



सत्यमेव जयते



Implementation of Nagoya Protocol on Access and Benefit Sharing

India's Experience



Ministry of Environment, Forest
& Climate Change



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FOREWORD

The Convention on Biological Diversity is a collective commitment of the countries of the world to conserve and sustainably use the biological diversity for the benefit of present and future generations. Of the three objectives of the Convention, namely conservation, sustainable use, and fair and equitable sharing of benefits arising from the utilization of biological resources and knowledge associated with them, the third one is the core objective, and is essential to achieve the first two. The Convention's Nagoya Protocol on Access and Benefit Sharing establishes a clear framework for the attainment of this core objective through access to genetic resources and associated traditional knowledge by companies and researchers, and for sharing of benefits arising from their use.

Indian has been at the forefront in implementing the Convention and the Nagoya Protocol, because as a megadiverse country, India has vital stake in realization of their objectives. A progressive and robust legislative framework had been put in place through Biological Diversity Act 2002 and Biological Diversity Rules, 2004, which includes provisions and procedures for access to resources subject to fair and equitable benefit sharing. The Guidelines on Access and Benefit Sharing Regulations, 2014 notified following the Nagoya Protocol provided a further fillip to the ongoing implementation of access and benefit sharing measures by India.

The present document is an endeavour to reach the experience of India's implementation of the Nagoya Protocol to the wider community that shares our commitment to achieve the objectives of the Convention and the Protocol.

Date: 23.02.2018

(Dr. Harsh Vardhan)



सी.के.मिश्रा
C.K.Mishra



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PREFACE

India is a megadiverse country rich in biodiversity and associated traditional knowledge. With only 2.4% the world's land area, India accounts for 7-8% of all recorded species in the world. As livelihoods of millions of people in India depend on biodiversity, its conservation is a national priority.

India has made sustained efforts in fulfilling her commitments towards conservation of biodiversity, its sustainable use and the fair and equitable sharing of benefits. This is evidenced *inter-alia* through enactment of domestic legislations, framing of policies and action plans, and setting up of institutional structures for their implementation. India is a Party to the Convention on Biological Diversity and its Nagoya Protocol on Access and Benefit Sharing. These international obligations have further strengthened India's resolve and commitment towards conservation of biological diversity.

As a Party to the Nagoya Protocol, India has submitted a National Report on implementation of the Protocol on 1st November 2017, in a questionnaire format.

With a view to enhance ease in understanding, the National Report is being presented in a narrative format in the present publication. This document provides valuable information on India's national and transboundary initiatives on access and benefit sharing. The implementation of these measures is an ongoing process necessitating continuous engagement with diverse stakeholders. I hope that the experiences shared in this report will be found useful by various stakeholders for developing a deeper understanding of the strategies that can be adopted as well as for addressing the challenges we face, in implementation of access and benefit sharing regime.


(C. K. Mishra)

Place: New Delhi

Dated: 26th February, 2018

अरुण कुमार मेहता, भा. प्र. से.
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सत्यमेव जयते

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MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE
GOVERNMENT OF INDIA



PROLOGUE

The Nagoya Protocol on Access and Benefit Sharing, a new international treaty adopted under the auspices of the Convention on Biological Diversity in Nagoya, Japan in 2010, aims at fair and equitable sharing of benefits arising from the utilization of genetic resources. Towards this, the Protocol establishes a clear framework on how researchers and companies can obtain access to genetic resources and to traditional knowledge associated with genetic resources, and how benefits arising from the use of such material or knowledge will be shared. The success of Nagoya Protocol would depend to a large extent on its effective implementation at the domestic level.

As a megadiverse country rich in biodiversity with a rapidly advancing biotechnology industry, India has much interest in ensuring effective implementation of the Protocol. In India, the Protocol is being implemented through the three-tiered institutional mechanism of the Biological Diversity Act 2002.

The Protocol, like any other international treaty, obligates Parties to report compliance on their implementation of the Protocol. This reporting system is expected to serve as a useful tool for sharing experiences in implementation of the Protocol, as well for identifying gaps in capacity, constraints and impediments. The present document has been prepared on the basis of the Interim National Report of Nagoya Protocol submitted by India in November 2017, which is available on the link <https://absch.cbd.int/search/nationalRecords?schema=absNationalReport>

The document in its first chapter presents how the basic edifice for an effective access and benefit sharing regime is implemented in the country so as to ensure fair and equitable sharing of benefits. The second chapter deals with obligations that support and create conditions for effectiveness and vibrance of this edifice. The third chapter encapsulates some experiences of implementation of the access and benefit sharing regime in the country.

I congratulate all those who were involved in this task which has been undertaken with support from Global Environment Facility implemented through United Nations Development Program by the National Biodiversity Authority. I wish to place on record the diligent efforts put in by Dr. Sujata Arora, Adviser, Ministry of Environment Forest and Climate Change in this endeavour.

Dated: 26.02.2018

(A.K. MEHTA)



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Implementation of Nagoya Protocol on Access and Benefit Sharing India's Experience

Introduction

One of the three objectives of the Convention on Biological Diversity, hereinafter referred to as the Convention, requires Parties to facilitate access to Genetic Resources (GRs) ensuring that benefits arising from the utilization of such GRs are shared with the providers in a fair and equitable manner. The concept of fair and equitable sharing of benefits also extends to access and use of traditional Knowledge (TK) associated with such GRs. Large populations of indigenous and local communities have created this knowledge through generations. While these provisions in the Convention raised hope of equity and fairness amongst the providers of GRs and TK associated thereto, Parties deliberated on creating the right instrument to implementing these concepts at the domestic and at the multilateral level.

India enacted its domestic legislation for the purpose in the year 2002 itself. The multilateral efforts under the aegis of the Convention resulted in Nagoya Protocol on Access and Benefit Sharing which entered into force on 12 October 2014. It provides the necessary wherewithal for the effective implementation of Access and Benefit Sharing (ABS) provisions of the Convention. Its scope includes benefits arising from GRs covered within the scope of Article 15 of the Convention, and traditional knowledge associated thereto.

Article 29 of the Protocol calls upon each Party to monitor the “implementation of its obligations” under the Protocol at its own level. In addition, it obligates Parties to report compliance to the Conference of Parties serving as Meeting of the Parties to the Protocol (COP-MOP) at intervals in the formats prescribed by the latter. Decision NP-1/3 of COP-MOP 2014 prescribed the format for the interim national report, which the Parties were to submit twelve months prior to the third meeting of COP-MOP to the Nagoya Protocol, i.e., by 1 November 2017. This reporting system is expected to prove as a tool to ensure fair and equitable share of benefits for people conserving and providing GRs and TK associated thereto.

India has submitted its compliance report to the Convention Secretariat on 1 November 2017 available at the link <https://absch.cbd.int/search/nationalRecords?schema=absNationalReport>. As a megadiverse country with a rich heritage of TK, India has vital stakes in the realisation of the objectives of the Convention and the effective implementation of the Protocol. This document is an endeavour to share with a wider audience, the experience so far of India's implementation of the Protocol which has been submitted to the Convention Secretariat as Interim National Report.

Some Articles of the Protocol create the basic edifice for an effective ABS regime to ensure fair and equitable sharing of benefits, while some other Articles create obligations that support and create conditions for effectiveness and vibrance of this edifice. Accordingly, the first part of the document deals with the edifice and the second deals with the Articles in the second category. The document also encapsulates some experiences of implementation of the ABS regime in the third Part.

I

Key Articles of the Protocol and India's Access and Benefit Sharing Framework

The Protocol has specific and detailed provisions for creation of ABS mechanisms by the Parties. A discussion on India's compliance with these follows.

1.1 Obligation to Create Domestic Legislative, Administrative or Policy Measures

Articles 5 (1) and (3) of the Protocol reiterate the provision under the Article 15 (7) of the Convention regarding ABS for GRs and mandates that each Party has to take appropriate "legislative, administrative or policy measures" to ensure fair and equitable sharing of benefits arising out of the utilisation of GRs.

Article 15 (7)

Convention on Biological Diversity

"Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms."

Article 5(1)

Nagoya Protocol

"In accordance with Article 15, paragraphs 3 and 7 of the Convention, benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms."

Article 5(3)

Nagoya Protocol

"To implement paragraph 1 above, each Party shall take legislative, administrative or policy measures, as appropriate."

However, Article 5(2) of the Protocol is an advance over the Article 15 of the Convention in that it obligates that indigenous and local communities (ILCs) must be given fair and equitable share of benefits for access to GRs, held by them in accordance with their established rights under the domestic laws of the Party concerned.

Article 5 (2)

Nagoya Protocol

"Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms."

Another significant provision in this Article relates to the benefits arising from the use of TK. Whereas Article 8 (j) of the Convention provides that "as far as possible and as appropriate" Contracting Parties shall "*encourage* the equitable sharing of benefits arising from the utilisation of such knowledge, innovations and practices", Article 5(5) of the Protocol obligates Parties to take appropriate measures to *ensure* that these benefits are shared in a fair and equitable way with ILCs upon mutually agreed terms.

Article 5 (5)

Nagoya Protocol

"Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms."

Article 7 of the Protocol reinforces it further by obligating Parties to ensure that access to TK is done with the prior informed consent or approval and involvement of ILCs on mutually agreed terms.

1.2 India's Legislative Framework

India had enacted the Biological Diversity Act in 2002 (hereinafter referred to as the Act, 2002) to implement the Convention with specific reference to its three core objectives. Thereafter, Biological Diversity Rules, 2004, (hereinafter referred to as Rules 2004) were notified to spell out procedures and mechanisms for the implementation of the Act, 2002. These legislative measures pre-empted a number of provisions that have been included in the Protocol. Following the entry into force of the Protocol, the Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, 2014, (hereinafter referred to as ABS Regulations, 2014) were notified under the Act, 2002. These further strengthened the enforcement of the Act, 2002 in accordance with the provisions of the Protocol. These three instruments together prescribe a comprehensive scheme of processing the applications for access to GRs and associated knowledge, and provide a template and terms for benefit sharing. The Government has authority under the Act, 2002 to issue notifications as and when required to meet any exigencies for effective implementation of the ABS measures.

1.3 Implementation Mechanism

The Act, 2002 is implemented through a three-tier institutional mechanism: National Biodiversity Authority (NBA) at the national level; State Biodiversity Boards (SBBs) at the State Government level; and the Biodiversity Management Committees (BMCs) at the local level. NBA was constituted in the year 2003. It has its office in Chennai, which is the capital of the coastal state of Tamil Nadu. It is funded by the Union Budget of India. All the 29 states of India have constituted the State Biodiversity Boards.

Sections 3, 7 and 23 of the Act, 2002 empower the NBA and SBBs respectively to grant approval for access to GRs and associated knowledge as applicable. Participation of local communities is ensured through BMCs. India's local communities are a part of the mainstream. BMCs are constituted at the village/ local level by the elected Municipal and Panchayat bodies and comprise the elected members of the local communities and have a direct link and interface with the local people. Over 62,000 BMCs have been constituted so far. Section 41(1) of the Act, 2002 mandates BMCs to document biological diversity found in their jurisdiction in the form of Peoples Biodiversity Registers (PBRs) and chronicle TK related thereto. This documentation is done with the participation of local communities including women.

Section 41

Biological Diversity Act, 2002

"Constitution of Biodiversity Management Committee. —(1) Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity."

These PBRs are a powerful tool in securing benefits for the local communities as “benefits claimers”. Section 2(a) of the Act, 2002 defines local conservers and holders of biological resources and TK as “benefit claimers” to entitle them to benefits through ABS.

Section 2(a)
Biological Diversity Act, 2002

“benefit claimers” “to mean the conservers of biological resources, their by-products, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices to the use of such biological resources, innovations and practices associated with such use and application;”

1.4 PIC and MAT : Basic Tools of Ensuring Access and Benefit Sharing

Prior Informed Consent (PIC) of the providing Party and Mutually Agreed Terms (MAT) between the providing and utilizing Parties are the *sine qua non* for ensuring fair and equitable sharing of benefits.

The Protocol accordingly obligates Parties to create mechanisms for implementation of these as provider Parties, i.e., countries of origin or as Parties holding GRs in accordance with the Convention, and as user Parties in whose territories the accessed GRs and TK are utilised. These measures must include monitoring and cooperation at the level of Parties to ensure adherence to the Protocol. A brief discussion on implementation by India as provider and user Party follows.

1.5 Obligations as Providing Party

1.5.1 Access to Genetic Resources and Traditional Knowledge

Articles 6 and 7 of the Protocol obligate providing Parties to take appropriate legislative or regulatory measures to ensure PIC and MAT before access to GRs and TK is granted. Article 6(3) spells out what these measures must include to ensure smooth and transparent implementation. It mandates that the Party requiring PIC shall take measures as appropriate to:

- “(a) Provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing legislation or regulatory requirements;
- (b) Provide for fair and non-arbitrary rules and procedures on accessing genetic resources;
- (c) Provide information on how to apply for prior informed consent;
- (d) Provide for a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time;
- (e) Provide for the issuance at the time of access of a permit or its equivalent as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms, and notify the Access and Benefit- sharing Clearing-House accordingly;

- (f) Where applicable, and subject to domestic legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources; and
- (g) Establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms shall be set out in writing and may include, *inter alia*:
 - “(i) A dispute settlement clause;
 - (ii) Terms on benefit-sharing, including in relation to intellectual property rights;
 - (iii) Terms on subsequent third-party use, if any; and
 - (iv) Terms on changes of intent, where applicable ”

1.5.2 Elements of Article 6(3) Reflected in Indian Legislative Framework

The legislative framework of India takes into account all these requirements. Chapter II of the Act, 2002 captioned “Regulation of Access to Biological Diversity” contains the provisions relating to grant of access to bio-resources. Firstly, the approval of NBA/ SBBs as competent authorities is a pre-requisite for access to GRs and associated knowledge for various purposes. These purposes include research, commercial utilization, bio-survey and bio-utilization, transfer of results of research on biological resources and third party transfer of resources already accessed with prior approval. Section 6 in this chapter provides for prior approval of the competent authority before any application is made for grant of patent in or outside India for “any invention based on any research or information on any biological resource obtained from India”. That inventors are not put to any undue hardship in applying for patents is ensured by setting a time limit of 90 days for disposal of such applications by the competent authority, and by allowing the inventor to apply for patent but ensure approval from competent authority before the patent is granted.

Sections 3 and 6 of the Act, 2002 obligate the user to seek prior approval of NBA before accessing GR and/or associated knowledge for any purpose mentioned earlier and for applying for any type of intellectual property right in India or abroad. Sections 19 and 20 prescribes the procedures to be followed by NBA while processing such applications. Section 20 (1) and (2) oblige any permit holder for access granted under Section 19 to apply before transfer of any biological resource or TK to any other party. Rules 14 to 19 of the Rules, 2004 lay down the procedures and conditions for such applications. Further, the Schedule incorporated in the Rules prescribes Forms for such applications specific to the purpose of access / permission sought.

Sub-sections (3) and (4) of Sections 19 and 20 deal with the manner in which competent authority should dispose off these applications. Competent authority is required to pass orders in writing on such applications and give public notice of every approval granted. Rules, 2004 detail the modality for this. Rule 14(5) requires that the decision of NBA as competent national authority for granting access should be in the form of a clear and transparent written agreement signed between the competent authority and the applicant user. These ensure PIC and MAT. No application requesting access can be rejected unless the applicant is given a reasonable opportunity to present his/her case before a final decision is taken. In the event the access is denied, the reasons for rejection have to be recorded in writing by the competent authority. As evidence of the decision of granting PIC and MAT, the competent authority is required to issue permit or its equivalent by entering into an agreement with the applicant.

1.5.3 Prior Informed Consent

Procedure for PIC has to be secured with the involvement of local people and communities by following a process of consultation. Section 41 (2) of the Act mandates this.

Section 41 (2) **Biological Diversity Act, 2002**

“The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee.”

1.5.4 Mutually Agreed Terms

Section 21 of the Act, 2002 in conjunction with Rule 14(6) lays down the minimum conditions that must be a part of the MAT in case of grant of access to GRs, their by-product and TK. The benefits shared could be monetary or non monetary or both depending upon the nature and merits of that case.

It is a testimony to the efficacy of these clearly spelt out procedures that as on 31 March 2018, 86 permits have been issued by NBA had been made available through the Access and Benefit Sharing Clearing House (ABS-CH) for various purposes permitted under the Act, 2002.

1.6 Exemptions under the Act, 2002

The Act, 2002 provides for certain exemptions so as not to restrict the customary use and exchange of biological resources and associated traditional knowledge within and among local people. Additionally, the definition of ‘commercial utilization’ in Section 2(f) does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping. Further, proviso to Section 7 of the Act, 2002 exempts local people and communities of the area, including growers and cultivators of biodiversity, practitioners of indigenous medicine from the requirement of prior approval. This corresponds with the Article 12(4) of the Protocol.

1.7 Exemptions Under the Biological Diversity Act, 2002

Certain uses and extraordinary situations have been accorded special consideration in the Protocol. Article 8 encourages Parties to create conditions for non-commercial research in the interest of conservation and sustainable use of biological diversity. Also it advises that due regard be paid to present or imminent emergency situations that threaten or damage human, animal or plant health in order to meet the need of “expeditious access to genetic resources” and to ensure expeditious fair and equitable sharing of benefits. These benefits may include access to “affordable treatments by those in need”. GRs required for food and agriculture security are also to be given special consideration.

Regulation 13 of the ABS Regulations, 2014 facilitates access to GRs by Indian researchers / government institutions who intend to carry or send biological resources outside India for basic non-commercial

research or for emergency purposes. A declaration has to be signed by the user and the recipient and submitted to the NBA. The applications filed under this provision are considered and disposed off expeditiously within a specified time frame through simplified procedure. Importantly, no fee is charged for such applications.

The same Regulation also facilitates transfer of biological resources by government institutions in India to carry out urgent studies to avert emergencies like epidemics etc. through an expeditious and simplified process. The provisions address the need for expeditious access to genetic resources and for expeditious fair and equitable sharing of benefits arising out of the use of such genetic resources, including access to affordable treatment by those in need, especially in developing countries, as provided in Article 8(b) of the Protocol.

The Government of India through notification dated 17 December 2014, has exempted crops listed in Annex - 1 of The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) from the provisions of seeking access under the Act, 2002 for the purposes of employing them for conservation, breeding, research and training for food and agriculture.

1.8 Dispute Resolution and Recourse to Justice System

Article 18 of the Protocol relates to this. Article 18(1) obliges Parties to incorporate and respect provisions regarding dispute resolution in MATs by including:

- “(a) Jurisdiction to which they will subject any dispute resolution processes;
- (b) Applicable law; and/or
- (c) Options for alternative dispute resolution, such as mediation or arbitration.”

Articles 18(2) and (3) cast specific obligations on Parties to ensure effective measures to resolve disputes and access to justice.

The Act, 2002, and the Rules, 2004 include effective provisions regarding this Article. Rule 14(6) (xiii) of the Rules, 2004 mandates inclusion of clauses referring to “ events limiting liability (natural calamities), arbitration, confidentiality clause” in the MAT signed between the competent authority and the intended user. Moreover, Section 52(A) of the Act, 2002 provides an opportunity to seek recourse under Indian legal system in case of any dispute arising from the MAT. Any person aggrieved by the order passed by NBA or SBB can file an appeal against such order before the National Green Tribunal which is the specialised body to handle environmental disputes in India.

Effective measures corresponding to Article 18(3) of the Protocol, to ensure access to justice and utilization of mechanisms that mutually recognize and enforce foreign judgements and arbitral awards are also in place. The Civil Procedure Code, 1908 enables enforcement of these. Further, The Foreign Award (Recognition and Enforcement) Act, 1961 gives effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, to which India is a Party.

1.9 National Focal Point and Competent National Authority

Ministry of Environment Forest and Climate Change (MoEFCC) has been designated as the National Focal Point (NFP) and NBA as the Competent National Authority (CNA), as required under Article 13. Designation of these national level authorities as NFP and CNA ensure coordination, transparency, facilitation of procedures and processes and sharing of information with ABS-CH.

1.10 Obligations as User Party

1.10.1 Compliance Obligations under Articles 15 to 17

Articles 15 to 17 of the Protocol address the user Party obligations. Article 15(1) requires Parties to take appropriate, effective and proportionate legislative, administrative or policy measures to ensure that GRs utilised within their jurisdiction have been accessed following the procedures of PIC and MAT as prescribed in the domestic measures of the providing Party. Article 15(2) obligates Parties to take effective and proportionate measures to address the cases of non-compliance of domestic measures of the providing Party by the user. Article 16 makes similar provisions regarding the use of TK. Both these Articles call upon the Parties to cooperate as far as possible and as appropriate in cases of such violations.

Measures identified in Articles 17 (1)(a)(i) to (iv) and (b) and (c), oblige Parties to create a strong framework for securing compliance in the jurisdiction of the user Parties. The Internationally Recognised Certificate of Compliance (IRCC) described in Article 17(4) which is to be shared widely through ABS-CH under Article 17(2) gives further strength to the compliance regime.

India has already shared IRCCs on ABS-CH. India believes that IRCCs would prove to be an effective tool for monitoring compliance. The process for identifying checkpoints is under way. NBA has set up an inter-ministerial, inter-disciplinary expert group to work out the proposal for designation of checkpoints with modalities and procedures for their effective functioning. In the meantime, patent offices are playing the role to some extent by informing the NBA about patent applications concerned with GR and TK based inventions/ innovations.



II

Provisions for Effective Implementation of Access and Benefit Framework

The comprehensive legislative, administrative and policy measures create a strong system for securing ABS with transparency and certainty of procedures and processes, further supported by enabling provisions as discussed hereafter.

2.1 Transboundary Issues and Enforcement

Article 11 obligates Parties to “endeavour to cooperate” in cases where GRs and TK are shared across the national boundaries, with the involvement of ILCs wherever applicable. Article 10 provides a window for creating modalities for a ‘global multilateral benefit-sharing mechanism’ to address the situation of ABS with respect to GRs and TK that occur in transboundary situations.

India views these provisions as a positive development in the pursuit of the objectives of the ABS. India's efforts and initiatives in this regard have been to secure common understanding and cooperation with Parties sharing same GRs and TK with it.

Some projects of such cooperation with the neighbouring countries are already on the ground, in cases where same GRs are found in situ within the territory of more than one Party or where the same TK is shared by one or more indigenous and local communities in several Parties as provided in Article 11.

Local communities are involved in these projects. One of such examples is the case study of the Kailash Sacred Landscape Conservation and Development Initiative included in Part III.

2.2 Access and Benefit Sharing Clearing House and Information Sharing

Article 14(1) establishes ABS-CH as a means for sharing information and Article 14(2) identifies subjects on which information “shall” be made available by the Parties. This includes permits issued by a Party, which constitutes IRCCs. Art 14(3) covers additional information that “may” be provided subject to availability and as appropriate on items such as model contractual clauses and codes of conduct.

India has been sharing required information on the ABS-CH. The MoEFCC as the NFP makes information on ABS available according to the requirements of Protocol.

India was the first country to upload permits of CNA to ABS-CH, based on which the first IRCC was issued on 1 October 2015. As on 31 March 2018 86 IRCCs had been generated.

2.3 Contribution to Conservation and Sustainable Use

Article 9 of the Protocol *encourages* the Parties to direct the benefits arising from the utilization of genetic resources towards conservation and sustainable use of biological diversity.

Conservation of biological diversity has been one of the impelling forces of the Act, 2002 and Rules 2004. Section 27 of the Act, 2002 obligates creation of a National Biodiversity Fund. One of the sources of collection in this Fund is all charges and royalties received by the NBA from grant of access. Section 27(2) (b) lists “conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed” as one of the three purposes for which the Fund is to be used. The other two purposes are allocation to benefit claimers and socio-economic development of areas from where resources are accessed.

BMCs have the power to levy fees under Section 41(3) of the Act, 2002 to regulate collection of resources in adherence to the principle of sustainable utilization. These fees form part of the Local Biodiversity Fund created under Section 43 of the Act, 2002. The Fund is used for conservation and promotion of biodiversity.

The experience of the implementation of ABS measures has shown that BMCs and benefit claimers have voluntarily been channelling funds towards conservation. The case of the BMCs benefitted through the research activity of Indian Institute of Oilseeds Research (IIOR), included in Part III is one of the examples. Part of the funds received by NBA for granting access to red sanders (*Pterocarpus santalinus*) has been made available to the Andhra Pradesh forest department for conservation and sustainable use of red sanders, which is an endemic species of the area. Similarly, SBBs at the state-level have allocated amounts to BMCs for biodiversity conservation.

2.4 Model Contractual Clauses, Codes of Conduct, Cooperation and Capacity Building

Implementation of the obligations created under these Articles 19 to 23 of the Protocol regarding creation of model contractual clauses, codes of conduct and best practices, raising of awareness, building of capacity including by technology transfer, collaboration and cooperation is meant to create suitable and required capacity and environment for the effective realisation of ABS as intended by the Protocol.

The legislative and policy framework of India recognises the importance of these measures in translating the Convention and the Protocol into action. Rule 12 of the Rules, 2014 deals with the general functions of the NBA. Items (vii) and (viii) under this Rule make NBA responsible for carrying out awareness building, developing codes and guides among others.

Rule 12 (vii)

Biological Diversity Rules, 2004

“Collect, compile and publish technical and statistical data, manuals, codes or guides relating to conservation of bio-diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge;”

Rule 12 (viii)

Biological Diversity Rules, 2004

“Organise through mass media a comprehensive programme regarding conservation of bio-diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge;”

Considerable work has been done on these since the commencement of the Act, 2002 and the Rules, 2004. Model contractual agreements and clauses have been developed in consultation with stakeholders to meet the requirements of different types of uses identified under the Act, 2002. The different uses include research or commercial utilisation or bio-survey and bio-utilisation, transfer of research results, seeking an intellectual property rights and third party transfers.

The models include written notice in case of non-compliance, administrative sanctions in case of breach of contractual clauses, termination and revocation, liabilities of the user, confidentiality and scope for making amendment, obligations of the applicant during the existence of the agreement, annual status reports, benefit sharing component and details of biological resources/ knowledge associated with biological resources.

NBA with the support of SBBs and domain experts undertook a large scale country-wide capacity building programme to train members of BMCs and local communities to identify elements of biodiversity in their areas and collect TK relating thereto for documentation of these in PBRs. Detailed formats were provided by the NBA to facilitate documentation and chronicling of this knowledge in a scientific and usable manner while maintaining the authenticity of the knowledge. This is now an on-going process. This continuous campaign of capacity building has also helped awareness raising about the Convention, ABS requirements, procedures of PIC and MAT at the grassroots level. It has created capacity in the local communities as “benefit claimers” to hold dialogues on MAT with the users as and when the occasion for these arises. Field experience, as evidenced in the case studies in Part III shows that such documentation and capacity building has raised awareness and created commitments about using the accrued benefits for conservation as well.

NBA maintains continuous engagement with diverse stakeholders for awareness generation including through creation of knowledge products, web site, workshops and other awareness programmes.





III

Case Studies on Implementation of Access and Benefit Sharing Regime

Transition from free access regime to ABS regime has been a challenging process. The Convention was a significant development for the conservers of GRs and practitioners and holders of TK. It recognised their role and held out prospects of equitable sharing of benefits with them. At the same time, it generated scepticism and apprehensions amongst the user community comfortable in the free access regime. Creating an atmosphere of balance and acceptance of a rational ABS regime required dialogue with various stakeholders calling for patience and perseverance supported by suitable policy and awareness building measures. Occurrence and distribution of the biological resources and TK across the length and breadth of the country had its own challenges to offer. The concerted efforts at constituency building for the ABS regime have yielded results. The entire administrative mechanism created for the implementation of the Act, 2002 and the other stakeholders have participated in this process. Following is an account of some important initiatives taken to create this atmosphere and some cases of implementation of the ABS measures.

3.1 India Business and Biodiversity Initiative

Dialogue with the industry and business started during the process of formulation of the Act, 2002. They were an important part of the consultative mechanisms for finalising the provisions of the Act, 2002. The continued efforts of holding a dialogue with industry and business finally found a shape in India Business and Biodiversity Initiative (IBBI).

IBBI was launched in 2014 by the MoEFCC. It is supported by Gesellschaft für Internationale Zusammenarbeit (GIZ), and is hosted by Confederation of Indian Industries (CII). It serves as a national platform to sensitise, guide and mentor industries and businesses, particularly in healthcare, agriculture, forestry and mining for mainstreaming the sustainable use and management of biological resources.

An expert group comprising members of IBBI maintains close contact with MoEFCC, NBA and SBBs on the subject of implementation of ABS measures and has undertaken several initiatives to create awareness of and adherence to these ABS measures. These measures include guidelines on frequently asked questions (FAQs) and sharing of clarification/ policy measures issues by Government of India from time to time. IBBI represents Indian business in CBD's Global Platform for Business & Biodiversity.

3.2 India Biodiversity Awards

India Biodiversity Awards, were instituted in 2012 by MoEFCC in association with UNDP India. These Awards are given every two years in four categories. Each category covers some important aspect of the implementation of three objectives of the CBD. Replicable mechanisms for ABS is one of the categories for the Awards. Three cycles of the Awards have already taken place. The fourth Biodiversity Award will be given on International Day for Biological Diversity on 22 May 2018. Voluntary applications for the Awards in response to the wide publicity bring out cases of innovative and substantive work. These undergo a rigorous scrutiny including through field visits by the jury and best practices are identified. The Awards serve the need of promoting, rewarding and disseminating best practices.

3.3 Indian Institute of Oilseeds Research (IIOR) and Telangana State Biodiversity Board

It is a case of sharing of benefits for access to a bio-resource followed by provisions in agreement for further sharing of benefits arising out of commercialisation of the results of research.

IIOR, headquartered in Hyderabad in the State of Telangana, is one of the national level research institutes under the Indian Council of Agriculture Research. It started a research project in 1999 to improve the yields of Castor (*Ricinus communis*) oilseed crop. This is an important crop for small and marginal farmers. Netherlands Biotechnology Programme partnered in the research project. Six years of research on microbes collected from the villages of Kothakota and Kothagudem of Andhra Pradesh led to a bio-pesticide formulation.

IIOR licensed the results of this research to public and private entrepreneurs following due procedures of law. It received a license fee for transferring the results of research. A percentage of this fee was transferred to the BMCs of the villages from where the soil samples were collected. BMCs have utilised this amount on awareness generation on ABS measures, and promotion of conservation and sustainable use. Agreements with the public and private entrepreneurs for mass production include benefit sharing ranging from 0.1 to 0.5 % following a graded percentage of annual gross ex-factory sale. The Agreement clauses stipulate that the amount would be made over to the SBBs who in turn will transfer 95% of the amount so realised to the BMCs concerned. The BMCs have decided to utilize these resources for conservation of biological resources, regeneration of the rare and endangered species and other related activities.

3.4 Gram Moongligai Company Limited (GMCL)

This is a case of people as cultivators and collectors of medicinal plants and herbs creating a system to secure better remuneration from biological resources provided by them to users. It covers the states of Tamil Nadu, Madhya Pradesh, Odisha and Chhattisgarh. It is a public limited company formed in 2002 with collectors and cultivators holding the majority shares. The objective of the company is to secure remunerative price from user companies accessing medicinal plants and herbs from primary cultivators and collectors. GMCL enters into agreements with companies like Dabur, Himalaya and Nature remedies to provide them with quality components of medicinal plants and herbs as raw materials.

GMCL has developed training packages combining traditional practices and modern techniques to train cultivators and collectors in best cultivation and sustainable harvesting practices. These practices include knowledge of the part of the plant or the herb to be harvested/ collected, manner in which and the extent to which to be harvested/collected and the time and season of the year in which to be sown and harvested/collected.

The initiative has resulted in direct monetary benefits to the people through better price for the resources provided to the industry. It has generated non-monetary benefits through capacity building of the people to negotiate with the markets and through sustainable and scientific harvesting and collection practices leading to conservation.

3.5 Kailash Sacred Landscape Conservation and Development Initiative

The Kailash Sacred Landscape Conservations and Development Initiative (KSLCDI) is a trans-boundary collaborative management initiative involving China, India and Nepal. International Centre for Integrated Mountain Development (ICIMOD), a regional intergovernmental centre with the membership of India, China, Nepal, Myanmar, Pakistan, Afghanistan, Bhutan and Bangladesh, located in Nepal serves as the Project Monitoring Unit (PMU) for this Initiative.

The Kailash Sacred Landscape is a 31,000 sq km region around Mount Kailash, which includes parts of Tibet Autonomous region in China, parts of northern India and adjacent parts of north-western Nepal. The region harbours culturally rich and globally significant biological diversity. KSLCDI was launched in 2009 to meet the challenges posed by anthropogenic interferences to this fragile ecosystem.

A regional technical institution from each country partners with ICIMOD to implement the project. ICIMOD as PMU works through a Regional Technical Advisory Committee and Programme Steering Committee comprising the representatives of all the three participating countries and domain experts. Each country designates a focal technical institution for coordinating the implementation of the project. G B Pant Institute of Himalayan Environment and Development is India's designated focal technical institution for the project. Central Himalayan Environment Association, Wildlife Institute of India and the Uttarakhand State Biodiversity Board are the implementing partners.

Overall aim of the project is to promote transboundary biological diversity and cultural conservation, ecosystem management, sustainable development and climate change adaptations. The project includes country specific initiatives and inter-country collaborations.

Inter-country capacity building Learning Exchange Visits have been organised under the Initiative. In one such visit of Nepal, India shared its experience of creating and implementing ABS measures. India-China-Nepal have collaborated in preparing a landscape map of the area covering the vegetation type and other details with the involvement of local stakeholders. This helps in appreciating the nature and extent of biological resources and associated knowledge shared by the countries.

This transboundary interaction zone of the high Himalayas hosts yarsagumba or caterpillar fungus (combination of parasitic fungus *Ophiocordyceps sinensis* and ghost moth caterpillar *Thitarodes spp.*) which has high economic value and hence has been susceptible to over exploitation. It is an important source of income for villagers living in this trans-boundary interaction zone. A collaborative and cooperative initiative of India and Nepal has sensitized the local communities to the dangers of over exploitation along with the need for sustainable harvesting and conservation.







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