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Comparative Analysis of Access and Benefit Sharing Regimes in India and Russia in Context of Indigenous People and Local Communities

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Received 28.10.2015, received in revised form 30.10.2015, accepted 06.12.2015

Conforming to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of their Utilisation (ABS), India has developed legislation and established statutory mechanisms, while Russia is evolving such legislation. The recognition and space of indigenous people and local communities (ILCs)¹ in domestic ABS regimes of Russia and India, and their participation/involvement in processes of international negotiations and domestic law making have been found scarce and inadequate.

Keywords: access and benefit sharing, indigenous people & local communities, Nagoya Protocol, genetic resources, biopiracy, convention on biological diversity, biodiversity governance.

DOI:

Research area: law.

INTRODUCTION

Context of ABS: General

Historically, the genetic resources were accessed for free, based on the worldview that the resources were global commons. But, gradually the monopolization of genetic resources and associated traditional knowledge

started, evidently, from 14th century. With the increased emphasis on intellectual property rights and private ownerships of products of genetic resources, this view changed over time and the UN Convention on Biological Diversity introduced a new legal framework where the sovereign rights of states over these resources

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were established (Josph, 2010). Nevertheless, the practice of illegal access (piracy) continued unabated. Piracy has also been rampant on the derivatives of genetic resources (Richerzhagen, 2010). Biopiracy also involves indigenous traditional knowledge (ITK) associated with genetic resources.

For the first time in the history of illegal access of genetic resources by the user corporations and countries, the CBD made provisions for fair and equitable sharing of benefits (CBD, 1992)². After negotiations and deliberations lasting over 16 years, the access and benefit-sharing protocol with regard to genetic resources laid the foundation for the international regime. On the occasion of the Conference of the Parties (COP.10) to the Convention³ on Biological Diversity (CBD) held on 29 October 2010 in Nagoya, Japan, the CBD adopted *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of their Utilisation* (the Nagoya Protocol) (CBD, 2010). The Protocol opened for signature from 2 February 2011 to 1 February 2012. Currently, there are 92 signatories to Nagoya Protocol and, it came into force on 12 October 2014 once the 53rd instrument of ratification was signed (CBD, 2014). The ABS regime established under Nagoya Protocol has been depicted in Figure.1. The figure describes that if the genetic resources (existing in ex situ or in situ biodiversity) possessed by a provider country or its company/organization are accessed or utilized by a user or its company/organization for commercial or non-commercial purposes, the potential user needs to get prior informed consent (PIC) of the provider and sign mutually agreed terms (MAT) before actually accessing or utilizing, and later the user has to share the monetary or non-monetary benefits with the provider as per MAT.

Context of ABS: Russia and India

Russia

The country's fundamental biological research is carried out in the institutes and scientific centres of the Russian Academy of Sciences. Work on the selection and preservation of diversity of plants and animals, regulation of «access and participation» in the agricultural sector has been regulated by the Russian Academy of Agricultural Sciences. Medical aspects of flora and fauna are dealt with the Russian Academy of Medical Sciences. Studies of genetic resources are held in many educational universities and institutes, specialised institutes of the Ministry of Agriculture, Ministry of Health and the Ministry of Natural Resources. Genetic resources in Russia are utilised by businesses such as industrial microbiology, plant breeding, breeding for commercial purposes, plants in nurseries, botanical gardens, zoos, etc. Access and benefit-sharing issues are very important in Russia because around 40 nationalities and ethnic groups with a total of more than 200,000 people reside in Siberia, North and the Far East regions. They live in highly rich diversity landscapes. In Russia, 28.3 million hectares of land is owned communally by ancestral farmers and 17.1 million hectares are reindeer pastures and forests.

The issue of genetic resources and access to and participation in the benefits of Russia became important after the ratification of the Convention on Biological Diversity in 1995. Although the country has not yet signed Nagoya Protocol and not yet established a National Focal Point for ABS, the national and domestic ABS policy is under consideration by the Department of Environment and Environmental Security of the Ministry of Natural Resources and the Department of Science, Ministry of Economic Development and Trade of the Russian Federation. Country is studying the opportunities and intricacies of the Nagoya Protocol and possible positions that

Russia can take. In the Fifth National Report «Conservation of Biodiversity in the Russian Federation» (November, 2014), the special target and relevant goals⁴ were set. Further, in accordance with Aichi Targets the national goals⁵ very well elaborate the preparations undergoing signing the Nagoya Protocol. Additionally, the ABS policy is important for Russia in view of huge diversity of life forms in the country and its increasing commercial utilization within and outside the country.

India

India's situation on ABS differs greatly from that of Russia, since India became a Party to Nagoya Protocol on 9 October 2012, whereas Russia has not even signed it. Further, in order to achieve the objectives of the Convention on Biological Diversity (CBD), the Government of India enacted the Biological Diversity Act 2002 and notified Biological Diversity Rules 2004. A three-tier structure – National Biodiversity Authority (NBA) at federal level, State Biodiversity Boards (SBBs) at provincial level and Biodiversity Management Committees (BMCs) at community level—is in place to implement the ABS mechanisms. Implementation of the Act and Rules in India with a focus on ABS issues receives much attention now (Pisupati, 2012). During the past several years, the NBA has put a robust and responsive ABS system in place which is being refined and made user friendly on a regular basis. According to NBA, India's engagement with ABS issues has been progressive and noteworthy. By the end of 2012, the NBA signed 100 agreements of ABS. Brazil which comes next has concluded just 10 agreements (NBA, 2012). In the words of erstwhile Chairman of NBA, “Conservation and sustainable use actions have been pursued by a range of local, national, regional and global initiatives, institutions and programmes, whereas ABS is a relatively new concept. There is a need

to tease out the operational elements of a system that responds to the ethics and equity questions on the ground. In the absence of specific and policy oriented focus on ABS, it is but natural that more efforts are being focused on understanding and implementing the ABS provisions both under CBD and Biological Diversity Act 2002” (DTE, 2012). However, the progress on putting in place the three-tier system of biodiversity management has been patchy. The performance of BMCs is highly uneven.

METHODOLOGY

Sampling

Purposive sampling was adopted both for conducting the contents analysis of the domestic ABS measures of India and Russia, and for conducting the opinion survey. Before conducting the opinion survey, the list of possible respondent groups was identified as under:

- A. Associations & forums of indigenous peoples, tribal movements
- B. Parties to CBD & Nagoya Protocol (India: National Biodiversity Authority and CBD/ ABS National Focal Point in Ministry of Environment & Forests; Russia: CBD Primary National Focal Point)

The above mentioned respondent groups were contacted physically or electronically to express their opinions in two different types of questionnaires (Q.A and Q.B). The list of respondents is given in Table 1 below.

Research Techniques and Tools

This case study employed both *non-reactive*⁶ (for example, content analysis and analysis of existing documents and secondary information) and *reactive* research (e.g. questionnaire survey) techniques. Depending on the nature, depth and importance of the variables⁷ and the purpose of research, the tools to gather/collate the data were chosen. The aspects of respondent categories

Table 1: List of Respondents

| Respondent Group | Q Type | India Respondents | Russia Respondents |
|-----------------------|--------|--|---|
| A: Indigenous Peoples | Q.A | Mizoram Chakma Development Forum (MCDF) | Centre for Support of Indigenous Peoples of the North (CSIPN) |
| A: Indigenous Peoples | Q.A | NESAM TRUST | Interregional Association of Indigenous Peoples of North of the Krasnoyarsk Region and Evenkiya |
| A: Indigenous Peoples | Q.A | Citizens Foundation | Russian Association of Indigenous Peoples of the North, Siberia and the Far East (RAIPON) |
| A: Indigenous Peoples | Q.A | Centre for Policy Solution | Association "Aleskam" |
| A: Indigenous Peoples | Q.A | M. Sudhakar (Individual) | Inuit Society "YUPIK" |
| B: Party to CBD/ NP | Q.B | National Biodiversity Authority, Ministry of Environment & Forests | Department of Environmental Protection and Ecological Safety, Ministry of Natural Resources |

Q.A NAT-ABS = Format for Associations & Forums of Indigenous Peoples, Tribal Movements, CSOs & Individuals

Q.B IND-ABS = Format for Parties to CBD & Nagoya Protocol: Represented by CBD Primary/Secondary NFP and ABS/ICNP Focal Point or National Competent Authority

* About 40 different organisations of A group each were contacted in India and Russia for getting their opinions in Q.A questionnaire formats.

were also taken into account when choosing the tools. All two types (as mentioned in Table 1) of opinion survey questionnaires are appended as Annex. Q.A and Annex.Q.B.

Timeframe

The India part of the opinion survey was carried out in late 2012 and early 2013, whereas the Russian part of the opinion survey was conducted in July–August 2013. Content analysis of ABS legislation or policies of India and Russia was also performed between March 2013 and October 2014.

RESULTS

A. Participation of ILCs in National ABS Policy/Law Making and Negotiation Processes

On asking about the involvement of indigenous people and local communities (ILCs) in developing national ABS law/policy/guidelines in their respective countries, only 40 per cent

and 20 per cent of the surveyed indigenous organisations/individuals, respectively, in India and Russia (Annex. Q.A: q.1) responded that their country involved/involves ILCs in developing national ABS instrument to little extent. Twenty per cent respondents in each country opined that their country did/does not involve ILCs in developing national ABS instrument. Thus, responses of sizeable respondents confirm that *neither India nor Russia has good record of involving respective ILCs in making national ABS policy or law*.

Contrary to the responses of indigenous organisations/individuals, the competent government authorities of India (Annex. Q.B: q.1&2) confirmed the participation of ILCs in national ABS law/policy making to a great extent and active. However, Russian government authorities were found unaware of any such participation of ILCs in national ABS law/policy making, and validated no participation in the process (Annex. Q.B: q.1&2). Likewise, concerns,

voices or viewpoints of ILCs were/are, to a great extent, respected, integrated or incorporated in the national ABS policy/law, according to Indian government authorities; while Russian authorities confirmed it “to some extent” on the question of respecting, integrating or incorporating in the national ABS policy/law the concerns, voices or viewpoints of ILCs (Annex. Q.B: q.3).

Surveyed indigenous organisations/individuals were questioned whether their country would “involve the ILCs in developing the prior informed consent (PIC) and mutually agreed terms (MAT) before allowing the user countries to access & utilise genetic resources or associated ITK held by ILCs” (Annex. Q.A: q.2). Only 20 per cent each of Indian and Russian respondents opined “affirmatively”. Another 20 per cent of Indian respondents *declined* any such possible involvement of ILCs. In case of Russia, 20 per cent respondents said that there was “no ABS instrument evolved or evolving in the country”. Lastly, the majority of respondents (60 per cent) both in India and Russia gave no opinion on the question (Annex. Q.A: q.1). The analysis of the responses of indigenous organisations/individuals, thus, indicates that *there is remote possibility on part of India and Russia of involving the ILCs in developing the PIC and MAT*.

The majority of indigenous organisations/individuals surveyed in India (80 per cent) expressed their views that India will ensure participation of ILCs in establishing the mechanisms to inform the potential users about their obligations before accessing any genetic resources and associated ITK, but that participation would not be *effective* (Annex. Q.A: q.3). The same response was conveyed by 20 per cent of Russian respondents. A sizeable ratio of Russian respondents (40 per cent) said that “no ABS instrument evolved or evolving in the country” (Annex. Q.A: q.3). Therefore, *Indian respondents have largely expressed their*

opinions in favour of the participation of ILCs in establishing the mechanisms to inform the potential users about their obligations; while such participation of ILCs was reported low in Russia, partly because no ABS instrument is in place as yet.

B. National Recognition of Customary Laws/Institutions of ILCs

The majority of surveyed indigenous organisations/individuals in India (60 per cent) responded “affirmatively” that India respects, recognises and enforces the rights and ITK of its own indigenous people, but not truly (with no serious effort) (Annex. Q.A: q.4). However, 40 per cent of Indian respondents *declined* that India respects, recognises and enforces the rights and ITK of its own indigenous people. Russian respondents showed varying trends in their responses—twenty per cent of them were “affirmative” that Russia respects, recognises and enforces the rights and ITK of its own indigenous people; and 40 per cent of them opined that Russia respects, recognises and enforces the rights and ITK of its own indigenous people, but not truly (with no serious effort) (Annex. Q.A: q.4). Thus, *the trend of responses in both India and Russia exhibits that the countries only partially respect, recognise and enforce the rights and ITK of their own indigenous people.*

Recognition of customary law/institutions of indigenous people by country’s ABS legislation/policy has been confirmed by only 20 per cent of the surveyed indigenous organisations/individuals from India; while none of the respondents from Russia confirmed the same (Annex. Q.A: q.5). On the other hand, 20 per cent respondents each from India and Russia responded “negatively” on issues of recognition of customary law/institutions. However, the majority of respondents (60 per cent each) in both India and Russia were unaware of such issues (Annex. Q.A: q.5). Therefore,

it is hereby summed up that *the indigenous organisations/ individuals have the opinion that their respective country's ABS legislation/policy recognises least the customary law/institutions of indigenous people.*

Contrary to the above, the national competent authorities of both India and Russia have responded “affirmatively” that existing/evolving ABS legislation/policy recognises the customary law/institutions of indigenous people, according to Article.12.1 of Nagoya Protocol (Annex. Q.B: q.4). However, the analysis as given in section-5.1 does not reveal any provision in the existing/evolving ABS laws or policies of India or Russia.

C. National Recognition of ILCs in Issuing PIC and MAT

“India’s ABS legislation/policy make the prior informed consent (PIC) mandatory before access/utilisation of genetic resources or associated ITK” has been confirmed by 40 per cent of surveyed indigenous organisations/individuals; while 20 per cent of Indian respondents indicate that the PIC is mentioned in India’s existing ABS legislation/policy, but it is not mandatory (Annex. Q.A: q.6). No respondent, on the other hand, from Russia responded as Indian respondents did. But, 20 per cent of Russian indigenous respondents indicated that PIC is not in place in Russia’s evolving ABS law/policy, and 20 per cent of them say the no ABS law/policy is evolving in Russia (Annex. Q.A: q.6). India’s 40 per cent respondents and Russia’s 60 per cent respondents showed lack of awareness on the same. The analysis of the responses reveal that only India has scope of PIC of indigenous people in country’s ABS law, but PIC is not made mandatory in Indian law/policy. Analysis in section-5.1 above validates the fact that *India’s ABS law/policy has been casual on the issue of PIC of indigenous people and has not considered the PIC mandatory before access/*

utilisation of genetic resources or associated ITK. The same is confirmed in the following lines too.

India’s national competent authorities opined “to some extent” on the question whether national ABS policy/law should respect the ILCs’ right to grant FPIC and right to sign MATs (Annex. Q.B: q.5). It indicates India’s lack of seriousness on necessity of PIC of indigenous people. On the other hand, Russian authorities expressed high need of respecting the ILCs’ right to grant FPIC and right to sign MATs and inculcate such needs in ABS law/policy (Annex. Q.B: q.5).

Identical to the above response, India’s competent authority conveyed “the PIC is mentioned in existing/evolving ABS legislation/policy, but it is not mandatory”, and Russian authorities said “there is no mention of PIC in our existing/evolving ABS legislation/policy” when they were asked “does your country’s ABS legislation/policy make the PIC mandatory before access/utilisation of genetic resources or associated ITK, in accordance with Article 6.1 and Article 6.2 of Nagoya Protocol?” (Annex. Q.B: q.6). Indian authorities responded that India’s existing/evolving ABS legislation/policy has a provision that the country’s ABS legislation/policy provides to ensure participation and involvement of ILCs in creating procedures/format of PIC (Annex. Q.B: q.7). But the analysis of existing legislation in India given in section-5.1 does not witness the same. Russia, on the other hand, has responded honestly that there is no such provision in existing/evolving ABS legislation/policy ensuring participation and involvement of ILCs in creating procedures/format of PIC (Annex. Q.B: q.7). *After all, it is known from the responses of government authorities that PIC is neither conceived nor incorporated in national ABS legislation/policy of India or Russia in the same spirit as it is envisaged in Article 6.1 and Article 6.2 of the Nagoya Protocol.* However,

both countries have shown their commitment to consult, involve or engage the ILCs in issuing the PIC to user Parties before accessing/utilising any genetic resources and associated ITK (Annex. Q.B: q.8).

Both India's and Russia's competent authorities confirm that their ABS legislation/policy includes provisions of drafting the mutually agreed terms (MAT) on equity principles, opposing the dominating positions of user countries (usually developed nations), as envisaged in Article 5.1 of the Nagoya Protocol (Annex. Q.B: q.9). The analysis given in section-5.1 also reveals the same position of both the countries. Besides, both India and Russia have confirmed that their ABS legislation/policy provides for engaging ILCs in developing the MAT, in accordance with Article 12.3(b) of Nagoya Protocol (Annex. Q.B: q.10). *It is reflected in the opinions of national competent authorities that the position of both the countries is quite strong in relation to executing MAT principles and involvement of ILCs therein. Yet, the opinion of indigenous organisations on this matter is missing.*

D. Importance of Community Protocols of ILCs in Countries

Surveyed indigenous organisations/individuals were asked to respond whether their country's ABS legislation/policy provides for supporting the concerned ILCs to develop community protocols. Only 20 per cent of India's respondents were "affirmative" that India's ABS legislation/policy has provision in support of community protocols (Annex. Q.A: q.7). The rest majority of the respondents showed ignorance about such provisions in India's ABS legislation/policy. Similarly, the majority of surveyed indigenous organisations/individuals showed ignorance about such provisions in Russia's evolving ABS legislation/policy (Annex. Q.A:

q.7). However, 20 per cent of Russian respondents denied any such provision in evolving ABS legislation/policy, while 20 per cent completely refused the existence of any ABS legislation/policy in Russia (Annex. Q.A: q.7). Thus, *the responses of indigenous organisations/individuals indicate that evolving/existing national ABS legislation/policy has no real importance given to community protocol, if any such provision exists.* The same questions were responded to by national competent authority of only Russia by saying that no such provision existed in evolving ABS legislation/policy (Annex. Q.B: q.11 & 12).

E. Access of ILCs to Bioresources in their Territories

On the one hand, the entire world is talking about access of users of any country to the biological resources existing in any country of the world; but on other side, the majority of countries restrict their own ILCs to access the same bioresources. So, the question "does your country restrict the ILCs' access to bioresources in forests and protected areas" was floated to the respondents. Both in India and Russia, 20 per cent of surveyed indigenous organisations/individuals confirmed that there was absolute restriction of ILCs' access to bioresources in forests and protected areas. Besides, 80 per cent of Indian respondents and 40 per cent of Russian respondents confirmed selective restriction of ILCs' access to bioresources in forests and protected areas (Annex. Q.A: q.8). Therefore, *it is revealed from the analysis that both India and Russia put restrictions on their own ILCs' access to bioresources in forests and protected areas.*

On the contrary to the above, India's competent authorities opined reverse saying that they do not restrict the ILCs' access to bioresources in forests and protected areas (Annex. Q.B: q.13). Yet, the ground observations and Indian laws like Indian Forest Act 1927 and Wildlife (Protection) Act 1972

confirm full/partial restrictions on ILCs' access to bioresources in forests and protected areas. But, Russian authorities accepted the selective restriction on ILCs' access to bioresources in forests and protected areas (Annex. Q.B: q.13).

On the question of whether their country ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves or not, the majority of indigenous organisations/ individuals (60 per cent) were not aware of the issue in both India and Russia (Annex. Q.A: q.9). Only 40 per cent responded in each country, of whom 20 per cent in each responded group said that their respective country partially ensures the rights of ILCs to exchange genetic resources and ITK within and among themselves, whereas the other 20 per cent each responded that their respective country restricts ILCs exchanging genetic resources and ITK within and among themselves (Annex. Q.A: q.9). So, *it is pertinent to draw a conclusion that both India and Russia do not support much the ILCs to exchange genetic resources and ITK within and among themselves. But, national competent authorities of India responded differently saying that India fully ensures the rights of ILCs to exchange genetic resources and ITK within and among themselves* (Annex. Q.B: q.14). However, Russian authorities confirmed that Russia partially ensures the rights of ILCs to exchange genetic resources and ITK within and among themselves (Annex. Q.B: q.14).

F. Fair and Equitable Sharing of Benefits

Only 20 per cent each of India's and Russia's surveyed indigenous organisations/individuals confirmed that the Nagoya Protocol would ensure fair and equitable sharing of the benefits arising from the utilisation of genetic resources and indigenous traditional knowledge (ITK) associated with genetic resources (Annex. Q.A:

q.10). India's 60 per cent and Russia's 20 per cent respondents were clueless about it; while 20 per cent of Indian respondents negated the same (Annex. Q.A: q.10). The majority (60 per cent) of Russian respondents opined that their country would likely to share the received benefits with ILCs (Annex. Q.A: q.10). *It is thus understood that the indigenous organisations have least confidence that the governments of India as well as Russia would share received benefits with ILCs holding the accessed/utilised genetic resource or associated ITK.*

National competent authorities of both India and Russia have responded "affirmatively" on the recognition of ILCs in national ABS policy/ law over users' access to genetic resources and traditional knowledge, and over sharing of benefits arising out of utilisation of genetic resources (Annex. Q.B: q.15). To the question "does your country's ABS legislation/policy provide for sharing benefits with concerned ILCs in a fair and equitable way, as envisaged in Article 5.2 & Article 5.5 of Nagoya Protocol", Indian authorities responded "positively", while Russian authorities did "negatively" (Annex. Q.B: q.16). *Although Indian authorities have confirmed very confidently that India's ABS legislation/policy provides for sharing benefits with concerned ILCs in a fair and equitable way, yet the observations do not confirm a fully evolved mechanism to share the benefits with ILCs in a fair and equitable manner.*

G. Access to Genetic Resources and Space for ILCs

India's competent authorities responded that the country's ABS legislation/policy ensures effective participation of ILCs in establishing the mechanisms to inform the potential users of ITK about their obligations, in accordance with Article 12.2 of Nagoya Protocol; while Russian authorities also responded the same but their ABS

legislation/policy ensures the participation as *not effective* (Annex Q.B: q.18). India confirmed that country's existing/evolving ABS legislation/policy provides for disclosing the information in a language understandable to our ILCs; while Russia did not confirm the same (Annex Q.B: q.19). *It thus indicates that India leads Russia in the participation of ILCs in matters pertaining to information obligations of potential users of ITK and their obligations of disclosing the information in a language understandable to our ILCs.*

H. Associated Traditional Knowledge and ILCs Rights

Both India and Russia responded "affirmatively" on question of truly respecting, recognising and enforcing the rights and ITK of their own indigenous people (Annex Q.B: q.20). Unfortunately, the opinions of indigenous organisations could not be gathered, so it is hard to make a comparison.

I. Involvement of ILCs in Monitoring of Access to Genetic Resources

Responding to the question whether country's ABS legislation/policy (or administrative measure) involves ILCs in monitoring of the access and utilisation of genetic resources or associated ITK by the users, 60 per cent of surveyed indigenous organisations/individuals from India said that "there is no such provision in existing ABS legislation/policy or administrative measure" (Annex Q.A: q.11); while 40 per cent of the Indian respondents were unaware of the issue. In Russian contexts, 40 per cent of surveyed indigenous organisations/individuals highlighted that no ABS instrument or evolving in the country (Annex Q.A: q.11). The majority of Russian respondents (60 per cent) were unaware of the issue. So, *currently India has scope of involving the ILCs in monitoring of the access and utilisation of genetic resources*

or associated ITK by the users, but according to the majority of indigenous organisations, the existing ABS legislation/policy does not have such a provision.

The majority of the surveyed indigenous organisations/individuals from India (60 per cent) responded that India will involve the ILCs (but for namesake) in monitoring the access and utilisation of genetic resources or associated ITK by the user countries (usually developed countries) (Annex. Q.A: q.12); while in Russia, 20 per cent of respondents opined the same. In Russia, 40 per cent of surveyed respondents said that no ABS instrument is evolved in the country (Annex. Q.A: q.12). In both India and Russia, 40 per cent of the respondents each were unaware of the issue. *It shows that India and Russia might involve the ILCs in monitoring the access and utilisation of genetic resources or associated ITK by the user countries, but for namesake.*

Above the same question has been replied by India's competent authorities "affirmatively", saying that India's existing ABS legislation/policy or administrative measure involves ILCs in monitoring the access/utilisation of genetic resources by the users (Annex. Q.B: q.21); while Russian authorities clearly say that there is no such provision in existing/evolving ABS legislation/policy or administrative measure.

J. Check of Biopiracy

The surveyed indigenous organisations/individuals were lastly asked: "And if your country's government agencies/institutes or corporations are involved in illegal transfer/transportation of genetic resource to user country/corporation, will the ILCs be able to check the illegal transfer (misappropriation)?" Russia's 20 per cent respondents said that their ILCs are able to check the illegal transfer (misappropriation), but with mixed results (Annex. Q.A: q.13). However, another 20 per cent of Russian respondents opined

that their ILCs are able to check successfully the illegal transfer (misappropriation). Still, Russia's other 20 per cent respondents and India's 60 per cent respondents claimed that their ILCs are NOT able to check successfully the illegal transfer (misappropriation) (Annex. Q.A: q.13). *The data of the responses exhibits that Russia's indigenous organisations are positive about their ILCs that they would be able to check the biopiracy, while India's indigenous organisations showed no confidence in their ILCs that they might check the biopiracy.*

Both India's and Russia's 20 per cent each of surveyed indigenous organisations/individuals gave their opinions that ABS regime at the international level and national ABS regime would be able to stop to a large extent the biopiracy (if any) of their country's genetic resources and associated ITK (Annex. Q.A: q.14). Simultaneously, 40 per cent of India's and 60 per cent of Russia's respondents indicated that international and national ABS regime would be able to stop to some extent the biopiracy (if any) of their country's genetic resources and associated ITK (Annex. Q.A: q.14). Similarly, 40 per cent respondents from India and 20 per cent respondents from Russia opined that international and national ABS regime would not at all be able to stop the biopiracy (if any) of their country's genetic resources and associated ITK (Annex. Q.A: q.14). Therefore, *India's surveyed indigenous organisations/individuals were not very much pessimistic that the biopiracy of India's genetic resources and associated ITK would be checked by international or national ABS regime; while the Russian counterpart respondents expressed the same relatively positively.*

DISCUSSION

Present research paper compares the recognition, involvement, space, benefit sharing and acknowledgement being extended by Indian

and Russian governments to their respective indigenous people and local communities. The study conducted was based on opinion surveys of indigenous organisations/individuals and national competent authorities. The analyses of existing/evolving laws or policies dealing with ABS also became part of the study. The majority of surveyed indigenous organisations/individuals showed that India has advanced in terms of evolving the national ABS law/policy, while majority of the respondents in Russia did not confirm the development of national ABS law/policy in their country.

The issue of participation in ABS policy/law making and negotiation process at international and national contexts is worth understanding. Responses of the surveyed indigenous organisations reveal a grim picture of the participation of ILCs in the national ABS policy/law making process. According to them, neither India nor Russia has a good record of involving respective ILCs in making national ABS policy or law. On the contrary, Indian respondents have largely expressed their opinions in favour of the participation of ILCs in establishing the mechanisms to inform the potential users about their obligations; while such participation of ILCs was reported low in Russia, partly because no ABS instrument is in place as yet. Conclusively, it is well understood that the responses of indigenous people and the states are mixed about the participation and involvement of ILCs in national policy/law or administrative measures processes.

Customary laws and institutions of indigenous people have paramount importance in conserving and managing the biological resources and associated ITK. Simultaneously, it is also a fact that the customary laws and rules of indigenous people or local communities are seldom documented and taken into account in national laws or administrative mechanisms. The

trend of responses in both India and Russia also exhibits that the countries only partially respect, recognise and enforce the rights and ITK of own indigenous people. The indigenous organisations/individuals have the opinion that their respective country's ABS legislation/policy recognises least the customary law/institutions of indigenous people. It provides a basis of popular perceptions that the ILCs are given no or least importance in national regimes even in their own territories.

The Article 6.1 and Article 6.2 of the Nagoya Protocol equip the states with the prior informed consent (PIC), which is the most powerful tool to empower the ILCs if used realistically. The Parties to the Nagoya Protocol have obligations of getting PIC before allowing any access to or utilisation of biological resource and associated ITK. Despite these obligations, India's ABS law/policy has been casual on the issue of PIC of indigenous people and has not considered the PIC mandatory before access/utilisation of genetic resources or associated ITK. It is known from the responses of government authorities that PIC is neither conceived nor incorporated in national ABS legislation/policy of India or Russia in the same spirit, as it is envisaged in Article 6.1 and Article 6.2 of the Nagoya Protocol. Particularly in India, the PIC process is more or less manipulated in the sense that the state itself gives PIC and then signs the mutually agreed terms (MAT) in order to allow the access to and utilisation of the genetic resources or associated ITK. Said clauses of Nagoya Protocol also provide for obligation of Parties to involve the ILCs in signing MAT agreements with the users of genetic resources or associated ITK.

It is reflected in the opinions of national competent authorities that the position of both countries is quite strong in relation to executing MAT principles and involvement of ILCs therein. As the opinion of indigenous organisations on this matter was not recorded, the people's version

on the participation of ILCs in MAT agreements is thus unavailable. Similarly, Article 12(3)a of the Nagoya Protocol has obligation on state to support the ILCs to prepare their "community protocols", but efforts for such community protocols have been undertaken sporadically and with scanty support of the state. To substantiate this observation, the responses of indigenous organisations/individuals indicate that evolving/existing national ABS legislation/policy has no real importance given to community protocol, if any such provision exists.

In general, the biodiversity conservation programmes have excluded the local and indigenous people from ecosystems. When the Nagoya Protocol talks about free and unlimited access to and utilisation of biological resources of one country by other countries and corporations of same country, the access to and utilisation of same bioresources by ILCs who are custodians of those resources are denied by national laws. The same is revealed from the opinion survey that both India and Russia put restrictions on their own ILCs' access to bioresources in forests and protected areas. It is pertinent to draw a conclusion that both India and Russia do not support much the ILCs to exchange genetic resources and ITK within and among themselves.

Article 5 of the Nagoya Protocol, which is the core segment of the protocol, stresses on fair and equitable sharing of the benefits arising out of the utilisation of genetic resources and associated ITK. Parties are obliged to comply with the given clauses and to ensure the creation and enforcement of domestic legislation in that regard. Since India has already evolved such legislation and is trying to place the mechanisms of fair and equitable sharing of benefits with the ILCs, Indian authorities have confirmed very confidently that India's ABS legislation/policy provides for sharing benefits with concerned ILCs in a fair and equitable way. However, the

field observations do not confirm a fully evolved mechanism to share the benefits with ILCs in a fair and equitable manner. A few examples were quoted as demonstrating the benefit of sharing in an equitable manner (NBA, 2012). Example of the Kani tribe of Kerala province whose TK was used to develop an Ayurvedic medicine and some benefits were shared with the community; but this model also failed in due course of time. On the other hand, Russia is yet to evolve even a consolidated legislation on ABS; thus, the examples of fair and equitable sharing of benefits literally do not exist in the country. Opinions of indigenous organisations led to understand that the ILCs have least confidence that the governments of India or Russia would share received benefits with ILCs holding the accessed/utilised genetic resource or associated ITK. Overall, it gives a sense that the mechanisms of sharing the benefits fairly and equitably would take quite a long time to be established in the countries provided the efforts are made seriously by the governments.

Article 12.2 of the Nagoya Protocol calls for the establishment of mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations with the effective participation of ILCs concerned. The Parties have to comply with the obligations. Responses of national competent authorities have revealed that India leads Russia in the participation of ILCs in matters pertaining to information obligations of potential users of ITK and their obligations of disclosing the information in a language understandable to our ILCs. However, evidence is missing that the same is linked with the Clearing-House mechanism at CBD Secretariat.

The Nagoya Protocol contains the provisions of involving the ILCs in monitoring of access to genetic resources, and thus Parties are obliged to comply with the given provisions. Otherwise too, it would be ideal if the ILCs were given space

and they would have regulated the monitoring of users' access to genetic resources. Currently, India has scope of involving the ILCs in monitoring the access and utilisation of genetic resources or associated ITK by the users; but according to the majority of respondent indigenous organisations, the existing ABS legislation/policy of India does not have such a provision. Analysis further shows that India and Russia might involve the ILCs in monitoring the access and utilisation of genetic resources or associated ITK by the user countries, but for namesake. As a matter of fact, the bureaucracies actually having control over all mechanisms and processes lack willingness to devolve and thus involve the ILCs in critical functions such as monitoring of access.

Underlying the genesis of ABS was the thinking of checking the biopiracy and illegal utilisation of genetic resources followed by patenting it. Under the obligations of the Nagoya Protocol, the Parties are to take measures to regulate the illegitimate access and utilisation of genetic resources and associated ITK. India's surveyed indigenous organisations/individuals were not very much pessimistic that the biopiracy of India's genetic resources and associated ITK would be checked by international or national ABS regime; while the Russian counterpart respondents expressed the same relatively positively. Additionally, the ILCs might check the biopiracy once they are educated and empowered to do so; however, the current capacities of ILCs in India and Russia do vary, according to the opinions of indigenous organisations. The data of the responses exhibits that Russia's indigenous organisations are positive about their ILCs that they would be able to check the biopiracy, while India's indigenous organisations showed no confidence on their ILCs that they might check the biopiracy. In either situation, without checking the biopiracy, the objectives of ABS cannot be realised adequately.

CONCLUSION AND RECOMMENDATIONS

India's progressive legislation on ABS (i.e. Biological Diversity Act, 2002) has certain provisions recognising the role and participation needs of indigenous people and local communities (ILCs) in conserving the biological resources and associated ITK. Beyond this recognition, the legal framework provides for the involvement of ILCs through biodiversity management committee (BMCs) in preparation of people's biodiversity registers (PBRs) and issuance of mutually agreed terms (MAT). The Biological Diversity Act, 200, however, lacks any mention that the prior informed consent (PIC) is prerequisite of allowing users access to and utilisation of genetic resources and associated ITK, whereas, on the contrary the Nagoya Protocol⁸ makes the PIC essential before accessing a genetic material or associated ITK. Therefore, although the ILCs are given due recognition and appreciation in the ABS law, yet, the said legislation does not enable the empowerment of ILCs in the whole process. The existing mechanisms in place of ABS also do not conform to ILCs as primary stakeholders and the owners of biological resources.

The widespread practice of concluding agreements or arrangements on benefit sharing is missing in Russia. It is in fact still in evolution phase. Before signing the Nagoya Protocol, the Russian Federation has been studying the ABS processes and legislation in various other countries. At present, the contractual arrangements (mainly in the field of industrial microbiology, pharmacology and biotechnology) regulate the access to genetic resources and participation in the benefits of their use. But these agreements underrate the interests of ILCs as primary stakeholders. Hence, the Russian authorities need to start from scratch to promulgate and enact the ABS legislation.

Despite the emphasis given in the Nagoya Protocol on the need to recognise and incorporate the customary laws and institutions, both the countries seldom have given attention to customary laws and institutions of indigenous people; hence, it provides a basis of popular perceptions that the ILCs are given no or least importance in national regimes and even in their own territories. Moreover, despite the obligations of the Nagoya Protocol of getting prior informed consent (PIC) before allowing any access to or utilisation of biological resource and associated ITK, both India and Russia have been casual on the issue of PIC of indigenous people and have not considered the PIC mandatory before access/ utilisation of genetic resources or associated ITK. Almost similar is the status of involving the ILCs in signing MAT agreements. Equally poor is the record of governments supporting the preparation of Community Protocol by indigenous people. In general, the biodiversity conservation programmes have excluded the local and indigenous people from ecosystems. Reportedly, India and Russia do not support much the ILCs to exchange genetic resources and ITK within and among themselves.

Fair and equitable sharing of benefits arising out of the utilisation of genetic resources and associated ITK is the key of the ABS framework. India, being the leading country in the ABS legislation and mechanism in place, could not yet develop in true sense the system of fair and equitable sharing of benefits. On the other hand, Russia still has to walk a long way. Overall, the mechanisms of sharing the benefits fairly and equitably would take a long time to be established in the countries, provided the efforts are made seriously by the governments. The next crucial aspect of biodiversity governance is the involvement of ILCs in monitoring access to genetic resources. As the leading country in ABS

system in place, India's existing ABS legislation/policy does not have a provision of involving the ILCs in monitoring of users' access to genetic resources. This study reveals that India and Russia might involve the ILCs in monitoring the access and utilisation of genetic resources or associated ITK by the user countries, but they would do it for namesake.

Under the obligations of the Nagoya Protocol, the Parties are to take measures to regulate the illegitimate access and utilisation of genetic resources and associated ITK. India's biopiracy would likely be checked by international or national ABS regime; while Russia has some hope that the biopiracy would be checked. After all, without checking biopiracy, the objectives of ABS cannot be realised adequately, and the ILCs would not receive due respect and share in the benefits accrued from utilization of genetic resources.

Recommendations for India

India's existing legislation and ABS mechanisms require some fundamental changes, such as:

- Provisions are included to make the PIC of ILCs mandatory before any access to and utilisation of biological (genetic) resources and associated ITK;
- Domestic companies and research establishments accessing/utilising the genetic resources should also be brought under the ambit of prior approval of National Biodiversity Authority (NBA);
- ILCs need to be necessarily involved in monitoring the users' access to biological resources and associated ITK;
- Checkpoints should be created with the active involvement of ILCs; and

- The competent authorities (for example, the NBA and State Biodiversity Boards) should devise mechanisms to check the biopiracy.

Recommendations for Russia

It is hoped that Russia will join the major international processes in the period of 5–10 years. During this time, it is necessary for the authorities:

- To practice contractual agreements that take into account the interests of all parties to the proceedings;
- Streamline the accounting system (depository), control and monitoring of transactions (agreements) within the country and in the international market (through Clearing-House Mechanism);
- To form the consolidated legal framework on ABS and to evolve the ABS mechanisms;
- To engage in the process of ILCs through a series of demonstration projects; and
- To carry out an economic assessment of strategic genetic resources of the country and to assess the possible benefits at the national, regional and local levels, including specific reserves and national parks.

ACKNOWLEDGEMENT

The authors acknowledge the support for language corrections provided by Dr. Valentyna Savchyn, Associate Professor, Faculty of Foreign Languages, Lviv National University of Ukraine. To conduct studies in Russia, the partial support extended to the first author by Asia Pacific Network for Global Environmental Change, Japan is also duly acknowledged.

¹ The term has been connoted by CBD and widely used in Nagoya Protocol. During COP12 of CBD in Pyeongchang the debate centred around the use of the term "Indigenous Peoples and Local Communities (IPLCs)" instead of the current phrase "Indigenous and Local Communities (ILCs)". After a series of interventions a draft text was formulated

- related to the use the term “Indigenous Peoples and Local Communities” in future decisions and secondary documents under the Convention. These efforts resulted to the adoption of “Indigenous Peoples and Local Communities” without formally changing the original Convention. <http://www.forestpeoples.org/topics/convention-biological-diversity-cbd/news/2014/11/cop12-agrees-use-indigenous-peoples-and-loc>
- ² Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, 31 Int’l Leg. Mat. 818 (1992), Article 1.
- ³ Convention has been adopted by almost all states, with a total 193 Parties including the European Union. A noticeable exception is the United States, which as a non-Party to the CBD cannot become a party to the Nagoya Protocol, cf. Article 33(1) of the Protocol.
- ⁴ National goal on biodiversity conservation > By 2015, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is in force and operational, consistent with national legislation. Source: <http://strategy2014.ru/>
- ⁵ National Goals (Target 16): 1. Facilitate ratification of the Nagoya Protocol in the Russian Federation; 2. Harmonize national legislation in accordance with the implementation of Russian Federation’s commitments under the Nagoya Protocol; 3. Define organizational structure needed for implementation of the Nagoya Protocol in the Russian Federation; 4. Create conditions for effective implementation of the Nagoya Protocol at the national and regional levels. Source: <http://strategy2014.ru/>
- ⁶ Non-reactive research is a class of measures in which people being studied are unaware that they are part of a study. In non-reactive or unobtrusive measures, the people being studied are not aware of it but leave evidence of their social behaviour or actions “naturally”. Creating non-reactive measures follows the logic of quantitative measurement, although qualitative researchers also use non-reactive observation. Because non-reactive measures indicate a construct indirectly, the researcher needs to rule out reasons for the observation other than the construct of interest.
- ⁷ Operational definition of the variable includes how the researcher systematically notes and records observations.
- ⁸ Article 6.1 of Nagoya Protocol
- ⁹ Этот термин был введен Конвенцией о биологическом разнообразии и широко используется в Нагойском протоколе. Во время COP12 Конвенции в г. Пхенчхан шли дебаты вокруг использования термина «коренные народы и местные общины (IPLCs)» вместо текущего термина «коренные и местные общины (ILCs)». После серии мероприятий был сформулирован проект текста по применению термина «коренные народы и местные общины» в будущих решениях и вторичных документах в соответствии с Конвенцией. Эти усилия привели к принятию термина «коренные народы и местные общины», без формального изменения первоначального текста Конвенции. <http://www.forestpeoples.org/topics/convention-biological-diversity-cbd/news/2014/11/cop12-agrees-use-indigenous-peoples-and-loc>

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ABBREVIATIONS

| | |
|------|---|
| ABS | Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of their Utilisation |
| BMCs | Biodiversity Management Committees |
| CBD | UN Convention on Biological Diversity |
| CSOs | Civil Society Organisations |
| ICNP | Ad Hoc Intergovernmental Committee for Nagoya Protocol on Access and Benefit Sharing |
| ILCs | Indigenous People and Local Communities |
| ITK | Indigenous Traditional Knowledge |
| MAT | Mutually Agreed Terms |
| NBA | National Biodiversity Authority (Ministry of Environment and Forests, Government of India) |
| NFP | National Focal Point |
| NP | Nagoya Protocol |
| PIC | Prior Informed Consent |

Сравнительный анализ режимов доступа к генетическим ресурсам и совместного пользования выгод в Индии и России в контексте коренных народов и местных общин

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В соответствии с Нагойским протоколом регулирования доступа к генетическим ресурсам и совместного пользования на справедливой и равной основе выгод от их применения (ABS), Индия разработала законодательные акты и нормативные механизмы, в то время как Россия находится в процессе разработки такого законодательства. Признание коренных народов и местных общин (ILCs)⁹ и закрепление за ними территорий в режимах ABS в России и Индии, и их участие/вовлеченность в процессы международных переговоров и внутреннее законотворчество представляются незначительными и недостаточными.

Ключевые слова: доступ к ресурсам и совместное пользование выгод, коренные народы и местные общины, Нагойский протокол, генетические ресурсы, биопиратство, Конвенция о биологическом разнообразии, управление биологическим разнообразием.

Научная специальность: 12.00.00 – юридические науки.

Annex.Q.A: National ABS Regime: Opinions of Indigenous Organizations & Individuals (Q.A Format)

| QUESTIONS OF OPINION SURVEY | INDIA RESPONDENTS | | RUSSIA RESPONDENTS | |
|--|---|-------------------------------|---|-------------------------------|
| | Response (In parenthesis: No. of Respondents = Total 5) | Response Percentage | Response (In parenthesis: No. of Respondents = Total 5) | Response Percentage |
| A. PARTICIPATION OF ILCs IN ABS POLICY/LAW MAKING AND NEGOTIATION PROCESSES | | | | |
| Has your country involved the indigenous people and local communities (ILCs) in developing national ABS law/policy/guideline? | Yes, our country involved/involves ILCs in developing national ABS instrument to <u>big extent</u> Yes, our country involved/involves ILCs in developing national ABS instrument to <u>little extent</u> (2) No, our country did/does not involve ILCs in developing national ABS instrument (1) No ABS instrument is evolved or evolving in my country I am not aware (2) | 0% 40% 20% 0% 40% | Yes, our country involved/involves ILCs in developing national ABS instrument to <u>big extent</u> Yes, our country involved/involves ILCs in developing national ABS instrument to <u>little extent</u> (1) No, our country did/does not involve ILCs in developing national ABS instrument (1) No ABS instrument is evolved or evolving in my country I am not aware (3) | 0% 20% 20% 0% 60% |
| Will your country involve the ILCs in developing the prior informed consent (PIC) and mutually agreed terms (MAT) before allowing the user countries to access & utilize genetic resources or associated ITK held by ILCs? | Yes, our country would involve ILCs effectively in developing the PIC and MAT. Yes, our country would involve ILCs in developing the PIC and MAT, but for namesake only. (1) No, our country would not involve the ILCs at all in developing the PIC and MAT. (1) No ABS instrument is evolved or evolving in my country I cannot say. (3) | 0% 20% 20% 0% 60% | Yes, our country would involve ILCs effectively in developing the PIC and MAT. Yes, our country would involve ILCs in developing the PIC and MAT, but for namesake only. (1) No, our country would not involve the ILCs at all in developing the PIC and MAT. No ABS instrument is evolved or evolving in my country (1) I cannot say. (3) | 0% 20% 0% 20% 60% |
| Do you think that your country will ensure <i>effective</i> participation of your ILCs in establishing the mechanisms to inform the potential users about their obligations before accessing any genetic resources and associated ITK? | Yes, our country will ensure <i>effective</i> participation of our ILCs. Yes, our country will ensure participation of our ILCs, but that would <u>not be effective</u> . (4) No ABS instrument is evolved or evolving in my country. I am not aware. (1) | 0% 80% 0% 20% | Yes, our country will ensure <i>effective</i> participation of our ILCs. Yes, our country will ensure participation of our ILCs, but that would <u>not be effective</u> . (1) No ABS instrument is evolved or evolving in my country. (2) I am not aware. (2) | 0% 20% 40% 40% |

| QUESTIONS OF OPINION SURVEY | INDIA RESPONDENTS | | RUSSIA RESPONDENTS | |
|--|--|-------------------------------|--|-------------------------------|
| | Response (In parenthesis: No. of Respondents = Total 5) | Response Percentage | Response (In parenthesis: No. of Respondents = Total 5) | Response Percentage |
| B. NATIONAL RECOGNITION OF CUSTOMARY LAWS/INSTITUTIONS OF ILCs | | | | |
| Does your country truly respect, recognize and enforce the rights and ITK of your own indigenous people? | Yes, our country does. Yes, but not truly. (3) No. (2) I don't know. | 0% 60% 40% 0% | Yes, our country does. (1) Yes, but not truly. (2) No. (1) I don't know. (1) | 20% 40% 20% 20% |
| Does your country's ABS legislation/policy recognize the customary law/institutions of your indigenous people? | Yes, our existing/evolving ABS legislation/policy has such a provision. (1) No, there is no such provision in our existing/evolving ABS legislation/policy. (1) No ABS instrument is evolved or evolving in my country I am not aware. (3) | 20% 20% 0% 60% | Yes, our existing/evolving ABS legislation/policy has such a provision. No, there is no such provision in our existing/evolving ABS legislation/policy. (1) No ABS instrument is evolved or evolving in my country (1) I am not aware. (3) | 0% 20% 20% 60% |
| C. NATIONAL RECOGNITION OF ILCs IN ISSUING PIC AND MAT | | | | |
| Does your country's ABS legislation/policy make the PIC mandatory before access/utilization of genetic resources or associated ITK? | Yes, the PIC is mandatory in our existing/evolving ABS legislation/policy. (2) Yes, the PIC is mentioned in our existing/evolving ABS legislation/policy, but it is not mandatory. (1) No, there is no mention of PIC in our existing/evolving ABS legislation/policy. No ABS instrument is evolved or evolving in my country I don't know. (2) | 40% 20% 0% 0% 40% | Yes, the PIC is mandatory in our existing/evolving ABS legislation/policy. Yes, the PIC is mentioned in our existing/evolving ABS legislation/policy, but it is not mandatory. No, there is no mention of PIC in our existing/evolving ABS legislation/policy. (1) No ABS instrument is evolved or evolving in my country (1) I don't know. (3) | 0% 0% 20% 20% 60% |
| D. IMPORTANCE TO COMMUNITY PROTOCOLS OF ILCs | | | | |
| Does your country's ABS legislation/policy provide for supporting the concerned ILCs to develop community protocols of your indigenous people? | Yes, our existing/evolving ABS legislation/policy has such a provision. (1) No, there is no such provision in our existing/evolving ABS legislation/policy. No ABS instrument is evolved or evolving in my country I am not aware. (4) | 20% 0% 0% 80% | Yes, our existing/evolving ABS legislation/policy has such a provision. No, there is no such provision in our existing/evolving ABS legislation/policy. (1) No ABS instrument is evolved or evolving in my country (1) I am not aware. (3) | 0% 20% 20% 60% |

| QUESTIONS OF OPINION SURVEY | INDIA RESPONDENTS | | RUSSIA RESPONDENTS | |
|--|--|-------------------------------|--|-------------------------------|
| | Response (In parenthesis: No. of Respondents = Total 5) | Response Percentage | Response (In parenthesis: No. of Respondents = Total 5) | Response Percentage |
| E. ACCESS OF ILCs TO BIORESOURCES IN THEIR TERRITORIES | | | | |
| Does your country restrict the ILCs' access to bioresources in forests and protected areas? | Yes, our country fully restricts our ILCs' access to bioresources in forests and protected areas (1) Yes, our country selectively restricts our ILCs' access to bioresources in forests and protected areas. (4) No, our country does not restrict our ILCs' access to bioresources in forests and protected areas. I cannot say. | 20% 80% 0% 0% | Yes, our country fully restricts our ILCs' access to bioresources in forests and protected areas (1) Yes, our country selectively restricts our ILCs' access to bioresources in forests and protected areas. (2) No, our country does not restrict our ILCs' access to bioresources in forests and protected areas. I cannot say. (2) | 20% 40% 0% 40% |
| Does your country ensure the rights of ILCs to exchange genetic resources and ITK within and amongst themselves? | Yes, our country fully ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves. Yes, our country partially ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves. (1) No, our country restricts our ILCs exchanging genetic resources and ITK within and amongst themselves. (1) I cannot say. (3) | 0% 20% 20% 60% | Yes, our country fully ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves. Yes, our country partially ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves. (1) No, our country restricts our ILCs exchanging genetic resources and ITK within and amongst themselves. (1) I cannot say. (3) | 0% 20% 20% 60% |
| F. FAIR AND EQUITABLE SHARING OF BENEFITS | | | | |
| Will your country further share the benefits [received from user countries (usually developed countries)] with your ILCs holding the accessed/utilized genetic resource or associated ITK? | Yes, our country would share the received benefits with ILCs judiciously. Yes, our country would share the received benefits with ILCs, but only a fraction. (1) It is likely that our country would share the received benefits with ILCs. No, our country would not share the benefits with ILCs. (1) I don't know. (3) | 0% 20% 0% 20% 60% | Yes, our country would share the received benefits with ILCs judiciously. Yes, our country would share the received benefits with ILCs, but only a fraction. (1) It is likely that our country would share the received benefits with ILCs. (3) No, our country would not share the benefits with ILCs. I don't know. (1) | 0% 20% 60% 0% 20% |

| QUESTIONS OF OPINION SURVEY | INDIA RESPONDENTS | | RUSSIA RESPONDENTS | |
|---|--|-------------------------|---|--------------------------|
| | Response (In parenthesis: No. of Respondents = Total 5) | Response Percentage | Response (In parenthesis: No. of Respondents = Total 5) | Response Percentage |
| I. INVOLVEMENT OF ILCs IN MONITORING OF ACCESS TO GENETIC RESOURCES | | | | |
| Does your country's ABS legislation/policy (or administrative measure) provide to involve your ILCs in monitoring of the access and utilization of genetic resources and associated ITK by the users? | Yes, our existing/evolving ABS legislation/ policy or administrative measure provides to involve our ILCs in monitoring of the access/ utilization of genetic resources by the users? No, there is no such provision in our existing/ evolving ABS legislation/policy or administrative measure. (3) No ABS instrument is evolved or evolving in my country (2) I do not know. (2) | 0% 60% 0% 40% | Yes, our existing/evolving ABS legislation/ policy or administrative measure provides to involve our ILCs in monitoring of the access/ utilization of genetic resources by the users? No, there is no such provision in our existing/ evolving ABS legislation/policy or administrative measure. No ABS instrument is evolved or evolving in my country (2) I do not know. (3) | 0% 0% 40% 60% |
| Will your country involve the ILCs in monitoring the access and utilization of genetic resources or associated ITK by the user countries (usually developed countries)? | Yes, our country would effectively involve the ILCs in monitoring. Yes, our country would involve the ILCs in monitoring, but for namesake. (3) No ABS instrument is evolved or evolving in my country I do not know. (2) | 0% 60% 0% 40% | Yes, our country would effectively involve the ILCs in monitoring. Yes, our country would involve the ILCs in monitoring, but for namesake. (1) No ABS instrument is evolved or evolving in my country (2) I do not know. (2) | 0% 20% 40% 40% |
| J. CHECK OF BIOPIRACY | | | | |
| And if your country's government agencies/institutes or corporations are involved in illegal transfer/ transportation of genetic resource to user country/corporation, will your ILCs be able to check the illegal transfer (misappropriation)? | Yes, our ILCs are able to check successfully the illegal transfer (misappropriation). Yes, our ILCs are able to check the illegal transfer (misappropriation), but with mixed results. No, our ILCs are NOT able to check successfully the illegal transfer (misappropriation). (3) I cannot say. (2) | 0% 0% 60% 40% | Yes, our ILCs are able to check successfully the illegal transfer (misappropriation). (1) Yes, our ILCs are able to check the illegal transfer (misappropriation), but with mixed results. (1) No, our ILCs are NOT able to check successfully the illegal transfer (misappropriation). (1) I cannot say. (2) | 20% 20% 20% 40% |
| Do you think that the ABS regime at international level and national ABS regime be able to stop the biopiracy (if any) of your country's genetic resources and associated ITK? | Yes, to large extent. (1) Yes, to some extent. (2) No, not at all. (2) I cannot say. | 20% 40% 40% 0% | Yes, to large extent. (1) Yes, to some extent. (3) No, not at all. (1) I cannot say. | 20% 60% 20% 0% |

Annex.Q.B: National ABS Regime: Opinions of CBD/NP Parties (Q.B Format)

| Q.No. | QUESTIONS OF OPINION SURVEY | RESPONSE OPTIONS | India | Russia |
|--|--|---|-------|--------|
| A. PARTICIPATION OF ILCs IN ABS POLICY/LAW MAKING AND NEGOTIATION PROCESSES | | | | |
| 1 | Whether or not the indigenous and local communities (ILCs) were/are allowed taking part in national ABS law/policy making? | Yes, to large extent. Yes, to some extent. No, not at all. I do not know. | 1 | 4 |
| 2 | Was/is ILCs' participation active or passive? | Active participation Passive participation No participation I do not know | 1 | 3 |
| 3 | Were/are the concerns, voices or viewpoints of ILCs respected, integrated or incorporated in the national ABS policy/law? | Yes, to large extent. Yes, to some extent. No, not at all. I do not know. | 1 | 2 |
| B. NATIONAL RECOGNITION OF CUSTOMARY LAWS/INSTITUTIONS OF ILCs | | | | |
| 4 | In accordance of Article.12.1 of Nagoya Protocol, does your country's ABS legislation/ policy recognize the customary law/institutions of your indigenous people? | 1. Yes, our existing/evolving ABS legislation/policy has such a provision. 2. No, there is no such provision in our existing/evolving ABS legislation/policy. 3. I am not aware. | 1 | 1 |
| C. NATIONAL RECOGNITION OF ILCs IN ISSUING PIC AND MAT | | | | |
| 5 | Shall the national ABS policy/law respect the ILCs' right to grant FPIC and right to sign MATs, and in what way? | Yes, to large extent. Yes, to some extent. No, not at all. I do not know. | 2* | 1 |
| 6 | In accordance of Article.6.1 and Article.6.2 of Nagoya Protocol, does your country's ABS legislation/policy make the PIC mandatory before access/utilization of genetic resources or associated ITK? | Yes, the PIC is mandatory in our existing/evolving ABS legislation/policy. Yes, the PIC is mentioned in our existing/evolving ABS legislation/policy, but it is <u>not</u> mandatory. No, there is no mention of PIC in our existing/evolving ABS legislation/policy. | 1 | 3 |

| Q.No. | QUESTIONS OF OPINION SURVEY | RESPONSE OPTIONS | India | Russia |
|---|--|--|-------|--------|
| 7 | Does your country's ABS legislation/policy provide to ensure participation and involvement of ILCs in creating procedures/format of PIC? | <ol style="list-style-type: none"> Yes, our existing/evolving ABS legislation/policy has such a provision. No, there is no such provision in our existing/evolving ABS legislation/policy. I am not aware. | 1 | 2 |
| 8 | Is your country committed to consult, involve or engage the ILCs in issuing the PIC to user Parties before accessing/ utilizing any genetic resources and associated ITK? | <p>Yes, our country is fully committed.</p> <p>Yes, our country is somewhat committed.</p> <p>No, our country has no such mandate.</p> <p>I cannot say.</p> | 1 | 1 |
| 9 | As envisaged in Article.5.1 of Nagoya Protocol, does your country's ABS legislation/policy include provisions of drafting the mutually agreed terms (MAT) on equity principles, opposing the dominating positions of user countries (usually developed nations)? | <p>Yes, our country has legal provision in ABS law/policy to draft MAT on equity principles.</p> <p>Yes, our country has legal provision in ABS law/policy to draft MAT, but <u>not</u> on equity principles.</p> <p>No, our country has no legal provision in ABS law/policy to draft MAT.</p> <p>I cannot say.</p> | 1 | 1 |
| 10 | In accordance of Article.12.3(b) of Nagoya Protocol, does your country's ABS legislation/ policy provide for engaging your ILCs in developing the MAT? | <ol style="list-style-type: none"> Yes, our country's ABS law/policy provide for engaging ILCs in developing the MAT. No, our country has no such provision in ABS law/policy. I cannot say. | 1 | 1 |
| D. IMPORTANCE TO COMMUNITY PROTOCOLS OF ILCs | | | | |
| 11 | In accordance of Article.12.3(a) of Nagoya Protocol, does your country's ABS legislation/policy provide to ensure the development of community protocols before granting any PIC to users of ITK? | <p>Yes, our existing/evolving ABS legislation/policy provides to ensure the development of community protocols.</p> <p>No, there is no such provision in our existing/ evolving ABS legislation/ policy.</p> <p>I do not know.</p> | NAT | 2 |
| 12 | Does your country's ABS legislation/policy provide for supporting the concerned ILCs to develop community protocols of your indigenous people? | <p>Yes, our existing/evolving ABS legislation/policy has such a provision.</p> <p>No, there is no such provision in our existing/ evolving ABS legislation/ policy.</p> <p>I am not aware.</p> | NAT | 2 |

| Q.No. | QUESTIONS OF OPINION SURVEY | RESPONSE OPTIONS | India | Russia |
|---|--|--|-------|--------|
| E. ACCESS OF ILCs TO BIORESOURCES IN THEIR TERRITORIES | | | | |
| 13 | Does your country restrict the ILCs' access to bio-resources in forests and protected areas? | Yes, our country fully restricts our ILCs' access to bioresources in forests and protected areas Yes, our country selectively restricts our ILCs' access to bioresources in forests and protected areas No, our country does not restrict our ILCs' access to bio-resources in forests and protected areas. I cannot say. | 3 | 2 |
| 14 | Does your country ensure the rights of ILCs to exchange genetic resources and ITK within and amongst themselves? | Yes, our country fully ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves. Yes, our country partially ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves. No, our country restricts our ILCs exchanging genetic resources and ITK within and amongst themselves. I cannot say. | 1 | 2 |
| F. FAIR AND EQUITABLE SHARING OF BENEFITS | | | | |
| 15 | Is there recognition in national ABS policy/law of ILCs over users' access to genetic resources and traditional knowledge, and over sharing of benefits arising out of utilization of genetic resources? | Yes, to large extent. Yes, to some extent. No, not at all. I do not know. | 1 | 1 |
| 16 | As envisaged in Article.5.2 & Article.5.5 of Nagoya Protocol, does your country's ABS legislation/policy provide for sharing benefits with concerned ILCs in a fair and equitable way? | Yes, our country's ABS law/policy provides for sharing benefits with concerned ILCs in a fair and equitable way. Yes, our country's ABS law/policy provides for sharing benefits with concerned ILCs, but <u>not</u> in a fair and equitable way. No, our country's ABS law/policy does not provide for sharing benefits with concerned ILCs in a fair and equitable way. I cannot say. | 1 | 3 |
| 17 | How would the benefits received by your country further be shared with your indigenous people and/or local communities holding the genetic resource or associated ITK being accessed/ utilized? | 1. I cannot say. 2. Our country has no clues about developing any such mechanism. 3. I suggest the following mechanism: | 3* | 1 |

| Q.No. | QUESTIONS OF OPINION SURVEY | RESPONSE OPTIONS | India | Russia |
|--|--|--|-------|--------|
| G. ACCESS TO GENETIC RESOURCES AND SPACE FOR ILCs | | | | |
| 18 | In accordance of Article.12.2 of Nagoya Protocol, does your country's ABS legislation/policy ensure <i>effective</i> participation of your ILCs in establishing the mechanisms to inform the potential users of ITK about their obligations? | Yes, our existing/evolving ABS legislation/policy ensures <i>effective</i> participation of our ILCs. Yes, our existing/evolving ABS legislation/policy ensures participation of our ILCs, but that is not effective . No, there is no such provision in our existing/evolving ABS legislation/policy. I am not aware. | 1 | 2 |
| 19 | Does your country's ABS legislation/policy provide for disclosing the information pertaining to access of ITK to potential users in a language understandable to your ILCs? | Yes, our existing/evolving ABS legislation/policy provides for disclosing the information in a language understandable to our ILCs. No, there is no such provision in our existing/ evolving ABS legislation/ policy. I am not aware. | 1 | 2 |
| H. ASSOCIATED TRADITIONAL KNOWLEDGE AND ILCs RIGHTS | | | | |
| 20 | Does your country truly respect, recognize and enforce the rights and ITK of your own indigenous people? | Yes, we do. Yes, but not truly. No. I don't know. | 1 | 1 |
| I. INVOLVEMENT OF ILCs IN MONITORING OF ACCESS TO GENETIC RESOURCES | | | | |
| 21 | Does your country's ABS legislation/policy (or administrative measure) provide to involve your ILCs in monitoring of the access and utilization of genetic resources or associated ITK by the users? | Yes, our existing/evolving ABS legislation/policy or administrative measure provides to involve our ILCs in monitoring of the access/ utilization of genetic resources by the users? No, there is no such provision in our existing/evolving ABS legislation/policy or administrative measure. I do not know. | 1 | 2 |

NAI = Not Attempted; NAp = Not Applicable.

*Appendix to Questions' Responses

| Country | Legislation | Q.5 | Q.17 |
|---------|---|---|---|
| India | <p>Biological Diversity Act 2002 Biological Diversity Rules 2004</p> | <p>Section.41 of the Biological Diversity Act 2002 provides for constitution of Biodiversity Management Committees (BMCs) within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of landraces, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity. Section.41(2) provides that the National Biodiversity Authority and the State biodiversity Boards shall consult the BMCs while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the BMCs. Section.41(3) provides that BMCs may levy charges by way of Collection Fees from any person for accessing or collecting any biological resources for commercial purposes from areas falling within its territorial jurisdiction.</p> | <p>It is provided for in Section.21 of Biological Diversity Act 2002.</p> |
| Russia | <p>Patents Act, 1993 Law on Veterinary Medicine, 1993 Law on Selection Achievements, 1994 Law on Copyright and Related Rights, 1994 Law on State Regulation of Foreign Trade, 1994 Law on Wildlife, 1995 Law on Science and State Science and Technology Policy, 1996 Law on Participation in the International Exchange of Information, 1996 Law on State Regulation in the Field of Genetic Engineering, 1996</p> | <p>Participation of ILCs is solicited in “prior informed consent” and “mutually agreed terms” and the benefit sharing processes.</p> | |