

International Framework on Access and Benefit Sharing regime

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ABSTRACT

During the Rio Earth Summit in 1992 the convention on Biodiversity was adopted.

CBD and its Bonn Guidelines defines Access and Benefit Sharing principle to respect the parties country's sovereignty rights on animals, plants and other genetic resources found within its territories. In 2010 the Nagoya protocol for CBD specified the Access and Benefit Sharing principle to enhance legal framework for all the parties involved in utilization a genetic resources. Any interested foreign researcher or company may only access a genetic resources and traditional knowledge associated with the genetic resources only when it is allowed by the providing country. This paper will examine the various international instruments, providing legal framework to regulate the Access and Benefit Sharing regime.

Introduction:

Before the Convention on Biological diversity entered in the force on 1993, access to such biological resources or genetic resources and associated knowledge with them was free access and easily available to the user. As most of the biological resources are located in the developing country the ABS regime was not that developed. Therefore there was no obligation on the to share benefit derived out of the utilization of the genetic resources to the sovereign state which is providing the biological resources. Further the issue of obtaining the IPRs by the industrialized nations has mark significant impact on the adoption of an international instrument in ABS regime. The international discussion have started over the fact that IPRs rewarded to the human inventiveness but the raw materials on which this inventions are based upon have been ignored. In fact it is found that IPRs regime did not acknowledge the contribution of indigenous community and farmers to the conservation and maintain ace and preserving of the genetic resources by the cultivating process and through using their traditional knowledge associated with biological resources transmitted to by generation to generation.

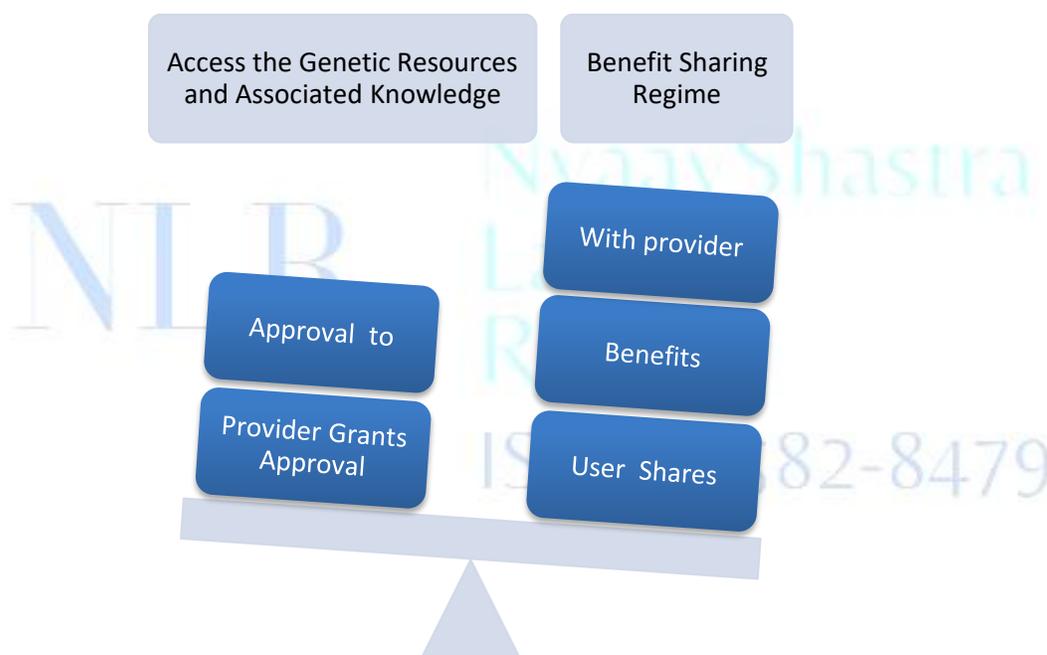
In almost 8th decade of the 20th century when the restriction on the access of the genetic resources had started by the several countries. The concern of the developing countries was their contribution and value of their traditional knowledge and their contribution in providing the genetic resources should be properly recognised and they should be eligible to get the benefit derived from the utilization of their biological resources and associated knowledge more fairly and equitably. They wanted that their sovereign rights over natural resources be recognised and respected.

Important International instruments on ABS Regime

Convention on Biological Diversity

ABS Regime In CBD

Provider v. Users



The three ultimate goals of the Convention on Biological Diversity, as articulated in Article 1 of the convention one among them is “fair and equitable sharing of the advantages arising out of the use of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking under consideration all rights over those resources and to technologies, and by appropriate funding”. The Convention on Biological Diversity acknowledges absolutely the and sovereign rights of States over their natural resources in areas within their jurisdiction. Parties to the Convention therefore have the authority to work out access to genetic resources in areas within their

jurisdiction.¹

The third objectives concern with the access to genetic resources in exchange for the fair and equitable share of the benefit derived from their utilization.

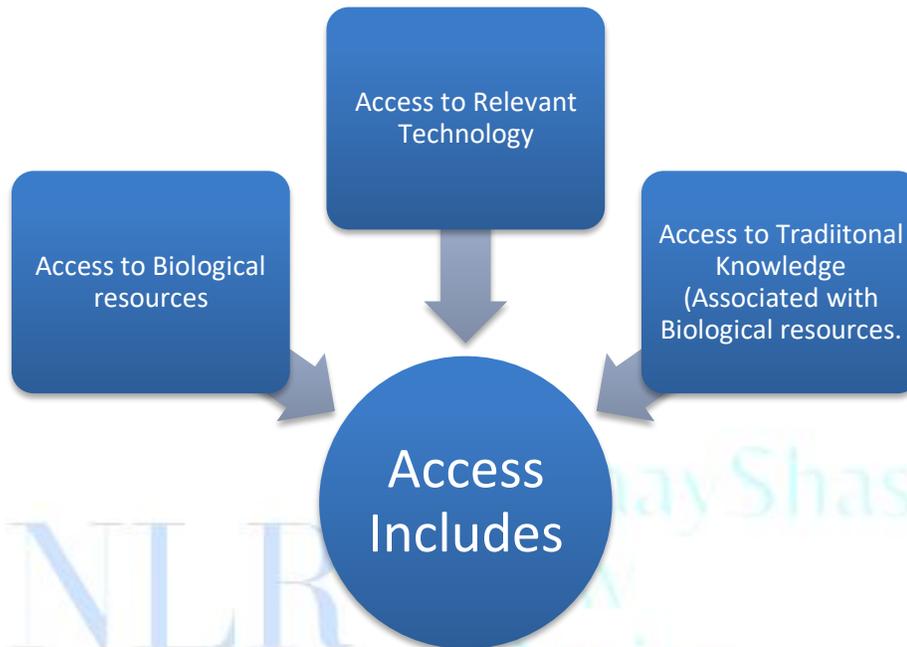
According to CBD, Biological resources are the property of the states on whose boundaries these resources are found. These biological resources includes , The ABS system covers all types of genetic resources, be they wild or domesticated; of animal, plant, microbial or other origin; situated on or in private or public land or waters. Excluded from the scope of application of the CBD are human genetic resources. It applies to research on resources that are both located and collected in situ or procured from ex situ facilities or from academic partners.

The CBD has come up with a procedure for the regulation of accessing the genetic resources and sharing the benefit arises from it. The Third Goal of the convention involves is the joint regulation of accessing the Genetic resources and the sharing the benefit arising out of it. These mechanism is also applicable to Genetic resources, traditional Knowledge associated with.

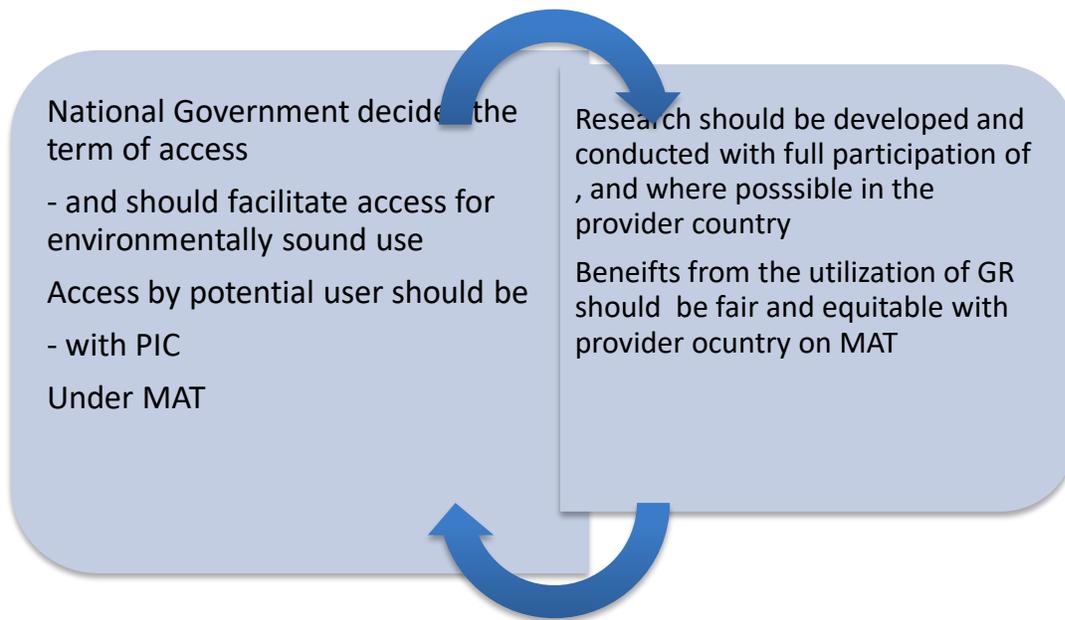
¹ History - CBD. <https://www.cbd.int/abs/background/>

Regulation of 'Access' under CBD

'Access' includes 3 types of the access



Article 15(1) of Convention on Biodiversity provides the provision regarding the 'Access'. Through this article the CBD clarified that the Doctrine of the state sovereignty also applies on the natural resources found in the territorial boundaries of the State. Hence, the CBD assures the regulation on the accessing the biological resources from the sovereign State. CBD under this article introduces the significant rubrics on access to biological resources, about the establishment of the domestic authorities to approve the access to the natural (Biological) resources the Pre-requisites to access the biological resources i.e. Prior Informed Consent ; and establishing the Contractual legal drafting in form of Mutually Agreed Terms.



The central government empowered to fix how the biological resources can be accessed. With regulation of the access they should assure that access should facilitate for environmentally sound use.

² It further state that the state government does not have any sovereign right over the biological

² Article 15 of CBD , 1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.

3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and

Articles 16 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.

4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.

5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.

6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties.

resources all should be governed by the national legislation. The national government is having discretionary power to decide that the access of the biological resources is environmentally sound or not in its jurisdiction. It will be depends upon considering the most instantaneous implicit benefit of enabling access and minimalizing or abolishing restraint will be to increase the prospect that biological resources inside areas under nation's jurisdiction will be used, that will resulted in to increase of probability equitable benefit sharing.

Article 15(3) of the Convention of Biodiversity provides that only the state under whose territory the biological resources has been used or the country of origin has right to grant the access. It limits the access to genetic resources by the state without the approval grant by the country of origin. Hence, it provides that

- ✚ the country of origin which possess those of the biological resources in in-situ or,
- ✚ the country which has acquired the genetic resources in concurrence with the Convention of Biological diversity

These two category of biological resources enable a provider to the benefits under CBD.

Regulation of benefit Sharing under CBD

CBD obliges each member state to take statutory, administrative or policy actions to fulfill the one of the goal of convention i.e. fair and equitable benefit sharing regime with country which provides the access to the genetic resources.³The term 'benefit' has not been defined under the CBD but it expects different types of benefit sharing which may be monetary or non- monetary. These benefits may includes any of the below

Transfer of the research result⁴

commercial or other benefit arising out of the use of the biological resources

7. 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.

³ Article 15 (7) of CBD

⁴ id

Transfer of technology⁵

participation in scientific research⁶

The benefit derived out of the utilization of the biological resources should be based on MAT.

Traditional knowledge and CBD

Article 8(j) of the CBD puts an obligation on the contracting parties to respect, preserve and maintain traditional knowledge, their innovations, and practices of indigenous peoples and local communities concerned with the biological resources. It further says that contracting parties have to promote the wider application of traditional knowledge, innovation and practices subject to the prior informed consent and mutually agreed terms. With the proper utilization of the traditional knowledge associated with the biological resources, state parties have to promote the fair and equitable sharing of benefits derived out of the utilization of the associated knowledge.

The Convention recognizes the benefit sharing regime in utilization of the genetic resources

| PROVISION | CONTENT |
|-----------|---|
| PREAMBLE | NOTES THE DESIRABILITY OF EQUITABLY SHARING BENEFITS ARISING FROM THE USE OF TRADITIONAL KNOWLEDGE, INNOVATIONS, AND PRACTICES RELEVANT TO THE CONSERVATION OF BIOLOGICAL DIVERSITY AND THE SUSTAINABLE USE OF ITS COMPONENTS. |

⁵ Article 16(3) CBD

⁶ Article 15(6) CBD

| | |
|----------------------|---|
| ARTICLE 1 | LISTS ABS AS ONE OF THE THREE CBD OBJECTIVES. |
| ARTICLE 2 | DEFINES THE TERMS “GENETIC RESOURCES” AND “GENETIC MATERIAL”, AS WELL AS THE TERMS “COUNTRY OF ORIGIN OF GENETIC RESOURCES” AND “COUNTRY PROVIDING GENETIC RESOURCES”. |
| ARTICLE 8(J) | REQUIRES CBD PARTIES TO RESPECT, PRESERVE, AND MAINTAIN THE KNOWLEDGE, INNOVATIONS, AND PRACTICES OF ILCS; PROMOTE THEIR WIDER APPLICATION WITH THEIR HOLDERS’ APPROVAL AND INVOLVEMENT; AND ENCOURAGE THE EQUITABLE SHARING OF THE BENEFITS ARISING FROM THEIR UTILISATION. |
| ARTICLE 15(1) | CLARIFIES THAT STATES HAVE SOVEREIGN RIGHTS OVER THEIR NATURAL RESOURCES AND THE AUTHORITY TO REGULATE ACCESS. |
| ARTICLE 15(2) | REQUIRES CBD PARTIES TO FACILITATE ACCESS FOR ENVIRONMENTALLY SOUND PURPOSES AND NOT TO IMPOSE RESTRICTIONS THAT ARE COUNTER TO THE CBD. |
| ARTICLE 15(3) | PROVIDES THAT ONLY THE COUNTRY OF ORIGIN OR A COUNTRY THAT HAS ACQUIRED GENETIC RESOURCES IN COMPLIANCE WITH THE CBD MAY GRANT ACCESS TO GENETIC RESOURCES. |
| ARTICLE 15(4) | PROVIDES FOR ACCESS ONLY ON MAT. |

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|----------------------|---|
| ARTICLE 15(5) | PROVIDES FOR ACCESS SUBJECT TO PIC. |
| ARTICLE 15(6) | PROVIDES FOR FULL PARTICIPATION OF THE PROVIDER IN SCIENTIFIC RESEARCH BASED ON THE GENETIC RESOURCES PROVIDED. |
| ARTICLE 15(7) | REQUIRES CBD PARTIES TO TAKE LEGISLATIVE, ADMINISTRATIVE, OR POLICY MEASURES TO SHARE BENEFITS FROM RESEARCH AND DEVELOPMENT AND COMMERCIALIZATION EQUITABLY AND BASED ON MAT. |
| ARTICLE 16(3) | REQUIRES CBD PARTIES TO TAKE LEGISLATIVE, ADMINISTRATIVE, OR POLICY MEASURES TO PROVIDE ACCESS TO AND TRANSFER OF TECHNOLOGY THAT MAKES USE OF GENETIC RESOURCES ACCESSED ON MAT AND IN ACCORDANCE WITH INTERNATIONAL LAW. |
| ARTICLE 19(1) | REQUIRES PARTIES TO THE CBD TO TAKE LEGISLATIVE, ADMINISTRATIVE, OR POLICY MEASURES TO ENSURE THE EFFECTIVE PARTICIPATION BY PROVIDERS IN BIOTECHNOLOGICAL RESEARCH ON THE GENETIC RESOURCES. |
| ARTICLE 19(2) | PROVIDES FOR PRIORITY ACCESS TO THE RESULTS AND BENEFITS FROM BIOTECHNOLOGIES BASED ON GENETIC RESOURCES PROVIDED. |

2.2.2 Nagoya Protocol

The Nagoya protocol is international treaty under the convention on biological diversity. Whose objective is to ensure the fair and equitable benefit sharing arising out of the utilization of the biological resources and traditional knowledge associated with it. When we talk about genetic resources we are referring to entry point of these genetic resources as well as which commonly known as traditional knowledge of indigenous and local communities. Hence, it is important international instrument in this regard.

According to article 32 of the NP States can become the member to the protocol the from 2nd February 2011 to 1st February 2012 as it was open for signature. After receiving minimum 50 countries ratification the protocol can come into force. Within 3 months the target has been achieved and the protocol came in to the force.

For proper implementation and preparation for its existence, the CBD COP 10 established and open ad hoc Intergovernmental Committee for the Nagoya Protocol on ABS (ICNP). The authority was empowered to make necessary preparation. The first meeting of the ICNP were held to address issues stated below:

-  Modalities function of the ABSCH
-  issues relating to capacity building
-  Raising the awareness
-  The amenability of mechanism stated under article 30 of the Nagoya Protocol.

The second meeting of ICNP held to address

-  Guidance for the financial mechanism
-  Budget for the enforcement of the Nagoya Protocol
-  Drafting the provisional agenda for the meeting of the contracting Parties to the protocol
-  The necessity for modalities of a global multilateral; benefit sharing instrument

OVERVIEW

The convention is divided in to 27 clauses with 36 articles providing the effective provisions and one annexure which includes the list of monetary and non- monetary benefits.

Two main important aspect of this protocol is

1. It is legally binding instrument at international level that regulates the access of biological resources and traditional knowledge and ensure the fair and equitable benefit sharing derived out of the use of the biological resources and traditional knowledge associated with it.

2. By signing it countries have committed to regulate utilization of genetic resources in their jurisdiction and verify and assure that these genetic resources are being used in their country have been legally accesses in the country of origin. genetic resources are effectively intangible . we are referring the genetic material to genetic information that is biological resources .

3.

Genetic resources are primarily materials of high value for whole biotechnology sector, cosmetic companies pharmaceuticals companies which are based on biological resources. However these sectors unfortunately utilize the biological resources without attributing and without sharing the benefits with those who protects the resources. which is in just situation as it does not provide any incentive in order for the countries rich in the biodiversity to continue protecting their biodiversity and not destroying it or no basing their development in its destruction as we have done in develop countries by giving them value we can ensure their incentives and repayment. For the conservation of biodiversity and also to provide the most basic need of the countries where these biological sources have been found. In these regard this protocol provides the fined list of possible ways of benefit sharing. But rather it offer flexibility o be adapted to the needs of specific community and countries. , Which could range from capacity building , to enhance their agricultural production or transfer of technology or medical clinic to treated health of the locals. One of the protocol's most notable innovation is the recognition at international sphere is to recognition that the traditional knowledge do not belong to the state rather belongs to the local community .

Access to Genetic Resources Under 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.

2. 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.

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

4. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in the Annex.

5. 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.

Annex. Monetary and Non-monetary Benefits

1. Monetary benefits may include, but not be limited to:

(a) Access fees/fee per sample collected or otherwise acquired;

(b) Up-front payments;

(c) Milestone payments;

- (d) *Payment of royalties;*
- (e) *Licence fees in case of commercialization;*
- (f) *Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;*
- (g) *Salaries and preferential”*

One of the important basic component of ABS is the ‘Access’. Access in general sense means utilizing the biological resources or associated knowledge thereto. The term ‘Access’ is not defined under the CBD. But in general sense it means that utilization of the biological resources for research purpose or for commercial purpose from the provider countries. The protocol recalls the third objective of the convention on Biological Diversity, Fair and Equitable benefit Sharing derived out of the utilization of the biological resources and associated knowledge⁷. It reaffirms the sovereign rights of the State over its natural In-situ and Ex- situ biological resources and traditional knowledge associated with it. The Protocol provides a foundation base for the proper correspondence and negotiation for accessing the Biological Resources and Associated knowledge.

Early attempts to implement these CBD provisions and develop domestic ABS frameworks revealed lack of conceptual clarity about ABS transactions and corresponding legal challenges. These related, for instance, to the frequently unclear status of the ownership over genetic resources at the domestic level, resulting in lack of clarity on who was responsible to grant PIC.⁸

⁷ Preamble, Nagoya protocol , 2010

⁸Unraveling the Nagoya Protocol: A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity, Elisa Morgera Elsa Tsioumani Matthias Buck-e-edition of 2015 , Article 6. Access to Genetic Resources
https://www.jstor.org/stable/10.1163/j.ctt1w76vvq.13?seq=1#metadata_info_tab_contents last visited on 21, January, 2021

The 'access' provision under the protocol, which points linkage between the Article 15 of the CBD, which assure the sovereign rights of the State and pre-requisites of the access i.e PIC and MAT. According to the article 6 of the Nagoya Protocol State under whose territory the genetic resources the access has been made the sovereign state has right to regulate and monitor the access to the biological resources found in its territory. For that the prior informed consent is required to be obtained by the user of the biological resources in all the case.

The article advances the article 15 of the CBD in three ways.



Based on the reaffirmation of the principle of national sovereignty over natural resources, Parties have the authority to regulate access to genetic resources and require PIC as the key precondition for access, unless they determine otherwise, subject to domestic ABS legislation or regulatory requirements.⁹¹⁰ Furthermore the elaborative list of the standards and provision regarding the PIC and for framing the legislative, administrative policies or laws of the provider country for regulating the access to the biological resources.

⁹ Article 6. Access to Genetic Resources Unraveling the Nagoya Protocol: A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity, of **Elisa Morgera ,Elsa Tsioumani Matthias Buck**

¹⁰ Article 6(2) of Nagoya Protocol on Access and Benefit Sharing

The combined reading of the two provisions, however, may arguably give rise to differing interpretations.³² Article 6(1) clearly indicates that access to genetic resources is subject to the provider Party's PIC, unless that Party *specifically* determines that it does not require PIC. In Paragraph 2, a new scenario is introduced, which did not exist in the international law of access before the Nagoya Protocol: the right of indigenous and local communities (ILCs) to determine access to genetic resources, where they have the established right to grant access to such resources. This provision needs to be distinguished from Articles 7 and 12 of the Nagoya Protocol which regulate access to traditional knowledge associated with genetic resources.^[11]

Article 6(3) calls on Parties 'requiring PIC' to take the necessary legislative, administrative or policy measures satisfying a series of standards and minimum requirements. Article 6(3) may thus be interpreted so as to imply that the PIC requirement must be explicitly spelt out in domestic measures.¹² This provision is portrayed in a-g of article 6(3). According to which PIC is prerequisites for the accessing the biological resources and obliged the state to frame the domestic legislation to :

¹¹ Article 6 (2) of the Nagoya Protocol on access and benefit sharing
https://www.iucn.org/sites/dev/files/import/downloads/short_paper_article_6.pdf Last visited on 7th February, 2021

¹² 3.1 National Sovereignty over Genetic Resources and Domestic Measures on Access-
<https://www.jstor.org/stable/10.1163/j.ctt1w76vvq.13>, last visited on 25th July 2020

Certainty in law related to ABS

Precise laws on ABS

Transparency laws monitoring the ABS

Equal Treatment of access application for Citizens and Foreigners

No Arbitrariness in Access laws

Procedure of how to apply for Access of genetic resources

Provide a written and straightforward decision in writing

Access permit should reflect the MAT and once permitted the same is notified by the provider to the ABSCH

Establishing criteria and process for obtaining the PIC and MAT

Establishing the grounds when the MAT is Required

ISSN: 2582-8479

However, the article says that Contracting parties are free too decides how to implement these measures by legislative , administrative or through policy measures.

Access to Traditional Knowledge Associated with Genetic Resources ¹³

“In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and

¹³ Article 7 of the Nagoya Protocol on Access and Benefit Sharing

local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.”

Regarding access to traditional knowledge associated with genetic resources, the Protocol obliges Parties to take measures, in accordance with their domestic legislation, aiming to ensure that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the PIC or approval and involvement of these communities and that mutually agreed terms are established. Parties are also required to take measures to provide that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with the ILCs holding such knowledge. ¹⁴

Article 7 of the Nagoya Protocol advances the text of the Convention on Biological Diversity, and establish the obligation on the contracting parties to foster the legal domestic framework on access to the associated knowledge to the biological resources. In the other words it states that Prior informed consent before accessing the traditional knowledge should be mandatory and involvement of the indigenous community while granting the access is must. The PIC should further supported by establishing the provisions of Mutually Agreed Terms (MAT).

However the protocol is salient in recognizing the right of the indigenous peoples and local community for Pic to permitting their traditional knowledge associated with biological resources but, it puts and obligation on the states parties to establish the national measures legislative, administrative, policies in order to manage the rights of indigenous people and local community in granting the approval for access to their traditional knowledge.

¹⁴ Study to analyse legal and economic aspects of implementing the Nagoya Protocol on ABS in the European Union, Final report Version: 10 August 2012, Institute for European Environmental Policy Together with: Ecologic Institute, Germany GHK, United Kingdom, <https://ec.europa.eu/environment/nature/biodiversity/international/abs/pdf/ABS%20FINAL%20REPORT.pdf>, last visited on 9th February, 2021

Article 7 specifically provides that the PIC for accessing the traditional knowledge is independent from PIC for the accessing the genetic resources as it also includes the approval and involvement of the Indigenous people and local community. Conceptually, the State PIC is based on the principle of state sovereignty over the natural resources, while the PIC requirement concerning the associated knowledge from the local community is relating to the human rights of the indigenous people and local community enumerated in International Covenant on Economic, Social, and Cultural Rights, 1966. even the preamble of the protocol also emphasizes on the same by stating that

“the interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, and the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components and for the sustainable livelihoods of these communities.”¹⁵

The Protocol also advances the UNIDRIP’s acknowledgement on the rights of the indigenous people which emphasizes on the development, maintenance, protection of the traditional knowledge associated with the genetic resources of the local community and indigenous people. Hence it can be said that as the traditional knowledge is owned by indigenous and local community which is inter alia to their way of living, is indispensable for the contacting parties to advance the implementation mechanism with effective partaking of the local community indigenous people. The domestic laws on how the community PIC will be realized may differ from country to country depending upon the customary laws, international obligation and internal laws.

At international level yet there is no legal instrument which specify the proper procedure requirement for community PIC over the associated traditional knowledge.

The language of Article 7 is qualified and attention must be paid to the specific terms used in it. First of all, the obligation to provide for procedures for community PIC and establishment of MAT is limited to traditional knowledge ‘held’ by indigenous and local communities. The Protocol does not arguably require community PIC for access to traditional knowledge ex situ, for example documented in

¹⁵ Preamble, Paragraph ___ of the Nagoya protocol on Access and Benefit Sharing

databases, genebanks or libraries outside community control, if it is no longer held by the community.

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The Protocol also establishes the following obligations for Parties:

to establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations

- **to take into consideration, in accordance with domestic law, ILCs' customary laws, community protocols and procedures with respect to traditional knowledge associated with genetic resources**

to support the development by ILCs of traditional knowledge-related community protocols, minimum requirements for mutually agreed terms, and model contractual clauses

- **not to restrict, as far as possible, customary use and exchange of genetic resources and traditional knowledge associated with genetic resources.**

ISSN: 2582-8479

Global Multilateral Benefit Sharing Mechanism ¹⁷

“Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in trans boundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits

¹⁶ Book Chapter Article 7. Access to Traditional Knowledge Associated with Genetic Resources. Pg no. 175 Book Author(s): Elisa Morgera, Elsa Tsioumani and Matthias Buck e –copy Available on <https://www.jstor.org/stable/10.1163/j.ctt1w76vvq.14pp>, last visited on 8 the February, 2021

¹⁷ Article 10 of the Nagoya Protocol on Access and Benefit Sharing.

shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.”

The second core component of the Protocol – benefit-sharing – is also addressed in several articles. Benefits to be shared shall include not only those arising from the utilization of genetic resources but also benefits from subsequent applications and commercialization. Each Party is to take legislative, administrative or policy measures to implement the benefit-sharing obligation.

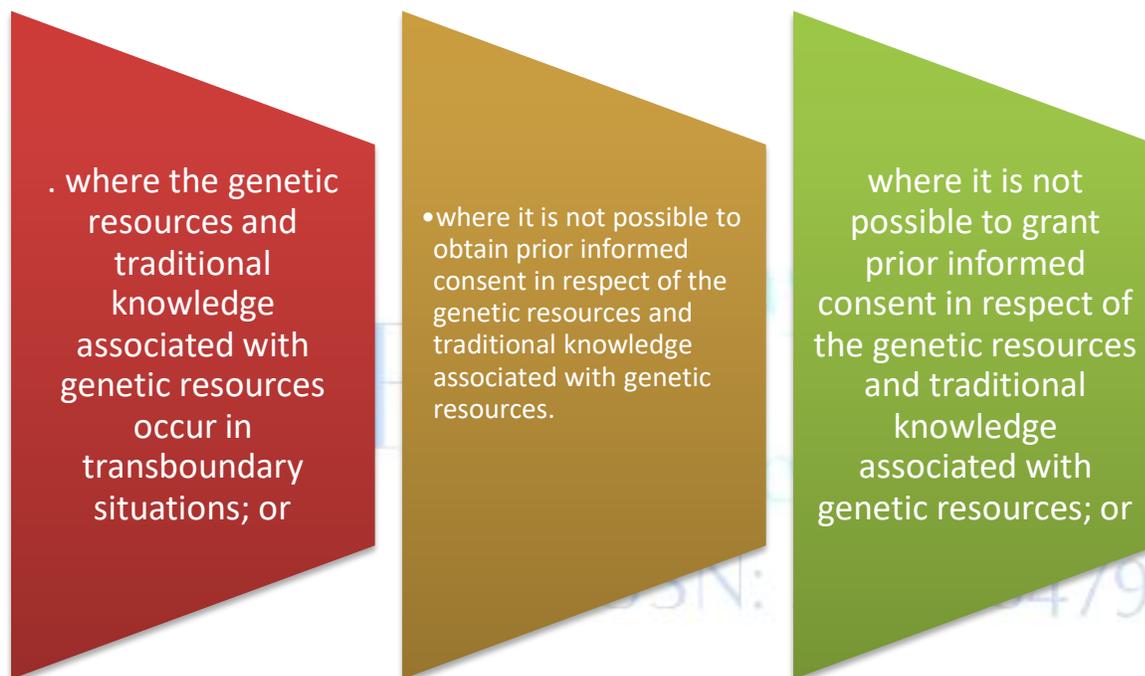
The identification of benefits and arrangements details shall be agreed through MAT between the user and provider. Parties can use as a guide the Protocol’s Annex, which contains a list of non-exhaustive potential monetary and non-monetary benefits. Each Party shall also encourage the development, update and use of sectoral and cross-sectoral model contractual clauses for MAT and voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing (Articles 19 and 20). Furthermore, Parties shall encourage users and providers to direct benefits to conservation and sustainable use of biological diversity (Article 9).

If ILCs have established rights over the resources, Parties shall take measures aiming to ensure that benefits are shared based on MAT with the concerned ILCs. The Protocol also sets the foundation for consideration of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain PIC.

During the negotiations of the Nagoya Protocol, there were several issues identified on which parties could not agree on and for which further discussion was required, so Article 10 was meant to offer a frame in which these issues could be tackled at a later stage.¹⁸

The GMBSM is meant to possibly address the sharing of

benefits in three situations:



Domestic-level benefit-sharing measures are to provide for the fair and equitable sharing of benefits arising from the utilization of genetic resources with the contracting party providing genetic resources. Utilization includes research and development on the genetic or biochemical composition of genetic resources, as well as subsequent applications and commercialization. Sharing is subject to mutually agreed terms. Benefits may be monetary or non-monetary such as royalties and the sharing of research results.¹⁹

¹⁸ The global multilateral benefit-sharing mechanism under the Nagoya Protocol Author: Daniela Rat <https://politheor.net/the-global-multilateral-benefit-sharing-mechanism-under-the-nagoya-protocol/> last visited on 21st January, 2021.

¹⁹ About the Nagoya Protocol,

Conclusion:

Before the adoption of the Convention on Biodiversity the genetic resources and associated knowledge were free to access for all mankind . The Convention on Biodiversity was open for signature for the world countries in the year of 1992. After receiving the minimum number of ratification on 29th December 1994 the convention on biological diversity come in to force. The Convention on Biological Diversity includes all three types of Biodiversity i.e Ecosystem biodiversity, Species Biodiversity and genetically Diversity

In 1992, at the Earth Summit held in Rio de Janeiro, Brazil, world leaders agreed on a comprehensive strategy for "sustainable development" -- meeting our needs while ensuring that we leave a healthy and viable world for future generations.²⁰ The Convention is one of the important pact wherein the majority of the state has agreed upon the obligation to make sure the preservation of biological diversity, using the genetic resources and its components sustainably and assuring the fair and equitable sharing of the benefit derived out of the use of the genetic resources or associated traditional knowledge.

ISSN: 2582-8479

<https://www.cbd.int/abs/about/default.shtml/> , last visited on 21st January 2021

²⁰²⁰ Convention on Biological Diversity , Background , <https://www.cbd.int/youth/0003.shtml>, Last visited on 21st January, 2021 .