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**UNU-IAS**

Institute of Advanced Studies



## **Workshop Report**

# **“India’s Experiences in Implementing Access and Benefit Sharing”**

**17–18 December, 2007, New Delhi**

Intergovernmental negotiations to develop an international regime on access and benefit sharing (ABS) within the framework of the Convention on Biodiversity (CBD) are ongoing with the goal of finalizing negotiations of the regime by 2010. These negotiations are difficult given the various positions assumed by different countries, depending on their broad status as users or providers of genetic resources.

Bilateral discussions between India and Japan on ABS began in 2006 with the visit of a delegation from India to Japan to share experiences on how India and Japan are dealing with issues of access and benefit sharing (ABS). In continuation of this dialogue, a joint workshop between India and Japan (through the Ministry of Environment and Forests, Government of India and the Japan Bioindustry Association) was organized in New Delhi, India supported by United Nations University Institute of Advanced Studies (UNU-IAS). It sought to provide a platform of meaningful bilateral interactions between India and Japan on ABS issues that will eventually provide guidance to the international processes. India passed the National Biological Diversity Act (2002), and is implementing the provisions of the Act. The Workshop focused on the implementation experience of India, and sharing of thoughts and concerns between India and Japan on the implementation.

The Workshop commenced with a brief inaugural ceremony. Prof. A. H. Zakri, Director, UNU-IAS welcomed the delegates speaking on the global significance of the meeting. Dr. Seizo Sumida, Director General, Research Institute of Biological Resources, JBA, then addressed the meeting with emphasis on the Japan recognition of India’s cultural to trade significance. He emphasized the importance of mutual understanding of issues in domestic situations by both the users and providers of genetic resources. Prof. S. Kannaiyan, Chairman, National Biodiversity Authority (NBA) of India, then addressed the gathering about the role of the NBA as the implementing agency for India’s ABS provisions. Mr. B. S. Parsheera, Additional Secretary, MoEF, India then launched a publication on the National Biodiversity Authority (NBA) of India titled

“Implementation of Biological Diversity Act 2002”, which provides a useful guide to the status of implementation of the Biodiversity Act of India. In his presidential remarks, Mr. Parsheera highlighted the importance of the meeting in the light of global and regional developments.

### **Session 1:**

The morning session was chaired by Dr. R. S. Rana, former Director, National Bureau of Plant Genetic Resources, India. Prof. A. H. Zakri presented on ‘*Access and Benefit Sharing of Genetic Resources—Issues and Challenges from a Global Perspective*’. He identified the various issues and challenges related to ABS. He listed the different concerns of providing countries (Providers) and countries that use genetic resources for commercial and other end-uses (Users). He noted that: the technological and scientific capacities of different stakeholders vary; awareness levels are different; benefit requirements vary between countries; costs of product development vary with sector and there no uniform coherent global implementing policy. In addition to these issues to be resolved within the territorial jurisdictions of countries, there are also issues of accessing genetic resources from areas beyond national jurisdiction, such as accessing deep sea bed genetic resources and bioprospecting in Antarctica. These various issues should be addressed while developing the international regime, and in negotiations between co-operating nations.

Dr. Balakrishna Pisupati, UNEP, Nairobi presented on ‘*The International Regime— An Overview*’. He drew attention to the discussions within global forums on the development of the international regime on ABS (IR). Negotiations are underway to decide on the nature, scope and elements of the IR with emphasis on disclosure requirements during the filing of patent applications, provision of certificates of origin and proof of prior informed consent during patent applications and defining adequately the development of derivatives from genetic resources. He also identified other outstanding issues including intellectual property protection of traditional knowledge and issues related to terms of benefit sharing. He noted that UNEP is engaged in discussions with the co-chairs of the ABS Working Group of the CBD and is considering holding meetings with regional groups and develop a strategy between 2008 and 2010 for the purpose of development of the IR. However, for this UNEP would require a mandate and the support of the Parties to the CBD.

Dr. Biswajit Dhar, Head, WTO Division, Indian Institute of Foreign Trade, presented on ‘*Implementing the ABS Provisions: Importance of the International Certificate*’. In his talk, Dr. Dhar noted that international certificate of origin of genetic resource and/or traditional knowledge submitted at the time of applying for patents will make the whole process of accessing genetic resources transparent. It will indicate compliance with national laws and will enable in tracking the use of genetic resources and related traditional knowledge. It would serve as a commercial measure to tackle an ethical issue. He added that some of the issues that to be addressed include: affordability of

implementation of this measure, competence of countries to provide such certificates and the compatibility of such a system with other processes such as the Food and Agriculture Organization (FAO) International Treaty on Plant Genetic Resources (ITPGR) and the WTO Agreements, especially on issues related to transboundary movement of resources/ derivatives.

Discussions followed on the data intensive nature of the certification process and whether alliances between countries could help to address such data insufficiency. Concerns were also raised about: cross boundary issues of origin; and the need to strengthen databases and fill knowledge gaps. It was recommended that these issues be addressed while implementing the certificates of origin and while waiting for further developments.

The discussions on ABS capacity development of countries led to the recommendation of a process to educate parliamentarians (the decision makers) individuals, institutions at the various levels. . A useful forum would be regional groupings at preparatory meetings for international meetings. The issue of ABS as a market failure issue was identified as the one requiring attention.

## **Session 2:**

The afternoon session on Day 1 was chaired by Dr. S. Kannaiyan, Chairman, National Biodiversity Authority. Dr. Sujata Arora, MoEF presented on *'Historical development of development of ABS legislation and protection of traditional knowledge in India'*. During this presentation, Dr. Arora gave the background to the development of ABS discussions globally and nationally. She then provided details on the development process and enactment of the National Biological Diversity Act of India (2002). The provisions of the Act are well complemented by other national legislation, such as the Patent Amendment Act, which makes it compulsory for declaration of source and geographical origin of genetic resource and traditional knowledge, non-compliance with which could result in revocation of patent. The Plant Variety Protection and Farmers' Rights Act (PVP & FR) also provides for systems of benefit sharing while using native varieties for crop development purposes. The challenges faced when developing the Biodiversity Act of India include the issues of: regular use of genetic resources by domestic industries, local population and communities for product development, everyday and trade purposes (such as non-timber products) and export of large quantities of primary 'bioresource' commodities from the country. The second part of the presentation highlighted the various institutional provisions within the Biodiversity Act including its three-tiered structure to deal with national, regional and village level resources and stakeholders. It also threw light on the various related measures within the country to protect genetic resources and related traditional knowledge.

Dr. S. Kannaiyan presented on '*Biodiversity Act and Rules-Elements and Provisions*', in which he highlighted the nature, scope and elements of the Act. He elaborated the administrative, institutional and operational aspects of the Act including the National Biodiversity Authority (for central decisions and on matters related to foreigners), State Biodiversity Boards (SBBs at State/ Province levels) and village level Biodiversity Management Committees (BMCs).

Dr. K. Venkataraman, Member Secretary, NBA, presented on '*Implementation of National Biodiversity Act and the Rules- Issues and Experiences*', in which he explained the processes and procedures involved in implementing the Biodiversity Act of India. He highlighted the procedures to be followed for foreign nationals to access genetic resources within India, use restrictions, exemptions for research collaborations, normally traded commodities and value added products. He related the benefit sharing norms to be followed by the users, efforts taken by the NBA to protect traditional knowledge (TK) and genetic resources through Plant Biodiversity Registers (Databases at village levels), provision of unique indigenous collection or accession numbers to specimens, restrictions on taking a material outside the country for identification, restrictions on access to endangered species, and the regulations on filing IPR claims.

Mr. D. S. Raj Ganesh from the Protection of Plant Variety and Farmers' Rights Authority presented on the '*Links between the Biodiversity Act and Plant Variety Protection Act*'. He identified the similarities in approach to recognizing local knowledge between the two Acts, and the inter-relatedness of the Acts in dealing with resources that fall in either Act's purviews. Both Acts provide for benefit sharing while accessing related resources.

Discussions focused on normally traded commodities and their implications for benefit sharing and how far into the value addition chain will the inclusion of such commodities be considered for benefit claims. The Authority's position was that such commodities are meant only for consumption and not for further research and development. It was felt that the notification of the list should be done in consultation with the Ministry of Commerce and Industry.

## **Day 2: 18<sup>th</sup> Dec, 2007**

### **Session 3:**

The morning session on Day 2 was chaired by Dr. P. Pushpangadan, Director General, Amity Institute for Herbal and Biotech Products Development. The first presentation was made by Dr. Seizo Sumida, JBA on '*Japan's ABS Guidelines and Experiences*'. Dr. Sumida highlighted the role played by JBA as the implementing body for ABS under CBD provisions in Japan for the Ministry of Economy, Trade and Industry (METI) that is a competent national authority for ABS issues. Identifying that users of

genetic resources require more clear-cut and user-specific guidelines to complement the Bonn Guidelines on ABS, JBA and METI developed 'The Guidelines for ABS for Users in Japan' (2005). These Guidelines provide a step by step guide to Industry and Academia on the process of accessing and using genetic resources from provider countries- starting from understanding provider's policy situation, establishing contact with concerned authorities and stakeholders, establishing contracts and terms associated including need to obtain prior informed consent, arriving at mutually agreed terms, and execution of contracts. A number of activities are supported by JBA-METI through services such as providing information, obtaining relevant information through fact finding missions and bilateral workshops and dissemination of the information through a helpdesk. From their experience in implementing ABS provisions, JBA-METI understands that national compulsions are different which is reflected in policies and regulatory systems. Hence, JBA seeks to establish collaborative models with providing countries to develop joint practical and effective procedures that will generate benefits, reduce risks and ensure equity.

Dr. Balakrishna Pisupati then made a presentation on '*Future Dimensions on ABS*', in which he highlighted that a pragmatic approach to advance ABS discussions which are characterized by compromise without sacrificing key user and provider concerns. This is possible if ABS is looked at from a trade or market perspective and considered as a 'you pay' (BS) for what 'you get' (access). To make this operational, inputs from people in the fields of economics, commerce and law are required. For the regime to be effective, certainty of source of material, insurance of rights and obligations of providers and users, raising the capacities of all countries to a common level of understanding and development of a mechanism for dispute settlement must be provided for.

This was followed by a presentation by Dr. V. K Gupta on '*Considerations for Traditional Knowledge linkages in dealing with ABS provisions*'. Dr. Gupta highlighted the interrelationship between traditional knowledge (TK) and genetic resource. Misappropriation issues are common in the interface between GRs and TK. The Council for Scientific and Industrial Research (CSIR), Government of India, seeks to ensure defensive protection of TK through a Traditional Knowledge Digital Library (TKDL). The TKDL is a database of medicinal plants from texts from traditional systems of medicine such as Ayurveda, Siddha, and Unani. It has been introduced into the International Patent Classification (IPC) system in various categories and is available in five languages.

Discussions centered on Japan's approach to ABS and it was noted that the extent of contribution to the results is the criterion for benefit sharing in Japan. The participants also appreciated the efforts taken by Japan through the JBA to understand and be sensitive to policy scenarios of individual countries. Discussions also revolved around the need to develop a global search tool for all databases- including Patent and Non- patent databases, access to which needs to be regulated.

## Session 4

The final session was chaired by Prof. A. H. Zakri, UNU-IAS. Dr. Sachin Chaturvedi, Research and Information System for Developing Countries (RIS), made a presentation on *'Global Experience with ABS: Emerging evidence from India and South Africa'*. In his presentation, he highlighted the two case studies related to ABS that were first implemented before CBD negotiations on ABS began – the Kani case study (India) and the San tribe case study (South Africa). He narrated the evolution of the access to the genetic resource and related traditional knowledge by domestic research institutes in both cases. The product that was developed was commercialized, and the benefits accrued shared with the communities. However, the processes involved in the benefit sharing varied with a higher degree of conflict and arbitration required in the San case study for recognition of the San tribe's right to benefits.

Dr. Chaturvedi noted the lessons learnt from these cases, these include: the need for a clear and transparent process to obtain consent from a community – if not dealt with sensitively, the consent process could increase the vulnerability of tribal communities by conflicting with their extant cultures; and it is important that national measures are complemented by international processes to mitigate any misappropriation beyond national territories.

The final discussions of the meeting looked at how to improve India's implementation of the Biodiversity Act and on how best to advance the dialogue between India and Japan.

### Recommendations and Suggestions

1. For India, it was felt that the NBA should participate in regional discussions on ABS, and perhaps even convene a regional consultation in South Asia on ABS.
2. The NBA could establish a programmatic link on ABS with UNU-IAS and UNEP.
3. The MoEF could be involved in regional consultations and in regional capacity building and benefit sharing discussions. It could also get involved in second track diplomacy in science-policy dialogues to arrive at meaningful arrangements with users.
4. The JBA could look at developing perspectives on benefit sharing in its next phases of MoU with UNU-IAS that could include a technical support programme to further define benefit sharing principles at national level, convening side meetings, expanding bilateral dialogues (such as the current one) into multilateral ones.
5. A Joint JBA-MOEF joint programme on ABS could be developed.

## Workshop Photos



L-R Dr. Seizo Sumida, JBA; Dr. Suneetha M.S, UNU-IAS; Prof. A.H. Zakri, UNU-IAS



Pro. A.H Zakri, UNU-IAS; Mr.B. S.Parsheera, Addl. Secretary, MOEF; Dr. Seizo Sumida, JBA; Prof S. Kannaiyan, Chairperson, National Biodiversity Authority





Mr. S. Parsheera, Addl. Secretary, MOEF



Mr. G. Balachandran, MOEF; Prof. A. H. Zakri, UNU-IAS



Dr. Suneetha, M.S., Ms. Yumiko Usui, UNU-IAS



Dr. K. Venkataraman, Secretary, National Biodiversity Authority or NBA; Prof S Kannaiyan, Chairperson, NBA; Dr. Seizo Sumida , JBA



Mr. B. S. Parsheera; Dr. Balakrishna Pisupati, UNEP



Mr. Michal Zrust, IUCN India; Ms. Lindy Thompson IUCN, India; Dr. Sujata Arora, MOEF; Mr. G. Balachandhran ,MOEF; Prof. A. H. Zakri, UNU-IAS; Dr. Sanjay Kumar, Ministry of Finance