

# Knowledge Commons: Current Issues related to Natural Resources and Biodiversity

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# Background of the Report

- Data considered as the next 'oil' of our times.
- Good quality data useful for all aspects of governance.
- Thus need felt to undertake comprehensive legal assessment on data and information related to biodiversity and associated knowledge
- Report covers the following aspects broadly:
  - Nature and trends of biodiversity data and information sharing across the globe and in a few select countries
  - Intellectual property rights regime in India with specific reference to such data
  - Common misunderstandings and apprehensions under the Biological Diversity Act, 2002 and Patents Act, 1970
  - Important case studies on need for open access to ecological data
  - Policy-practice recommendations to free up access to such data

# Benefits for Open Access to Environmental Data

- Direct economic benefits to the countries which practice it
- Beneficial for citizen and government's day-to-day decision making
- Increased trust in national institutions
- Potential for enabling local innovations
- Direct economic and social benefits to communities that document their knowledge

# Benefits for Open Access to Environmental Data (contd.)

- Leads to efficiency, transparency and reproducibility and reduces uncertainties and duplications
- Contributes to mitigation of all forms of environmental degradation including:
  - Protection of biodiversity and endangered species from extinction
  - Maintenance of water and food security
  - Protection from epidemics
  - Response to natural disasters

# India's Preparedness for Open Access

- Some good examples in India of open access to bio-informatics, to name a few:
  - Data generated on temperature and rainfall levels and satellite- based land cover data by state agencies such as IMD and ISRO.
  - MoEF&CC's Environmental Information System
  - Traditional knowledge digital library initiative by CSIR
  - India a participant in the Global Biodiversity Information Facility
- No concerted attempt by Indian Government to validate these databases and bring them all under one umbrella

# India's Preparedness for Open Access (contd.)

- Real dearth of good quality information due to several reasons:
  - Failure to maintain records by government institutions
  - Patchy information on aspects such as biodiversity, TK and groundwater
  - Suppression and falsification of environmental data for vested interests
  - Preventing public participation in gathering information despite legal mandate
  - Failure to make information publicly available

# Existing Law and Policy Measures

- **National Data Sharing and Accessibility Policy, 2012:** Governs public access to government owned shareable data
- **Biological Diversity Act, 2002:** Relates to documentation of biological resources and associated TK through People's Biodiversity Registers
- Policy mandates with line departments to collect data

# International Law on Access to Environmental Data

- **International Covenant on Civil and Political Rights, 1966:** Freedom of right to expression to include freedom to receive information
- **Stockholm Declaration, 1972:** Scientific research to be free flowing
- **Rio Declaration, 1992:** Cooperation between parties through exchange of scientific and technological knowledge
- **Convention on Biological Diversity (CBD), 1992:** Clearing House Mechanism
- **Aarhus Convention, 1998:** Promotes access to Information, public participation in decision-making and access to justice in environmental matters
- **'Escazú Agreement', 2018:** Regional Agreement on access to information, public participation and justice in environmental matters

# Global Trends on Open Access

- **New Biodiversity Law of Brazil, 2015:** Scope of research related to biodiversity and use of information from databases
- **Costa Rican Biodiversity Law of 1998:** Priority given to research and participation in decision making by communities
- **Initiative of European Union in Habitat Protection:** Creation of Natura 2000, an EU wide ecological network comprising of Special Protection Areas (SPA) for Birds and Special Areas of Conservation (SAC).
- **Philippine's Guidelines on Indigenous Knowledge Systems and Practices (IKSPs) and Customary Laws (CLs) Research and Documentation, 2012:** On research and documentation of TK with adequate safeguards
- Country also came out with freely accessible **TKDL for Health.**
- Several best practice examples of **freely accessible databases** from countries like Belize, Australia, South Africa and the Pacific countries, to name a few.
- Decisions by several **international courts** giving emphasis on making data on projects that are hazardous to the environment, publicly available.

# Foreseen Legal Hurdles in Open Access

- **Nature and quality of data:** Poor quality of data, its huge volume, heterogeneity and non-standardised techniques of pooling this data
- **Intellectual property rights and moral rights:** if In case there are trade secrets, TK, copyrighted articles or information on patentable inventions included within the database
- **Regulating access to TK:** TK is yet to be defined in Indian law and its documentation at a very preliminary stage
- **Tussle between corporates and academics**
- **Misuse of publicly available data:** If access violates some form of ethics or someone's privacy

# Proposed Policy-Practice Recommendations

- Adequate amendments to India's current policy on national data sharing and accessibility
- Addressing privacy concerns with data sharing
- Developing of operational policies
- Potential for feedback from data users
- Ensuring data quality
- Bottom up approach to data collection and dissemination
- Legal precursors to data collection
- Addressing IPR concerns



**Thank you for your time!!**