

India's submission in response to CBD Notification 2019-024 dated 25 February 2019 relating to Article 10 of Nagoya Protocol on ABS

The CBD Secretariat in pursuance to decision NP-3/13 paragraph 4, vide its notification no. 2109-024 dated 25 February 2019, has requested to submit:

- i. information on specific cases which may support the need for a global multilateral benefit sharing mechanism that are not covered under the bilateral approach, accompanied by an explanation as to why such cases cannot be covered under the bilateral approach of the Nagoya Protocol; and
- ii. options for possible modalities for addressing those cases including through a global multilateral benefit sharing mechanism.

Article 10 provides for Parties to consider the need for and the modalities of a global multilateral benefit sharing mechanism to address sharing of benefits from the utilization of genetic resources (GRs) or traditional knowledge (TK) associated with genetic resources that occur in transboundary situation in which it is not possible to grant or obtain PIC. The benefits are to be used to support the conservation and sustainable use of biodiversity.

Article 10 of the Nagoya Protocol identifies two situations for the creation of a Global Multilateral Benefit Sharing Mechanism (GMBM): (i) genetic resources (GRs) and associated traditional knowledge (TK) that occur in transboundary situations; or (ii) genetic resources and associated traditional knowledge for which it is not possible to grant or obtain PIC.

In respect of (i) above, the mere occurrence of GRs and associated TK in transboundary situation does not support the need of a GMBSM. Whenever countries of origin for those genetic resources that are found *in situ* within the territory of two or more countries can be identified, benefit-sharing through bilateral approach by cooperation among those countries is the default mechanism. It is only in such situations where the countries of origin cannot be identified after making reasonable efforts, or in situations where it is impossible to grant or obtain PIC that the need for GMBSM would arise.

In India, ABS mechanism is being implemented through the Biological Diversity Act, 2002. Over a period of time, there has been a steady growth in the number of applications received under the Act seeking access. As one of the pioneering countries in implementing ABS mechanism and with experience from a wide range of sectors, India has so far not come across any situation where PIC could not be obtained for a biological resource.
