



Convention on Biological Diversity

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Subsidiary Body on Implementation

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Agenda item 8

Specialized international access and benefit-sharing instruments in the context of Article 4, paragraph 4, of the Nagoya Protocol

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Draft recommendation submitted by the Chair

The Subsidiary Body on the Implementation

Recommends that, at its sixth meeting, the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization¹ adopt a decision along the following lines:

The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol,

Recalling paragraph 4 of Article 4 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization,²

Recognizing the need to enhance legal clarity, equity and coherence in the implementation of paragraph 4 of Article 4 of the Nagoya Protocol and to avoid duplication and fragmentation across access and benefit-sharing regimes,

Affirming the importance of maintaining mutual supportiveness among international instruments, in accordance with paragraph 3 of Article 4 of the Nagoya Protocol, and of respecting the sovereign rights of Parties,

Recalling Article 10 of the Nagoya Protocol,

1. *Takes note* of the synthesis of submissions received pursuant to decision [NP-5/8](#) of 25 October 2024, as contained in document [CBD/SBI/6/8](#);

2. *Also takes note* of the options presented in section I of annex I to the present decision, and the indicative criteria proposed in section II of annex I to the present decision as potential pathways for considering a specialized international access and benefit-sharing instrument, under paragraph 4 of Article 4 of the Nagoya Protocol, without prejudice to the application of the Protocol and relevant national measures, and notes that these options are without prejudice to any future decision by the Parties and should be assessed in terms of their contribution to legal certainty, fairness and the prevention of fragmentation;

¹ United Nations, *Treaty Series*, vol. 3008, No. 30619.

² *Ibid.*

3. *Invites* Parties, other Governments, indigenous peoples and local communities, relevant stakeholders, and international organizations and processes to submit views on the options and indicative criteria, including additional proposals, on specialized international access and benefit-sharing instruments, as set out in sections I and II of annex I to the present decision;

4. *Decides* to establish an informal entity³ to advance work on [paragraph 4 of Article 4] through an online and fully inclusive process open to all Parties, indigenous peoples and local communities, relevant international organizations and stakeholders to inform the Subsidiary Body on Implementation at its eighth meeting [and to conclude the agenda item on specialized international access and benefit-sharing instruments in the context of Article 4, paragraph 4, of the Nagoya Protocol at the seventh meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol];

5. *Requests* the Executive Secretary, subject to the availability of resources:

(a) To compile a synthesis of the views referred to in paragraph 3 above, for consideration by the Entity;

(b) To assist the co-chairs of the Entity in organizing and conducting the online meetings of the Entity and the preparation of their report;

6. *Recommends* that the scope of the standing agenda item relating to cooperation with other international organizations and the secretariats of international instruments for future meetings of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, to take stock of progress relevant to paragraph 4 of Article 4 of the Protocol and promote mutual supportiveness to avoid fragmentation of the access and benefit-sharing regime, and to promote consistency with discussions on Article 10 of the Protocol;

7. *Invites* Parties in a position to do so, and relevant international organizations and donors, to provide financial, technical, and capacity-building support, including technology transfer, to facilitate the participation of developing countries and indigenous peoples and local communities in processes to strengthen the effective use of the Access and Benefit-Sharing Clearing House.

Annex I

Proposed options for determining the status of or recognizing specialized international access and benefit sharing instruments in the context of Article 4, paragraph 4, of the Nagoya Protocol

I. Options for recognizing specialized international access and benefit-sharing instruments

Option A

Recognition by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization

1. The objective of option A is to establish a formal, Party-led mechanism for recognizing specialized international access and benefit sharing instruments through the Conference of the Parties serving as the meeting of the Parties of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization⁴ on

³ The word “entity” is a placeholder until the Parties decide what to name the Entity. Options suggested includes “Open-ended Informal Advisory Group” or “Discussion Forum”.

⁴ Ibid.

the basis of the indicative criteria set forth in section II. The option may include the following elements:

- (a) Indicative criteria agreed by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (see sect. II);
- (b) The submission of dossiers by Parties;
- (c) Inclusive consultations with stakeholders including indigenous peoples and local communities, women and youth;
- (d) A time-limited recognition subject to periodic review;
- (e) A dispute-resolution mechanism;
- (f) A registry in the Access and Benefit-sharing Clearing-House.

Option B

Approach based on initial coordination without formal recognition

2. The objective of option B is to promote structured coordination and mutual supportiveness without formal recognition. The option is defined by the following elements:

- (a) Structured cooperation with other international organizations;
- (b) Information exchange and transparency through the Access and Benefit-sharing Clearing-House on and other relevant mechanisms;
- (c) National reporting on practices related to specialized international access and benefit-sharing instruments;
- (d) Assessments based on the Nagoya Protocol;
- (e) Review processes;
- (f) No formal recognition or accreditation step.

Option C

Hybrid “deference and docket” model⁵

3. The objective of option C is to combine self-declarations by the governing bodies and secretariats of specialized international access and benefit-sharing instruments that would be recorded by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol with a minimal review. The option is defined by the following elements:

- (a) Primary self-declarations by the governing bodies or secretariats of specialized international access and benefit-sharing instruments;
- (b) The recording or noting of self-declarations by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol;
- (c) Use of voluntary criteria by the governing bodies or secretariats of specialized international access and benefit-sharing instruments to determine the status of those instruments in relation to paragraph 4 of Article 4 of the Protocol;
- (d) Rolling intersessional listings;
- (e) The creation of a registry in the Access and Benefit-sharing Clearing-House;

⁵ A hybrid “deference and docket” model refers to a strategic governance approach that blends Party-led discretion (deference) with a structured, transparent process (docket) that can be used for reviewing and recognizing specialized international access and benefit-sharing instruments under paragraph 4 of Article 4 of the Nagoya Protocol.

- (f) A cross-regime help desk for Parties, indigenous peoples and local communities, and other stakeholders.

Option D

Decision procedure by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on the applicability of the Protocol to an international instrument

4. The objective of option D is to establish a Party-driven decision procedure whereby the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol determines, in accordance with Article 4, paragraph 4, whether the Nagoya Protocol applies to a given international instrument, without invoking any form of recognition or accreditation. This approach restructures the process so that the Conference of the Parties serving as the meeting of the Parties to the Protocol issues a finding on applicability, rather than validating the international instrument itself. The option is defined by the following elements:

- (a) A single, simplified decision criterion, limited to assessing whether the international instrument is “consistent with” and “does not run counter to” the Nagoya Protocol, both in its legal provisions and in its actual implementation, to ensure that benefit sharing obligations are not diminished;

- (b) Consideration triggered by a Party or group of Parties, supported by essential information on the instrument’s scope, operation and implications for access and benefit-sharing;

- (c) Inclusive consultations, including with indigenous peoples and local communities, women, youth and other relevant stakeholders, consistent with established Convention on Biological Diversity practice;

- (d) A finding by the Conference of the Parties serving as the meeting of the Parties to the Protocol that the Protocol applies or applies in part, or that further information is required, noting that such a finding does not override or alter the autonomy of the international instrument governing body;

- (e) Where appropriate, non-binding recommendations from the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol to the other instrument’s governing body on how its access and benefit-sharing mechanisms may be made consistent with, and not run counter to, the Convention on Biological Diversity and the Nagoya Protocol;

- (f) A clear emphasis on mutual supportiveness (Article 4, paragraph 3), thereby avoiding questions of hierarchy between treaty regimes while ensuring that Parties fulfil their obligations under Article 4, paragraph 4 of the Nagoya Protocol.

5. Under option I.D, the final determination rests with the Parties to the Nagoya Protocol, ensuring that Article 4, paragraph 4 is fully implemented while respecting the autonomy of other treaty bodies and reinforcing mutual supportiveness across regimes.

II. Proposed indicative criteria for determining the status of or recognizing specialized international access and benefit-sharing instruments (applicable to options I.A and I.C)

6. Indicative criteria for recognition include:

- (a) A legal basis provided through intergovernmental adoption or endorsement;

- (b) A specialization in scope and purpose i.e. what are the specific genetic resources comprised and the specific use;

(c) The alignment with the objectives of the Convention on Biological Diversity⁶ and the Nagoya Protocol and the maintaining of mutual support between instruments;

(d) Fair and equitable benefit-sharing mechanisms; including gender-responsive monetary and non-monetary benefits that support women's livelihoods, knowledge systems, capacity-building and community wellbeing; including monetary and non-monetary benefits, capacity-building, and technology transfers, as appropriate;

(e) Appropriate access to digital sequence information on genetic resources as well as fair and equitable sharing of benefits arising from the use of digital sequence information of genetic resources;

(f) Access to genetic resources shall be subject to legally binding commitments undertaken by recipients concerning the conditions of use, the scope of permitted research and development activities, access by or transfer to third parties, the fair and equitable sharing of benefits arising from such utilization, and the digital sequence information on genetic resources generated from such resources;

(g) The full and effective participation of indigenous peoples and local communities; including specific measures to ensure the full, effective and meaningful participation of women within those communities, including, as appropriate, approval and participation or free, prior, and informed consent, in accordance with national legislation;

(h) Transparency, gender-responsive monitoring and accountability provisions; including the public availability of relevant information and the exchange of information, where appropriate, through the Access and Benefit-Sharing Clearing House;

(i) The promotion of mutual supportiveness and the avoidance of duplication including safeguards to prevent the status of specialized instrument from being used to circumvent access and benefit-sharing obligations under the Nagoya Protocol.

7. Under option I.D, the Conference of the Parties serving as the meeting of the Parties applies the following decision criterion and streamlined procedure:

(a) The international instrument is consistent with the objectives, principles, and relevant provisions of the Nagoya Protocol;

(b) The international instrument does not run counter to the Protocol in law or in practical implementation, including with respect to fair and equitable benefit-sharing.

Annex II

Terms of reference of the Entity

1. The Entity will consider:

(a) The synthesis of views received from Parties and relevant stakeholders, with a view to identifying areas of divergence and convergence;

(b) The information described in the first national reports on the implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization,⁷ and the second assessment and review of the Protocol.

2. The Entity will meet up to three times, online, accommodating different time zones. Each meeting is expected to last approximately three hours. The working language will be English.

⁶ United Nations, *Treaty Series*, vol. 1760, No. 30619.

⁷ *Ibid.*, vol. 3008, No. 30619.

3. The Entity will be guided by two co-chairs. One Co-Chair will be from a developed country and one from a developing country. The Co-Chairs are XXX and XXX.⁸
 4. The Co-Chairs will prepare a report on the following elements, among others:
 - (a) Legal and institutional implications of options for implementing paragraph 4 of Article 4 of the Protocol;
 - (b) Draft indicative criteria for specialized international access and benefit-sharing instruments.
 5. Other Governments, observers and experts from Parties or relevant organizations may be invited to participate in meetings of the Entity or parts thereof at the discretion of the Co-Chairs.
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⁸ The co-chairs have not been selected.