

CHALLENGES IN IMPLEMENTING ABS MECHANISM: INDIAN EXPERIENCE

(IAC - MEETING ON CAPACITY BUILDING FOR THE IMPLEMENTATION OF
NAGOYA PROTOCOL 15-17 SEPT 2015, MONTREAL)

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As per Biological Diversity Act- 2002,(BDA) Rules 2004 & also Rules framed by States (Provincial Governments)

* *The Regulators / Facilitators / Promoters in India are*

- Central Govt. of India
- National Biodiversity Authority(NBA)Autonomous Regulatory Body
- State/Provincial Govts.
- State Biodiversity Boards(SBBs) Autonomous Body- Provincial Level.
- Biodiversity Management Committees (Local / Grass Root Level- Statutory Body)

* **Possibility of-**

- Overlapping roles
- Mis-understanding
- Mis-communication
- Clash
- Conflict

For Effective implementation of Nagoya Protocol-

There is a need to bring-

Better Understanding

Convergence

Synchronisation

Synergy

➤ Main Players on Ground- -- NBA(National) & SBBs (Provincial Authorities)

-Should be on same page

➤ Central & State(Provincial) Govts are basically-

Policy makers and have little role in day to day implementation of Biological Diversity Act and Nagoya protocol.

➤ Biodiversity Management Committees (BMCs) are actually on ground and as of now work mostly under the guidance of SBBs and NBA.

Indian Situation

- **BDA – 2002 ; Rules- 2004(National) ; Rules framed by States – Federal Structure – Central & Provincial Govts.**
 - Envisage a **decentralised** system of ABS regulation--
- **Providers** – Individuals, Institutions, Farmers, Indigenous communities
Locals, BMCs, SBBs, NBA.
- **Users** – Individuals, Industry, Institutions, Researchers, Academic Institutions, Multinational Companies (Indian/Non Indian)

CAPACITY BUILDING – FIRST PROJECT- ABS REGIME

INDIA-UNDP - BIODIVERSITY PROJECT

-Title- Strengthening Institutional Structures to Implement the Biological Diversity Act of India

- Launched in 2009 in Two Provinces(states)
- Institutions -NBA, SBBs, BMCs –

Areas of Capacity Building

- Awareness Generation
- Documentation of Biodiversity
- Conservation
- Access & Benefit Sharing

NAGOYA PROTOCOL (NP)

- Came into force on 12 Oct 2014
- India played a stellar role
- Align our Acts and rules in line with NP ?
- NP- Subject to national Legislation
- If required amend BDA, 2002 ; Rules 2004 & Rules framed by States
- We need to harmonize Domestic Law /Regulations with NP (inter'nal ABS regime)

SBBs (Provincial Authorities) need to fine tune its rules—

- In line with Biological Diversity Act
- Avoid friction with NBA
- Improve Techno-legal capabilities
- Develop thorough understanding of NP and ABS guidelines 2014 (Central Govt)

Nagoya Protocol

(Article – 2 – Terms Defined)

❖ Utilization of Genetic Resources

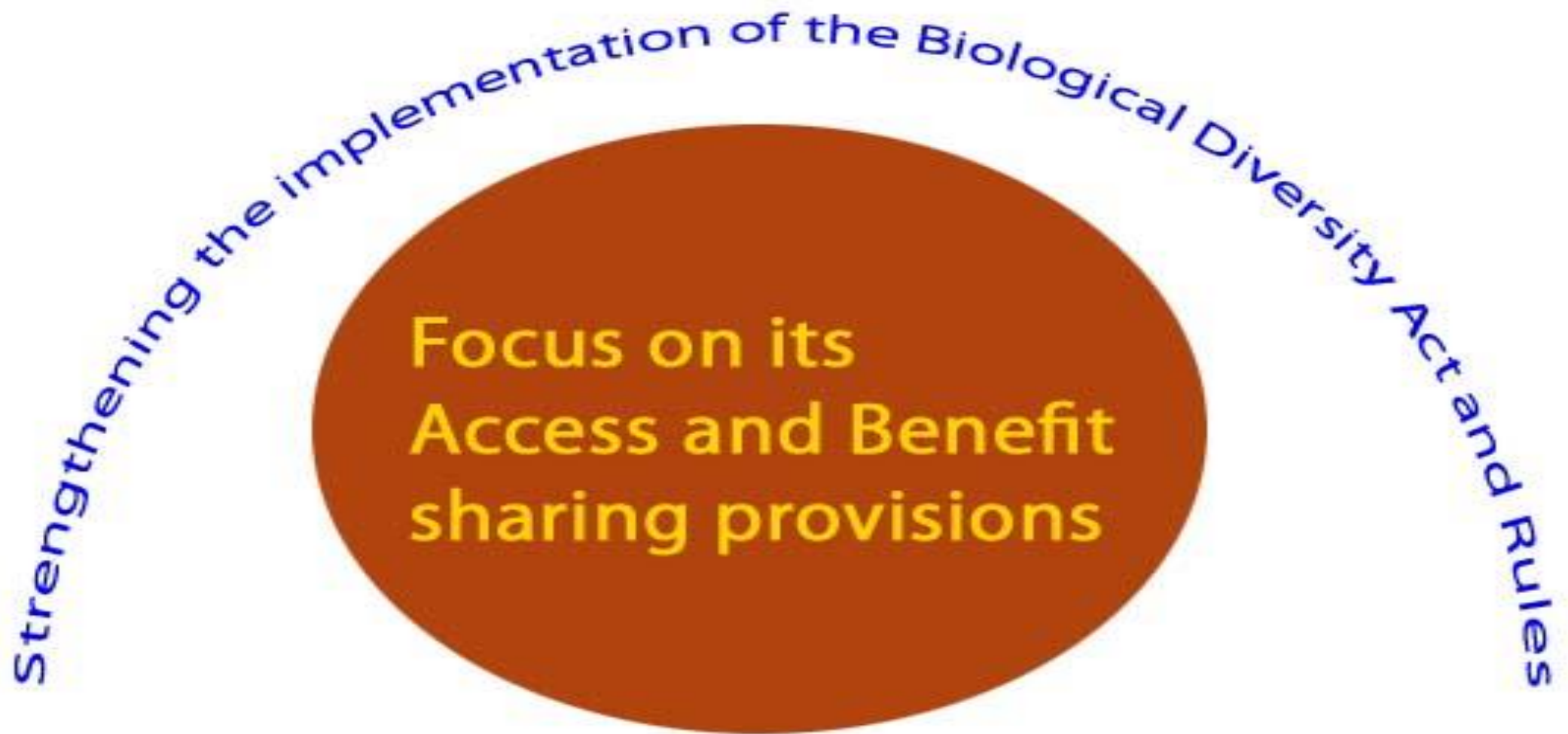
Means to conduct research and development on the genetic and/ or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the convention.

❖ Derivative - Means

A naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

CAPACITY BUILDING – SECOND PROJECT – ABS REGIME

UNEP-GEF-GOI Project – First ever Global ABS project for India



Project Information

GEF Agency Project ID: 493; Country: **India**

GEF Strategic long term objective – **To build Capacity on ABS**

Other Executing Partners

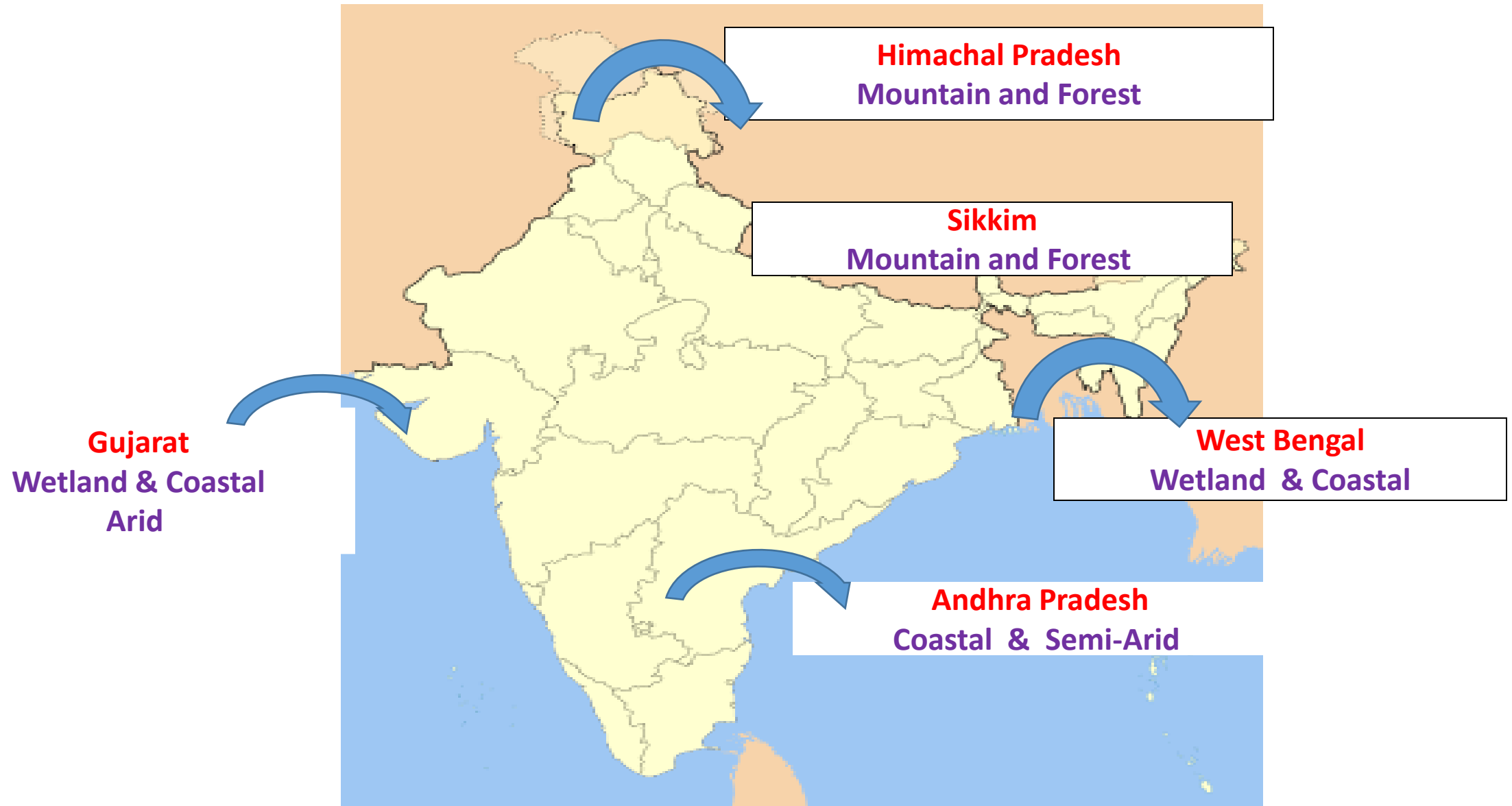
- Ministry of Environment and Forests, Government of India
- National Biodiversity Authority
- State Biodiversity Boards (5 states)
- UNEP - Division of Environmental Law and Conventions (UNEP/DELIC),
- United Nations University – Institute of Advanced Studies (UNU-IAS)

Duration : 36 Months

Agency Approval date: March, 2011

Duration of Project: 2011 -2014

GEF & GoI Project Implementation sites



Main Components

1. Identification of biodiversity with potential for ABS and their valuation in select ecosystems such as Forest, Agriculture and wetlands.
2. Development of tools, methodologies, guidelines, frameworks for implementing ABS Provisions of the BDA.
3. Piloting agreements on ABS.
4. Implementation of policy and regulatory framework(s) relating to ABS provisions at national level and thereby contribute to international ABS policy issues.
5. Capacity building for strengthening implementation of ABS provisions of the BD Act
6. Increasing public awareness and education programmes.

CAPACITY BUILDING –THIRD PROJECT- ABS & RELATED CEBPOL

Centre for Biodiversity Policy and Law

After a series of informal discussions on bridging the gap between strategic thinking and research to deal with emerging and current biodiversity governance issues and policy as well as law making,-

Governments of Norway and India decided to collaborate in the establishment of CEBPOL based in Chennai, India, Nov, 2010

Objective of the Centre

- Develop professional expertise in biodiversity related policies and laws.
- Interface with other multilateral environment agreements and United Nations bodies.
- To provide professional support, advice and expertise to the Government of India
- To develop capacity building programmes
- To facilitate interactive information sharing through web conferencing, web seminars and virtual meetings
- To help develop India as a regional and international resource Centre for Biodiversity Policy and Law.

ABS REGULATIONS/GUIDELINES ON ACCESS TO BIOLOGICAL RESOURCES & ASSOCIATED KNOWLEDGE – 21ST NOV, 2014

- As per Sec – 64
 - Sec – 18(1)
 - Sec – 21(4)
- } of Biological Diversity Act

&

- in pursuance of Nagoya Protocol- Guidelines notified
 - Contains 17 provisions
 - Form – A (see Regulation-13)
 - Annexure – 1 – Fair & Equitable Benefit Sharing options

TWO NEW ELEMENTS IN ABS REGULATIONS / GUIDELINES NOTIFIED IN NOV. 2014

❖ Trader

❖ Benefit Sharing on Purchase Price

Other elements highlighted

- Benefit Sharing at crucial stages of value chain in movement of Biological Resources.
- Upfront payment (Guidelines 1(2))
- Derivative (Guideline – 3(3))
- Speedy disposal –Form-B- Regulation-13-Conducting of Non-Commercial research or research for emergency purposes outside India by Indian Researchers/Govt. Institutions.

[Derivative mentioned in BDA while defining Research at Sec-2(m);Art 2(e) Nagoya Protocol]

SEC- 56 – BIOLOGICAL DIVERSITY ACT -2002

TRADER can be possibly dealt under Sec-56 of BDA 2002 in conjunction with ABS Guidelines notified in Nov,2014

If any person contravenes any direction given or order made by the Central Government, the State Government, the NBA or the SBB for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to one lakh rupees and in case of a second or subsequent offence, with fine which may extend to two lakh rupees and in the case of continuous contravention with additional fine which may extend to two lakh rupees everyday during which the default continues.

IMPLEMENTATION OF NAGOYA PROTOCOL A DYNAMIC PROCESS

Facilitate smooth transaction between Provider & User

Simple - Clear

Effective - Efficient

User - Friendly

Sector - Specific

Cost Benefit Ratio

RESEARCH

- For Indians & Indian entities no permission is required to access BRs.
- The SBBs need to re-orient itself as a facilitator.

PPVFRA (Indian Act)

- Guideline –No(8) – procedure for obtaining IPR
- Any person applying for right under PPVFRA shall be exempted from this regulation.

ITPGRFA

- **Notified in Dec-2014- Annex-1- Crops exempted under sec-40 of Biological Diversity Act; Article-4 of nagoya Protocol.**
- The Annex-1 – listed crops
- Being food crops and forages exempted from Sec-3 & Sec-4 of Indian Biodiversity Act.
 - Research, Breeding & Training -
 - Shall not Include chemical, Pharmaceutical,
 - And/or other non-food or feed industrial uses

PROCESSING OF APPLICATIONS & CONDITIONS STIPULATED BY SBBS

- In respect of **Form-III (NOC for IPR)** the NBA has a dominant role.
- **It is better if SBBs do not stipulate any conditions contrary to NBA's intentions/agreement.**

EXAMPLES

- The applicant shall provide information on claims of the applicant on Royalty Rights /manufacturing Rights / Outright Sale of Patent / Partnership Arrangement etc. and expected monetary benefits from such an arrangement as and when such need arises.
- The applicant shall provide prior information of Lab/production centre to the SBB before making such arrangements.
- It will be binding on the applicant or its partner or any of the person on his behalf utilising this patent for commercial utilization/manufacture of the intended product to obtain prior approval of the SBB for access to BR in question U/S 7 of BD Act 2002 and U/R of 17/ relevant rule - of State BD Rules, 2008. **NBA will execute agreement for the same with the applicant as per their provisions.**

THIRTY DAYS TIME LIMIT

- The NBA has been placing applications before Expert Committee on ABS once 30 days time is elapsed.
- The SBBs may ask more time if required. But being- non-responsive may put SBB **in risk** at later stages.
- They may develop a model for processing applications as in case of Tamilnadu Where a 3 member committee including Member Secretary has been constituted to process and clear applications.

Normally Traded Commodities(NTCs)

- **NTCs are notified by Govt of India in consultation with NBA**
- SBBs - to continuously monitor the lists of NTC- released by NBA.
- SBBs may suggest items/BRs to be included/excluded in NTC list.

Overlapping Provisions-on ABS under CBD, ITPGRFA & TRIPS

- ITPGRFA- Monetary benefits into –Global crop Diversity Trust Fund- Potentially difficult to implement.
- ABS in Plant Treaty differs from ABS regime of CBD/NAGOYA PROTOCOL
- Not all parties to the CBD are members of Plant Treaty
- Intergovernmental Committee on Intellectual Property & Genetic Resources, Traditional Knowledge & Folklore - WIPO

Status of Applications -30 April 2015- NBA

➤ No. of BS Agreements Signed- Access (*186)	(Form-1)	40
➤ No of BS Agreements Signed – Research (*40)-	(Form-11)	12
➤ No of BS Agreements Signed – IPR (*681) -	(Form- III)	93
➤ No of BS Agreements Signed- 3 rd Party Tr of BRs(*78)	(Form-IV)	26
TOTAL -		171

(* No. of Applications Received- all added = 985)

IT IS NOT ABOUT WHAT VISION WE HAVE ,-

--BUT ABOUT THE -

- VISION WE MAKE ALL OUR STAKEHOLDERS BELIEVE IN
IMPLEMENTING NAGOYA PROTOCOL

Thanks A Lot