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ANALYSIS OF EVOLVING DOMESTIC ACCESS AND BENEFIT SHARING LEGISLATION IN RUSSIA FROM THE PERSPECTIVES OF INDIGENOUS PEOPLE AND LOCAL COMMUNITIES

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Abstract: *Under Article 15 of Convention on Biological Diversity, the Nagoya Protocol came into force in 2014 as an international regime to regulate the cross-border utilization of biological resources. By promoting the use of genetic resources and associated traditional knowledge, and by strengthening the opportunities for fair and equitable sharing of benefits from their use, it is believed that the Nagoya Protocol binds the Parties to develop their respective ABS legislation or administrative measures to regulate access to genetic resources and benefit sharing arising out of its commercial utilization. In compliance with CBD obligations, Russia has been dealing with Access and Benefit Sharing (ABS) issues under certain pre-existing legislations and administrative measures. However, as part of the National Conservation Strategy 2014, the Russian Federation has been developing a national ABS legislation, and preparing the signing of the Nagoya Protocol. By conducting an opinion survey of organizations representing the indigenous people in Siberia, North and Far East regions, the present paper is aimed at understanding primarily the recognition of and space allowed to indigenous people and local communities in existing/evolving domestic ABS measures of Russia, and their participation/involvement in domestic ABS processes nationally.*

Keywords: ABS Domestic Laws; Indigenous People & Local Communities; Nagoya Protocol; Biodiversity Governance; Traditional Knowledge

Introduction

In the words of Jospeh (2010), “the genetic resources were accessed for free, based on the world view that the resources were common heritage of humankind. But, with the increased emphasis on intellectual property rights and private ownerships of products from genetic resources, this view changed and the United Nations Convention on Biological Diversity (CBD) introduced a new legal framework where the sovereign rights of States over these resources were established”. Nevertheless, until the CBD came into existence in 1993, the practice of illegal access (piracy) continued unabated. Patent laws have changed over the course of about 200 years, from excluding genetic resources and the processes for producing their derivatives from patentability, to extending patents to all forms of unique plants and animals and the processes for making the derivatives. Whereas the people have historically considered genetic resources to be part of their open access commons, the globalization and the evolution of patent laws has significantly changed how we view these resources. Today, companies are accused of stealing when they take genetic resources or the traditional knowledge associated with these resources from communities or countries without the permission or fair compensation to the people from the communities or countries concerned. The emergence of the term “biopiracy” reflects a shift in the perception of genetic resources from “common property resources” to “national sovereign resources”. This new way of viewing genetic

resources and the traditional knowledge associated with these resources has led to several controversies in the past few decades between technologically advanced countries and countries that are rich in biodiversity. Piracy has also been rampant on the derivatives of genetic resources. Biopiracy also involves indigenous traditional knowledge (ITK) associated with genetic resources. ITK plays an important role in bioprospecting, the process of searching for and extracting potential compounds having commercial value from biological resources. According to Treso (2008), the originators and custodians of much of this knowledge are the indigenous groups who through years of consistent usage through trial and error and keen observation have developed a wealth of knowledge. With economic liberalization and the opening up of borders, the scope for transboundary movements of genetic resources and indigenous knowledge systems are greatly enhanced (Chaturvedi, 2007). Researchers often source their materials for screening from the traders. Once extracted, there is no need to access the natural material again, as its chemical structure can then be synthesized (Richerzhagen, 2010). Thus the scope for challenging illegal patents becomes limited; the Indian Council for Scientific and Industrial Research (CSIR) could challenge the US patent on *turmeric* as India had documented evidence on its healing properties (Dhar and Anuradha, 2005). Actually, India knew of the healing properties of turmeric before the US obtained it from India. But such reclaim of intellectual property rights (IPR) on biological resources is not possible in the majority of cases. It has also been very difficult for Parties to identify the instances of biopiracy.

For the first time in the history of illegal access to genetic resources by the user corporations and countries, the CBD made provisions for fair and equitable sharing of Benefits[1]. For permitted access, the users of genetic resources are obliged to share benefits arising from the utilization of such resources with the providers; benefits, which help providers to develop their own sustainable uses and to preserve biodiversity (Kamau, Fedder and Winter, 2011). Article 15.1 and 15.7 of the CBD acknowledge the sovereign rights of States to regulate access to genetic resources as well as their right to stipulate the sharing of benefits from the utilisation of genetic resources. Article 15.2 places a caveat requiring resource providing States not to impose restrictions that hinder access to genetic resources and thereby restrain conservation[2] and sustainable use of biodiversity. Article 15.7 of the CBD implies that users of genetic resources are obliged to share benefits arising from the utilization of genetic resources with provider countries (Kamau, Fedder and Winter, 2011). According to Article 8(j), the Parties to CBD have an obligation to share benefits from the utilization of traditional knowledge, innovations and practices of indigenous and local communities associated with genetic resources.

In the above context, the biodiversity rich developing countries demanded an international regime which would ensure that access to genetic resources or indigenous traditional knowledge (ITK) associated with such resources be subject to prior informed consent (PIC) from competent national authority and mutually agreed terms (MAT) have been established. After prolonged 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 tenth Conference of the Parties (COP10) to the CBD[3] held on 29 October 2010 in Nagoya, Japan, the parties to the CBD adopted the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of their Utilization* (the Nagoya Protocol) (CBD, 2010). There are 91 signatories and 57 Parties to the Nagoya Protocol (CBD, 2014). It came into force after the 50th instrument of ratification was received on 12 October 2014. The Nagoya Protocol is said to advance significantly the CBD's third objective[4] by providing a strong basis for greater legal

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1 Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, 31 *Int'l Leg. Mat.* 818 (1992), Article 1.

2 It is assumed that access to genetic resources would promote conservation by way of benefit sharing and utilizing the benefits for investing in conservation. So the restrict access is supposed to halt conservation in this sense.

3 The Convention has been adopted by almost all states, with a total of 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 CBD's third objective is "to share the benefits of biological diversity fairly and equitably."

certainty and transparency for both providers and users of genetic resources. Specific obligations to support compliance with domestic legislation or regulatory requirements of the Party (country) providing genetic resources and contractual obligations reflected in MAT are a significant innovation of the Nagoya Protocol (CBD Secretariat, 2011). In addition, the Protocol's provisions on access to ITK held by indigenous and local communities (ILCs) when it is associated with genetic resources will strengthen the ability of these communities to benefit from the use of their knowledge, innovations and practices (CBD Secretariat, 2011).

Prospects for Access and Benefit Sharing in Russia

Genetic resources in Russia are utilized by businesses such as industrial microbiology, plant breeding, breeding for commercial purposes, plants in nurseries, botanical gardens, zoos, etc. ABS 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 landscapes highly rich in biodiversity. 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 CBD in 1995. Although the country has not yet signed the 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. The country is studying the opportunities and intricacies of the Nagoya Protocol and possible positions that Russia can adopt. In the Fifth National Report "Conservation of Biodiversity in the Russian Federation" (November, 2014), the special target and relevant goals[5] were set. Further, in accordance with Aichi Targets[6], the national goals[7] very well support the ongoing preparations for signing the Nagoya Protocol. Additionally, the consolidation of a national ABS regime has been difficult due to traditional and compartmentalized works. The country's fundamental biological research is carried out in the institutes and scientific centers of the Russian Academy of Sciences. Work on the selection and preservation of plants and animals diversity, regulation of "access and participation" in the agricultural sector have been regulated by the Russian Academy of Agricultural Sciences. Medical aspects of flora and fauna are dealt with by the Russian Academy of Medical Sciences. Studies of genetic resources are held in many educational universities and institutes, specialized institutes of the Ministry of Agriculture, Ministry of Health and the Ministry of Natural Resources. Therefore, the ABS policy is important for Russia in view of the huge diversity of life forms in the country and its increasing commercial utilization within and outside the country.

Methodology

Purposive sampling was adopted for conducting the content analysis of the domestic ABS measures of Russia, and for conducting the opinion survey. Before conducting the opinion survey, the list of possible respondent groups from "Associations & Forums of Indigenous Peoples Movements" was identified as mentioned in Table.1 below:

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5 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 will be in force and operational, consistent with national legislation. Source: http://strategy2014.ru/

6 In the COP-10 meeting, the parties agreed that previous biodiversity protection targets are not achieved, so COP10 came up with new plans and targets. This10-year plan provides a set of 20 ambitious yet achievable targets, collectively known as the *Aichi Targets.*

7 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/

Table.1

Respondent Group	*Q Type*	*Respondents*
A: Indigenous Peoples' Representatives	Q.A	Center for Support of Indigenous Peoples of the North (CSIPN)
A: Indigenous Peoples' Representatives	Q.A	Interregional Association of Indigenous Peoples of North of the Krasnoyarsk Region and Evenkiya
A: Indigenous Peoples' Representatives	Q.A	Russian Association of Indigenous Peoples of the North, Siberia and the Far East (RAIPON)
A: Indigenous Peoples' Representatives	Q.A	Association "Aleskam"
A: Indigenous Peoples' Representatives	Q.A	Inuit Society "YUPIK"

Q.A NAT-ABS: Format for Associations & Forums of Indigenous Peoples

* About 25 different organizations were contacted in Russia for getting their opinions in Q.A questionnaire formats.

Research Techniques and Tools

This case study employed both ***non-reactive***[8] (e.g. content analysis of existing documents and secondary information) and ***reactive*** research (e.g. questionnaire survey) techniques. Depending on the nature, depth and importance of the variables[9] and the purpose of research, the tools to gather/collate the data were chosen. The aspects of respondent categories were also taken into account when choosing the tools.

Timeframe

The opinion survey was conducted in July-August 2013. Content analysis of ABS measures and processes in Russia was performed between March and July 2013.

RESULTS

(A) Analysis of Pertinent Legal Systems in Russian Federation

The Russian Federation is in the process of evolving ABS legislation and its mechanisms. As part of the process of ABS system, the Ministry of Natural Resources and Environment, however, recognizes the customary laws of indigenous people and folk varieties[10]. Analysis of the existing legislation in Russia is summed up in the Table.2 given below.

(B) Analysis of Opinion Survey of Organizations Representing ILCs

Taxonomy of the responses from the indigenous organizations expressed by them in opinion surveys is provided. The responses are thus grouped according to certain distinct, but interconnected, variables.

8 Non-reactive research is a class of measures for 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 they are part of a study but leave behind 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.

9 Operational definition of the variable includes how the researcher systematically notes and records observations.

10 The term landrace can be traced to the time when 'modern' varieties of cereals were introduced to European farmers in the late nineteenth century. The farmers' varieties of the time were called 'landraces' and understood as seeds adapted to local growing conditions through natural adaptation usually with no intentional selection. But the term was quickly adopted as generic for all farmers' varieties including those that are bred and maintained by active seed selection on-farm. Such farmer-bred varieties are better termed 'folk varieties' (Berg, 2009).

B1. Participation of Indigenous and Local Communities in National Access and Benefit Sharing Policy Making and Negotiation Processes

On asking about the involvement of ILCs in developing national ABS law/policy/guideline in Russia, only 20 percent of the surveyed indigenous organizations/individuals (Annex.Q.A: q.1) responded that Russia involved/involves ILCs in developing national ABS instrument to little extent. Further, 20 percent respondents opined that their country did/does not involve ILCs in developing national ABS instrument. However, a large majority (60 percent) of the respondents did not know. Thus, responses do not firmly establish that *Russia has a good or bad record of involving respective ILCs in making national ABS policy or law*. Surveyed indigenous organizations/individuals were asked 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 and utilize genetic resources or associated ITK held by ILCs' (Annex.Q.A: q.2). Only 20 percent Russian respondents opined 'affirmatively'. Further, 20 percent respondents said that 'no ABS instrument evolved or was evolving in the country'. Lastly, the majority of respondents (60 percent) gave no opinion on the question (Annex.Q.A: q.2). The analysis of the responses of indigenous organizations/ individuals, thus, indicates that *there is only a remote possibility on the part of Russia of involving the ILCs in developing the PIC and MAT*.

Nearly 20 percent of indigenous organizations/individuals surveyed in Russia expressed their views that Russia 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 ILC participation would not be *effective* (Annex.Q.A: q.3). A sizeable proportion of respondents (40 percent) said that 'no ABS instrument evolved or was evolving in the country' (Annex.Q.A: q.3). Therefore, *the respondents have hardly expressed their opinions in favour of the participation of ILCs in establishing the mechanisms to inform the potential users about their obligations, partly because no ABS instrument is in place as yet*.

B2. National Recognition of Customary Laws/Institutions of Indigenous and Local Communities

Responses vary in this context. 20 percent were 'affirmative' that Russia respects, recognizes and enforces the rights and ITK of her own indigenous people; and 40 percent opined that Russia respects, recognizes and enforces the rights and ITK of her own indigenous people, but not effectively (Annex.Q.A: q.4). Thus, *the responses exhibit that the country only partially respects, recognizes and enforces the rights and ITK of her own indigenous people*.Recognition of customary law/ institutions of indigenous people by country's ABS legislation/ policy has been confirmed by none of the surveyed indigenous organizations/individuals (Annex.Q.A: q.5). On the other hand, 20 percent responded 'negatively' on issues of recognition of customary law/institutions. The majority of respondents (60 percent) were unaware of such issues (Annex.Q.A: q.5). Therefore, one can infer that *the indigenous organizations/ individuals hold the opinion that their country's ABS legislation/ policy hardly recognizes the customary law/institutions of indigenous people*.

B3. National Recognition of Indigenous and Local Communities in Issuing Prior Informed Consent and Mutually Agreed Terms

Interestingly, 20 percent of indigenous respondents indicated that PIC is not in place in Russia's evolving ABS law/policy, and 20 percent say that no ABS law/policy is evolving in Russia (Annex.Q.A: q.6); while 60 percent respondents showed lack of awareness of the issue. The analysis of the responses reveals that *Russia's evolving ABS law/policy has been casual on the issue of PIC of indigenous people and has not considered PIC as mandatory before access/utilization of genetic resources or associated ITK*.

B4. Importance to Community Protocols of Indigenous and Local Communities

Surveyed indigenous organizations/individuals were asked to respond whether their country's ABS legislation/policy provides for support to the concerned ILCs in order to develop community protocols. The majority of surveyed indigenous organizations/individuals showed ignorance about

such provisions in Russia's evolving ABS legislation/policy (Annex.Q.A: q.7). However, 20 percent of respondents denied that there is any such provision in evolving ABS legislation/policy, while 20 percent completely refused the existence of any ABS legislation/policy in Russia (Annex.Q.A: q.7). Thus, *the responses of indigenous organizations/individuals indicate that evolving/existing national ABS legislation/policy attach no real importance to community protocols, if any such protocol exists*.

Table. 2

#	*Aspect*	*Characteristics of Russian Legal Frameworks*
1.	Laws	There is no consolidated law on ABS. The cases are dealt invariably under the following laws by different ministries/ authorities: • 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
2.	Access to Genetic Resources	Transfer of ownership of genetic resources is governed by specific 'contractual agreements' between the accessing entity and the concerned Ministry or authority.
3.	IPR Systems	Multiple laws apply to the transfer of genetic resources and provide exclusively for the protection of rights to traditional "folk" varieties of plants and animals. Granting of special rights to breeders of plants and animals is ensured within the ABS mechanisms. Yet, the main fare under the Intellectual Property Right (IPR) system concentrates on patent protection, the use of "confidential commercial information", and rights of copyright, trademarks, etc.
4.	Protection of ITK	Although there is no single law governing the ABS system, federal laws as a whole recognize the customary laws of indigenous people and the *sui generis* system of IPR. The ITK of indigenous communities is considered a subject for IPR and thus protected by ABS mechanism, and a 'contractual agreement' is signed if the ITK is utilized.
5.	ABS Mechanism	The evolving ABS system follows the principles of "prior informed consent" (PIC) and "mutually agreed terms" (MAT), as envisaged in the Nagoya Protocol. Yet, the instruments of PIC and MAT need an elaborate design and testing in ABS cases.
6.	ABS Implementation	Legal international cooperation in this area work out better than domestic legal cooperation. No clear mechanism for equitable sharing of benefits between the state, the region and the local community for the use of genetic resources has evolved. Since there is no single law dealing with the ABS mechanisms, there is no single agency regulating the access to genetic resources. Many agencies, e.g. Ministry of Health, Ministry of Industry, Technology and Science, Russian Academy of Sciences, Ministry of Economic Development and Trade, Ministry of Culture, Ministry of Education, Ministry of Natural Resources, Ministry of Agriculture, Russian Agency for Patents and Trademarks, etc. implement the fluid procedures laid down as ABS mechanisms.
7.	ILCs in ABS Mechanisms	It is articulated by the Ministry of Natural Resources & Environment that participation of Indigenous and Local Communities (ILC) in the benefit sharing and access processes is ensured, but there is no established body of evidence witnessing the active participation of ILCs. Although the social and political interests of ILCs are taken into account, and ILCs are considered in-charge of resources in their territories, the conceptual views of the interests of ILCs are missing in the current ABS mechanisms. More inclusion of indigenous people is envisaged.

B5. Access of Indigenous and Local Communities to Bio-resources in their Territories

The entire world is talking about access of any country to the biological resources existing in any other country; but, on the other side, a majority of countries restrict their own ILCs to access the same bio-resources. So, the question "does your country restrict the ILCs' access to bio-resources

in forests and protected areas" was floated to the respondents. Only 20 percent of surveyed indigenous organizations/individuals confirmed the full restriction of ILCs' access to bio-resources in forests and protected areas. Besides, 40 percent of respondents confirmed selective restriction of ILCs' access to bio-resources in forests and protected areas (Annex.Q.A: q.8). Therefore, *it is revealed from the analysis that Russia puts restrictions on their own ILCs' access to bio-resources in forests and protected areas*. On the question whether the country ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves or not, the majority of indigenous organizations/individuals (60 percent) were not aware of the issue (Annex.Q.A: q.9). Only 20 percent of respondents said that their country partially ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves, and 20 percent responded that their country restricts ILCs exchanging genetic resources and ITK within and amongst themselves (Annex.Q.A: q.9). So, *it is allowed to draw the conclusion that Russia does not support much the ILCs in exchanging genetic resources and ITK within and amongst themselves.*

B6. Fair and Equitable Sharing of Benefits

Russia's 20 percent of surveyed indigenous organizations/individuals confirmed that their country shares the benefits [received from user countries (usually developed countries)] with ILCs holding the accessed/utilized genetic resource or associated ITK (Annex.Q.A: q.10). The majority (60 percent) of respondents was doubtful that acquired benefits would ever be shared with ILCs (Annex.Q.A: q.10). *It is thus concluded that the indigenous organizations have little confidence that the government would share received benefits with ILCs holding the accessed/utilized genetic resource or associated ITK*.

B7. Involvement of ILCs in Monitoring of Access to Genetic Resources

Responding to the question whether country's ABS legislation/policy (or administrative measure) provides for the involvement of ILCs in monitoring the access and utilization of genetic resources or associated ITK, 40 percent of surveyed indigenous organizations/individuals highlighted that no ABS instrument has been developed in Russia (Annex.Q.A: q.11). The majority of respondents (60 percent) were unaware of the issue. So, *according to the majority of indigenous organizations the existing ABS legislation/policy in Russia does not* provide for the involvement of ILCs in monitoring access and utilization of genetic resourcesor associated ITK. Only 20 percent of respondents opined that Russia will involve the ILCs (but for namesake only) in monitoring the access and utilization of genetic resources or associated ITK by the user countries (usually developed countries). The remaining 40 percent of surveyed respondents said that no ABS instrument is being evolved in the country (Annex.Q.A: q.12). The remaining 40 percent of the respondents were unaware of the issue.

B8. Check of Biopiracy

The surveyed indigenous organizations/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 percent respondents said that their ILCs are able to check the illegal transfer (misappropriation), but with mixed results (Annex.Q.A: q.13). However, 20 percent of respondents opined that their ILCs are able to check successfully the illegal transfer (misappropriation). Still, 20 percent respondents claimed that their ILCs are NOT able to check successfully the illegal transfer (misappropriation) (Annex.Q.A: q.13). *The majority of the responses exhibits that Russia's indigenous organizations are positive about their ILCs capacity to check on biopiracy*. Russia's 20 percent of surveyed indigenous organizations/individuals gave their opinion that ABS regime at the international level and national ABS regime would be able to stop to a large extent biopiracy (if any) of their country's genetic resources and associated ITK (Annex.Q.A: q.14). Simultaneously, 60 percent of respondents indicated that international and national ABS regime would be able to stop to some extent biopiracy (if any) of their country's genetic resources and associated ITK (Annex.Q.A: q.14). Similarly, 20 percent respondents from Russia opined that international and national ABS regime would not at all be able to stop biopiracy (if any) of

their country's genetic resources and associated ITK (Annex.Q.A: q.14). Therefore, *Russia's surveyed indigenous organizations/ individuals were relatively pessimistic that biopiracy of genetic resources and associated ITK would be kept in check by an international or national ABS regime*.

Discussion

With the advancement of science especially biotechnology and genetic engineering, it has become very difficult for countries to identify the possible instances of biopiracy. For the first time in the history of illegal access to genetic resources by the user corporations and countries, the CBD made provisions for fair and equitable sharing of benefits. Article 15.1 and 15.7 of the CBD acknowledge the sovereign rights of States to regulate access to genetic resources. Over 16 years of negotiations within the CBD led to the adoption of Nagoya Protocol in 2010. In accordance with this international ABS regime, the Parties (or potential Parties) are obliged to evolve their respective national ABS legislation/policy frameworks or administrative measures. The present case study looks at the recognition, involvement, space, benefit sharing and acknowledgement being extended by Russian Federation to its indigenous people and local communities. The study was conducted under strict limitations of resources and time; it was based on opinion surveys of indigenous organizations/individuals and on the analysis of existing/evolving domestic laws or policies dealing with ABS. As has been identified in Table.2, there is no consolidated law on ABS in Russia as yet. The cases of access to genetic resources are dealt invariably under various laws implemented by different ministries/ authorities. The most significant element in IPR systems has been the exclusive protection of rights to traditional 'folk' varieties of plants and animals, and *sui generis* system of IPR in the country. Some robust ABS mechanisms are in place in the country leading to handling the ABS cases, though not in a synchronized manner. While the ILCs are given due recognition in the existing laws, the inclusion of ILCs in the processes needs more attention in evolving ABS legislation and its implementation.

The issue of participation in ABS policy/law making and negotiation processes is worth understanding. The indigenous organizations of Russia opined that the participation and involvement of ILCs are very much required in national ABS policy & legislation making and negotiation processes. ILCs have clearly indicated that their participation is not adequately solicited. Thus the responses from the surveyed indigenous organizations reveal a grim picture about the participation of ILCs in national ABS policy/law making process. 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; participation of ILCs was reported low, partly because no ABS instrument is in place yet. The responses of indigenous people 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. At the same time, 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 pattern of responses also exhibits that Russia only partially respects, recognizes and enforces the rights and ITK of its own indigenous people. The indigenous organizations/individuals have the opinion that their country's ABS legislation/policy recognizes the customary law/institutions of indigenous people very little. This opinion provides a basis for the popular perceptions that the ILCs are given no or little importance in national regimes and even in their own territories.

The Article.6.1 and Article.6.2 of the Nagoya Protocol equip the States with PIC, which is the most powerful tool to empower the ILCs if used effectively. The Nagoya Protocol also provides for involving the ILCs in signing MAT agreements with the users of genetic resources or associated ITK. Russia is entrusted to include the provisions in its domestic ABS legislation pertaining to PIC/MAT and involvement of ILCs in signing the PIC and MAT. Yet, the opinion survey of indigenous organizations/individuals has revealed that Russia's evolving ABS law/policy has been casual on the issue of PIC of indigenous people and has not considered the PIC mandatory before access/utilization of genetic resources or associated ITK. In case the evolving ABS legislation

of Russia takes shape without inclusion of such clauses, the law would be incomplete and against the spirit of Nagoya Protocol. Similarly, Article 12(3)a of Nagoya Protocol imposes the obligation on States to support the ILCs in preparing their 'community protocols', but efforts for such community protocols have been undertaken sporadically and with scant support of the States. To substantiate this observation, the responses of indigenous organizations/individuals indicate that evolving/existing national ABS legislation/policy in Russia does not assign real importance to community protocols, if any such provision exists in the legislation. In general, the biodiversity conservation programs have excluded the local and indigenous people from ecosystems. When the Nagoya Protocol talks about free and unlimited access to and utilization of biological resources of one country by other countries and corporations of same country, the access to and utilization of same bio-resources by ILCs who are custodians of those resources are denied by national laws. The same is revealed from the opinion survey that Russia put restrictions on their own ILCs' access to bio-resources in forests and protected areas. It is pertinent to draw a conclusion that Russia does not support much the ILCs to exchange genetic resources and ITK within and amongst themselves. However, this needs to be further studied.

Article 5 of the Nagoya Protocol, which is the core segment of the Protocol, stresses the fair and equitable sharing of the benefits arising out of the utilization 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. Eventually, Russia has 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 organizations led to understand that the ILCs have least confidence that Russia Federation would share the received benefits with ILCs holding the accessed/utilized genetic resource or associated ITK. Overall, it gives a sense that the mechanisms of sharing the benefits fairly and equitably would take quite long time to be established in the country, provided the efforts are made seriously by the government. 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 are given space and regulate the monitoring of users' access to genetic resources. The analysis further shows that Russia might involve the ILCs in monitoring the access and utilization of genetic resources or associated ITK by the user countries, but for namesake. As a matter of fact, the bureaucracies have control over all mechanisms and processes, and there is a lack of willingness to devolve and involve the ILCs in critical functions such as monitoring of access. Underlying the ABS was the need of keeping in check biopiracy and the illegal utilization and patenting of genetic resources. Under the obligations of the Nagoya Protocol the Parties are to take measures to regulate the illegitimate access and utilization of genetic resources and associated ITK. Surveyed indigenous organizations/individuals were relatively pessimistic that the biopiracy of Russia's genetic resources and associated ITK would be checked by international or national ABS regime. Additionally, the ILCs might check the biopiracy once they are educated and empowered to do so; however, the current capacities of ILCs in Russia do vary, according to the opinions of indigenous organizations. The responses indicate that Russia's indigenous organizations are positive about their ILCs being able to check biopiracy.

Conclusion

Widespread practice of concluding agreements or arrangements on benefit-sharing is missing in Russia. 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. A robust ABS legislation is under development in Russia. Since the advent of the Nagoya Protocol, the awareness about international ABS regime has started building up. Despite the emphasis given in the Nagoya Protocol on the need to recognize and incorporate the customary laws and institutions, Russia has not given adequate attention to these; hence, this provides a basis for the popular perceptions that the ILCs are given no or little importance in evolving national ABS regime 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 utilization of biological resource and associated ITK, Russia has been casual on the issue of PIC of indigenous people and have not considered the PIC mandatory before access/utilization of genetic resources or associated ITK. Almost similar is the status of involving the ILCs in signing MAT agreements. In general, the biodiversity conservation programs have excluded the local and indigenous people from ecosystems. Reportedly, Russia does not support much the ILCs to exchange genetic resources and ITK within and amongst themselves. Fair and equitable sharing of benefits arising out of the utilization of genetic resources and associated ITK is the key of ABS framework. Russia still has to walk along way. Overall, the mechanisms of sharing the benefits fairly and equitably would take long time to be established in the country, provided the efforts are made seriously by the government. The next crucial aspect of biodiversity governance is the involvement of ILCs in monitoring of access to genetic resources. This study reveals that Russia might involve the ILCs in monitoring the access and utilization of genetic resources or associated ITK by the user countries, but for namesake. Under the obligations of the Nagoya Protocol the Parties (and potential Parties) are to take measures to regulate the illegitimate access and utilization of genetic resources and associated ITK. Russia has some hope that the biopiracy of genetic resources and associated TK would be checked. After all, without checking biopiracy the objectives of ABS cannot be realized adequately.

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Annex. Q. A: National Access and Benefit-Sharing Regime: Opinions of Indigenous Organizations

QUESTIONS OF OPINION SURVEY	RESPONDENTS	
	Response (In parentheses: No. of Respondents = Total 5)	Response Percentage
B1. PARTICIPATION OF ILCs IN NATIONAL ABS POLICY MAKING AND NEGOTIATION PROCESSES		
1. 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 to a large extent 2. Yes, our country involved/involves ILCs in developing national ABS instrument to little extent **(1)** 3. No, our country did/does not involve ILCs in developing national ABS instrument **(1)** 4. No ABS instrument is evolved or evolving in my country 5. I am not aware **(3)**	1. 0% 2. 20% 3. 20% 4. 0% 5. 60%
2. 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?	1. Yes, our country would involve ILCs effectively in developing the PIC and MAT. 2. Yes, our country would involve ILCs in developing the PIC and MAT, but for namesake only. **(1)** 3. No, our country would not involve the ILCs at all in developing the PIC and MAT. 4. No ABS instrument has been developed or is developing in my country **(1)** 5. I cannot say. **(3)**	1. 0% 2. 20% 3. 0% 4. 20% 5. 60%
3. Do you think that your country will ensure *effective* participation of your ILCs in establishing the mechanisms to inform the potential users about their obligations before accessing any genetic resources and associated ITK?	1. Yes, our country will ensure *effective* participation of our ILCs. 2. Yes, our country will ensure participation of our ILCs, but that would not be *effective*. **(1)** 3. No ABS instrument has been developed or is developing in my country. **(2)** 4. I am not aware. **(2)**	1. 0% 2. 20% 3. 40% 4. 40%
B2. NATIONAL RECOGNITION OF CUSTOMARY LAWS/INSTITUTIONS OF ILCs		
4. Does your country truly respect, recognize and enforce the rights and ITK of your own indigenous people?	1. Yes, our country does. **(1)** 2. Yes, but not truly. **(2)** 3. No. **(1)** 4. I don't know. **(1)**	1. 20% 2. 40% 3. 20% 4. 20%
5. 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. **(1)** 3. No ABS instrument has been developed or is developing in my country **(1)** 4. I am not aware. **(3)**	1. 0% 2. 20% 3. 20% 4. 60%
B3. NATIONAL RECOGNITION OF ILCs IN ISSUING PIC AND MAT		
6. Does your country's ABS legislation/policy make the PIC mandatory before access/utilization of genetic resources or associated ITK?	1. 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. 3. No, there is no mention of PIC in our existing/evolving ABS legislation/policy. **(1)** 4. No ABS instrument has been developed or is developing in my country **(1)** 5. I don't know. **(3)**	1. 0% 2. 0% 3. 20% 4. 20% 5. 60%
B4. IMPORTANCE TO COMMUNITY PROTOCOLS OF ILCs		
7. Does your country's ABS legislation/policy provide for supporting the concerned ILCs to develop community protocols 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. **(1)** 3. No ABS instrument is evolved or evolving in my country **(1)** 4. I am not aware. **(3)**	1. 0% 2. 20% 3. 20% 4. 60%
B5. ACCESS OF ILCs TO BIORESOURCES IN THEIR TERRITORIES		

QUESTIONS OF OPINION SURVEY	RESPONDENTS	
	Response (In parentheses: No. of Respondents = Total 5)	Response Percentage
8. Does your country restrict the ILCs' access to bioresources in forests and protected areas?	1. Yes, our country fully restricts our ILCs' access to bioresources in forests and protected areas **(1)** 2. Yes, our country selectively restricts our ILCs' access to bioresources in forests and protected areas. **(2)** 3. No, our country does not restrict our ILCs' access to bioresources in forests and protected areas. 4. I cannot say. **(2)**	1. 20% 2. 40% 3. 0% 4. 40%
9. Does your country ensure the rights of ILCs to exchange genetic resources and ITK within and amongst themselves?	1. Yes, our country fully ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves. 2. Yes, our country partially ensures the rights of ILCs to exchange genetic resources and ITK within and amongst themselves. **(1)** 3. No, our country restricts our ILCs exchanging genetic resources and ITK within and amongst themselves. **(1)** 4. I cannot say. **(3)**	1. 0% 2. 20% 3. 20% 4. 60%
B6. FAIR AND EQUITABLE SHARING OF BENEFITS		
10. 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?	1. Yes, our country would share the received benefits with ILCs judiciously. 2. Yes, our country would share the received benefits with ILCs,but only a fraction. **(1)** 3. It is likely that our country would share the received benefits with ILCs. **(3)** 4. No, our country would not share the benefits with ILCs. 5. I don't know. **(1)**	1. 0% 2. 20% 3. 60% 4. 0% 5. 20%
B7. INVOLVEMENT OF ILCs IN MONITORING OF ACCESS TO GENETIC RESOURCES		
11. 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?	1. Yes, our existing/evolving ABS legislation/ policy or administrative measure provides for the involvement of our ILCs in monitoring of the access/ utilization of genetic resources by the users? 2. No, there is no such provision in our existing/evolving ABS legislation/policy or administrative measure. 3. No ABS instrument has been developed or is developing in my country **(2)** 4. I do not know. **(3)**	1. 0% 2. 0% 3. 40% 4. 60%
12. 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)?	1. Yes, our country would effectively involve the ILCs in monitoring. 2. Yes, our country would involve the ILCs in monitoring, but for namesake. **(1)** 3. No ABS instrument is evolved or evolving in my country **(2)** 4. I do not know. **(2)**	1. 0% 2. 20% 3. 40% 4. 40%
B8. CHECK OF BIOPIRACY		
13. 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)?	1. Yes, our ILCs are able to check successfully for the illegal transfer (misappropriation). **(1)** 2. Yes, our ILCs are able to check for the illegal transfer (misappropriation), but with mixed results. **(1)** 3. No, our ILCs are NOT able to check successfully for the illegal transfer (misappropriation). **(1)** 4. I cannot say. **(2)**	1. 20% 2. 20% 3. 20% 4. 40%
14. 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?	1. Yes, to large extent. **(1)** 2. Yes, to some extent. **(3)** 3. No, not at all. **(1)** 4. I cannot say.	1. 20% 2. 60% 3. 20% 4. 0%