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Item 8 of the provisional agenda*

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

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Note by the Secretariat

I. Introduction and background

1. In its decision [NP-4/11](#), 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 from Their Utilization took note of recommendation [3/16](#) of the Subsidiary Body on Implementation in which the Subsidiary Body had recommended to request further information on the development and/or implementation of specialized international access and benefit-sharing instruments under paragraph 4 of Article 4 of the Protocol, in the light of divergent views among Parties. In decision [NP-5/8](#), the Conference of the Parties serving as the meeting of the Parties to the Protocol invited Parties, other Governments, relevant stakeholders and international organizations to submit views on the process proposed in recommendation [3/16](#) and reflections on the relationship among specialized international access and benefit-sharing instruments. It also requested the Subsidiary Body to consider the issue at its sixth meeting and to submit a recommendation for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its sixth meeting.

2. In response to an invitation to submit the views mentioned above sent out in notification [No. 2025-033](#), the Secretariat of the Convention received 19 submissions,¹ of which nine were from Parties,² - two were from non-Parties³ and -seven were from observers.⁴ Considering the joint responses from on behalf of regional groups, this represents a 56 per cent submission rate from Parties.

3. In view of the limited number of responses received from observers, in particular from relevant international organizations, the Executive Secretary extended the deadline for submission for relevant international organizations. Unfortunately, the timeline for the submission of documents for the present meeting made it impossible to incorporate input received after the original deadline into

* [CBD/SBI/6/1](#).

¹ See www.cbd.int/notifications/2025-033 for the full text of the submissions.

² Bolivia (Plurinational State of), Denmark on behalf of the European Union and its member States, Egypt, both individually and on behalf of the African Group of Negotiators, Japan, Namibia, Norway, South Africa, Switzerland and United Kingdom of Great Britain and Northern Ireland.

³ Australia and Canada.

⁴ DMUN Foundation, Euroseeds, German Plant Breeders' Association, HATOF Foundation, International Federation of Pharmaceutical Manufacturers and Associations, SynBio Africa and Third World Network.

the present note. Such information will therefore be submitted at the sixth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol in a note prepared by the Secretariat that will also incorporate information from the seventh national reports, which are due by 28 February 2026, pertaining to paragraph 4 of Article 4 of the Protocol, as part of the assessment and review of the effectiveness of the Protocol.

4. The present document contains an overview of the views received, with a focus on the main divergences and convergences on the process proposed in recommendation [3/16](#) and the relationship with other international access and benefit-sharing instruments (sect. II), an overview of cross-cutting issues that emerged from the submissions (sect. III), links to other relevant articles of the Protocol that emerged from the submissions (sect. IV) and a draft recommendation for consideration by the Subsidiary Body (sect. V).

II. Overview of submissions received on the process proposed in recommendation [3/16](#) and the relationship with other international organizations

A. Views on the process proposed in paragraphs 5 and 6 of recommendation [3/16](#)

5. An overall analysis of the submissions reveals divergent views on the proposed process for the formal recognition of specialized international access and benefit-sharing instruments by the Conference of the Parties serving as the meeting of the Parties to the Protocol, as detailed below:

(a) A number of Parties and stakeholders were supportive of the proposal and called for a Party-driven, transparent and criteria-based process to determine the status or recognition of specialized international access and benefit-sharing instruments by the Conference of the Parties serving as the meeting of the Parties to the Protocol. They emphasized the need for legal certainty, a periodic review and dispute resolution mechanisms to safeguard the integrity of the Protocol and prevent regulatory arbitrage;

(b) Other submitters were of the view that that paragraph 4 of Article 4 of the Protocol did not give a mandate to the Conference of the Parties serving as the meeting of the Parties to the Protocol to establish a formal recognition process. They cautioned that such a process might create an unintended hierarchy, thereby undermining treaty autonomy, and delay recognition, especially in urgent contexts, such as public health;

(c) Other submitters offered a middle-ground view and suggested that non-binding reporting mechanisms, such as self-declarations by the governing bodies of specialized international access and benefit-sharing instruments, should be established and that more effort should be placed on enhancing coordination rather than promoting formal recognition.

6. Many submitters underscored the need for balanced governance that respected both the sovereignty of Parties and the functional autonomy of other international instruments. In that regard, some submitters proposed the consideration of voluntary reporting, indicative criteria to determine the status of or recognize specialized international access and benefit-sharing instruments and dialogue platforms to foster mutual supportiveness without imposing a rigid hierarchy.

B. Views on the relationship with other international instruments

7. The submissions received showed that there was broad consensus on the need for specialized international access and benefit-sharing instruments to be consistent with, and not run counter to, the objectives of the Convention and the Protocol, but views diverged on how the relationship with other instruments should be managed, as summarized below:

(a) *Support for complementarity.* Many submitters emphasized the importance of mutual supportiveness, non-hierarchical coexistence and respect for treaty autonomy. They cautioned

against the Conference of the Parties serving as the meeting of the Parties to Protocol assuming a managerial role over other instruments;

(b) *Advocacy for oversight and alignment.* Some submitters stressed the importance of Party-led oversight, standardized criteria for the recognition of specialized international access and benefit-sharing instruments and ongoing review to ensure that such instruments uphold access and benefit-sharing principles and do not dilute obligations;

(c) *Sectoral and regional considerations.* Some submitters highlighted the role of regional frameworks, while others emphasized the need for inclusive governance, the alignment of the multilateral mechanism for the fair and equitable sharing of benefits from the use of digital sequence information on genetic resources, including the Cali Fund, and other such instruments with paragraph 4 of Article 4 of the Protocol, to avoid overlapping obligations, and community participation.

8. Many submissions reflected a shared commitment to legal clarity, policy coherence and respect for diverse access and benefit-sharing regimes. Submitters also noted that constructive engagement with specialized international access and benefit-sharing instruments could be focused on inter-institutional coordination, information-sharing and joint capacity-building, ensuring that such instruments reinforce rather than fragment the global access and benefit-sharing architecture.

III. Other emerging issues of importance

9. Several cross-cutting issues emerged as warranting further attention in the process of considering paragraph 4 of Article 4 of the Protocol:

(a) *Digital sequence information on genetic resources.* Multiple submitters called for the explicit inclusion of digital sequence information on genetic resources in the criteria for recognizing specialized international access and benefit-sharing instruments, with an emphasis on traceability, benefit-sharing and capacity-building;

(b) *Equity and rights of indigenous peoples and local communities.* Multiple submitters stressed the need for effective participation of indigenous peoples and local communities, respect for customary laws and transparent benefit-sharing mechanisms;

(c) *Legal certainty and avoidance of duplication and stacking of obligations.* Some submitters highlighted the importance of avoiding overlapping access and benefit-sharing claims and obligations related to the same genetic resource, digital sequence information on genetic resources or associated traditional knowledge under different access and benefit-sharing instruments, as such overlaps could hinder research and innovation;

(d) *Governance and procedural safeguards.* Some submitters proposed access and benefit-sharing governance frameworks and procedural safeguards that would include evidence-based recognition, time-limited status, public comment periods and dispute resolution mechanisms, to ensure accountability and adaptability.

IV. Links to other Articles of the Nagoya Protocol, in particular Article 10

10. Many submitters pointed to the need to advance discussions on Article 10 of the Protocol, on the global multilateral benefit-sharing mechanism, to address the fair and equitable sharing of benefits derived from the utilization of genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent.

11. In this regard, the need for a mechanism that would complement bilateral access and benefit-sharing frameworks, in particular in contexts involving transboundary genetic resources, digital sequence information on genetic resources and associated traditional knowledge, was highlighted.

12. Submitters also highlighted the importance of implementing Article 10 in line with lessons learned from specialized international access and benefit-sharing instruments under paragraph 4 of Article 4 of the Protocol, while cautioning against delays or dilution of its purpose. Proposals included inclusive governance, standardized benefit-sharing models, traceability tools and safeguards for indigenous peoples and local communities.

13. Many submitters noted that Article 10 of the Protocol was essential to ensure equity, legal certainty and coherence in the evolving access and benefit-sharing landscape, and they recommended establishing a dedicated process to explore modalities for its implementation.

14. Many submitters noted the need for a holistic and inclusive approach to global access and benefit-sharing governance that would integrate technological developments, community rights and legal safeguards.

15. Overall, the submissions revealed a wide range of views in response to decision [NP-5/8](#) and recommendation [3/16](#), as well as the growing relevance of specialized access and benefit-sharing instruments in addressing sector-specific needs.

16. Last, many submitters recalled that no consensus had emerged on the issue of recognizing specialized international access and benefit-sharing instruments under paragraph 4 of Article 4 of the Protocol when it had been considered at the fourth and fifth meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol, and they therefore supported the establishment of a dedicated process to advance discussions on the matter.

V. Recommendation

17. The Subsidiary Body may wish to adopt a recommendation along the following lines:

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 Utilization 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,⁵

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, which provides a basis for further consideration of the process for recognizing specialized international access and benefit-sharing instruments under 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;

⁵ United Nations, *Treaty Series*, vol. 3008, No. 30619.

2. *Takes note* of the options proposed in section I of the annex to the present decision as potential pathways to address the process for recognizing a specialized international access and benefit-sharing instrument under paragraph 4 of Article 4 of the Nagoya Protocol;

3. *Requests* the Executive Secretary:

(a) To invite Parties to submit additional views and proposals on the options for recognizing specialized international access and benefit-sharing instruments and the indicative criteria to determine the status of or recognize those instruments contained in sections I and II, respectively, of the annex to the present decision, and to submit a compilation of the submissions for consideration by the Subsidiary Body on Implementation at its eighth meeting and by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its seventh meeting;

(b) To hold informal technical webinars aimed at supporting Parties in progressing towards convergence on options for the recognition of specialized international access and benefit-sharing instruments under paragraph 4 of Article 4 of the Nagoya Protocol;

(c) On the basis of the outcomes of the activities set forth in subparagraphs 3 (a) and 3 (b) above, to further refine the options for recognizing specialized international access and benefit-sharing instruments under paragraph 4 of Article 4 of the Nagoya Protocol;

4. *Recommends* the inclusion of “cooperation with other international organizations and the governing bodies and secretariats of international instruments” as a standing item in the agendas for future meetings of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, to monitor developments relevant to paragraph 4 of Article 4 of the Protocol and promote mutual supportiveness.

Annex

Proposed options for determining the status of or recognizing specialized international access and benefit sharing instruments

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 Utilization⁶ on 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;

(d) A time-limited recognition subject to periodic review;

⁶ Ibid.

- (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;
- (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” model⁷

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;
- (f) A cross-regime help desk for Parties and stakeholders.

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)

4. Indicative criteria for recognition include:

- (a) A legal basis provided through intergovernmental adoption or endorsement;
- (b) A specialization in scope and purpose;
- (c) The alignment with the objectives of the Convention on Biological Diversity⁸ and the Nagoya Protocol;

⁷ 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.

⁸ United Nations, *Treaty Series*, vol. 1760, No. 30619.

- (d) Fair and equitable benefit-sharing mechanisms;
 - (e) The effective participation of indigenous peoples and local communities;
 - (f) Transparency, monitoring and accountability provisions;
 - (g) The promotion of mutual supportiveness and the avoidance of duplication.
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