

Sixth meeting of the Subsidiary Body Implementation

16–19 February 2026
Rome, Italy

AGENDA ITEM 8: SPECIALIZED INTERNATIONAL ACCESS AND BENEFIT-SHARING INSTRUMENTS IN THE CONTEXT OF ARTICLE 4, PARAGRAPH 4, OF THE NAGOYA PROTOCOL

DATE: 15 FEBRUARY 2026

Statement by the **International Indigenous Forum on Biodiversity (IIFB)**.

The IIFB supports Option C, but has some remaining concerns.

Of greatest concern is the need to recognize, respect, protect and uphold the rights of Indigenous Peoples and local communities in the Nagoya Protocol. These form the minimum standards of our rights that must be observed, and lower standards are not acceptable. Any non-Nagoya Specialized International Instrument (SII) that deals with genetic resources and associated traditional knowledge (GRATK) must not have lower standards than the Nagoya Protocol (NP).

Article 6.2 of the NP acknowledges the rights of Indigenous Peoples and local communities to genetic resources. Indigenous People have universal rights embodied in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and local communities also have this right to control access to genetic resources. States should fully recognize, respect and protect them.

The NP as a whole should be taken into consideration when evaluating whether a SII is “supportive of” or “does not run counter to” the NP. The NP also recognizes the right to prior informed consent (PIC) for access, the importance of community protocols, and the necessity of benefit sharing. These form a unified package. Non-Nagoya SIIs have some of these elements, but not all of them and vary in the degree of their recognition and enforcement.. This is a common issue among different treaties. It is critically important here because of the overlapping but differentiated subject matter of GRATK of the NP and SIIs.

To resolve this, we must have full and effective participation in decision making on recognizing SIIs that use genetic resources taken from our lands, waters and territories (LWTs) and associated traditional knowledge wherever it is encountered. Our participation is necessary to ensure that rights and obligations under the Nagoya Protocol are not undermined and create opportunities for forum shopping to the weakest regime. The decision should provide robust safeguards in the recognition of other SIIs.

We propose, and ask for Party support in decision paragraph 3 the two following additions to the draft text:

- (a) To invite Parties, **INDIGENOUS PEOPLES AND LOCAL COMMUNITIES, AND STAKEHOLDERS**

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And

(b) To hold informal technical webinars aimed at supporting Parties, **INDIGENOUS PEOPLES AND LOCAL COMMUNITIES, AND STAKEHOLDERS**

Narrative Justification (not read. Supplemental material to support positions, including our analysis of Nagoya Protocol Article 4 and briefly 10)

This section is only a more detailed justification of our positions for those members who want to understand some of the more technical issues. We have some issues related to the interpretation of NP Article 4, an elaboration of our rights recognized in that instrument, and also strays into some unresolved issues related to identifying genetic resources to which the NP and SIIs apply. We understand that these are not under negotiation here but are linked to the scope of what needs to be assessed when looking at whether an SII is “supportive of” or “does not run counter to” the objectives of both the CBD and the NP.

We understand that some have legal concerns regarding the assumption of control authority over non-Nagoya Protocol genetic resources and associated traditional knowledge initiatives. We note some comments made in the submissions that make the interpretation of Article 4 difficult. The first is the complexity of the legal issues involved that are complicated and not fully explained, creating a barrier to full evaluation. The second is that the language seems equivocal, leading to different interpretations.

Article 4

para 1: This is straightforward. Although there is no hierarchy among treaties, this paragraph clearly sets up limiting conditions, prohibiting the exercise of treaty rights and obligations where they seriously harm or threaten biodiversity. This paragraph implies some degree of control over the treaties themselves for SII rights and obligations when biodiversity is significantly threatened or damaged. However, it does not specify measures to deal with cases where harm to biodiversity occurs.

para 2. States freedom to create Specialized International Instruments (SIIs), "provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol." This language begs the question of those SIIs that are not supportive or run counter to the objectives. The IIFB strongly argues that the NP is not subsidiary to other instruments, as this could create a clear hierarchy, and the COP-MOP of the NP has the sole authority to make recognition decisions.

para 3. States that the NP is to be implemented in a mutually supportive manner other SIIs, with the supportive/not counter to provisions above. Some have interpreted this to mean the NP is subsidiary to other instruments. The CBD has priority in time over these instruments, and the other instruments draw from the CBD

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establishment of state sovereignty over genetic resources. Para 3 obligations to other SIIs refers to "mutually supportive manner" and with "due regard." It uses limiting language "useful and relevant ongoing work" (not their entirety) and the qualifying language that the SIIs be supportive of/not run counter to language.

para 4. States the primary purpose of the NP for benefit sharing obligations under the CBD. The NP shall not apply to SIIs that are consistent with/not counter to the NP. This requires solid criteria to decide whether they are consistent and not counter to the NP.

Most of the language does not seem to set up a hierarchy among instruments and clearly supports the idea that the Parties to the COP-MOP of NP have the authority to recognize or not recognize.

There are several distinctive contexts in which traditional knowledge associated with genetic resources and genetic resources occur in the different SIIs, each with their own unique contexts (food and agriculture, human pathogens, biodiversity beyond national jurisdiction). Even though all involve human rights and the rights of Indigenous Peoples and of local communities, these are associated and held in different ways.

Of greatest concern to the IIFB is the need to recognize, respect, protect and uphold the rights of Indigenous Peoples and local communities under the Nagoya Protocol, a widely adopted multilateral treaty. There are several limitations of the IIFB that are beyond these SBI negotiations that also should be addressed.

Of high concern is the need to directly recognize rights to genetic resources. NP Article 6.2 conditions the rights of Indigenous Peoples and local communities "where they have the established right to grant access to such resources." The IIFB notes that for Indigenous Peoples, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states in Article 31 that Indigenous Peoples unconditionally have the right to control access to and use of their genetic resources. Local communities in the context of the CBD also have rights to control access to genetic resources. States should universally recognize these rights, along with rights to associated traditional knowledge.

This is a core and inalienable right, and should be protected by any SII recognized by the NP. In the negotiations of the Multilateral Mechanism, the IIFB had the clear position, and decisions COP 15/9 and 16/2 support this, that all rights and obligations under the Nagoya Protocol remain in place. While the IIFB agreed that the rules of digital sequence governance would not be the same as NP and create highly differentiated rules, the IIFB still believes that DSI data should be governed by common rules that take into account the FAIR, CARE, and TRUST Principles and the UNESCO recommendation on Open Science and not an unrestricted public domain contained in COP 15/9 and 16/2.

Bilateral negotiations allow Indigenous Peoples and local communities to "contract into custom." Indigenous Peoples possess many collective spiritual beliefs related to their genetic heritage. Contracts are not simply a way

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of generating monetary benefits, though these are involved. Contracts also allow us to stipulate limits on research and use, and PIC/FPIC/A&I ensures that development of genetic resources from our lands, waters and territories (LWTs) align with their rights and values. They also underlie the sharing benefits in forms we desire.

At a minimum, recognized SIIIs must also recognize that genetic resources must be obtained and sequenced from our LWTs only with our consent and based on mutually agreed terms. Any consent in a bilateral contract must be narrowly constructed. They can only be deposited in publicly accessible databases with our explicit consent. This rule applies both to users and to database operators. The NP also has strong recognition of rights to associated traditional knowledge (Article 7 and 12), including the recognition of community protocols and minimum requirements for mutually agreed terms in the "first transcription" of genetic resources.

The IIFB mentions other issues for future consideration. These include related to genetic resources of our current LWTs. The NP and the DSI decisions do not explicitly address sacred sites and Lands and Waters Traditionally Occupied or used by Indigenous and Local Communities, Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on (decision VII/16 F, annex). There are also unresolved issues and little guidance on situations of unresolved land claims, uncertain boundaries, and collection directly adjacent to our LWTs

We are concerned that while we endorse Option C, the hybrid may not adequately ensure that non-Nagoya SIIIs fully support and do not run counter to the rights we all have achieved in the Nagoya Protocol and that Indigenous Peoples have under UNDRIP. Beyond Nagoya, we are also concerned that the Biodiversity Beyond National Jurisdiction (BBNJ) and FAO may also set up their own DSI systems that could be further removed from the Global Mechanism.

On Article 10 of the NP, we note the concerns above. The DSI decision under the CBD was finely balanced in negotiations where the IIFB has significant presence and has built negotiating trust with the Parties. While Indigenous Peoples participate in other SIIIs, the participation is not as robust and negotiating cultures differ. The decision should provide robust safeguards in the recognition of other SIIIs.

The IIFB's recommendations are in document CBD/SBI/6/8. The text highlighted in green is the text we recommended to be maintained, and in **GREEN CAPITALS** the new text proposal, as follows:

V. Recommendation

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

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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,¹

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;

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, **INDIGENOUS PEOPLES AND LOCAL COMMUNITIES, AND STAKEHOLDERS** 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, **INDIGENOUS PEOPLES AND LOCAL COMMUNITIES, AND STAKEHOLDERS** in progressing towards

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

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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 Utilization² 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;

² Ibid.

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- (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” model³

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;

³ 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.

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- (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 Diversity⁴ and the Nagoya Protocol;
 - (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.

⁴ United Nations, *Treaty Series*, vol. 1760, No. 30619.