

ACCESS, BENEFIT-SHARING AND INTELLECTUAL PROPERTY RIGHTS

Thematic Concept Note¹

The conservation of biodiversity and sustainable use of biological resources entails complex social and political issues that are as critical to address as the biological/ecological aspects. In particular, the following issues need to be addressed:

1. Access to biological and genetic resources is dependent on a range of factors, including the legal entitlements, ownership, socio-political status and other attributes that different sections of society have. For instance, access to forest resources in India is governed by forest related legislation, and by the administrative structures and programmes of the Forest Department. Such differential access has implications for benefit-sharing. A brief assessment of who has access to biological resources with differences in access for women and men, and for what purpose, would be the starting point for this theme.
2. Similarly, different sections of society have varying levels of access to information and knowledge relevant to the use of biological resources. For instance, knowledge on medicinal plants differs greatly within and between communities and often between women and men within communities and households. This has implications for benefit-sharing and intellectual property rights concerns. A brief assessment of this would be necessary.
3. Given the above conditions, benefits from the use of biological and genetic resources, and of related knowledge, are differentially distributed in society. This differential distribution occurs within households and communities along socio-cultural and gender axis, amongst different communities, between rural and urban areas, within the country as a whole, and internationally. This situation needs to be assessed, with concrete examples. E.g. what kind of inequities exist in the relationship between the women and men collectors of medicinal plants and a pharmaceutical company that makes use of these plants to make a drug?
4. Are there any kind of explicit benefit-sharing arrangements already existing in India, which attempt to break away from the conventional inequitous relationships (e.g. the TBGRI-Kani arrangement in Kerala)? An assessment of these would be necessary, with suggestions on how research bodies, corporations, and government agencies need to reorient their own programmes to enable benefit-sharing arrangements with local communities which are gender & equity sensitive.
5. What are the implications of current intellectual property rights regimes (domestic and international) on indigenous knowledge and its holders? How gender sensitive are these? Can such IPR regimes be used to benefit local communities and individual women and men holding biodiversity-related knowledge? Are there other existing laws/policies/programmes that help in such benefit-sharing and in protecting gender differentiated indigenous knowledge? What are the threats that will emanate from unequal trading mechanisms, multinational companies and international patenting regimes?
6. What modifications in existing laws and policies, including IPR systems, are needed to:
 - (i) Ensure that access and benefit-sharing in the use of biological diversity and related knowledge is equitable and gender sensitive?
 - (ii) Ensure that indigenous knowledge (community and individual) is respected and protected, in particular in relation to IPR regimes. Are alternative IPR regimes needed, and if so, what would be their features?
7. Are there developments in other countries that India can learn from?

¹ This note was prepared by Ashish Kothari, Coordinator, TPCG with inputs from other members of the TPCG.

8. What would next steps for local communities, corporations, state governments, and the country as a whole be?