

Improved Access to and Benefits from Genetic Resources for Mountain People

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Mountain women carrying fodder in Rasuwa district, Nepal, on the way to Langtang National Park

Access to biological resources and benefit sharing is characterised by power inequities between people of influence and marginalised people. The challenge is to ensure a transition in the power relations towards a more equitable sharing of benefits and to guarantee greater voice for marginalised mountain people.

This paper highlights the emergence of an Access and Benefit Sharing (ABS) regime and discusses key issues of ownership over genetic resources, and how ICIMOD is addressing the issues while supporting the security of livelihoods of mountain people.

Emergence of an Access and Benefit Sharing regime

Before 1992, access to biological and genetic resources for economic gain was relatively free and did not have to adhere to a benefit-sharing regime. In 1993, the Convention on Biological Diversity (CBD) moved away from the concept of a “*common heritage of mankind*” over biological resources and associated traditional knowledge and established the notion of conservation of biodiversity as a “*common concern of humankind*”. The Convention thus transferred the sovereign rights over natural resources to individual nations and, by that, “the authority to determine access to genetic

resources rests with the national governments and is subject to national legislation”. Article 15(5) of the Convention on Biological Diversity requires the users of genetic resources to obtain the permission (prior informed consent) of the nation where the resources are located before they are taken out.

The CBD emphasises conservation, sustainable use of biodiversity, and the fair and equitable sharing of benefits arising from its use and associated knowledge. Following the CBD, the Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) was enacted in 2004; it aims to establish a multilateral system of access and benefit sharing of plant genetic resources for food security and agriculture. Payments are required from persons and entities who commercially use such resources and payments are to be made to nations from which such resources originate (Moore and Tymowski 2005).

Sovereignty and ownership

Though the CBD and ITPGRFA affirmed the sovereignty of the nation-states, the challenge lies in understanding, applying, and negotiating what sovereignty and ownership means in the context of biological diversity use while facilitating access for bioprospecting. The Convention recognises the state's sovereignty over (not ownership of) genetic resources. Ownership of biological resources including genetic resources is determined by national law. If the federal or central

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government grants lands and resource ownership to a province, district, local level entity, or the private sector, this does not affect national sovereignty over these genetic resources. However, the federal system can also grant administrative powers to its lower levels or units of governance to develop and implement regulations that ensure such sovereignty. Regarding the use of genetic resources the different apparatuses of the state may become, in fact, the implementers of national sovereignty.

On the other hand, there is often confusion over the precise distinction between the terms, 'genetic', and 'biological resources'. Biological resources (for example, the trees or microbes) are subject to ownership legislation and regulation. Genetic resources – any material of plant, animal, microbial, or other origin containing functional units of heredity – are basically genetic materials and information existing at the level of molecules and cannot

be owned by anyone in particular because it would be like "owning the DNA" of a particular species of tree. The sovereignty of every national government allows it to regulate access to the DNA of the living resources in its territory. This is not directly related to the ownership of a biological resource like a tree. The only link is the law; legal measures may establish procedures such as prior informed consent and mutually agreed terms of the owner of the biological material (e.g., the tree's owner) for collecting parts of the tree, as well as benefit sharing with the tree's owner, if and when the resulting product produces benefits.

While discussions over ownership of biological resources is ongoing at both the local, national, and international levels, several countries have initiated activities to implement the CBD within their national jurisdictions. Many institutions are also involved in facilitating the process of developing an ABS regime so that local and indigenous communities can benefit from accessing their biological resources. ICIMOD is active in facilitating the ABS process with support from GTZ, Germany in four countries of the eastern Himalaya: Nepal, India, Bangladesh, and Bhutan.

Project overview

The aim of the ABS Project is to facilitate the access and benefit sharing process and raise awareness and enhance the capacity of marginalised communities in the Eastern Himalayan region for it. In this context, the project is working with eight partners to promote more equitable access rights for marginalised groups and communities. The project's interventions have been designed to have impact on two levels: (i) at the level of the citizenry, where the idea is to impart awareness about ABS-related issues, and (ii) at the government level, providing policy-related research



Meeting with traditional knowledge holders in Chirang, Bhutan as part of ABS project monitoring



Marketing traditional knowledge of local women in Darjeeling district, West Bengal, India poses a challenge

A regional ABS strategy is recognition that a large part of knowledge and genetic resources are commonly shared across the region.

inputs that can be used to develop a more socially inclusive ABS regime. At the regional level, efforts are being undertaken to develop a common regional ABS strategy to facilitate access of genetic resources and the fair and equitable share of benefits on a regional level by the holders of such resources.

At the citizens' level, the project and its partners have developed and are disseminating information materials to raise awareness on the processes and potential benefits of an ABS regime. In many cases the efforts are pioneering, as the concept of an ABS regime is very new. The programme has helped add value to the efforts to foster an ABS regime by building the capacities of our partners, and the process has strengthened many civil society institutions. The project is also working with international and regional networks like Mountain Forum and the Himalayan Grassroots Women's Natural Resource Management Association (HIMAWANTI) to promote a more socially inclusive and gendered ABS paradigm. Media awareness programmes covering both print and electronic media are in place. In Nepal, the Nepal Forum of Environmental Journalists (NEFEJ) is playing a leading role, publishing ABS-related articles in their quarterly magazine, *Haka Haki*, airing programmes on Sagarmatha Radio, and producing an exclusive episode on the ABS for the *Aankhijhyal* programme on Nepal television. Other project partners are expected to carry out similar advocacy and awareness-raising campaigns on the ABS across the region.



Tara Dhakal

Rare wild mushrooms found in Maipokhari, Ilam, Nepal

At the policy level, the process of developing policy-based research has been initiated. The research findings will influence the long-term implementation of an ABS regime in the member countries by creating empirical evidences of the claims of marginalised communities. The project is also providing technical support on ABS laws at different levels. Such inputs have helped familiarise lawmakers with the ABS scenarios, both at the international and regional levels. An ABS policy for the states of Nagaland and Mizoram in India is being developed as a result of state level workshops held with support from ICIMOD. An Eastern Himalayan ABS Strategy based on other regional ABS strategies, like the Andean Pact, is also being developed. The rationale behind a regional strategy is that ecological and political boundaries do not coincide and a large part of knowledge and genetic resources are commonly shared in the region. A regional strategy will also enhance the bargaining power of all the Eastern Himalayan countries.

Conclusion

The development of an ABS regime is a complicated process and it is easy to lose sight of the realities of poverty and marginalisation on the ground. ICIMOD's regional member countries are in different stages of developing and implementing an ABS regime. But an ABS regime alone, no matter how good, cannot guarantee fair and equitable benefit sharing for poor mountain communities who are the holders of these resources unless their awareness and power to negotiate their share and rights are enhanced. If the poor are not aware of, and their capacity to understand the value of genetic resources and associated knowledge are not strengthened, the arising benefits may not be shared equitably. The aim of the ABS Project should therefore be how its benefits could be brought to marginalised groups and not concentrated only among groups who are able to influence laws and policies.

References

- The Convention on Biological Diversity. Available at www.biodiv.org.
- Moore Gerald and Tymowski Witold (2005) 'Explanatory Guide to the International Treaty on Plant Genetic Resources for Food and Agriculture', IUCN Environmental Policy and Law Paper no.57, Glad (Switzerland): IUCN-The World Conservation Union