

Nagoya Protocol and Participation of Indigenous People and Local Communities in Policy Making Process and Benefit Sharing

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Abstract

Prior to the *Nagoya Protocol* on Access and Benefit Sharing the genetic resources had been utilized commercially without giving benefits to the providers of bioresources. The *Nagoya Protocol* was adopted in 2010 as international legislation governing access to genetic resources and associated traditional knowledge and resulting benefit sharing arising out of utilization. In core of this international legislation is the rights given to Indigenous people and local communities (ILCs) in the form of their mandatory prior informed consent (PIC), essential sharing of accrued benefits to them, their involvement in process of mutually agreed terms (MAT), and their participation in policy implementation processes. The present paper explores the core issue of participation, involvement and representation of Indigenous people in international and domestic ABS law making or negotiation processes, and actual sharing of accrued benefits from the utilization of biological diversity. Findings and analysis indicate that issues of inadequate participation, involvement and engagement of ILCs in international and national ABS law making, implementation, decision-making for benefit sharing, bilateral negotiation processes are unaddressed both in processes led by Convention on Biological Diversity and the nation-States. With the repeated references to 'domestic law' and 'sovereignty' in *Nagoya Protocol*, the State control and legitimacy are further strengthened on bioresources, causing exclusion of Indigenous people from overall political space for decision making process, policy negotiations and equitable benefit sharing.

Keywords: Indigenous People; ABS; Nagoya Protocol; Benefit Sharing; Participation; Policy Making

Introduction

During the Tenth Meeting of the Conference of the Parties (COP10) to the *UN Convention on Biological Diversity (CBD)* held in 2010, the *Nagoya Protocol*¹ on Access and Benefit Sharing (ABS) was negotiated and agreed upon. It is a legally binding² international instrument, which pursues to advance national access and benefit-sharing (ABS) legislation and/or administrative measures. The *Nagoya Protocol* mandates to fulfil the third objective of CBD: "to share the benefits of biological diversity fairly and equitably". The Protocol's objectives have led to worldwide debate concerning matters such as access to genetic resources, access to traditional knowledge (TK), benefit-sharing mechanisms, the role of States, and how Indigenous peoples and local communities (ILCs) are being affected or are involved in the process (Chennells, 2013; Arjjumend *et al.*, 2017, p.57). The focus on

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¹ The *Nagoya Protocol* entered into force on October 12, 2014, 90 days after the date of deposit of the 50th instrument of ratification: <http://www.cbd.int/abs>.

² Legally binding on Parties. As on 25 February 2018, there were 104 Parties with 105 ratifications and 92 signatories of the *Nagoya Protocol*.

compliance with domestic legislation or regulatory requirements of the Party providing genetic resources (usually developing countries) and contractual obligations reflected in prior informed consent (PIC) and mutually agreed terms (MAT) are a significant innovation of the *Nagoya Protocol* (CBD Secretariat, 2011; Arjjumend *et al.*, 2016, p.111). The Protocol also strengthens abilities of Indigenous and local communities (ILCs) to benefit from the commercial utilization of their knowledge, innovations and practices (Arjjumend *et al.*, 2016, p.111).

There is a general perception that the *Nagoya Protocol* is instrumental in protecting the rights of Indigenous peoples and their traditional knowledge; however, serious questions arise regarding ILC involvement, participation and engagement in policy decision and law-making processes related to the Protocol (Suiseeya, 2014; Arjjumend *et al.*, 2017, p.57). Present paper explores the responses of ILC participant representatives in CBD forums concerning the implementation of the *Nagoya Protocol*. It furthermore analyzes the implications of the data collected from India respondents in the context of the Protocol's capacity to address issues concerning ILC involvement, participation, and engagement in the international legal frameworks that currently guide the pertinent national domestic laws, policies, administrative measures, procedures and guidelines. The paper also explores whether or not the accrued benefits percolate to the ILCs in respective countries.

Methodology

Present paper is based on a study for which the data was gathered from 2013 to 2015. Evaluative research methods were applied to examine the position of ILC representatives in international forums and the impact of their position on ABS laws. Nonreactive and reactive methods were employed to conduct the study. These methods are described in detail in a similar work of the author (Arjjumend *et al.*, 2017, p.58).

Sampling for Structured Interviews

First of all, a list of potential respondents was prepared. The structured interviews were conducted using stratified random sampling. Organizations and individuals working on or advocating ILC issues and causes were first selected from civil society groups, and then contacted. The long list of potential respondents was subsequently narrowed down to make it more realistic. Nearly 200 potential respondents were contacted by email, out of whom only ten respondents belonging to Indigenous organization finally turned up. Of them, the responses of only 5 respondents were complete and usable for further analysis.

Structured Interviews

Prior to contacting the potential respondents by email and conducting the structured interviews, a set of questions was developed (see Table 1). The questions were grouped as follows:

- A. Respondents' awareness about ABS
- B. ILCs as primary stakeholders in ABS policy/law-making
- C. ILC participation in ABS policy/law-making and negotiation processes
- D. Fair and equitable benefit-sharing.

The data was sourced from five individuals representing diverse organizations from various parts of India. The respondents were the following: Hemant Larma representing Mizoram Chakma Development Forum, P. Murugan representing NESAM Trust, Amit Kumar representing Citizens Foundation, Sanjay Garg representing Centre for Policy Solution, and M. Sudhakar (individual). Their responses are conveyed in Table 1, and have been expressed in percentage format.

Table 1: Survey Questions and Responses of Indian Indigenous Organizations and Individuals

Questions	Response (Total no. of respondents= 5)	Response percentage
<i>A. Respondents' awareness about ABS</i>		
1. Are you aware of an international regime that has emerged on <i>Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization (ABS)</i> , which has been negotiated since 1998 (in COP4) under Article 15 of the <i>UN Convention on Biological Diversity</i> ?	1. Yes (3) 2. No (2)	1. 60% 2. 40%
2. Do you think that the <i>Regime on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization (ABS)</i> is connected to Indigenous People and Local Communities (ILCs)?	1. Yes (4) 2. No 3. I do not know (1)	1. 80% 2. 0% 3. 20%
<i>B. ILCs as primary stakeholders in ABS policy/lawmaking</i>		
3. Do you think that Indigenous peoples and local communities (ILCs) constitute one of the primary stakeholders in the process of developing the international policies, legislation or institutions related to:	A. Access to Genetic Resources held by ILCs 1. Yes (4) 2. No (1) B. Access to Traditional Knowledge associated with Genetic Resources held by ILCs 1. Yes (4) 2. No (1)	A. 1. 80% 2. 20% B. 1. 80% 2. 20%
<i>C. Participation of ILCs in ABS policy/lawmaking and negotiation processes</i>		
4. Do you think that the active participation of Indigenous people and local communities (ILCs) in the process of developing the international policies, legislations or institutions is essential?	1. Yes (5) 2. No 3. I cannot say	1. 100% 2. 0% 3. 0%
5. Do you think that the Indigenous people and local communities (ILCs) needed/need to be involved in negotiation process during developing the international policies, legislations or institutions?	1. Yes (5) 2. No 3. I do not know/ I cannot say	1. 100% 2. 0% 3. 0%
6. Has your country involved the Indigenous people and local communities (ILCs) in developing national ABS law/policy/guideline?	1. Yes, our country involved/involves ILCs in developing national ABS instrument <u>to big extent</u> 2. Yes, our country involved/involves ILCs in developing national ABS instrument <u>to little extent</u> (2) 3. No, our country did/does not involve ILCs in developing national ABS instrument (1)	1. 0% 2. 40% 3. 20% 4. 0% 5. 40%

Questions	Response (Total no. of respondents= 5)	Response percentage
	4. No ABS instrument is evolved or evolving in my country 5. I am not aware (2)	
<i>D. Fair and equitable benefit-sharing</i>		
7. Do you think that the <i>Nagoya Protocol</i> would ensure fair and equitable sharing of the benefits arising from the utilization of genetic resources and indigenous traditional knowledge (ITK) associated with genetic resources?	1. Yes (1) 2. No 3. I cannot say (4)	1. 20% 2. 0% 3. 80%
8. Will India further share the benefits [received from user countries (usually developed countries)] with their ILCs holding the accessed/utilized genetic resource or associated ITK?	1. Yes, our country would share the received benefits with ILCs <u>judiciously</u> . 2. Yes, our country would share the received benefits with ILCs, <u>but only a fraction</u> . (1) 3. It is likely that our country would share the received benefits with ILCs. 4. No, our country would not share the benefits with ILCs. (1) 5. I don't know. (3)	1. 0% 2. 20% 3. 0% 4. 20% 5. 60%

Participant Observation

One of the research tools adopted was participant observation of negotiations processes in the CBD's global forums. The tool 'participant observation' has been described by Arjjumend *et al.* (2017, p.60). The author directly observed the following two international meetings on the ABS regime:

- The Second Meeting of the Open-Ended *Ad Hoc* Intergovernmental Committee for the *Nagoya Protocol* on ABS (ICNP-2) (9 – 13 April 2012, New Delhi, India)
- The Eleventh Meeting of the Conference of the Parties (COP11) to the Convention on Biological Diversity (8 – 19 October 2012, Hyderabad, India)

The author specifically observed the space provided to various countries' ILC representatives in the deliberations and negotiations that took place on pertaining to ABS mechanisms and regarding outstanding *Nagoya Protocol* issues. Attention was paid to the extent of ILC members' representation, participation, engagement and involvement in scheduled sessions of the ICNP-2 and COP11, as well as in side events.

Results and Discussion

The full and effective participation of Indigenous people in international ABS processes is considered essential for the implementation of the third objective of CBD. According to Arjjumend *et al.* (2017), the Conference of Parties (COP7) of CBD had the focus on (a) procedural rights of Indigenous people that the CBD must protect in any future international regime on ABS, and (b) minimum substantive rights of Indigenous people that the CBD must protect in any future international regime on ABS. Importance of the centrality of the Indigenous people in CBD's negotiations may be understood from the recommendations of the United Nations to UNPFII³ and 9th meeting of CBD's Conference of

³ United Nations People's Forum on Indigenous Issues

Parties (COP 9). It was pertinently stated that the “Parties shall recognize and respect the rights of Indigenous people” and this must be the primary objective of the CBD and UNPFII (UN, 2007).

The ILCs have not been given adequate attention and importance in the development of national ABS legislation, policies, administrative measures or institutional frameworks, despite the emphasis placed by the *Nagoya Protocol* and the international ABS system on the need to recognize, involve and engage the ILCs and to provide space and recognition for their customary laws and institutions (Arjjumend *et al.*, 2016). It is observed that the exclusion of Indigenous people is not restricted to only ABS system, but it is common in all the biodiversity conservation programs. For instance, the establishment of protected areas has excluded local and Indigenous people from their habitats (Arjjumend *et al.*, 2017). Hence, the evolution of ABS and *Nagoya Protocol* are not the exception. Subsequent sections discuss the field implications of the legal provisions of *Nagoya Protocol* in context of involving ILCs in international and national policy process.

A. ILCs Awareness about ABS

Initially, it was explored to what extent the potential respondents were aware of ABS and the *Nagoya Protocol*. The majority (70%) of surveyed Indian Indigenous organizations/individual responded that they were aware of the *International Regime on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization* (ABS) developed under the CBD (Table 1, question 1). Similarly, 80% of respondents (Table 1, question 2) responded that the international ABS system was linked to the rights of Indigenous peoples and local communities (ILCs). With the evolution history of 17 years, the trajectory of *Nagoya Protocol* comprised number of groups, meetings and negotiations that took place in international forums. The ABS differs from intellectual property rights (IPR) systems in that awareness among government officers and representatives, scientists, academics, communities and Indigenous peoples remains very low (Arjjumend *et al.*, 2017). However, awareness about the international ABS regime has increased after enactment of *Nagoya Protocol* in October 2012. Yet, when it comes to genetic resources and associated traditional knowledge (TK), awareness among Indigenous communities is of special interest, as they are the primary stakeholders of ABS system.

B. ILCs in ABS Policy/Law Making

Recognition of Indigenous people and local communities (ILCs) as primary stakeholders by international forums, especially the CBD, in the process of developing international policies or legislation related to ABS is critical. Prior to the *Nagoya Protocol*, participation by ILCs was not considered important in international negotiations at various forums of the CBD. Only recently the vital role of ILCs in the preservation and creation of biodiversity has been recognized. Therefore, it is important to investigate the extent of involvement of ILCs in the process of developing the international policies, legislations or institutions related to: a) access to genetic resources held by ILCs, and b) access to traditional knowledge associated with genetic resources held by ILCs. The same has been confirmed by 80% of surveyed Indigenous organizations/individual (Table 1, question 3). It is revealed that *there was little evidence that ILCs were involved as primary stakeholders in the process of developing the international policies, legislations or institutions by global organizations of biodiversity governance, such as the CBD*. It was observed despite the clear concerns of the ILCs that they should be considered as primary stakeholders. Moreover, text of *Nagoya Protocol* also demonstrates that the rights of ILCs are more clearly recognized in the *Nagoya Protocol* than in CBD itself (Arjjumend *et al.*, 2017). Furthermore, art. 31 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) provides for the right of Indigenous peoples “to maintain, control, protect and develop their (...)traditional knowledge (...) as well as the manifestations of their sciences, technologies and cultures, including (...) genetic resources, seeds, medicines, knowledge of the properties of fauna and flora (...). They also have the right to maintain, control, protect and develop their intellectual property over such (...) traditional knowledge (...)”. In fact, the obligations of

the *Nagoya Protocol* relating to ILCs and/or TK are not qualified in the same manner as art. 8(j) of the CBD.

C. ILCs Participation in ABS Policy/Law Making and Negotiation Processes

All of the surveyed Indigenous organizations/individual expressed, the “active participation of Indigenous peoples and local communities (ILCs) is essential in the process of developing international policies, legislation and institutions” (Table 1, question 4). Similarly, all of the surveyed respondents (Table 1, question 5) stated that the “Indigenous peoples and local communities (ILCs) needed/need to be involved in the negotiation process during the developmental part of international policies, legislation and institutions.” Thus, the data clearly illustrates that *ILC stakeholders very much require ILC participation and involvement when making international ABS policy and legislation and when undertaking in negotiation processes through global biodiversity governance forums*. Another important aspect of investigation was whether ILCs are involved in national ABS laws. Only 40% of the respondents confirmed that their respective countries involved/involves ILCs in developing national ABS instrument to little extent (Table 1, question 6). On the other hand, one respondent (20%) said that his/her country did/does not involve ILCs in developing national ABS instrument. Remaining 40% respondents were unaware of the status (Table 1, question 6). So, like international ABS regime, the process of developing national ABS laws mostly ignores the need of involving respective ILCs.

Above data reflects that there is a strong need to empower Indigenous peoples so that they will be able to fully and effectively participate within the ABS processes, thus ensuring the full protection of their rights not only in legally binding international regime on access and benefit-sharing but also in processes of national ABS legislation and its implementation. As Arjjumend *et al.* (2017) articulate, effective participation of ILCs depends on more open dialogue between Indigenous peoples and the governments of the countries in which ILCs reside. They further articulate that *Nagoya Protocol* has actually provided the basis for such State-ILCs interface through Article 12, which requires Parties to 1) take into consideration the ILC’s customary laws, community laws and procedures with respect to TK associated with genetic resources; 2) establish mechanisms to inform potential users of TK associated with genetic resources about their obligations; 3) support the development by ILCs of (a) Community Protocols in relation to ABS in TK, (b) minimum requirements for Mutually Agreed Terms (MAT) and (c) Model Contractual Clauses for benefit-sharing; and 4) not to restrict the customary utilization and exchange of genetic resources and associated TK within and amongst ILCs in their implementation of the *Nagoya Protocol* (von-Bieberstein and Koutouki, 2011). Teran (2016) clarified that analysis of various reports of made it clear that the number of Indigenous participants was limited and wholly inadequate in a range of meetings, forums and gatherings of the Working Group on ABS (ABS WG) as well as the Working Group on Article 8(j) (Art 8(j) WG). In ICNP-2 and CBD’s COP11 government delegations of the Parties to the CBD were also observed not to contain any representation from the respective ILCs (Arjjumend *et al.*, 2017). Yet, ILC representative members took part as independent civil society groups or indigenous forums (Teran, 2016). Moreover, the Parties to the CBD are the ones who have the power to negotiate and make decisions, and Indigenous peoples may only influence the negotiations by lobbying to take up indigenous causes and by actively asserting their rights on the floor.

Undue emphasis on State sovereignty is supposed to undermine the gains achieved in the recognition and protection of Indigenous peoples’ rights in international and national human rights forums (Arjjumend, 2016). Indigenous peoples maintain that sovereignty is not absolute (Arjjumend, 2016). In its Article 3, the CBD itself acknowledges that sovereignty is limited by the United Nations Charter and the principles of international law (Arjjumend *et al.*, 2017). Article 15.1 of the CBD reads: “[r]ecognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national

legislation.” In its Article 12.4, the *Nagoya Protocol* also leaves the ILCs’ rights of access to bioresources to the State’s discretion by employing the phrase “as far as possible” (Bavikatte and Robinson, 2011). As a consequence, theoretically, the ILCs have rights over bioresources, but it is uncertain as to what bioresources will be controlled by ILCs. The same is revealed by the fact that national sovereignty often supersedes private/community ownership and entitlements, including those of the ILCs (Arjjumend *et al.*, 2017). It is noticed that States overrule the rights of Indigenous peoples throughout the *Nagoya Protocol*. Hence, it has become clear that most governments neglect their ILCs and their respective rights (Arjjumend, 2016). According to von-Bieberstein and Koutouki (2011), the tense nature of relationships between the State and Indigenous peoples makes it unlikely for States to give space to Indigenous peoples in international ABS negotiation processes or domestic ABS processes. This argument is reinforced by Arjjumend (2016), who analyzes the need for ILCs to participate or be involved in ABS law-making and negotiation process. It is clearly pointed out that dialogue between Indigenous peoples and governments is increasingly essential to engage ILCs in various legal and policy processes at international and domestic level.

D. Fair and Equitable Benefit-Sharing

Article 1 of *Nagoya Protocol* stresses on fair and equitable sharing of benefits arising from the utilization of genetic resources. It also includes appropriate access to such resources and transfer of the relevant technologies. According to Frein and Meyer (2011), the Protocol calls for considering such resource and technology rights, and issues of appropriate funding, in order to enable the conservation of biological diversity and the sustainable utilization of its components. Since the intent of Protocol should be implemented by Parties through taking measures in order that the benefits are shared in a fair and equitable way with respective ILCs, the Party needs to have a domestic ABS legislation to such effect. It is supported by the reference in the provision to ILCs “*holding such knowledge*” (i.e. TK) that entails an implicit reference to domestic law (Arjjumend *at al.*, 2017).

To test the rhetoric of *Nagoya Protocol* as stated in preceding para, various respondents belonging to Indigenous communities were surveyed. Only 20% of surveyed Indigenous organizations/ individual confirmed that the *Nagoya Protocol* would ensure fair and equitable sharing of the benefits arising from the utilization of genetic resources and indigenous traditional knowledge (ITK) associated with genetic resources, while 80% of the respondents had no opinion on the matter (Table 1, question 7). Further, only 20% of surveyed respondents felt that India would share a percentage of benefits received from user countries (usually developed ones) with ILCs who hold the genetic resource or associated ITK in question, while 20% clearly refused that India would share the benefits with ILCs (Table 1, question 7). Rest 60% of the respondents did not reply. *It is thus clear that Indigenous organizations have little confidence that the governments would share benefits received with their respective ILCs who hold the pertinent genetic resource or associated ITK.* Therefore, only a minority of respondents confirmed that the *Nagoya Protocol* would ensure fair and equitable sharing of the benefits arising from the utilization of genetic resources and the ITK associated with genetic resources.

Noticeably, few respondents commented that merely signing or ratifying a Protocol would not help. Chennells (2013) proclaimed that *Nagoya Protocol* should ensure stringent legal space and financial support for the “voiceless” Indigenous communities who possess knowledge on local biodiversity and its uses, to protect/safeguard it and to ensure that the benefits are equitably shared. Teran (2016) criticizes that ABS is an instrument to earn money for the companies (users of genetic resources) at minimum cost, and it is not certain that such fair sharing will happen. Therefore, if there will be any benefits to the providers of genetic resources or TK, these will not be significant. As the governments usually act as full regulators, negotiators, controllers and filters, some countries are reported to have developed or are in the process of developing national legislation and/or administrative measures to regulate not only access to genetic resources and TK, but also to control

the transaction/routing of the benefits from the users to providers (Chennells, 2013). Hardly any monetary benefit can route to the provider ILC without the approval of the government's competent national authority (CNA) or other mechanism. In majority of cases, such as in India, monetary benefits first go to the governmental authority; and only if the governmental authority permits it, the benefits eventually trickle down (usually only partially) to the provider ILCs (Arjjumend *et al.*, 2016). In most cases, governments retain the benefits in their entirety — chiefly in situations of blurred ownership claims of any ILC over the pertinent genetic resource or TK (Arjjumend *et al.*, 2017).

As far as equitable benefit-sharing is concerned, repeated references to domestic ABS legislation in the *Nagoya Protocol* are in recognition of national sovereignty. However, on the other hand, it may empower the Parties to interpret the ABS regime in their own fashion and to treat the respective ILCs at their discretion (Arjjumend *et al.*, 2017). The phrase “domestic legislation regarding the established rights of these Indigenous and local communities over these genetic resources” in Article 5.2 of the *Nagoya Protocol* was interpreted differently by the various participants of the survey. As Arjjumend *et al.* (2017) finally conclude such notions, there are constraints on benefit-sharing with ILCs, giving rise to equity and justice concerns.

Conclusion

The intents of ABS centralize on the right of Indigenous peoples to participate in decision-making processes, on the access to biological resources, and on equitable sharing of benefits arising from the utilization of genetic resources or TK (Suiseeya, 2014). Lack of ILC involvement/participation, engagement and space in the development of the international ABS regime is another core issue for further debate (Suiseeya, 2014; Arjjumend *et al.*, 2017). The results above highlight urgent need of ensuring Indigenous peoples' full and effective participation in ABS processes at international as well as domestic level. This will achieve the full protection of Indigenous rights in a legally binding *Nagoya Protocol* on ABS. It has been observed that progress made on front of engaging Indigenous peoples in the policy-making processes of the CBD and the development of the *Nagoya Protocol* has been grim, despite the express references in UNDRIP, UNFP II and other important instruments for effectively involving the ILCs. When there are repeated references in *Nagoya Protocol* for dealing with Indigenous rights in accordance of domestic ABS laws, progress of the development of domestic ABS laws is grim in majority of countries. Notably, the *Nagoya Protocol* has solely left it to the Parties to create domestic laws and to make relevant provisions for equitably benefit sharing of the accrued benefits derived from genetic resources or associated TK (Morgera, Tsioumani and Buck, 2014). Even more important is the Indigenous peoples' share in decision-making powers and processes for ascertaining the extent of benefit-sharing. Observations indicate that participation of Indigenous people in ABS law making and implementation processes has poor record internationally and nationally. Koutouki and von-Bieberstein (2012) conclude that in the absence of fair and equitable benefit-sharing with indigenous peoples, the *Nagoya Protocol* fails as international law, simply because its current provisions are so ambiguous and inadequate.

Repeated references in *Nagoya Protocol* to “domestic laws” and “State sovereignty” causes the exclusion of Indigenous peoples. It is confirmed by the fact that utilization of genetic resources is governed under the principle of State sovereignty and the domestic legislation of the countries. The *Nagoya Protocol* on ABS also does not adequately address the need to give space, recognition and legitimacy to Indigenous peoples and their TK. Depending on the Parties to respect the rights of their respective Indigenous peoples and letting such matters rely on the goodwill of the Parties are simply the CBD's attempts to escape its core responsibilities and further deprive Indigenous peoples (Arjjumend *et al.*, 2017). Frequent references in the *Nagoya Protocol* pertaining to access to genetic resources, the rights of ILCs, prior informed consent (PIC), mutually agreed terms (MAT), community protocols, monitoring, etc., relate to domestic measures of the Parties that partially reinforce State

sovereignty (Arjjumend, 2016). Therefore, reinforcing State sovereignty over the biological resources of the States has implication on strengthening of the countries to dispossess their respective Indigenous people and traditional communities. The Indigenous peoples also opine that the CBD and *Nagoya Protocol's* undue emphasis on State sovereignty would undermine the efforts made for the recognition and protection of Indigenous peoples' rights in international and regional human rights forums. Therefore, if the States do not have a well-developed charter of rights for the Indigenous peoples (and most countries do not) the *Nagoya Protocol* will lose much of its impact. Henceforth, to confirm adequate and right representation of Indigenous people in the committees, forums, bodies, meetings, etc., the CBD should ensure the effective participation, involvement and engagement of ILCs in ABS processes.

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