

# **A Framework for Access and Benefit Sharing towards Conservation of Biodiversity and Protection of Traditional Knowledge: A Case Study based Exploration**

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## **ABSTRACT**

Widespread loss of biodiversity around the world and the continuing unsustainable use of natural resources have raised concerns both at national and international forums. This concern led to the ratification of a legally binding global treaty, the Convention on Biological Diversity (CBD), in 1992. The treaty calls for conservation and sustainable use of biodiversity and also sets up a framework for regulation of access to genetic resources. It also provides a framework for regulation of access to genetic resources and subsequent benefit sharing and mandates the protection of related traditional knowledge (TK) of indigenous communities. At about the same time as the CBD was being negotiated the emerging modern biotechnology industry, led by large corporations who dominated this new field of scientific research, was intensifying its efforts to secure protection of the new technologies that it developed. This resulted in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) in 1994, which called for harmonization of norms and standards of intellectual property protection and paved the way for an IPR regime which is encouraging genetic resource based enterprises of the industrialized world to gain monopoly rights over living organisms and biological processes that can be exploited commercially.

With an increasing number of patents being extended to products based on genetic resources, developing countries, which harbor much of this biological diversity, are concerned not just about the misappropriation of resource based inventions but also the intangible knowledge associated with the resource. Much of this knowledge belongs to local and indigenous communities who through generations of observation, practice and

usage have not only maintained and conserved biodiversity, but also developed and preserved an associated traditional knowledge base. However, in most cases, benefits arising from commercial utilization of such resources are not shared with the provider community. Though there is recognition of the need to protect the rights of such indigenous communities, there is also the realization that this cannot be done through conventional IPR systems which are based on concepts of individual ownership. Therefore there is a need to achieve the objectives of the CBD and establish strong access and benefit sharing (ABS) regimes which can regulate access to biodiversity of developing countries and the TK of their traditional communities. There is also the need to ensure mandatory sharing of the resulting benefits with indigenous communities. This would not only be a strong tool to check biopiracy, it would also provide incentives for conservation and sustainable use of biodiversity.

This study attempts to gather lessons from the experiences of different countries in this regard by analyzing eleven cases of bio-prospecting from different parts of the world that resulted in sharing of benefits with indigenous communities that provided either bio-resources or traditional knowledge, or both. Based on the study of the process of negotiation of the agreements and their implementation a SWOT analysis was conducted with the objective of identifying certain common factors that either helped in successful implementation of a project or hindered it. Recommendations have been put forth aimed at strengthening the ABS regulatory framework (including the process of acquiring prior informed consent of bio-resource providers), increasing the participation of indigenous communities in negotiations and decision-making processes as well as strengthening their bargaining power. Various measures that could improve the ability of indigenous communities to participate effectively in bio-prospecting agreements, provide incentives to them to conserve biodiversity and sustainably use its components, enhance the magnitude and quality of benefits accruing from bio-prospecting and solve the problem of benefit sharing in case of cross-border resources have also been recommended.