



# Fair and Equitable Benefit Sharing in the Indo-Pacific Region

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## Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of their Utilisation

- Established under the Convention on Biological Diversity (CBD)
- Address the 3<sup>rd</sup> objective of the CBD – ensure the ‘fair and equitable sharing of the benefits arising out of the utilisation of genetic resources’ (Article 1)
- Article 5 – Fair and Equitable Benefit Sharing
- Article 7 – Access to Traditional Knowledge Associated with Genetic Resources
- Annex – Monetary and Non-Monetary Benefits

## Fair and Equitable Benefit Sharing under the Nagoya Protocol - Annex

Monetary Benefits	Non-Monetary Benefits
Access fees/fee per sample collected	Sharing of R&D results
Up-front and/or milestone payments	Collaboration, cooperation and contribution in R&D including research directed to priority needs
Royalties	Participation in product development
Licence fees	Education and training
Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity	Knowledge and technology transfer under fair and most favourable terms
Salaries and preferential terms	Capacity building
Research funding	Contributions to local economy
Joint ventures	Institutional and professional relationships
Joint ownership of IP rights	Food and livelihood security benefits
	Social recognition
	Joint ownership of IP rights

## Benefit Sharing in the Pacific

- Samoa – the case of Mamala
- Vanuatu – the case of the Santo expedition
- Australia – the case of mudjala

## Benefit Sharing in India – *Biological Diversity Act 2002*

<b>1. Commercial utilisation or bio-survey and bio-utilisation for commercial utilisation (Option A – Benefit Sharing on Purchase Price)</b>		
	<i>Trader</i>	<i>Manufacturer</i>
<i>No prior benefit sharing negotiation</i>	1-3% of purchase price of the biological resources	3-5% of the purchase price of the biological resources
<i>Prior benefit sharing negotiation</i>	>3% of the purchase price of the biological resources	>5% of the purchase price of the biological resources
<i>High economic value biological resources</i>	May include an upfront payment of >5% on the proceeds of the auction or sale amount payable prior to accessing the biological resource.	
<b>2. Commercial utilisation or bio-survey and bio-utilisation for commercial utilisation (Option B – Benefit Sharing on Sale Price)</b>		
<i>Annual Gross ex-factory sale of product (minus government taxes)</i>	<i>Benefit sharing amount</i>	
Up to Rupees 10,000,000	0.1%	
Rupees 10,000,001 to 30,000,000	0.2%	
Above Rupees 30,000,000	0.5%	
<b>3. Intellectual Property Rights</b>		
Where the applicant commercialises the IPR obtained, the applicant shall pay to the NBA such monetary and/or non-monetary benefits as agreed between the applicant and NBA		
Where the applicant himself commercialises the invention, the monetary benefits shall be between 0.2-1% based on a sectoral approach on the annual gross ex-factory sale minus government taxes.		
Where the applicant assigns/licenses the invention to a third party for commercialisation, the applicant shall pay to NDA 3-5% of the fee received (including the license/assignee fee) and 2-5% of the royalty received annually from the licensee/assignee based on a sectoral approach.		

## What is 'fair' in fair and equitable benefit sharing?

- What constitutes 'fair and equitable' benefits will differ on a case by case basis and will depend on the parties involved (community/government/user party)
- Balance between monetary and non-monetary benefits
- Delivering on benefit sharing arrangements is difficult to monitor and enforce particularly taking into account cross jurisdiction enforcement
- Without addressing the issues associated with ensuring fair and equitable benefit sharing run the risk of creating pure 'access regimes' and failing to deliver on the third objective of the Convention on Biological Diversity and requirements under the Nagoya Protocol.

Thank  
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