-state actors constitute an essential component of an effective and robust compliance mechanism for the Nagoya Protocol because they may inform strategies for compliance, or for providing assistance to those Parties out of compliance.

Measures to address non-compliance

- AFN generally supports a compliance mechanism which is focused on providing assistance to bring all Parties into compliance.
- AFN supports measures to address non-compliance which provide avenues for direct redress to indigenous peoples and local communities if state measures do not provide adequate mechanisms to enforce mutually agreed terms, if genetic resources or traditional knowledge is secured by Parties or non-state actors in contravention of a Party's obligations under the Protocol.
- AFN reminds Parties that international human rights law requires effective redress mechanisms for violations of indigenous rights. In this context, 'effective' means that in the event of a violation of state obligations, indigenous peoples are entitled to timely investigation and redress for that violation.
- Should the Parties elect to adopt measures to address cases of non-compliance which are focused on providing technical and capacity assistance to ensure compliance with the Protocol, involvement of indigenous peoples and local communities will provide critical information on which practices and measures are particularly effective 'on the ground'.

Recommendations

- An effective compliance mechanism for the Nagoya Protocol should include opportunities for indigenous peoples to make submissions on Party reports on compliance, as well as a mechanism for indigenous peoples to suggest the domestic measures of a Party do not provide adequate compliance with the Protocol.
- A robust compliance framework would include a regular reporting obligation for Parties and an opportunity for indigenous peoples to make submissions that a Party is out of compliance. The latter is of particular importance because it would provide an expert compliance body the ability to make statements on the meaning of contentious terms in the text of the Nagoya Protocol.
- The full and effective participation of indigenous peoples, as rights holders, must be respected in the development and implementation of the compliance mechanism. This must occur no matter the form the mechanism takes.

²⁴ Natural Resources Canada estimates that there were over 100 agreements between aboriginal groups and mining companies in 2008. A map has been produced showing the type and locations of these agreements and can be accessed here:

<http://www.nrcan.gc.ca/smm-mms/abor-auto/pdf/agr-ent-08-eng.pdf>

²⁵ For example, the Nuu-chah-nulth Tribal Council, the Mi'kmaq College Institute and the Six Nations of the Grand River. More information can be found on the First Nations Environmental Health Innovation Network.

- Measures which are not effective, or which do not provide redress for violations of indigenous rights, impugn the human rights of indigenous peoples. Indigenous peoples may suggest that a domestic measure discriminates against individual or collective indigenous rights, that measures do not provide adequate redress or that measures were developed without adequate consultation with indigenous peoples. Human rights complaint mechanisms will examine such situations through a human rights lens.
- Failure to consider indigenous rights in the context of compliance with the Protocol raises the possibility that indigenous peoples, as rights holders, will be forced to resolve disputes in other forums. Laws, policies and activities which might be considered 'compliant' with the Nagoya Protocol may nonetheless be held to be in violation of other international commitments. This potential for inconsistency may undermine the stability and certainty of an international benefit sharing regime.
- Development of a compliance mechanism which is accessible to indigenous peoples would provide an opportunity for indigenous peoples to bring disputes to a compliance body well-versed in the objectives of the Protocol, and expert in the preferred operation of the Protocol. Involvement of indigenous experts will ensure legitimacy, transparency and consistency with the established rights of indigenous peoples at international law.
- To the extent that ambiguous terms of the Nagoya Protocol result in actions by Parties that violate indigenous rights, AFN is confident that First Nations will seek redress through other mechanisms.

Head Office/Siège Social

Territory of Akwesasne, RR#3, Cornwall Island, Ontario K6H 5R7 Telephone: (613) 932-0410 Fax: (613) 932-0415
Territoire de Akwesasne, RR#3, Ile de Cornwall K6H 5R7 Téléphone: (613) 932-0410 Télécopieur: (613) 932-0415