

National Contexts and Complexities

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Introduction

- Benefit Sharing in India to try to understand context and complexities
- India—international leader, but domestic implementation weak
- Complexities in national implementation
- How can developing countries set the agenda?

India

- Played a key role in promoting benefit sharing in CBD
- One of the first countries in world to enact laws on Benefit sharing and farmer's rights
- The National Biodiversity Authority--over a hundred ABS agreements have been signed as of 2012 & dealt with over six hundred applications.
- But not resulted in effective implementation nationally:
 - Very few cases of benefit sharing to date
 - Focus on monetary benefits but not much revenue collected
 - Prevention of bio-piracy?
 - Distribution of benefits to communities not clear
 - Development of communities

India's Policy

- National Biodiversity Act, 2002
 - National Biodiversity Rules, 2004
 - Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, 2014
- Protection of Plant Varieties and Farmer's Rights Act, 2001

India's Regulatory Structure

- Three tier Structure
 - National Biodiversity Authority– national level body that grants approvals for access to resources & ensuring benefit sharing
 - State Biodiversity Board
 - Biodiversity Management Committees

Cases of Benefit Sharing under NBA

- PepsiCo India Holdings Private Limited—2007 for commercial access and transfer of sea weed to Malaysia, Indonesia, Phillipines
 - INR 37.26 lakhs paid by company to the NBA
 - “Efforts are being made to form Biodiversity Management Committees by State Biodiversity Board of Tamil Nadu in coastal villages to distribute the benefits accrued thus far with 754 benefit claimers spread across 4 districts in Tamil Nadu”
 - Training, employment?

Cases of Benefit Sharing under NBA

- NBA has collected Rs. 55,035.00 (about \$ 924 USD) from Bio India Biologicals for the export of 2000 kilograms of neem to Japan
- The NBA states that it has transferred a “part of the royalty amount” to the local biodiversity body in Amarchinta for “planting neem saplings and creation of awareness about biodiversity conservation

Benefit Sharing—State and local level

- Natural Remedies Pvt. Ltd.—medicinal herb from MP paid INR 21,000 to BMC
- Madhya Pradesh SBB and the Gram Moolige Company Ltd
- MP Biodiversity Board—interpretation of term ‘biological resources’ to include coal
- Uttarakhand Biodiversity Board
 - *Total ABS applications received – 22*
 - *Notices issued to industries – 400*
 - *Fee deposited by 8 industries*

Plant Varieties and Farmer's Rights Act—Benefit Sharing

- According to the Act, the Authority after registering a variety shall invite claims for benefit sharing. Any person or group of persons, firm, governmental or non-governmental organization can submit claim for benefit sharing provided that the persons are citizens of India and firms are formed or established in India
- The amount of benefit sharing as determined by the Authority shall be placed in the National Gene Fund
- Benefit Sharing/Recognition of Farmers---only in the form of Plant Genome Saviour Community Award instituted in 2009-10

Why poor implementation of actual distribution of benefits?

- Focus on Regulation rather than on distribution
- State interests—viewing it as source of revenue
- Focus on monetary benefit sharing
- Not clear on the real objective—conservation, development of local communities
- Difficulties of implementation itself

Why poor implementation of actual distribution of benefits?

- Impact of Regime Complexity
 - Politics shifts to national stage—international rules are reinterpreted
 - Ambiguity at the international allows national actors to select the interpretation of the rules they prefer—India focusing more on bilateral contract based approach
 - A state can interpret the rules in a manner that may be perceived as complying with international regimes while promoting the interests powerful actors.

Complexities

- Defining a clear objective of benefit sharing and embedding it within wider development strategy
 - Market based vs Rights based approach
- Dealing with Regime Complexity
 - MLS vs. bilateral approach
- Managing interests of Actors
- Setting up effective structure

How can developing countries set the agenda on benefit sharing?

- Focus on local context
 - Define terms based on needs of local communities
 - Get own house in order first?
- Study and implement what works in other countries/contexts
- Utilize the regime complexity Strategically

Setting the Agenda

- Establish effective regional mechanisms
- Systems that can adapt quickly to changes
- Convergence, Divergence, Transvergence?