

# Access and Benefit Sharing (ABS) Issues in Seed Policy and Legislation in Nepal



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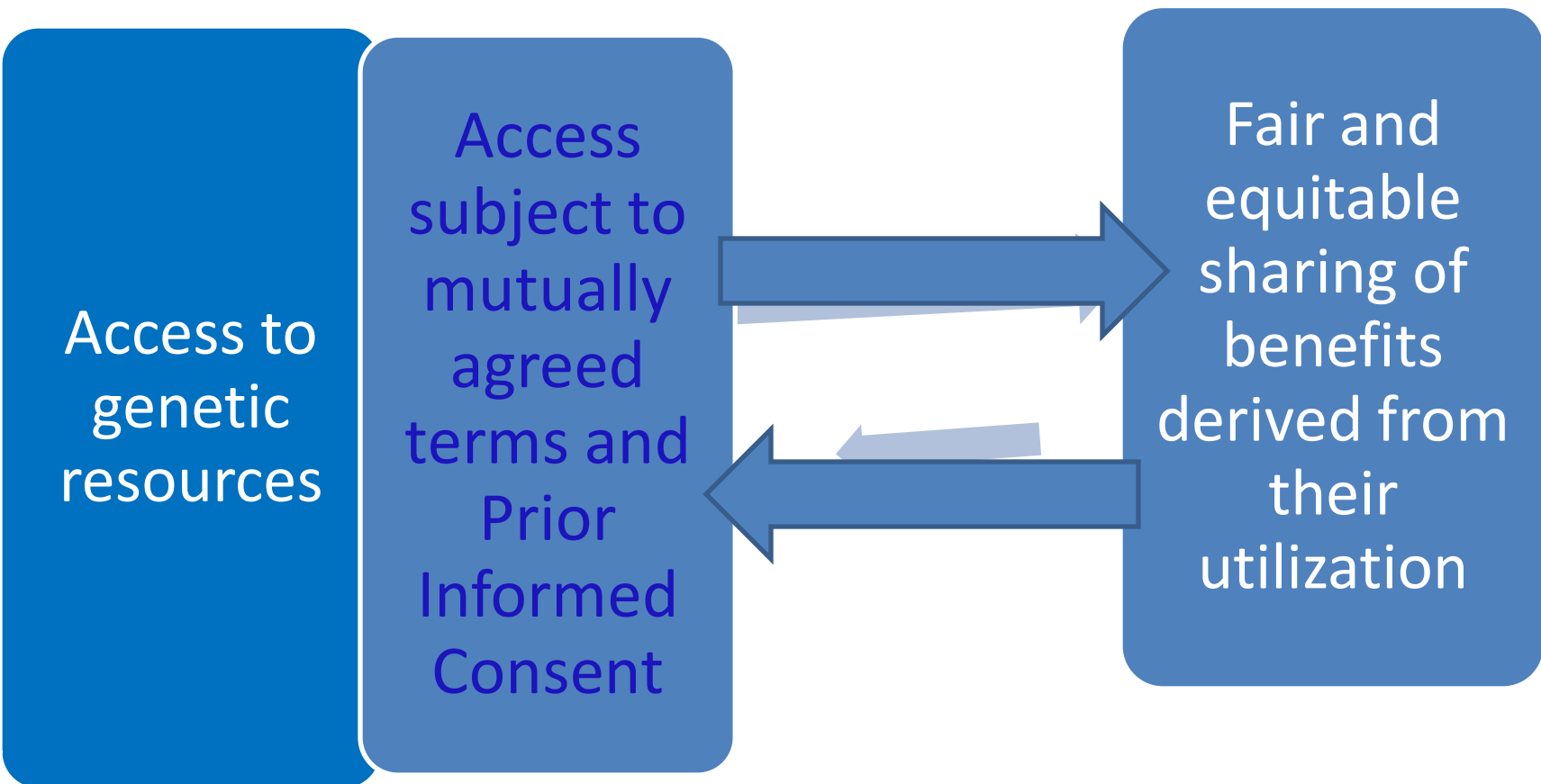
# Presentation Outline

- Concept and Context of ABS
- Potential Means and Mechanism of ABS
- Relevant Policies and Legislations in ABS in Nepal
- Seed Act (1988) amendment (2008) and Seed Regulation(2013)
- National Seed Vision (2013-2025) and Seed Policy (1999)
- Interpretation, Comments on Seed Act, Seed Vision, Policy and Regulation
- Potential Options for Implementation of ABS in Seed Policy and Legislation

# Concept of Access and Benefit Sharing

- **Access** means – Access of genetic resources (GR) and Traditional Knowledge (TK) associated with GR
- **Benefit Sharing** -means provisions of any benefits, compensation, reward or recognition that flows directly or indirectly from party seeking access to a genetic resources to the “supplier” or party in control of that resources

# Relationship between Access and Benefit Sharing



# Context of ABS

- Access to genetic diversity—usually in the form of **seed or clonal material**—is crucial to any plant breeding program as well as for farmers to ensure their food security and livelihood.
- The concept of access and benefit-sharing (ABS) in genetic resources as maintained by the Convention on Biological Diversity (CBD) aims at promoting the conservation of biodiversity and equity between the North and the South at the same time.
- Access and benefit-sharing (ABS), together with conservation and sustainable use, are at the heart of both the **CBD and the ITPGRFA**.

# ABS in CBD and ITPGRFA

## Convention of Biological Diversity (CBD)

- Access to valuable biological resources must be carried out on **mutually agreed terms (MAT)** and be subject to the **prior informed consent (PIC)** of the country of origin (CBD art. 15.1/4/5).
- Focus on bilateral access and benefit sharing subject to individually tailored access and benefit-sharing agreements through its **national sovereignty** of genetic resources

## International Treaty on PGRFA ITPGRFA

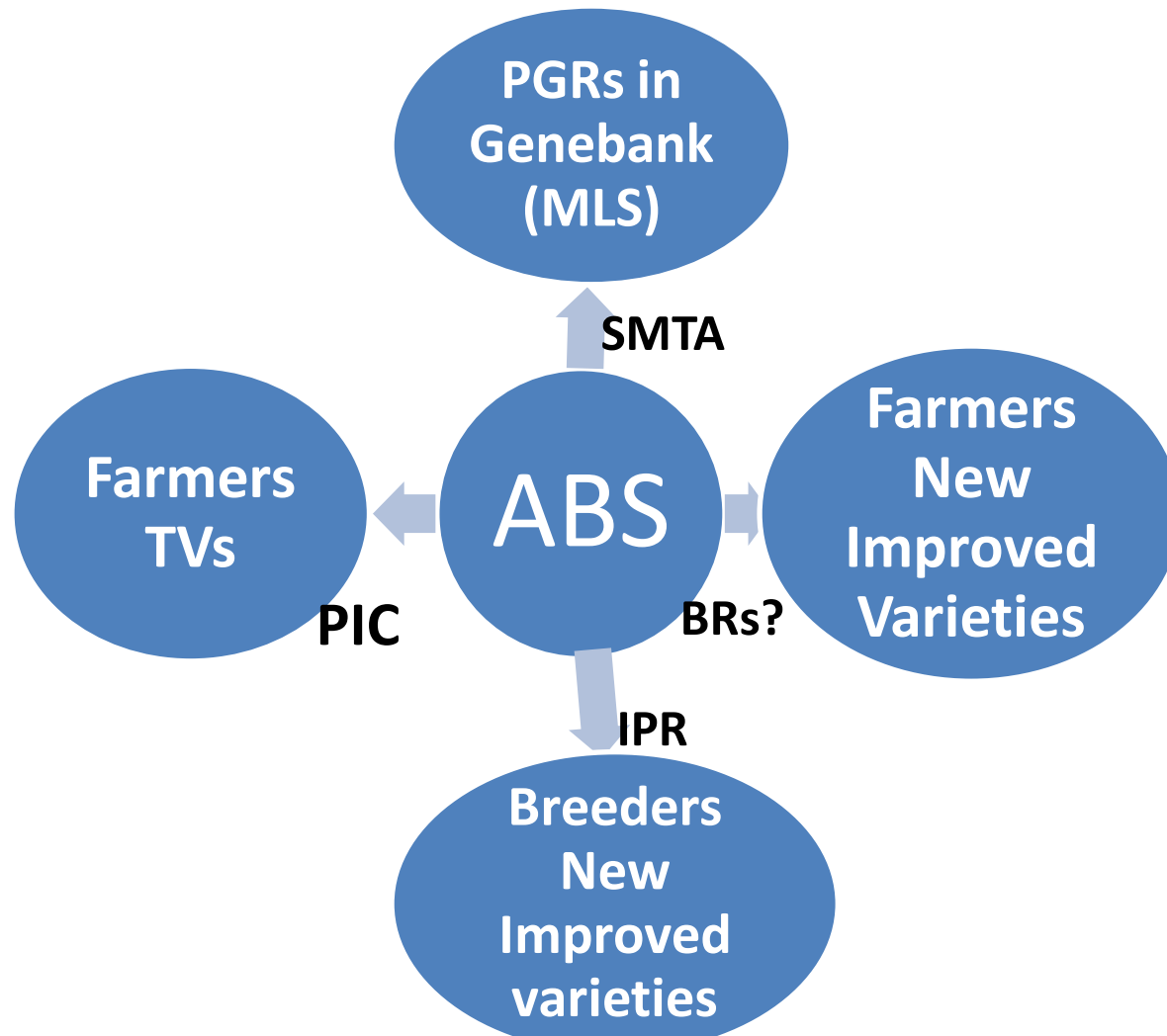
- Access and Benefit sharing of genetic resources will be facilitated through Multilateral System under Standard Multilateral Transfer Agreement (SMTA)
- Focus on international pooling and sharing of genetic resources through **multilateral system (MLS)** of **access and benefit sharing** for agricultural research and food security.

# Potential Means of Access and Benefit Sharing (ABS)

- Intellectual Property Rights (IPR)
- Suigeneris legislation
- Contract /agreement between parties
- Standard Material Transfer Agreement (SMTA) as per the provision of ITPGRFA
- Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT)



# Mechanisms for Access and Benefit Sharing for different types of PGRs





# Current Policy Status and Initiatives related to ABS of Genetic Resources in Nepal

- Access to Genetic Resource & Benefit Sharing Draft Bill (2002)
- Plant Variety Protection (PVP) and Farmers Rights Bills (Draft)
- National Biodiversity Strategy & Action Plan (NBSAP) (2014)
- National Agrobiodiversity Policy (2007)
- Seed Act (1988) amendment (2008) & Seed Regulations (2013)
- Seed Policy (1999) and Seed Vision (2013-2025)

# Access to Genetic Resources and Benefit Sharing Bill (Draft)

- The Kingdom of Nepal exercises **sovereign rights** over her bio-resources
- Access of genetic resources is subject to **prior informed consent (PIC)** and **mutually agreed terms (MATs)**
- Access also required for in-country collection, research and training
- Contention on benefit sharing allocation – low allocation to “community” (less than 50%)
- Focus on **Pro-bioprospecting** and discourage **bio-piracy**
- Establishment of a **competent Authority**
- **Registration** of Biodiversity and Traditional Knowledge
- **Ownership** – Individuals, Community, Nation

# National Agrobiodiversity Policy (2007)

- Conservation, sustainable use and benefit sharing
- Access to genetic resources and sharing of benefits based on provision of **prior-informed consent (PIC)**
- Provisions of farmers rights to their genetic resources, traditional knowledge and rights to participate in decision making and **equitable sharing of benefits**
- Registration of agricultural genetic resources and traditional knowledge for protection and benefit sharing
- No provision for Multilateral System of ABS and IT Implementation Mechanism (revised version- has incorporated this one including one window policy for access)

# Plant Variety Protection (PVP) & Farmers Rights Draft Bill (2005)

- **Balance rights** of Plant Breeders and Farmers
- Rights over farmers' traditional varieties
- Rights over new plant varieties (claim IPR and act as breeders)
- Rights to compensation for losses due to bad quality seed or wrong information about the new variety
- **PIC, disclosure, and ABS requirements** on use of traditional varieties
- Access of genetic resources for **research, academic, non-commercial breeding and training**
- Provisions for farmers to **access protected varieties for local use and non-commercial production**

# Seed Act (1988) amendment (2008) and Seed Regulation(2013)

- Provision of **rights to developer** of new plant varieties based on DUS test (नयाँ जातको बीउ बिजनको विशिष्टता, एकरूपता र स्थायित्व परीक्षण गरी तोकिए बमोजिम प्रजनकलाई स्वामित्वको अधिकार प्रदान गर्ने )
- NSB has **authority to ensure and facilitate quality** assurance, control and monitoring of seeds that are produced and marketed within the country and imported from outside
- **Licensing of seed producers and traders** in seed business to promote rapid supply of quality seeds
- Provision for **compensation to farmers** for poor quality seeds
- Provision of **registering/ listing of farmers traditional varieties** to promote, conserve and enhance their access

# Important Nepali traditional Crop Varieties Released and Registered in Nepal

Crop	Released varieties	Registered varieties
Rice	Pokharelo Jethobudho	
	Lalka Basmati	
Barley	Solu Uwa	
Fingermillet	Kabre local, Okhale-1	
Radish	Pyuthane Rato	
Rayo	Marpha Rayo, Khumal Ratopat	Guchhmuche Rayo, Dunde Rayo
Cauliflower	Kathmandu Local	
Tori	Lumle Tori-1, Morang Tori-2	
Asparagus Bean	Sarlahi tane, Khumal tane	
Pigeanpea	Bageswori	
Soybean	Lumle-1	
Ginger	Kapurkot Aduwa	
Cucumber	Kushle	

# National Seed Vision (2013-2025)

- Self-sufficiency, import substitution and export promotion
- Conservation of **indigenous varieties** and traditional knowledge for **crop improvement** (sustainable use)
- Formulate and amend **policy and act** for ensuring farmers' rights on seeds
- Develop policy for **breeders rights** to provide incentives and investment in competent seed industry development
- Provision of **contract farming act** including seed insurance and mechanization for seed production
- **Harmonization of seed policy** with other Nepalese Policies, laws and also with neighbouring countries

# National Seed Vision (2013-2025)

- Focus on hybrid variety development to provide adequate options and **access of HYVs to farmers** by encouraging both public and private sectors
- **Simplify variety approval, release** and registration of indigenous and farmers varieties
- **Decentralize source seed production** for enhancing access to quality source seeds and strengthening capacity of private sector and communities in seed production and supply
- **Public-private sector partnership** for seed sector growth based on comparative advantage of both public and private sector (public sector in breeding and private sector in marketing)



# Seed Policy (1999)

- **Ownership** of traditional varieties and conservation of Agrobiodiversity
- Technical support in seed production and supply by organizing **farmers groups in remote areas** to **enhance access of quality seeds** to small farmers
- Subsidy on source seed production and transportation of seeds to remote hills and mountain regions
- Involvement of **private sectors** in source seed production and **seed supply in remote areas** and seed quality assurance services
- Research on Biotechnology and **regulation of GMO**

# Interpretation, Comments on Seed Act, Vision, Policy and Regulation

- Nepali seed vision, policy and legislation focus on developing **mechanisms and programs** in providing **easy access of improved quality seeds** to farmers and communities
- Focus on **commercialization and access of new seed varieties** to farmers
- Access to improved variety seed is **formerly facilitated after release, registration and notification** of varieties
- Right to **breeders is specified** but does not **define specific contents** of the rights of breeders. There are also no elaboration of the **modality of the breeders rights** including the punishment for the violator of breeders' rights.
- **Farmers' rights** on local genetic resources is spelled out but they donot define the actual content and modality of rights

# Interpretation, Comments on Seed Act, Vision, Policy and Regulation

- No provision and mechanisms for **benefit sharing** from the use of **quality seeds** or genetic resources
- There are no provision for access and benefit sharing of traditional knowledge
- Formal **access of new seeds varieties** to farmers and communities is only limited to certain domains where varieties are formally recommended for release or registration
- Provisions for **release and registration** of local landraces even by **private sectors** and **farmers**
- **Release and registration** are means of not only for enhancing access through commercial production and distribution but also indirectly **conserving** them through **use and recognizing the ownership** of the TVs.

# Potential Options for Implementation of ABS in Seed Policy and Legislation

- Revise and harmonize Seed Act for details of **farmers' rights and breeder rights** provisions.
- Revise existing Seed Act and Seed Regulation and Seed Policy for **Benefit sharing** mechanisms
- Harmonization of bilateral and Multilateral system of Access and Benefit Sharing in seed policy and act
- Revise existing Draft ABS Bills (2002) for inclusion of MLS as per ITPGRFA provisions
- Revise and implement PVP and Farmers Rights Bills in relation to **ABS**

***THANK YOU***