

## **India's submission in response to CBD Notification 2017-094 and 2017-136 dated 22<sup>nd</sup> September 2017 & 8<sup>th</sup> December 2017 relating to Article 10 of Nagoya Protocol on ABS**

### ***Article 10. Global Multilateral Benefit-sharing Mechanism***

*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 transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits 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.*

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.

### **Information, including practical experiences, if any, on situations in which it is not possible to grant or obtain prior informed consent in relation to in situ or ex situ genetic resources and associated traditional knowledge (paragraph 4 of decision NP-2/10)**

Pursuant to the CBD, India enacted the Biological Diversity Act in 2002, and notified Biological Diversity Rules in 2004, to give effect to the provisions of this Convention, including those relating to Access and Benefit Sharing (ABS). The Act is implemented through a three-tiered institutional mechanism at the national, state and local levels. The National Biodiversity Authority (NBA) has been set up in October, 2003. The Nagoya Protocol on ABS is also being implemented through the Biological Diversity Act, 2002 at the national level. The NBA, as Competent National Authority, grants approval for access to biological resources through an agreement with the applicant. The agreement is an evidence of prior informed consent (PIC) and mutually agreed terms (MAT), and is equivalent to the permit provided in Article 6.3 (e) of the Nagoya Protocol.

So far, NBA has received 1989 ABS applications for different activities envisaged in the Act. There have been:

- i. 375 applications for access to biological resources and/or associated traditional knowledge;
- ii. 51 applications for seeking prior approval of NBA for transferring results of research;
- iii. 1407 applications for seeking prior approval of NBA for applying for intellectual property rights; and
- iv. 81 applications for seeking approval of NBA for third-party transfer of the accessed biological resources and/or associated traditional knowledge.

Out of 1989 applications received by the NBA, 1196 applications have been cleared for approval, i.e. draft agreements (MAT) have been communicated to the applicants for execution. Of these, 671 ABS agreements have been signed, indicating approval for the activities for which permission is sought by the applicant. India has so far published 86 IRCCs on the ABS Clearing House of CBD.

Out of the applications cleared for approval, 74% of the applications seek grant of approvals for accessing plants, 7% for accessing animals and 19% for accessing micro-organisms. These applications relate to (i) biological resources or (ii) biological resources and associated traditional knowledge.

Biological resources mentioned in the applications are procured from the wild, domesticated or from cultivated area (*in situ*) or from collection centres such as botanical gardens, gene banks, seed banks and microbial culture collections (*ex situ*). The applications cleared for approval are from different sectors including pharmaceuticals (60%), nutraceuticals (12%), environmental bioremediation (4%), cosmetics (3%), agriculture (9%) and academic research (11%).

As one of the pioneering countries in implementing ABS mechanism 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.

It is relevant to inform that the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 notified under the Biological Diversity Act provide that in cases where beneficiaries are not identified, monetary benefits accruing from commercial utilization will be used to support conservation and sustainable use and to promote livelihoods of the local people living in the area where the biological resources were accessed.

#### **Views on the way forward in relation to Article 10 (paragraph 5 of decision NP-2/10).**

Article 10 of the Nagoya Protocol identifies two situations for the creation of a Global Multilateral Benefit Sharing Mechanism (GMBSM): (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.

However, 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, as also rightly recognized at the Second meeting of the Conference of Parties serving as the meeting of the Parties to the Nagoya Protocol (COP-MOP) in its decision NP 2/10 on the need for and modalities of a global multilateral benefit-sharing mechanism.

In consonance with India's earlier views submitted to CBD Secretariat pursuant to the notification on "Submission of views in preparation for the Expert Meeting on the need for and modalities of a global multilateral benefit-sharing mechanism and the first meeting of the Compliance Committee of the Nagoya Protocol" (SCBD/ABS/VN/jh/84620), it is reiterated that only in such situations where the countries of origin cannot be identified after making reasonable efforts, and in situations where or it is impossible to grant or obtain PIC, the need for GMBSM can be supported.

It is important that the need for a GMBSM has to be determined first. Once the need for a GMBSM is established, the modalities as well as implications of different scenarios on these modalities may be ascertained.

Some relevant issues relating to possible modalities that may then be considered keeping into consideration how GMBSM could contribute to conservation and sustainable use of biodiversity at the global level, include: existing benefit sharing mechanisms; nature of GMBSM; funding source; institutional arrangements; administration; administrative cost; decision making; monitoring of utilisation of funds etc.

Implementation of Nagoya Protocol and learning from this experience, which is an ongoing process, may go hand in hand with discussions on potential situations that may support the creation of a GMBSM, and the possible modalities for a GMBSM.

\*\*\*\*\*