

Note for International Regime on Access and Benefit Sharing, Traditional Knowledge and Amendments to Biological Diversity Act, 2002 and Rules, 2004

A. Consultation on International Regime on Access and Benefit Sharing

“Biodiversity is life. Biodiversity is our life”. Fully aware of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components and fast pace of its (biodiversity) depletion, the heads of all nations met at the UNCED Earth Summit at Rio de Janeiro in Brazil on June 5, 1992, where the Convention on Biological Diversity (CBD) was negotiated. This international convention reaffirmed the sovereign rights of States over their own biological resources and required States to evolve their own national laws to promote conservation of their own biodiversity, its sustainable use in an environment friendly manner and to allow access with prior informed consent vis-à-vis equitable sharing of the benefits arising from the utilization of biodiversity and associated knowledge.

2. With 2.5% of the world’s land area, India accounts for 7-8% of the recorded species of the world including 45,968 species of plants and 91,364 species of animals. India is also rich in traditional and indigenous knowledge, both coded and informal. It possesses an exemplary diversity of ecological habitats like forests, grassland, wetlands, coastal and marine ecosystems, and desert ecosystems. India is thus considered as one of the world’s 17 “megadiverse” countries.

3. When the CBD came into force on December 29, 1993, India became a Party to it in February 18, 1994. At present, there are 193 Parties to this Convention. Taking cognizance of the provisions of the CBD, and to deal with extensive pressure on our biological resources, Government of India has enacted the Biological Diversity Act, 2002 and Biological Diversity Rules, 2004.

4. The CBD is one of the most comprehensive international agreements to conserve world’s biological diversity, sustainably use it and share the benefits equitably. Under its Article 15, the CBD provides for ways in which countries could facilitate access to biological resources and recommends that countries make appropriate legal, administrative and other provisions to provide access to biological resources and/or associated knowledge based on Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT). It also encourages the providers of resources

to enter into a material transfer agreement with the users which defines conditions of further development and use of biological resources.

5. The principle on which the benefits accrue from the use of the resources forms the basis of a benefit sharing agreement. Decisions on who has the right to provide access and benefit sharing (ABS) are left for countries to define. The involved stakeholders could range from the State to communities and their representatives. The ABS provisions under CBD are being negotiated by the parties for developing an International Regime for ABS.

6. Since 1993, country parties to the CBD began working on formulating a set of internationally agreed principles on ABS which resulted in the adoption of Bonn-Guidelines on ABS in 2002 during the sixth Conference of Parties (CoP) to the CBD. The guidelines are expected to assist countries and other relevant stakeholders in developing and implementing ABS strategies / regime.

7. In order to further implement the third objective of the Convention and its ABS related provisions, the World Summit on Sustainable Development, held in Johannesburg in September, 2002, called for action to negotiate within the framework of the CBD an International Regime to promote and safeguard the fair and equitable sharing of benefits of the use of genetic resources. In response to this call for action, in 2004, the CoP mandated the *Ad hoc* Working Group on Access and Benefit-Sharing (AWG-ABS) to elaborate and negotiate the “International Regime on access to genetic resources and benefit-sharing”. In its CoP9 meeting held in May 2008, in Bonn, Germany, the CoP adopted a roadmap for the negotiation of the international regime, ensuring that the ABS working Group will meet three times before the 2010 deadline for completion of negotiations. The CoP also established three expert groups, and instructed the ABS working group to finalise the international regime and to submit an instrument/ instruments for consideration and adoption by CoP10 scheduled at Nagoya, Aichi Prefecture, Japan, from 18-29 October, 2010.

8. An International Regime (IR) can ensure that biodiversity-rich developing countries obtain a fair and equitable share of benefits of the use of genetic resources originating from their territory by setting out a clear and transparent framework for ABS. The sharing of benefits, through technology transfer, research results, training and profits etc., can contribute to poverty reduction and sustainable development in such countries. Access to genetic resources in exchange for fair and equitable sharing of benefits can lead to further research and development thus contributing to human well-being through its use in pharmaceuticals,

cosmetics, agriculture and many other sectors. Further, access to genetic resources is also essential to ensure a better understanding of the world wide web of life through taxonomic research.

9. The IR on ABS is being negotiated by the parties to the convention under the aegis of *Ad hoc* open-ended Working Group on ABS. The last meeting of the above working group (*Ad hoc* AWG-ABS 8) was held at Montreal, Canada, from 9-15 November, 2009 and the consolidated text for negotiating the IR was adopted. To quote *Earth Negotiations Bulletin* vol.9 No.503 dated 31, March 2010 (<http://www.iisd.ca/biodiv/abs9/>):“The ninth meeting of the *Ad hoc* open-ended working Group on ABS of the Convention on Biological Diversity (CBD) was held from 22-28 March 2010, in Santiago de Cali, Colombia. More than 500 participants attended the meeting, representing Governments, UN agencies, intergovernmental and non-governmental organizations, indigenous and local community groups, public sector research, academia and business. The meeting continued negotiations on an international regime on ABS, in view of its mandate to submit an instrument for consideration at the tenth meeting of the CBD Conference of Parties (CoP10). For the first time in the process, negotiations were conducted on the basis of a draft protocol, tabled as a Co-Chair’s text and developed upon a request made during the Co-Chairs’ informal Inter-regional Consultation held prior to ABS 9. Delegates identified a series of key issues with respect to the draft protocol text and established four contact groups to address them. Following three days of productive contact group discussions and significant progress made on a number of issues, including benefit-sharing from derivatives and an internationally recognized certificate of compliance, an inter-regional group was established. Due to procedural wrangling, the inter-regional group never managed to enter into text-based negotiations and talks temporarily broke down. The Working Group eventually agreed to: suspend ABS 9 and convene a resumed session in the near future; and forward the draft protocol text, as revised during this session, to the resumed session, with the understanding that the draft was not negotiated, is without prejudice to the rights of parties to make further amendments and additions to the text, and should be read together with the ABS 9 report reflecting parties’ views expressed at the meeting. ABS 9 is expected to resume in June or July 2010.” The text (**Annexure A1**) is to be considered for possible adoption in 10th CoP, scheduled in Japan in October, 2010.

10. In this context, the Ministry of Environment and Forests, Government of India, has decided to hold a national consultation to solicit suggestions by the different stakeholders for

reflecting the views on the International Regime on ABS and requested NBA to organise this event.

11. This is the most appropriate time and the right stage to seek and consolidate the views through the national consultation. The discussions and following consultations would help the Indian delegation during the 10th CoP of CBD, wherein the negotiated text on International Regime on ABS may be considered for adoption.

12. Considering the importance of the subject, the honourable Minister has agreed to Chair the consultation meeting on April 23, 2010.

Annexures:

A1:	Revised draft protocol on Access to Genetic resources and the fair and equitable sharing of benefits arising from their utilization to the Convention on Biological Diversity – based upon ABS-9 Meeting held in Cali, Colombia on 22-28 March 2010	(NBA website: www.nbaindia.org).
A2:	Framework study on food security and access and benefit-sharing for genetic resources for food and agriculture	-do-
A3:	Specific comments on draft Guidelines on ABS	-do-
A4:	General comments received on ABS	-do-

B. Evolving *sui generis* System for Protection of Traditional Knowledge Related to Biodiversity

Traditional Knowledge refers to the knowledge, innovations and practices of indigenous and local communities. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is often transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, and agricultural practices, including the development of cultivated plant species and animal breeds.

2 There is today growing appreciation of the value of Traditional Knowledge as it can make a significant contribution to sustainable development. This knowledge is valuable not only to those who depend on it in their daily lives, but also to modern industry and agriculture.

3 Most indigenous and local communities have used biological diversity in a sustainable way for thousands of years, and are thereby known to be excellent natural resource managers. They cultivate crops and livestock with unique properties and are highly skilled in the preparation of medicines derived from wild plants and other biological resources. Their extensive knowledge of local environments and ecologically sustainable lifestyle provide valuable information and useful models for conservation and sustainable use of biodiversity.

4 The Biological Diversity Act, 2002, (BDA, 2002) provides for conservation of biological diversity through regulating access to biological resources and ensuring sharing of benefits arising out of their use and/or associated traditional knowledge. The Act provides for notifying threatened species and prohibits or regulates their collection, taking appropriate steps to rehabilitate and preserve those species (Section 38). Section 37 provides for notifying certain areas of biodiversity importance as Biodiversity Heritage Sites (BHS) by the State Government, in consultation with the local bodies.

5 The preamble of the Biological Diversity Act, 2002 emphasises that India is rich in biological diversity and associated traditional and contemporary knowledge systems related to

it. It provides for setting up of Biodiversity Management Committees (BMCs) for conservation, sustainable use and documentation of biodiversity. Section 41 (1) of the Act provides for relevant chronicling of traditional knowledge, while Section 36(5) has an enabling provision in empowering the Central Government “to respect and protect the knowledge of local people relating to biological diversity, as recommended by the NBA through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including *sui generis* system”.

6 In order to implement the above provision, the NBA has supported, sponsored and organized consultative meetings to evolve *sui generis* system for the protection of Traditional Knowledge. The outcome of these meetings has resulted in draft rules (**Annexure -B1**), on which further comments are solicited for the forthcoming National Consultation on “Developing *sui generis* System for Protection of Traditional Knowledge”. The document has been circulated among the State Biodiversity Boards, advertised in national daily and also uploaded in the web site (www.nbaindia.org) for comments.

7. The NBA has received comments from several stakeholders towards the protection of Traditional Knowledge. Discussions will be held during the consultation process towards finalising the rules on “Evolving *sui generis* system for protection of Traditional Knowledge related to Biodiversity”.

Annexures:

B1:	The protection, conservation and Effective Management of Traditional Knowledge Relating to BD Rules, 2009.	(Please see the NBA <i>website</i> : www.nbaindia.org).
B2:	Specific comments received on the draft TK Rules	-do-
B3:	General comments received on the subject	-do-

C. Amendments to Biological Diversity Act, 2002 and Biological Diversity Rules, 2004

The Biological Diversity Act, 2002 is implemented engaging decentralized regulation of activities through Biodiversity Management Committees (BMCs), State Biodiversity Boards (SBBs) and the NBA, each with well-defined functions within their respective jurisdiction. Accordingly, it is being operated at national, State and local levels, as a three-tier system. It places emphasis on meeting its objectives by involving different stakeholders in public, private and NGO sectors. To accelerate the process of implementation of the Act, the NBA, through a consultative process involving expert committees and stakeholders, is working closely with taxonomists, researchers, stakeholders and other Government departments for the conservation of the biological resources.

2 The Government of India, with inputs or advice of the NBA and other associated/relevant agencies, is implementing different provisions of the Biological Diversity Act, 2002 and Biological Diversity Rules, 2004, such as notifications of repositories for accessed matters, vesting powers to different categories of officers for enforcement to enforce the penalty provisions of the Act, designation of national repositories, and guideline on collaborative research projects etc. Notifications are also issued on species of plants and animals which are on the verge of extinction in the States of Himachal Pradesh, Kerala, Uttar Pradesh, Uttarakhand, Mizoram, Orissa and Meghalaya. The National Biodiversity Fund has been created for promoting the conservation of biodiversity and model guidelines for People's Biodiversity Register (PBRs) to document the biological resources available at the local level in different parts of India have been circulated to the SBBs.

3 The NBA has constituted expert committees for guiding and assisting in the management and conservation of biodiversity heritage sites, microbial diversity, normally traded commodities, evaluation of applications for ABS for seeking patent transfer of research results and third party transfer of bio resources, notification for the enforcement of the Act, conservation of medicinal plants, threatened/endangered/endemic species, Indian Biodiversity Information System (IBIS), designation of repositories, agro-biodiversity conservation etc.. The NBA has initiated action for the establishment of a legal cell, to take necessary steps to oppose the grant of Intellectual Property Rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resources which is derived from India. The NBA is also involved in the capacity building, awareness generation and creation and strengthening institutional structures to implement the Act.

4 The MoEF, Government of India and the NBA are taking initiatives to strengthen the institutional mechanisms for implementing the said Act at the national, State and local levels. One such effort is the pilot project on strengthening institutional system in Madhya Pradesh and Jharkhand with the support of UNDP and another project with GEF/UNEP support is on the anvil. These initiatives are expected to provide new leads for implementing the Act.

5 Good progress has been made in implementing the Act and it is believed that with the support, cooperation and partnership of different stakeholders, the implementation process will reach new heights. It will provide an exemplary mechanism for meeting the various provisions of the Act. However, it is to be understood that it is an umbrella Act covering kaleidoscopic biodiversity of the country, interfacing with many other related Acts/instruments and above all involving diverse stakeholders representing public, private and NGO sectors.

6 The NBA has been receiving requests from various stakeholders to amend some Section(s) of the Act and Rules. Paying heed to these requests, the NBA put out a public notice in January 2010 seeking suggestions and recommendations for making appropriate amendments. The responses received have been compiled and will be deliberated during the National Consultation to be chaired by the Honourable Minister on 23rd April 2010, at Chennai.

Annexures

C1:	BD Act, 2002; BD Rules, 2004	(Please see the NBA website: <i>www.nbaindia.org</i>)
C2:	Specific comments received on the Act and Rules	
C3:	General comments on the subject	-do-