

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

### **Non-paper**

#### *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* Article 4 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization,<sup>1</sup>

*Recognizing* the importance of 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,

*Recognizing* that Article 4, paragraph 4, offers an opportunity to strengthen synergies and mutual supportiveness among relevant processes and institutions, including the World Health Organization, the Food and Agriculture Organization of the United Nations, Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction and other emerging or future specialized instruments,

*Noting* the concerns regarding the development and implementation of international access and benefit-sharing instruments, including their expanding scope, limited transparency in the access to and utilization of genetic resources, uncertainty regarding digital sequence information derived from genetic resources, lack of anti-diversion measures and gaps in governance, and accountability,

*Affirming* the importance of implementing international instruments in a mutually supportive manner, in accordance with paragraph 3 of Article 4 of the Nagoya Protocol, and of respecting the sovereign rights of Parties, without creating a hierarchy among instruments,

*Recognizing* the essential role of indigenous peoples and local communities in conserving genetic resources and traditional knowledge, and emphasizing the need for their full, effective and equitable participation in processes under Article 4, paragraph 4, of the Nagoya Protocol,

*Further* recognizing the need to respect, protect and uphold the rights of indigenous peoples and local communities, including with regard to their genetic resources and associated traditional knowledge, and emphasizing that such rights must be duly recognized and observed by all specialized international access and benefit-sharing instruments developed or applied under Article 4, paragraph 4, of the Nagoya Protocol,

*Emphasizing* that any international instrument addressing benefit-sharing from the use of genetic resources or associated traditional knowledge should uphold standards at least equivalent to those of the Nagoya Protocol, to ensure coherence and avoid weakening existing obligations,

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<sup>1</sup> United Nations, *Treaty Series*, vol. 3008, No. 30619.

*Recognizing* the importance of the Access and Benefit-sharing Clearing-House for transparency and exchanging information, and the need to strengthen capacities, including technology transfer, for its effective use,

*Recognizing* the need for enhanced implementation support, including capacity-building, technology transfer and financial resources, to enable all Parties, especially developing countries, to effectively apply Article 4, paragraph 4, of the Nagoya Protocol,

*Recalling* Article 10 of the Nagoya Protocol, and recognizing that progress on the implementation of Article 10 can contribute to strengthening the coherence and equity of the global framework for access and benefit-sharing,

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. *Takes note* of the options presented in section I of the annex 1 to the present decision, and the indicative criteria proposed in section II of the annex 1 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;

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

(a) To invite Parties, other Governments, indigenous peoples and local communities, women and youth, other stakeholders, and relevant international organizations and processes, in line with their capacities and priorities, to submit additional views and proposals on the options and indicative criteria for determining, declaring or recognizing specialized international access and benefit-sharing instruments, as set out in sections I and II of the annex 1 to the present decision, including through joint or regional submissions as appropriate; and requests the Executive Secretary to compile these inputs 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. Views should be focused on ensuring that any such criteria guarantee that specialized instruments do not undermine the effective implementation of the benefit-sharing obligations of the Protocol;

(b) To convene informal international and regional technical webinars that are open, inclusive, and regionally balanced, to support Parties, indigenous peoples and local communities, women and youth and other stakeholders in progressing towards convergence on options for determining, declaring or recognizing specialized international access and benefit-sharing instruments under paragraph 4 of Article 4 of the Nagoya Protocol and to provide a written summary of their main findings;

(c) To establish an informal advisory group, in accordance with established procedure, to refine the options for recognizing specialized international access and benefit-sharing instruments under paragraph 4 of Article 4 of the Nagoya Protocol and identifying modalities to link article 4 to other Articles of the Nagoya Protocol, in particular Article 10. The terms of reference of the group are contained in annex II to this decision, taking into account equity, legal certainty, preventing duplication, the rights of indigenous peoples and local communities, as well as issues related to digital sequencing information on genetic resources;

(d) To submit the outcomes of the activities set forth in subparagraphs 3 (a) and 3 (b) above, to the informal advisory group, established in paragraph (c) above, to further refine the options for determining the status, declaring or recognizing specialized international access and benefit-sharing instruments under paragraph 4 of Article 4 of the Nagoya Protocol. The

report of the informal advisory group will be made available for consideration by the Subsidiary Body on Implementation at its eighth meeting;

4. *Recommends* that the scope of the standing agenda item relating to cooperation with other international organizations and the governing bodies and 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.

5. *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 Utilization<sup>2</sup> 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 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:

<sup>2</sup> Ibid.

- (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” model<sup>3</sup>**

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, 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;

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<sup>3</sup> 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.

(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 CBD practice;

(d) A COP-MOP finding that the Protocol applies, 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's 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 Diversity<sup>4</sup> 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;

<sup>4</sup> United Nations, *Treaty Series*, vol. 1760, No. 30619.

(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 Informal Advisory Group on Advancing the Recognition of Specialized International Access and Benefit-sharing Instruments under Article 4, paragraph 4 of the Nagoya Protocol**

1. The Informal Advisory Group is to provide technical advice and guidance on refining recognition options taking into consideration the criteria outlined in Article 4, paragraph 4. In particular, the Group will develop and propose criteria for recognizing specialized international access and benefit-sharing instruments to benefit from the provision of Article 4, paragraph 4, and provide a comprehensive analysis for potential specialized international access and benefit-sharing instruments (established or under development), resource they cover and their scope and identify where they overlap or conflict with the Nagoya Protocol.

2. The technical working group or advisory body will identify the linkages between specialized international access and benefit-sharing instruments and the provision of Article 10 of Nagoya Protocol on global multilateral benefit-sharing mechanism, investigating the possibility of Article 10 to serve as an “umbrella” for all specialized instruments.

3. The Informal Advisory Group will comprise technical experts, as follows: 15 nominated by Parties from the five CBD regions, seven nominated by representatives of indigenous peoples and local communities from the seven sociocultural regions, and four nominated by relevant organizations. The Executive Secretary, in consultation with the Bureau, will select the four experts from those nominated by relevant organizations, taking gender and the relevant technical expertise of the candidates into account.

4. The Informal Advisory Group may draw on existing expertise and liaise with relevant organizations, as appropriate, in the execution of its mandate. The working language of the Informal Advisory Group will be English.

5. Subject to the availability of financial resources, the Informal Advisory Group will meet, as needed, to ensure the timely provision of advice and, wherever possible, back-to-back with other relevant meetings. Where possible, the Secretariat will use available means of electronic communication to reduce the need for in-person meetings.