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Biodiversity is our life



National Biodiversity Authority, India

International Year of Biodiversity

[NBA Official Website](#)

NEW! Public comments on the Protection, Conservation and Effective Management of Traditional Knowledge
Relating to Biological Diversity Rules, 2009

NEW! Comments on draft guidelines on Access and Benefit sharing - comments may please be sent to
nbahda@gmail.com

Public Comments on ABS + Signatories on T.K. were placed
in the website on 27, Jan 2010 + 18 Jan 2010 respectively.

Rg
9/2/10

NBA Secretary

From: Dr P.L. GAUTAM [pl_gautam@yahoo.com]
Sent: Monday, September 07, 2009 5:11 PM
To: achal nba
Subject: Fw: Re: The Protection, Conservation and Effective Management of Traditional Knowledge
Attachments: The TK Rules 2009.pdf

Yours sincerely,

P.L. Gautam

Chairman,

National Biodiversity Authority,
5th Floor, TICEL Bio Park, Taramani
Chennai-600 113.

-mail: nba_indial@vsnl.net; pl_gautam@yahoo.com
Ph: 044-22541805; Fax: 044 2254 1073

--- On Mon, 7/9/09, Devinder Sharma <hunger55@gmail.com> wrote:

From: Devinder Sharma <hunger55@gmail.com>
Subject: Re: The Protection, Conservation and Effective Management of Traditional Knowledge
To: jairam@vsnl.com
Cc: "Dr P.L. GAUTAM" <pl_gautam@yahoo.com>
Date: Monday, 7 September, 2009, 5:06 PM

Dear Mr Jairam Ramesh,

You would recall that some two months ago at a National Consultation on framing legal provisions for protecting and conserving Traditional Knowledge held at TERI Retreat, Gurgaon, you had asked us to frame rules that can be incorporated under the National Biodiversity Act. It was certainly a formidable task, and I am glad to inform you that after a series of deliberations and innumerable number of hours of discussions on the Skype, the working group has been able to finally come up with what I think is an excellent set of rules that will do justice to the communities protecting Traditional Knowledge associated with biodiversity.

The core team comprised of Ms. Sunita Sreedharan, Mr. TC James, Prof. T. Ramakrishna, Mr. Sridhar R, Mr. Bhaskar Goswami, Ms Tulika Rastogi and myself.

As you are aware, we had started this process way back in January 2009, with the first National Consultation at Bangalore, where we developed a policy framework for the protection of Traditional Knowledge. A wide spectrum of participants had detailed discussions before finalising the policy framework. Based on this we had set up a core group which worked for nearly 3 months to come up with a draft legal framework for the protection of Traditional Knowledge, which as you are quite aware, was discussed thread bare during the Gurgaon consultation.

It was indeed a pleasant surprise and also quite rewarding for us, when you suggested that the regulation could be adopted, if we could deliver the same in two months time. This gave us a lot of hope, as we have been grappling with this matter for a number of years, both nationally and internationally. Fortunately, very good contribution, by way of experience and intellect came from all sections towards drafting this law.

7/9/09 (15)

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The Rules specifically sets out to provide for protection, conservation and effective management of traditional knowledge related to biodiversity. It recognises the ownership of the holder of Traditional Knowledge and also ensures that not only should this right be upheld but the continuum of the practice is also ensured. You will agree that "simply" documenting it will not ensure its continuity which is why we have proposed numerous checks and balances to benefit and protect the rights of the Traditional Knowledge holder. On the management side, we have aimed at preventing misuse, abuse and misappropriation of Traditional Knowledge by bringing in a License to Use system. This includes a stringent process of evaluation, with active participation of the State Biodiversity Boards, Biodiversity Management Committees and most importantly the Traditional Community.

The Rights of the Traditional Communities and Practitioners to use, share and continue their livelihood unhindered is also ensured, even while its commercial utilisation is managed from the point of view of its ecological and social sustainability as well as ensuring adequate and equitable benefits by way of monetary, non-monetary and welfare-based measures. We have also ensured that a strong regulatory system is in force which is a deterrent against usurpation of rights of knowledge holders and also bestows responsibility and power on the NBA.

It is with great pleasure that I am submitting the *Sui generis* regulation for the protection of Traditional Knowledge related to biodiversity. I am hopeful that this effort will be taken up for a serious debate and discussion. We shall be too willing to continue to help in the process till its final notification.

With regards,

Devinder Sharma

Chair

Working Group on Traditional Knowledge

National Consultation on Protecting and Conserving Traditional Knowledge

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YESHWANTH SHENOY
Advocate

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NBA/LCS/YLS/Aug-2010/ABS-1

18 August 2010

To

Shri. C. Achalender Reddy,
Secretary, National Biodiversity Authority,
5th Floor, TICEL Bio Park,
Taramani Road, Taramani,
Chennai - 600 113

NATIONAL BIODIVERSITY AUTHORITY
CHENNAI

DIARY No. 1307
RECEIVED ON 18.8.10

Dear Sir,

Ref: My opinion letter no. NBA/LCS/YLS/Jul-2010/ABS dated the 24 July 2010 and e-mail dated 12 August 2010 from Mr. Achalender Reddy, Secretary, National Biodiversity Authority (NBA)

Sub: Submission of the Draft Access & Benefit Sharing Regulations related to Biological Resources and Associated Knowledge (the 'Draft Regulations') under the Biological Diversity Act, 2002 (the 'Act').

I had submitted the Final Version of the Draft Guidelines on Access & Benefit Sharing related to Biological Resources and Associated Knowledge through the letter referred above. Thereafter, I am in receipt of an e-mail referred above from Mr. Reddy requesting me to look into the Draft "The Protection, Conservation and Effective Management of Traditional Knowledge Relating to Biological Diversity Rules, 2009 (the "TK Rules"). I had a personal meeting with Shri. P.L. Gautam, Chairman, NBA and I have understood the concerns raised by him and agreed to separate the Draft Guidelines on Access & Benefit Sharing related to Biological Resources and Associated Knowledge in two parts to specifically deal with access to Biological Resources in Part A and Access to Associated Knowledge in Part B. I have intentionally avoided the use of the word 'Traditional Knowledge' and have used the word 'Knowledge associated with Biological Resources' as such a terminology will have a wider meaning than Traditional Knowledge.

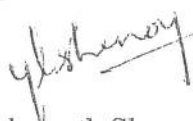
As regards the TK rules, I reiterate that there is no specific provision under the Act that authorizes the Central Government or the NBA to make Rules on Traditional Knowledge. Moreover, The TK Rules is full of flaws, both legal and technical and for this reason I

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had recommended that the same may be referred to an Expert Committee for further deliberations. The TK Rules would narrow down the wide scope provided for by the Act and thereby jeopardize the rights of the Communities/Individuals related to the knowledge they hold which is associated with the Biological Resources and at the same time, it may be too onerous on the industry and will result in the industry shying away from access to associated knowledge which would affect the communities and holders of the associated knowledge and also undermine India's ability to use this knowledge to its benefit at the International level.

The Draft Regulations attached with this letter may be notified by the NBA as Regulations made under the Powers granted to NBA under Sec.64 read with Sec. 21(2) of the Act. The NBA shall seek the approval of the Central Government before notifying the Regulations.

Regards,



Yeshwanth Shenoy

Final
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BIOLOGICAL DIVERSITY (ACCESS AND BENEFIT SHARING) REGULATIONS 2010

In exercise of powers granted under Sec.64 read with sub section (2) of Section 21 of the Biological Diversity Act, 2002 (18 of 2003), the National Biodiversity Authority hereby makes the following Regulations:-

1. Objectives

1.1 These Regulations on Access and Benefit Sharing Regarding the Utilization of Biological Resources and knowledge associated thereto (hereinafter "the Regulations") provides an objective framework for granting approvals for access to Biological Resources and Knowledge associated thereto and the fair and equitable sharing of the benefits arising from their utilization, in conformity with the Biological Diversity Act 2002 (hereinafter "the Act") and the Biological Diversity Rules 2004 (hereinafter "the Rules").

1.2 The Regulations is divided in two parts, Part A and Part B. Part A provides for the conditions under which access to Biological Resources will be granted and the sharing of benefits arising out of the utilization of Biological Resources. Part B provides for the conditions under which access to the Knowledge associated with Biological Resources shall be granted and the conditions under which the sharing of benefits shall be qualified as fair and equitable.

1.3 The CBD recognized the sovereign rights of States over the genetic resources within their jurisdiction and accordingly the Act requires that all Users of Biological Resources shall, unless otherwise provided in the Act, seek the consent of the State prior to access to Biological Resources.

1.4 These Regulations will be applicable to the Applications made to the National Biodiversity Authority under the Act.

2. Definitions

2.1 In these Regulations, unless the context otherwise requires:

a) *Access* means any access to the Biological Resources and/or knowledge associated thereto made under the Act

b) *Net Profit*¹ means profit after expenses have been deducted from gross revenue.

c) *Provider* means any natural or legal person(s) which has the legal right of disposal over the Biological Resources and/or knowledge associated thereto being made available to the Users

d) *User* means any natural or legal person(s) which has requested for Access to Biological Resources and/or knowledge associated thereto under the Act.

¹ The ADMA has suggested a formula (similar to that of the Drug Pricing Control Order) to calculate the Benefit Sharing and this definition may have to be modified accordingly. All references to 'Net Profit' in the text shall be read with this comment.

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2.2 words and expressions used but not defined in these Regulations and defined in the Act and/or Rules shall have the meaning respectively assigned to them in the Act and/or Rules.

PART A

ACCESS & BENEFIT SHARING RELATED TO BIOLOGICAL RESOURCES

(I) USER OBLIGATIONS

3. User Obligations Prior to Access

3.1 The Users shall request for Access by using the appropriate Forms provided for in the Rules and shall, in addition to the details therein, disclose the following:

A. Biological Resources which are Plants, their parts or Genetic Material

- i. Whether cultivated or collected from natural areas
- ii. Whether BR procured from Private Land or Public Land
- iii. If Public Land, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

B. Biological Resources which are Animals, their parts or Genetic Material

- i. Whether domesticated or wild
- ii. Whether BR procured from Private owners or from Public Land
- iii. If Public Land, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

C. Biological Resources which are Micro organisms, their parts or Genetic Material

- i. Whether developed/maintained in controlled conditions or collected from natural areas
- ii. Whether BR procured from Private areas or Public areas
- iii. If Public Area, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

PROVIDED that the access is made for Research, Biosurvey and Bioutilisation and the quantity of Biological Resources required is less than 100 grams and the same will not cause any adverse impact on Biological Diversity, approvals shall be granted immediately on the Users giving an undertaking that the Benefits shall be shared in accordance with these Regulations.

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3.2 The Users shall submit a report on the possible impact to environment that may be caused by their relevant activities prior to Access.

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4. User Obligations During and After Access

4.1 The User shall continue to report changes to the report mentioned in clause 3.2 as and when the User identifies any such changes at any stage during or after the Access.

PROVIDED that in the event, the User reports a possibility of any adverse impact on Biological Diversity, the User shall immediately stop access of the Biological Resources.

PROVIDED further that the User while mentioning any adverse impact on Biological Diversity in the report shall also mention the ameliorative measures and precautions that may be taken to minimise the adverse impact to the Biological Diversity.

4.2 The Users shall after collecting the Biological Resources and Knowledge associated thereto, describe and record all relevant data and share the same with the nodal agency identified by NBA for the Purpose.

4.3 Users shall utilize the Biological Resources strictly for the purposes for which the Access was obtained. Any change in the purpose shall be notified to NBA and fresh application for such purpose shall be made under the Act.

4.4 Users shall conduct scientific study on the Accessed Biological Resources to ensure the conservation and sustainable use of the Biological Resources. The Users shall ensure that this knowledge shall be transferred free of cost to the Providers in the event of the Providers being the collectors of the Biological Resources from wild/government properties.

(II) PROVIDER OBLIGATIONS

5. Provider Obligations

5.1 Once the access is approved by the NBA, the Providers shall ensure that the access is facilitated within the prescribed time.

5.2 Providers shall ensure the conservation and sustainable use of the Biological Resources and if need be request the Users to conduct further studies under clause 4.4 after reporting their findings to the Users to ensure the conservation and sustainable use of the Biological Resources.

(III) NBA APPROVALS AND BENEFIT SHARING PRINCIPLES

6.1 Access to Biological Resources for Commercial utilization

(i) Where the access to Biological Resources is obtained for Commercial utilization from Providers who are cultivators of the same, the User shall ensure that the Access ensures Sustainable Livelihoods² to the Providers. The User shall further share with the Providers

² Sustainable Livelihoods For eg. Would mean direct procurement of the BR from the farmers through contract farming with a pre determined price for the produce and supply of the best seeds/insuring the produce etc. If the procurement is with the involvement of Agents, then a undertaking from the Agents about having paid the producers/farmers minimum wages for their labour etc.

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its knowledge of best practices to ensure conservation and sustainable use of the Biological Resources.

- (ii) Where the Access to Biological Resources is obtained for commercial utilization from local communities who collect the same from governmental/Public Land, the Users shall make fair payments³ to the Providers. The Users shall also ensure ___% of the total price of the purchase towards the National Biodiversity Fund (NBF) which may apply it in accordance with Sub Section (2) of Section 27 of the Act. The User shall further share with the Providers its knowledge of best practices to ensure conservation and sustainable use of the Biological Resources.

6.2 Access to Biological Resources for Research

- (i) Where the Access is made for Research Purposes, the User shall ensure effective participation of Providers, wherever possible or collaborate with any research institution identified by the NBA.

A. In case of non commercial research

The results of all non commercial research should be published without any restrictions of use including disclosure of any details that may be required to commercialise the research results by any person who is interested to commercialise the same.

B. In case of Collaborative Commercial Research

(a) Where the research is a collaborative research with any central/state government research institute, any IP rights shall be held in accordance with the Agreement entered to by the Parties. Any knowhow required for the production shall be transferred free of any costs if requested by the NBA for any use by government entities or if the products are required by the Government for Public good.

(b) ___% of the Net Profit shall be paid to the NBF and in the event of involvement of any community as Providers of the Biological Resources, the NBA may also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

C. In case of non Collaborative Commercial research

(a) Where results are shared

In cases where the results of a non collaborative commercial research is shared with any designated Government Research Facilities, the User shall pay to the NBF ___% of the Net Profit and the NBA shall also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

(b) Where results are not shared

³ Fair payment means the payment fixed by the Government for such products (JFM's) or a minimum wage per day prescribed by the government

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7.4 The Users shall respect customs, traditions and values of the Provider, if any, before during and after Access.

7.5 The User which has accessed Knowledge associated with Biological Resources shall handle such knowledge in the manner requested by the Provider and shall not in any event use such knowledge in any manner that is derogatory to the customs, traditions and values of the Providers.

(V) PROVIDER OBLIGATIONS

8. Provider Obligations for Access of Knowledge Associated with Biological Resources

8.1 If the Provider feels the need of professionals in assisting them with the negotiations with the Users, the Providers shall make a request for the same to the concerned BMC, SBB or NBA and it shall be the responsibility of the BMC, SBB or the NBA as the case may be to provide for the requested professionals to the Providers to assist them with the negotiations

8.2 The Providers shall record their assessment of the advantages and disadvantages in the event of access being given to the knowledge associated with Biological Resources. The Assessment made by the Providers should clearly record the statement of the Users and also the statement of the Professionals who have helped them in their negotiation.

PROVIDED that the Providers are not in a position to record the same, the User shall notify the concerned BMC, SBB or the NBA and the BMC, SBB or the NBA, as the case may be, shall ensure the presence of a suitably qualified person who shall record the negotiations.

8.3 In the event of the Users and Providers entering into any mutually agreed terms for the Access to Knowledge associated with Biological Resources, the Providers shall ensure that the mutually agreed terms are put before all the stakeholders and the same are agreed to by the majority of the stakeholders.

(VI) NBA APPROVALS AND BENEFIT SHARING PRINCIPLES

9.1 Access to Knowledge associated with Biological Resources

- (i) The Benefit Sharing shall be in accordance with the terms and conditions negotiated between the Users and Providers and the NBA shall interfere only in the event of a gross inadequacies to the disadvantage of the Providers is found in the negotiated terms. The Benefit sharing may have a monetary part and any non monetary benefits that may be listed in Annexure I of these Regulations.
 - (ii) The NBA while determining the mode for the sharing of benefits shall consider the short, medium and long term interests of all stakeholders involved. NBA acknowledges that some modes of benefit sharing may become effective immediately, whereas others become effective only in the distant future due to the period of time needed for the benefits to arise.
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In cases where the results of a non collaborative commercial research is not shared, the User shall pay to the NBF ___% of the Net Profit and the NBA shall also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

6.3 Access to Biological Resources for seeking Intellectual Property Rights

- (i) Where the NBA approval is sought for seeking any Intellectual Property Rights under sec. 6 of the Act, the following benefit sharing shall be qualified as fair:

A. Where the IP is for non commercial use

The User shall file an affidavit with the NBA stating that the IP is for non commercial use and the same shall be made available to the Government use free of cost. In the event the IP is later sought to be commercialized then Para B of sub clause (i) of clause 6.3 shall be applicable.

B. Where IP is for commercial use

The User shall pay to the NBF ___% of the Net Profit and the NBA shall also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

PART B

ACCESS & BENEFIT SHARING RELATED TO KNOWLEDGE ASSOCIATED WITH BIOLOGICAL RESOURCES

(IV) USER OBLIGATIONS

7. User Obligations for Access of Knowledge Associated with Biological Resources

7.1 The Users shall request for Access to Knowledge associated with Biological Resources by using the appropriate Forms provided for in the Rules and shall, in addition to the details therein, disclose the following:

- (i) Whether the knowledge is owned by individual, family, group, organisation or a community or is accessed from ancient texts recorded in TKDL (Traditional Knowledge Digital Library)
- (ii) What BR is associated with the knowledge?
- (iii) What Benefit Sharing is proposed by the Users?

7.2 The Users shall explain the advantages and disadvantages that would accrue to the Providers in the event of access given to the knowledge associated with the Biological Resources. The User shall record these advantages/disadvantages as explained to them in writing and shall submit the same along with the application for access.

45 7.3 The Users shall make an audio video recording of their negotiations with the Providers and a copy of the same shall be deposited with the concerned SBB or the NBA along with the application for access.

10 Certification of Compliance

The NBA shall develop a system of certification and a certification mark will be provided for by the NBA that shall certify the compliance with the Act and highlight the fair and equitable benefit sharing.

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DRAFT REGULATIONS

YESHWANTH SHENOY
Advocate

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Suren Road, Andheri (East),
Mumbai - 400 093.

Mobile: 9967642195
biolawindia@gmail.com

NBA/LCS/YLS/Jul-2010/ABS

24 July 2010

To

Shri. C. Achalender Reddy,
Secretary, National Biodiversity Authority,
5th Floor, TICEL Bio Park,
Taramani Road, Taramani,
Chennai - 600 113

NATIONAL BIODIVERSITY AUTHORITY
CHENNAI

DIARY No. 1045
RECEIVED ON 26-7-10

Dear Sir,

- Sub: 1) Submission of the Draft Guidelines on Access & Benefit Sharing related to Biological Resources and Associated Knowledge (the 'Draft Guidelines') under the Biological Diversity Act, 2002 (the 'Act').
- 2) Review of the Draft "The Protection, Conservation and Effective Management of Traditional Knowledge Relating to Biological Diversity Rules, 2009 (the "TK Rules")

I am attaching the Final Version of the Draft Guidelines on Access & Benefit Sharing related to Biological Resources and Associated Knowledge which may be Notified by the NBA as Regulations under the Powers granted to NBA under Sec.64 read with Sec. 21(2) of the Act. It is brought to your notice that before such Notification, NBA shall seek the approval of the Central Government.

The Attached Draft Guidelines has not determined the percentage of Benefit Sharing because the Rule 20 (3) of the Biological Diversity Rules, 2004 (the 'Rules') mandates that the Benefit Sharing shall be determined on a case to case basis. The ADMA has proposed the building up of an appropriate formula similar to that found in the Drug Pricing Control Order.

I have been forwarded 'Working Guidelines for Equitable Sharing' (the 'Working Guidelines') developed by the Expert Committee on ABS headed by Dr.R.S.Rana. The Committee has determined percentages to be awarded as benefit sharing to four general

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~~categories~~ categories of the applications and further ~~dividing~~ the users in two categories. It is my opinion the fixing of the percentages in terms of general categories is against the Mandate provided for by Rule 20(3) of the Rules thereby questioning the legality of the Working Guideline. The classification between the applicants as Public Sector Research Organizations and Other Users may further run counter to Article 14 of the Constitution of India as the final intent between both the classes remains the same. For the reasons stated herein, I would not recommend the use of the Working Guidelines.

As regards the TK rules, there is no specific provision under the Act that authorizes the Central Government or the NBA to make Rules/Regulations on Traditional Knowledge. However, the Central Government may make rules under the general powers given to it by Sec.62(1) of the Act.

The TK Rules given to me for review is full of flaws, both legal and technical and the same may be referred to an Expert Committee for further deliberations. The TK Rules would narrow down the wide scope provided for by the Act and thereby jeopardize the rights of the Communities/Individuals related to the knowledge they hold which is associated with the Biological Resources. Sec.21 limits the rights given to the NBA to regulate the exchange of Information between persons holding/owning the associated knowledge and the Users of that knowledge. The reference to *sui generis* system in Sec.36(5) of the Act should not be equated as the power to make a legal instrument having the force of law.

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If the Central Government is keen on legislating in the area of Traditional Knowledge, the Central Government must first take over the right to negotiate on behalf of the holders of Traditional Knowledge by declaring itself as a Trustee of the Knowledge held by the people of India through an Act of Parliament. Once such a right is taken over by the Central Government, then the Central Government will have the right to have appropriate control mechanism related to Traditional Knowledge held by its People.

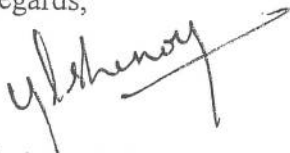
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The TK rules by defining certain to ~~mis like~~ 'abuse', 'misappropriation of traditional knowledge' limits the rights of individual and communities in controlling their wider rights provided for by the Act. The very definition of 'Traditional Knowledge' is beyond the scope of the Act. The further parts of the TK Rules would make the access to Traditional Knowledge almost impossible and India may have to face the same fate faced by Philippines after they legislated on the 'Access to the Biological Resources' and take research to negligible levels.

The Draft Guidelines submitted takes appropriate care against the misuse of Traditional Knowledge by providing appropriate protection in clause 5.2 & 5.3. These clause ensure that the disclosures made to the holders of knowledge is sufficient to allow them to make an informed decision and the availability of Professionals to negotiate on their behalf assures that they will not be subjected to undue pressure from the Users.

For the reasons recorded herein, I suggest that the Draft Guidelines be sent to the Ministry for their Approval and the TK Rules be sent to an Expert Committee for Further deliberations.

Regards,



Yeshwanth Shenoy

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DRAFT GUIDELINES ON ACCESS AND BENEFIT SHARING RELATED TO BIOLOGICAL RESOURCES AND ASSOCIATED KNOWLEDGE¹

I. Preliminary

1. Objectives

1.1 These Guidelines on Access and Benefit Sharing Regarding the Utilization of Biological Resources and knowledge associated thereto (hereinafter "the Guidelines") provides an objective framework for granting approvals for access to Biological Resources and Knowledge associated thereto and the fair and equitable sharing of the benefits arising from their utilization, in conformity with the Biological Diversity Act 2002 (hereinafter "the Act") and the Biological Diversity Rules 2004 (hereinafter "the Rules").

1.2 The Guidelines lay out the conditions under which access to Biological Resources and Knowledge associated thereto shall be granted and under which the sharing of benefits arising out of the utilization of Biological Resources and Knowledge associated thereto shall be qualified as fair and equitable.

1.3 The CBD recognized the sovereign rights of States over the genetic resources within their jurisdiction and accordingly the Act requires that all Users of Biological Resources shall, unless otherwise provided in the Act, seek the consent of the State prior to access to Biological Resources.

1.4 These Guidelines will be applicable to the Applications made to the National Biodiversity Authority under the Act.

2. Definitions

2.1 In these Guidelines, unless the context otherwise requires:

a) *Access* means any access to the Biological Resources and/or knowledge associated thereto made under the Act

b) *Net Profit*² means profit after expenses have been deducted from gross revenue.

c) *Provider* means any natural or legal person(s) which has the legal right of disposal over the Biological Resources and/or knowledge associated thereto being made available to the Users

d) *User* means any natural or legal person(s) which has requested for Access to Biological Resources and/or knowledge associated thereto under the Act.

¹ The Act uses the words "knowledge Associated Thereto" and the same meaning shall be attributed to the words.

² The ADMA has suggested a formula (similar to that of the Drug Pricing Control Order) to calculate the Benefit Sharing and this definition may have to be modified accordingly. All references to 'Net Profit' in the text shall be read with this comment.

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2.2 words and expressions used but not defined in these Guidelines and defined in the Act and/or Rules shall have the meaning respectively assigned to them in the Act and/or Rules.

II. User Obligations

3. User Obligations Prior to Access

3.1 The Users shall request for ~~Access~~ by using the appropriate Forms provided for ~~Access~~ Rules and shall, in addition to the details therein, disclose the following:

A. Biological Resources which are Plants, their parts or Genetic Material

- i. Whether cultivated or collected from natural areas
- ii. Whether BR procured from Private Land or Public Land
- iii. If Public Land, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

B. Biological Resources which are Animals, their parts or Genetic Material

- i. Whether domesticated or wild
- ii. Whether BR procured from Private owners or from Public Land
- iii. If Public Land, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

C. Biological Resources which are Micro organisms, their parts or Genetic Material

- i. Whether developed/maintained in controlled conditions or collected from natural areas
- ii. Whether BR procured from Private areas or Public areas
- iii. If Public Area, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

D. Knowledge associated with Biological Resources

- i. Whether the knowledge is owned by individual, family, group, organisation or a community or is accessed from ancient texts recorded in TKDL (Traditional Knowledge Digital Library)
- ii. What BR is associated with the knowledge?
- iii. What Benefit Sharing is proposed by the owners?

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3.2 The Users shall submit a report on the possible impact to environment that may be caused by their relevant activities prior to Access. The User shall continue to report changes to this report as and when the User identifies any such changes at any stage during or after the Access.

Provided that in the event, the User reports a possibility of any adverse impact on environment, the report shall also mention the ameliorative measures in place and precautions taken to cause no damage to the environment or Biological Diversity. Any Access falling within this proviso will require the approval of the NBA prior to access and in the event the report is made during or after the Access, the User shall ensure that it shall stop any and all activities of Access.

3.3 The users are encouraged to make an audio video recording of the negotiations with the Providers and in the event such a recording is made, a copy of the same shall be deposited with the concerned SBB or the NBA.

4. User Obligations During and After Access

4.1 The Users shall after collecting the Biological Resources and Knowledge associated thereto, describe and record all relevant data and share the same with the nodal agency identified by NBA for the Purpose. Users shall respect customs, traditions and values of the Provider, if any during and after Access.

Provided that in the event of Knowledge associated with Biological Resources are accessed, the same shall be handled by the User in the manner requested by the Provider.

4.2 Users shall utilize Biological Resources and Knowledge associated thereto strictly for the purposes for which the Access was made obtained. Any change in the purpose shall be notified to NBA and NBA shall at its sole discretion allow such use or direct fresh application to be made under the Act.

4.3 Users shall conduct scientific study on the Accessed Biological Resources to ensure the conservation and sustainable use of the Biological Resources. The Users shall ensure that this knowledge shall be transferred free of cost to the Providers.

III. Provider Obligations

5. Provider Obligations

5.1 Once the Access is approved by the NBA, the Providers shall ensure that the Access is facilitated within the prescribed time.

5.2 If the Provider feels the need of professionals in assisting them with the negotiations with the Users, the Providers shall make a request for the same to the BMC, SBB or NBA and it shall be the responsibility of the BMC, SBB or the NBA as the case may be to provide the requested professionals to the Providers to assist them with the negotiations

5.3 The Providers shall record the advantages and disadvantages as informed to them by the Users while negotiating the terms for the Access to Biological Resources and Knowledge associated thereto. In the event the Providers are not in a position to record the same, the User shall notify the concerned BMC, SBB or the NBA and the BMC, SBB or the NBA as the case may be shall ensure the presence of a suitably qualified person who shall record the negotiations under this Clause.

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5.4 Providers shall ensure the conservation and sustainable use of the Biological Resources and if need be request the Users to conduct further studies under clause 4.3 after reporting their findings to the Users to ensure the conservation and sustainable use of the Biological Resources

IV. NBA Approvals. ~~Benefit~~ Sharing principles

6.1 Where the Access to Biological Resources is obtained for Commercial utilization from Providers who are cultivators of the same, the User shall ensure that the Access ensures Sustainable Livelihoods³ to the Providers. The User shall further share with the Providers its knowledge of best practices to ensure conservation and sustainable use of the Biological Resources.

6.2 Where the Access to Biological Resources is obtained for commercial utilization from local communities who collect the same from Public Land, the Users shall make fair payments⁴ to the Providers and shall ensure ___% of the total price of the purchase towards welfare measures⁵ /NBF for the community. The User shall further share with the Providers its knowledge of best practices to ensure conservation and sustainable use of the Biological Resources.

6.3 Where the Access is made for Research Purposes, the User shall ensure effective participation of Providers, wherever possible or collaborate with any research institution (collaborative Research) identified by the NBA.

A. In case of non commercial research

i. The results of all non commercial research should be published without any restrictions of use including disclosure of any details that may be required to commercialise the research results by any person who is interested to commercialise the same.

B. In case of Collaborative Commercial Research

i. Where the research is a Collaborative Research, any IP rights shall be held in accordance with the Agreement entered to by the Parties. Any knowhow required for the production shall be transferred free of any costs if requested by the NBA for any use by government entities or if the products are required by the Government for Public good.

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³ Sustainable Livelihoods For eg. Would mean direct procurement of the BR from the farmers through contract farming with a pre determined price for the produce and supply of the best seeds/insuring the produce etc. If the procurement is with the involvement of Agents, then a undertaking from the Agents about having paid the producers/farmers minimum wages for their labour etc.

⁴ Fair payment means the payment fixed by the Government for such products (JFM's) or a minimum wage per day prescribed by the government

⁵ Welfare measures may be building community centers/infrastructure/scholarships etc for the community

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ii. ___% of the Net Profit shall be paid to the National Biodiversity Fund and in the event of involvement of any community as Providers of the Biological Resources, the NBA may also direct the User to provide any of the non monetary benefit sharing measures provided for in _____

C. In case of non Collaborative Commercial research

i. Where results are shared

In cases where the results of a non collaborative commercial research is shared with any designated Government Research Facilities, the User shall pay to the NBF ___% of the Net Profit and the NBA shall also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

ii. Where Results are not shared

In cases where the results of a non collaborative commercial research is not shared, the User shall pay to the NBF ___% of the Net Profit and the NBA shall also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

6.4 Where the NBA approval is sought for seeking any Intellectual Property Rights under sec. 6 of the Act, the following benefit sharing shall be qualified as fair:

i. Where the IP is for non commercial use

The User shall file an affidavit with the NBA stating that the IP is for non commercial use and the same shall be made available to the Government use free of cost. In the event the IP is later sought to be commercialized then sub clause (ii) of clause 6.4 shall be applicable.

ii. Where IP is for commercial use

The User shall pay to the NBF ___% of the Net Profit and the NBA shall also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

6.5 Where the Access is made for knowledge associated with Biological resources

4/1 The Benefit Sharing shall be in accordance with the terms and conditions negotiated between the Users and Providers and the NBA shall interfere only in the event of a gross inadequacies to the disadvantage of the Providers is found in the negotiated terms. The Benefit sharing may have a monetary part and any non monetary benefits that may be listed in Annexure I of these Guidelines or any legislation/mechanism made on TK.




6.6 The NBA while determining the mode for the sharing of benefits shall consider the short, medium and long term interests of all stakeholders involved. NBA acknowledges that some modes of benefit sharing may become effective immediately, whereas others become effective only in the distant future due to the period of time needed for the benefits to arise.

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7. Certification of Compliance

The NBA shall develop a system of certification and a certification mark will be provided for by the NBA that shall certify the compliance with the Act and highlight the fair and equitable benefit sharing



Annexure I – Non Monetary Benefit Sharing⁶

- a) Sharing of research and development results;
- b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities
- c) Participation in product development;
- d) Collaboration, cooperation and contribution in education and training;
- e) Admittance to *ex situ* facilities of genetic resources and to databases;
- f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
- g) Strengthening capacities for technology transfer to facilitate abilities of indigenous and local communities to conserve and sustainably use their genetic resources;
- h) Institutional capacity-building;
- i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
- j) Training related to genetic resources with the full participation of providing Parties
- k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
- l) Contributions to the local economy;
- m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in India
- n) Institutional and professional relationships that can arise from an access and benefit sharing agreement and subsequent collaborative activities;
- o) Food and livelihood security benefits;
- p) Social recognition;
- q) Joint ownership of relevant intellectual property rights.
- r) Collaboration in education and training;
- s) Collaboration in scientific research and development programs;
- t) Participation in product development;
- u) Joint ventures;
- v) Co-authorship of publications.
- w) Admittance to *ex situ* facilities of genetic resources and to databases;
- x) Admittance to taxonomic, biochemical, ecological, horticultural and other information and data;
- y) Transfer of knowledge and technology, in particular knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity.

⁶ This list contains the non monetary benefits identified and set out in Bonn Guidelines

Evolving a *Sui Generis* system for protection of Traditional Knowledge

Dr. S. Nagarajan, Chair:

The Biological Diversity Act, 2002 and the PVP&FRA that was passed in parliament 2001 are for all practical purposes twins. One looks at the variety and the other one looks at the diversity and the germplasm at large. There are several areas that are common, not necessarily having identical words. There are also major differences in layout of the Act between the two. The registrar in PVP&FRA has magisterial powers and sub judicial powers. Therefore, he is at the helm of affairs in the first level of looking at the infringement or other deviations that may happen when the plant breeder's rights are executed. There are several other variations that are there between the two. It is good to look at the opportunity that has been given to us to evolve a *sui generis* system to accommodate the traditional knowledge related to biodiversity in the overall framework of the Act by bringing suitable amendments or additions into the Rules. A number of experts under the leadership of Shri. James have put their heads together and have come up with some common convergence of ideas.

Shri. T.C. James



[See Annexure 3 for Power Point Presentation made by Shri. T.C. James]

The purpose of this presentation is to briefly go through the traditional knowledge preservation, conservation Rules that has been proposed. There is a background to this. Sometime in the month of January 2009, a set of like-minded people got together and discussed about how to move forward in protecting the rich traditional knowledge in the country. This was followed by another consultation in Delhi in July 2009. At that time we had a draft of a bill prepared by a group headed by Ms Sunitha Sridharan. In that meeting, besides a number of people, the Honorable Minister for Environment and Forests also participated. The

minister offered that if we could separate those areas which relate to biodiversity, which comes under his purview, he could push it forward. And then five experts sat together for continuously for three-four days and culled out from the original draft and adapted and amended them in a kind of rules. A second discussion also took place and broadly it was discussed in a private national consultation at Bangalore. This is what the biodiversity authority had put on the website and invited comments.

The question to ask is why should there be a need for protecting the traditional knowledge? There have been so many cases of misappropriation and misuse of traditional knowledge belonging to India, including the ones on turmeric and neem. So that naturally led people to think, on what could be the remedy for this, how does one conserve it? There has been widespread commercialization either of the knowledge or derived from traditional knowledge, but without either the consent or the permission of the people who had nurtured it, or giving any kind of compensation. In some cases some compensation but not adequate to the holders of these resources was given. The existing legislations were found to want to address these issues. What would be the rationale for protecting the knowledge? Many may consider traditional knowledge as common like water, land and air. Nobody had raised the question as long as it was not used for personal or corporate aggrandizement. That is when the issue comes up. It is not something static. It is an ongoing and continuous process that means it needs to be facilitated. Some of the purposes or the reasons for this is to ensure the continuation of the traditional knowledge and practices which have been going on for ages; of the communities which have been maintaining and nurturing it; and also to protect their inherent rights. And naturally, the economic returns consequent on any kind of commercialization of traditional knowledge should be there. The objectives that we set before drafting the rules are that, number one; it should be there to preserve and to continue to protect the traditional knowledge and their holders. It is not only the knowledge but also the communities need to be protected. Secondly, the protection of traditional knowledge from misappropriation and or misuse should be part of the process. Thirdly, all these protections are for a sustainable eco-system. In the absence of all these protections, anecdotal evidence from certain countries point out that bio resources get depleted very fast because of the commercial interests of the companies, which produce certain products based on the traditional knowledge of biodiversity. And then there should be naturally benefit sharing. In the absence of traditional knowledge, companies and research organizations would have to spend huge sums of money to acquire the needed information. While, if there is a particular traditional knowledge available, the cost would have come down to a fraction of that expenditure. The society has to pay back to the people who had made it possible, who had preserved the invaluable knowledge. Ultimately, the point is that most of these communities are in a disadvantaged situation. They need to be empowered; to be made conscious of their rights; and further they need to be given their rights.

One strategy could be to opt for new *sui generis* legislation. In the Biodiversity Act, there is a provision under 35(5), which says that the government can come out with a *sui generis* system of protecting traditional knowledge of the local people. The second option is to look into these particular Rules. Broadly, there are five major issues in this. They are the ownership;

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the kind of rights; the scope of the protection; institutional mechanisms to implement the Rules; and finally the enforcement through penalties for offences.

When one looks into the ownership, Biodiversity Act and other treaties clearly say that genetic resources or bio resources belong to the national governments. The Convention on Biodiversity recognizes also that. But the question is when it comes to traditional knowledge, although they may be associated with genetic resources, but the knowledge many a times could be with ~~the~~ community and that community could be with ~~the~~ state and there could be more than one community within the same state. Looking from the Indian perspective, there could be two or more communities in one state or one community spread over two or more states. And, there are certain things where the whole nation can be considered as one community. In fact, in the case of knowledge like ayurveda, one would have to say that, the whole of India is a community.

Next comes the rights. Here, the approach is of two kinds. One is about registration of the traditional knowledge. Now, it is for the owners, the holders, to decide whether to register or not. That is where they get their rights. It is not compulsory that they should register it and the option is theirs. If they have to derive certain benefits, then they may have to register. The second is about deciding the access. They have the right to give or deny access as it is not a system merely for facilitating access. They have a right to deny access also. Because, that is what ownership and rights are all about. Then, if they decide to give access, on what terms should it be given? What elements should go into the prior informed consent and what should be the benefit sharing formula that should be with the community.

Under the scope of protection, all the current traditional knowledge, whether it is documented or not documented were looked into and they should be covered. And this would also get into a kind of register. The existing registers like traditional knowledge digital library (TKDL) as also the other registers like the ones maintained by the state governments and people's registers should all form part of it. Any case of access can be possible only when the TK is registered. Then only one can bring legality to the matter. Because if the TK is non registered, there would be legal ambiguity, which should be avoided.

For Institutional mechanism, a system of a National level Authority with a State Boards and local boards and the customary community committees were followed. Many communities have their own customary mechanisms, but some do not have them. In this decision making process, one has to approach the top but it will go down to get the final decision. The option of giving the access and if so on what terms rests with the community, which is the owner. Some of the salient features are that the customary system is incorporated into this mechanism. Many communities in the North East have their own systems, which could be part of this process, and they should not merely be superimposed by the local boards. If the access request comes to the National Authority, the decision is taken at the local level. The State and National authorities should enable, facilitate, empower and build capacities of the communities to take informed decision making.

Coming to the offences, any contravention to the rules is to be made an offence as well as misappropriation and misuse. The Biodiversity Act broadly has this provision to levy penalties ranging from up to 5 years of imprisonment and Rs 10 lakhs as fine. It also incorporates certain salient features like, fixing the responsibility on the NBA to develop national strategies, plans and programmes, for the development and sustainable use of TK with certain measures, suggested for those kinds of traditional knowledge that are facing extinction. Immediate measures on this have to be taken. It also has provisions for declaring Traditional Knowledge Heritage Zones. There are various parts in the country which need to be specially nurtured. Special Traditional Knowledge Heritage Zones should be set up on the lines of special economic zones. And it also provides for setting up of a Traditional Knowledge Heritage Fund.

A few points about the Rules. All are well aware that the Rules will be valid only when they are within the ambit of the Act. So it may need certain amendments to the Act. In the rule 5(1), it is said that all persons whether Indian or foreign have to seek approval. There is no distinction between them. But Section 7 of the Act very specifically excludes Indians from seeking any prior approval for accession for research, education etc. And for even other activities also they need to give only prior intimation for access. But that is not what is provided in the Rules. Therefore, there will be a need for amending section 7 of the Act to include access to traditional knowledge by all, whether Indian or foreign subject to prior approval.

And also there may have to be certain consequential changes required in Sections 3 and 19 which are about foreigners among others. Rule 3(7), refers to setting up of the traditional knowledge fund, and provisions thereof, and Section 27 of the Act specifically talks of about National Biodiversity Fund. So even if it is to be set up under Section 27, that section may have to be amended so that in the future nobody can challenge how the authority could set up a separate fund for these. The definition of Traditional Knowledge is very exhaustive and elaborate. It includes cultural expressions like paintings, sculptures, and others including dyes and colours. But in the Act, there is no clear definition of traditional Knowledge. Even Section 36(5) under which the TK Rules are brought, talks only about knowledge of local people relating to biological diversity. It speaks about *in situ* and other things, but it does not talk about traditional knowledge. That section needs to be amended. Without that amendment, the entire Rules could be challenged by any person in the court of law and it would throw it out.

The present draft Rules on offences and penalties follows the pattern given in Section 55. But prescribing imprisonment, which curtails the liberty of a person, under a subordinate legislation is not a good legal practice. Given the kind of approaches Judiciary has, it is doubtful whether it can stand scrutiny. It is proposed that it may have to be incorporated in the Act itself.

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Dr. V.K. Gupta



[See Annexure 4 for Power Point Presentation made by Dr. V.K. Gupta]

The cabinet committee on economic approvals gave their consent then to this initiative on protecting traditional knowledge in this country, particularly those which are codified and in the public domain. There was only one objective earlier, to ensure that Indian knowledge is not misappropriated at the international level. Whatever is codified in the public domain is a candidate for TKDL. Ayurvedic books, Unani Books, Siddha books and Yoga books, can be bought by anybody in the country for Rs 50000. In fact, Pfizer can also buy them and they can also create a TKDL, but there is no way to stop them. They only need to have the mechanism and desire to do it.

Secondly, TKDL does not aim to protect what it does not contain, but can only protect its contents. About last year, there was some deliberation and a line was added on creating of new intellectual property. Preventing misappropriation is, of course, very good, but ultimately the people should become rich. With its entire great heritage that we all speak of and are proud of, can this country produce two thousand medicines in the next five years? Should such a project be launched? That is what is being debated and discussed. So this item that has been added is only debated and may be, if the government agrees, it may be a project of Rs 5000 crores. It could be less than that, but at the moment it is not there. Everyone knows of turmeric, neem and basmati that were the trigger of the patent issues. The issue on neem took ten years and cost about a million dollars to fight. After several studies, it was found that the problem was much bigger than just "neem, turmeric and basmati". Every year, at least two thousand patents on Indian Ayurveda, Unani, Siddha and Yoga are being taken by multinationals, and this number is increasing by 200%. Despite all the negotiations at WTO, all the achievement in CBD and in IPC, these are the factual numbers. Yoga trademarks are a very big industry in the US. They take an Ayurveda book, convert its contents into a patent application format and file for a patent. Now, the examiner does not have these books and even if he does, the book is in Sanskrit, so he would not understand it. Today, in the examination system, unless it is digital, it is not recognized.

The fundamental problem, if the issue is national, when it is pirated and one feels hurt. If it is internationally being pirated, one cannot solve it nationally, but one will have to solve it at the international level. One cannot have a law nationally and think it will solve all the problems because the ~~problem~~ is happening in foreign lands.

So, this system called the international patent classification was studied. Actually, this is the system by which patent systems work. It enables the patent systems to identify novelty of X from novelty of Y. It has 69000 groups for all other disciplines of science. But all genetic resources, till 2005, are under one group only. It means that any plant-based application cannot be shifted. That is how the patent system works. A new classification for traditional knowledge was created with 25000 groups, as against one. It is now very well recognized. The matter was taken to the WIPO committee of experts and IGC union, where it was appreciated. They created a task force consisting of US, Europe, China, Japan and India. Now there are 200 sub groups. So, the international system is now capable of examining the plant-based extractions. Then we have also got linked our 25000 groups. It still has limitations.

What it means in practical terms. The way the knowledge exists now cannot be understood at the global level. Mere names in Sanskrit and other languages cannot be understood unless converted to a Latin name. For patents applications, bibliographic references, uses etc., one needs those terminology conversions and you cannot do it in one language. So it has been done in five languages- Japanese, German, French, Spanish and English.

Today, we have in this library 2.17 lakh Ayurvedic, Unani and Siddha medical formulation, in 34 million pages. This is the largest database globally. It is now possible to prove our country's great heritage with this documented knowledge using modern digital technology. CSIR is implementing the project and Ayush is closely involved and collaborating. So far in this project, 7 crores have been spent. That is all. For example, in the neem case, 5 crores were spent. If done in a conventional manner, 5000 people would be needed, who would have to work for 60 years and the minimal cost would be is, at today's prices 1.2 billion dollars. Now, if one page is added at an extra cost of Rs 2, misappropriation that would cost millions is saved.

This is an international benchmark where India is considered to be a global leader and recognized by the best. India sets standards, international standards, which are followed by US. WHO and several countries want to replicate this. In fact, recently, WIPO had written to India, (DIBP is the nodal department), that they have received requests from fifty countries. They want to replicate TTDR, so the government has agreed in principle. The mechanism that will take place has not yet been worked out. Our Minister feels this is a strategic advantage to India, because it is a common problem.

TKDL access is "take it or leave it". It is not changed, and there is no authority to change. However when an application is rejected, the reason has to be given in a printout. There is lot of concern on this and many blogs have been written saying that because TKDL is giving a

printout, that is why the knowledge is coming out in the public domain. It can then be misused. Theoretically 2, 17,000 applications can be filed to get all the knowledge.

For filing a patent application on a Sanskrit *shloka* which is translated into English, the minimum cost is \$30,000 to \$50,000 dollars to get two pages, whereas the whole book of five hundred pages is available for Rs.11. Why would anybody do that? Nobody has done it - but still, the question may arise. There are agreements with the European patent office, German patent office, Indian patent office, USPTO. UK and Canadian will also be done.

Nobody is requested to sign. If they come, they are considered because our agreement is "take it or leave it". Even if negotiations go on for two or three years, it does not matter. The conditions cannot be changed, and these are our safeguards.

To demonstrate what TKDL does - a Spanish firm took a patent on a leucoderma cure by utilizing the watery extracts of Malam. In the Unani system, the same is being used since the 10th century. This evidence was given, and the patent was quickly rejected. One email was sent, so the cost was Rs.0! No one can go to court, because the patent was not granted. Also for *Withania somnifera* for management of stress, it did not cost a penny. It is just an email which is sent, attaching the evidence, the TKDL translation, showing the references and giving the reason why it is not novel. So far among those rejected are from different countries. In the EPO system 200 groups were studied and 2400 patents were found out of which 206 belong to India. All 206 will be rejected through this route.

All the patent systems, by virtue of their definition, are a creation of man. That is knowledge and nothing else matters in the patent system. Other countries are spending 2 million dollars on a case while India is spending an email and few weeks. Now it is found that fewer wrong applications are being filed. In fact it is a big deterrent and even if there are patents concerning other countries, there are none concerning India. What is being done is to integrate all these systems of knowledge on plants and diseases. Scientific data is being added to it, for instance on malaria, what the Ayurveda content is, and what the TKDL data is.

Chair:

Now that both the presentations are over, only those questions that are directed towards the title of this session are to be placed here.

Dr. Narayana:

It is correctly stated in this presentation what are the traditional knowledge that needs to be protected. Dr. Gupta has presented the canvas of the kind of information that is available. Today, the coverage of protecting this and permitting anybody to make a product on the basis of this knowledge in the form of a market license is already available under the drugs and cosmetics Act and Rules. And also the food safety authority is having this PFA and various other Acts, whereby one can take a license and develop a product for the market based on all this

Traditional Knowledge. In addition to that, is there any intention to introduce one more step of taking permission for using the traditional knowledge, which is already codified? I am not asking a clarification for what is not approved/listed in the drugs and cosmetics law or the food law. What drugs law does sir, in simple words is that it has a schedule where 57 books of Ayurveda, 11 books of Unani, 8 books of Siddha, and some 34 books of homeopathy has been regulated already as official text. Any manufacturer in the country can apply to FDA saying that I want to use this particular formulation as per the *grantha* or the book I will produce and they get a manufacturing license and a marketing license. In addition to that, is there intent to regulate it further? Are we not creating multiple regulating mechanisms? And if so, can there be a harmony between the two departments?

Dr. A.K. Ghosh:

The comments are restricted to the draft for the protection conservation and effective management. Section 2 to start with, which is supplemented by section 15, talks of the formation of standing committees at the national and the state levels. These committees would have to be formed at the National Biodiversity Authority level and at State biodiversity Board level. At the local level, as has been mentioned under section 3(1), local representative bodies should be nominated. The questions are: Who should look into that? and who should recognize the local representative body? Is it a registered body under the Societies registration Act? Who exactly says that this is a representative body?

The Section 3(7), mentions about setting up of a Traditional Knowledge fund. There is already provision for the local biodiversity fund. Is this part of the local biodiversity fund or is it in addition to the local biodiversity fund? Where does one stand, with regards to the traditional knowledge fund vis-a-vis the local biodiversity fund? The Section 27, which talks about the biodiversity fund, does not talk about the traditional knowledge fund.

Section 4(1) talks about the national TK register with prior approval of the local community. Now already the process of people's biodiversity register has started as per the law. In the TVR, approved version also, there are provisions (as in the PBR approved version) not only to register the local resources, but also the knowledge associated with it. Obviously, it looks little contradictory. Because it has already been made as a mandate, and given to all the state governments by the NBA. From that point, as a part of that the knowledge was also included in it.

Section 4(2) talks about traditional knowledge being divided into public and confidential categories. But in the PDF format, there are no confidential categories. And Section 4(7) talks about contents that can only be revealed by the national authority on discretionary basis. Should PBR be considered confidential, or is it public domain material?

On setting up of the TK fund under section 11, is it again the elaboration of the TK fund that was mentioned earlier or is it a local biodiversity fund? Is it supposed to be composed of, both for use of material and for knowledge? If the two funds are differentiated separately, there would be two management systems. Already in the last 6-year period, India's experience

in biodiversity management committees is not very happy and while travelling all around the country it can be seen that this is the weakest point of the entire process.

Lastly the penalty. It has been mentioned that violation of this particular draft regulation with regard to penalty, is mentioned as imprisonment and fiscal penalty. But then the request would be to designate the authority, because if there is a biodiversity violation, there has been a very bitter experience of not having the authority being designated. This created a lot of problems in the case of violation in Darjeeling Himalaya, which should not come up again. All the points and Section-wise comments are given in my short note.

Dr. Bala Ravi:

It is good glad that Ministry of Environment and Forests, at the behest of NBA, has come with a *sue generis* draft. So far we do not have any kind of a legal system in the country for protecting this traditional knowledge about which we are very proud. However this covers part of the traditional knowledge, since for obvious reasons, the entire knowledge cannot be covered. Highlighting some important points for the attention of the house, the first point is to the definition of intellectual property rights. It needs to be known whether this covers the entire property right, or what is relevant to this Act, because it has left out both plant breeder's rights as well as trade secrets from its purview, but has included geographical indications, which in fact, has nothing to do with the Biodiversity Authority. It should be a separate community right, not an individual right.

In the comment referring to Rule 3(4) it says, 'National Biodiversity Authority shall ensure that members of any community shall be allowed to access traditional knowledge of another traditional community for the purpose of earning their livelihood and not for commercial gain'. Here are two expressions, one is 'earning for livelihood', and the other is 'commercial gain.' Is there any cut off point? What makes commercial use, what makes a livelihood? In a country like India where there is a different poverty line for each state, how is it going to be defined and set? This is very important because commercial gain cannot be accurately assessed and there are small players as well as big players in the commercial area, so a correct definition has to be put to make it an effective provision.

In Rule 4(2), regarding registering traditional knowledge and classifying it as confidential or public, if secret knowledge is taken and documented in a computer system of a public office, how is secrecy of the traditional knowledge be ensured? Livelihoods will be affected. If at any time, the knowledge becomes open, who is responsible for that? Will the NBA take full responsibility?

Rule 5(3) mentions procedures for common traditional knowledge shared by three states. What about when two states are sharing the knowledge? It should say "more than one state" for better understanding and clarity.

The same Sub Rule no 6 says "on receiving the application, the traditional community shall inform the State Biodiversity Board of their willingness or unwillingness to participate in consultation on prior informed consent". For many traditional groups holding associated knowledge, the Biodiversity Management Committee is the appropriate grassroots institution under this Act, which has been totally omitted by this particular Rule. The grassroots level of this particular knowledge system has to be strengthened, as Dr. Swaminathan mentioned.

The next point is on the Sub Rule 16 of the same rule that says "authorities are issued license of use after being satisfied, etc. etc" ... the major omission of this rule as well as other rules is in putting down the time frame for every official action. This is every important since from the official side there can be unwillingness to undertake a time frame.

Rule 6(2) says, the National Standing Committee will have three women, and one will be from the traditional community. Two posts have been left vacant, and there is a suggestion that academics and experts should be there.

There is a contradiction in the Sub Rule 6(4), which says that the prior informed consent along with the access and benefit sharing agreement will be signed between NBA and the applicant, whereupon the NBA shall issue the license. Now this contradicts the earlier Rules 5(13) and 5(16), where it has been said that the community will negotiate and do it. So there is a lot of mismatch between these two.

Another important area is the provision given to the right for opposition under Rule 5, Sub Rule -3. This is an important element in every intellectual property right issue. Six months from the date after the grant is given and the Authority publishes it, any individual has a right to go on protest or question the grant. Then there are a series of steps - a counter is invited grant recipient and legal procedure continues till the Authority finally comes to a decision. This may take almost a year, by which time the accessor may have already collected the material, or invested an amount into the research area and it will not be possible to stop the process. Therefore to avoid creating a legal problem it is important to first invite the opposition and then grant access if there is no opposition.

In conclusion, regarding Rule 6(20) 'Executing proceedings of the order', it says every proceeding of the order shall be made by NBA as per these Rules and certified by NBA in the same manner as the decree of a court. NBA in fact, as per the law, has been provided judicial authority. There it says the writ can only lie in Supreme Court and not in any High Court, so does it mean that NBA has got a status of High Court? It does not seem so.

Shri. Yogesh Gokhale:

On the draft guidelines that have been circulated, if TK rules are seen in that context, then the guidelines are quite inadequate in terms of implementation.

The Rules speak about public knowledge and confidential knowledge at many places. In terms of public knowledge there needs to be more clarity and understanding and more debate. For example in terms of traditional knowledge, what is public in Himachal Pradesh might not be public in Kerala. Geography and language are two barriers which are destroyed in English Databases and access becomes wider.

Then none of the documents, the draft guidelines or the TK rules talk about validation of knowledge. Any processes where TK gets validated is very important when a license is required to use it. They say that use is not for more than three years. Three years is too little time because if knowledge is to be really used, the process of validation goes on for a longer time.

Shri. N.D. Brindavanam:

Regarding the traditional knowledge register cited in 4.1, again the issue comes of the clash or overlap between the codified systems of medicine like Ayurveda, Siddha and the traditional knowledge. In many of the ethno botanical or ethno medical observations, it is observed that the ayurvedic prescription is closely correlating to the ethnic practices being followed by a particular community. For example, *Phyllanthus* species is mentioned in Ayurveda for treating liver disease and similar kind of practice of using this species for liver diseases is in vogue in a few ethnic communities. The knowledge register needs to take care of these specific overlaps between the systems that perhaps might be existing for a thousand botanical species. Therefore both of them need a special kind of a treatment while evolving a *sui generis* system of protection.

Dr. Narasimhan:

There are two comments on this draft. One is that determining ownership of knowledge if in India, especially in peninsular India, is highly diffused. For example a large number of plants used by the local communities from Orissa to Tamil Nadu, seem to be common. So how can one fix ownership?

Secondly, the practice of ethno botanist and the practices of universities. When there are university norms requiring sending a thesis abroad for evaluation, the whole package is being sent out of the country, so how does one control access of knowledge through this thesis?

Professor Ezhumalai:

By and large this draft is okay though there may be some minor problems and is actually no mismatch. For certain knowledge that has not been registered with the Biodiversity Authority, the community has a role. Once the community has consented for registration, then the authority is vested solely upon NBA to step in. Some of the states are yet to establish their biodiversity boards. It is desired that NBA should have more and more powers. Though it would be good as Dr. Swaminathan talked about the grass root, but it is not possible to go down to

that level, because in India, that maturity has not come. Till it comes, NBA should have the power, because India is a federal country. Different states may have different interests that should dilute our national interests. Therefore, NBA should have more powers. On the other hand, in the Committees like the National Standing Committee, representations can be given to more people.

Likewise to suggest one more point regarding the appeal going only to the Supreme Court. That is not possible. How many of our farmers can approach the Supreme Court? The Supreme Court itself cannot be reduced to only an appellate tribunal. Please take up the SEB model, which has a Chairman, like our NBA Chairman, and a Secretary. Within that there should be something like NBA tribunal. When there is a breach between the obligations, as has been rightly mentioned, the tribunal should handle all these affairs. If the NBA itself commits a breach, that should be handled only within NBA tribunal. If there is some conflict between the State Biodiversity Board and the NBA, currently the problem is being referred to the Central Government.

Dr. Rao:

In the tribal areas along the Eastern Ghats, different kinds of plant materials are used for different types of diseases. The Center for Tribal medicine, with a small team, has built confidence with the tribal communities. Taxonomists with ayurvedic training compiled data of nearly ten years' work in a book on the request of the tribal department of the state. By careful analysis, it was found that all the medicines have been identified scientifically. The tribal doctors (*vaid*s) were assured that this is not any competition with them, but it was to try to help them to develop the scientific background of their system. In that process, couple of interesting plants were found that were not mentioned at all in Ayurveda, but still being used by these *vaid*s. The second stage of investigation is just being planned to study whether it is actually working on the particular disease, or is the cure through the resistance of the patient. Through the modern system of medicine it will be verified if that particular plant not known in Ayurveda has been actually working on that particular disease. In such cases, how can one include the traditional knowledge of the tribal doctor, who is also responsible for locating that plant, but does not know its significance? With this scientific background, if successful, new species of plants not known in Ayurveda for that particular disease will be introduced. How does one accommodate such cases in this document?

Dr. V.K. Gupta:

The protection of traditional knowledge has to be an international system. An international instrument is being negotiated at WIPO, which is being coordinated at DIPPO. So before anything is organized, MoEF, NBA and DIPPO should take a joint view and then take it forward. Otherwise it would result in fragmentation and in fact dilute the position of India in various international forums. MoEF, NBA and DIPPO should sit together, along with Ministry of Commerce, to evolve a longer term coordinated and consolidated approach. With the IPP this is a subject which is going on for the last ten years. There are delegations going out

internationally. There is no rationale in now suddenly saying that traditional knowledge is within the framework of biodiversity. A conscious view has to be taken together in an inter-ministerial consultation. Before taking a decision, we need to consult other ministries.

Dr. V.S. Vijayan:

Under Articles 4.4 and 4.5, it says the traditional knowledge digital library and a people's biodiversity register shall be included as part of the traditional knowledge register. It is a very serious issue because, though there is no problem with secondary information that is already in the public domain, but new information which is coming out because of the biodiversity registers which are being prepared now, whether that should also go into it has to be thought about very seriously. Nobody should feel offended. It is not possible to protect everything, with the NBA or any authority, because of the system. The reality is that it is impossible to protect TK, so why record it? In Kerala there is now a problem and it is decided that the data will not be computerized. A number of them have already been made in panchayats; it is intended to complete 999 panchayats by the end of this year. Now how is one going to protect them? This is the main issue now. And again even if it is marked as very confidential, it is not known if it will not come under the purview of RTI. Caution is necessary because information is being collected from the whole country and put it in one place. Therefore it is exposed. It will be dangerous.

Shri. N.S. Yadav:

There is no need for this Rule separately because most of the points relating to traditional knowledge have been covered under the Act. It is better to understand how to implement that Act, what addition or modification or amendments can be made in the Biodiversity rules 2004 to cover issues left out here.

What is the role of the State Standing Committee, as given in the definition? Access to traditional knowledge by Indians is not covered under the Act, so are they not supposed to take permission regarding this? That should be looked upon.

Secondly Rule 3 Sub-Rule 4 says "National biodiversity authority shall ensure that the members of any traditional committee shall be allowed to access or practice the traditional knowledge of another community for the purpose of earning their livelihood and not for commercial gain", is there anything, any line on this to what extent it would be branded as livelihood and to what extent it will be taken as a commercial gain? Regarding National Biodiversity Authority fund, how many rules are going to be created and how many funds are going to be created? Since there is already a provision for a National Biodiversity Fund one can keep a head for Traditional knowledge there. Regarding the documentation of traditional knowledge, it is very well covered under the PBR. Once the PBR is done, it cannot be kept confidential. If PBR is maintained at the biodiversity management committee level, it will be very open, everywhere. How will it be kept confidential?

Shri. Vivekanandan:

First, Number 2 definition under 'Collective rights'. For traditional communities to practice their indigenous knowledge, they should have access to natural resources, common property resources. Without access to these traditional rights, they cannot practice their knowledge. It is not merely knowledge of the communities, to practice they need their traditional rights - access to forests, access to common property resources and conservation, all these should be considered.

Then again, Number 3, 'measures to be taken by national biodiversity authority'. Under 3, it says traditional communities have to be facilitated to exercise their traditional rights. Traditional varieties or breeds are a product of indigenous knowledge and also a cultural expression. So to continue to keep, whether it is knowledge or genetic resources, they have to have the rights. Already the Government of India has the schedule tribes and other forests dwellers rights Act since 2006. How much is it being implemented? It has still not come into force. So there is contradiction and conflict because the forest officials or bureaucrats never see traditional knowledge for conservation of biodiversity. Within the department or because of the lack of coordination between the agricultural, animal husbandry department and forest department, biodiversity is compartmentalized. But indigenous knowledge once protected and given regard and respect, it is a holistic vision. So the knowledge has to be seen on the basis on which it intervenes on biodiversity. But this is not happening, especially, with forest department that is the custodian of biodiversity.

Lastly, the traditional knowledge fund. For the constitution of traditional knowledge fund, under 2b, conservation and sustainability of traditional resources, welfare and livelihood support for traditional communities, one has to sit with the communities and see what are their needs and aspirations to conserve the traditional knowledge. It is the activities identified by the communities that have to be funded for the programme, rather than only livelihood matters. Only when the communities as stakeholders are first consulted to arrive at their priorities and aspirations, so that they can be fulfilled, then can traditional knowledge be conserved.

Shri. Bala Prasad:

With respect to traditional knowledge associated with agro biodiversity and medicinal systems, to quote the figures from Manipur, 30 years back there were 300 varieties of rice. Now there are just 50 varieties being cultivated. From it can be understood that since the traditional crops are being replaced by the high yielding varieties, the traditional knowledge in this field is also in danger.

Secondly, on the medicinal side, taking any group, the average age is about a 60-70. In fact, at a conference for traditional breeders in Manipur, the average age was above 60. So the people who are having the knowledge are becoming less and less. The point is to highlight that the need for the preservation of traditional knowledge is very high, whereas the existing legal system is against them. As per the Indian Medical Council Act, nobody can prescribe medicine,

if he is not registered as a practitioner. The legal position is such that under the prevention of quackery Act, any traditional knowledge holder who is giving medicine can be arrested. There is a need to give some legal basis to the traditional knowledge holders so that their dispensation of medicine can be regularized.

Coming to the Rule which have been circulated, the definition given in 2u and 2v, could be modified seeing the ground reality that the traditional knowledge of individuals and a group of individuals is recognized. So the definition of traditional knowledge of communities needs to be revised in this context.

Next point is, under Section 40, the commonly traded items that have been notified by the Biodiversity Authority have been kept out of the purview of the Act. But what about the traditional knowledge associated with that species that have been kept out of the purview? Since those species have been kept out, the knowledge associated also goes out of the Act. Whereas there is a need to keep the knowledge associated with those items also under the purview of the Act. This needs to be considered. Why is TKDL only for Ayurveda, Unani, and Homeopathy? TK should also be extended to traditional knowledge held by other communities. Other traditional medicines should be documented in this same format, compatible to TKDL, so that the protection is available to traditional systems of tribal communities also.

Shri. Debal Ray:

While compiling the people's biodiversity register, it is understood that it is to try to protect the traditional knowledge of the villagers, traditional communities and others. At the same time the ethno botanist and other scientist who work in those tribal communities publish research papers giving full details of the formulations. The same knowledge is made available to the wide scientific arena. Now which path is correct? Are the efforts of the biodiversity boards going in vain? A fuller understanding of this issue is needed.

Secondly, it is not that only the full molecule or its derivative that is used by the MNC or private company for commercial benefit, many a time even the bio-mimetic compounds are derived using the simple molecular architecture. For example the paints that were used using the lotus affect. The famous paint, which doesn't allow dust to accumulate on it. This has been used through electron microscopy of the lotus leaf. Is there any protection there? When some molecule is derived using the same architecture or same mechanical properties of a biological compound. That is also should be covered by some form of legislation. It can be seen in lotusdust.effect.com

Shri. A. Seth:

Clarity is needed on what are we trying to protect - or trying to exploit? It seems as if there is a huge knowledge, with monetary volume, which everybody in the world is trying to steal. The idea is that basically this knowledge should not die. Whatever the sphere of domain

they are working they should be allowed to exist. Some kind of a preservation mechanism needs to be put in for the biological resources needed for them.

Dr. R. S. Rana:

The discussions have brought out that they are parallel system. It is to be discussed further, separately on how the codified systems, and the systems under the Biological Diversity Act, that means, the registry through the peoples biodiversity register and other systems, can be carried forward, and how they can be harmonized. It was said rightly that we need to see traditional knowledge beyond the medicinal use. Going back to Dr. Swaminathan's remarks, we face three questions. One is, is there a need for a new Act? Is there a need for amendments? Is there a need for amending or creating the new Rules? This is very relevant here. The expanded role of NBA has been discussed. Perhaps the knowledge associated with bio resources is of a separate category and should be dealt with separately. While granting an access to bio resource, certainly one has to consider the knowledge associated with it, and in that case Section 3, Section 19, need to be modified or amended, because it is proposed that Indian nationals should also apply if they want access to this knowledge. It depends on what really is the objective. Does this help the creators and holders of Knowledge? Does it help to take this process further? Validation and defining were certainly suggested as scientific means of providing support. But it comes to the same basics of public education and awareness starting from the grass root level. Instead of talking about the authority now, more discussion can be about the grass root level and how they want to mobilize the social sector and also the others associated locally into this. Also more supportive research in this particular respect could be provided. The discussions were still very open and not by any means concluded.

Dr. S. Nagarajan:

What opened up were several topics and several issues and views were presented very explicitly. To sum to the best extent, on examining the Biological Diversity Act, it leaves behind any scope to accommodate additional responsibilities to the already existing Authority that is in place. So when looking into the preamble, it reads, "an Act to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of its benefits arising out the use of biological resources, knowledge and matters connected therewith or incidental thereto". Therefore the word "knowledge" is finding a place here, whether it is traditional knowledge or otherwise. It only talks about knowledge in terms of sharing benefit, but does not give the mileage to accommodate the exclusivity that was talked about in certain cases. Are exclusivity and sharing benefit one and the same? If exclusivity is there, then probably a department like DIPP, which has the patent Act and very many similar ones, will have to be consulted or dovetailed with it. So what exactly it is meant by granting exclusivity for knowledge will have to be examined here.

The department of agriculture in this the way is not necessarily any shade better. There is this seed bill and also PPV. One is the varietal promotion and marketing part for the variety in cultivation in usage. And then there is the intellectual right that is attached to the variety that

has been developed. Similarly, is it possible to have on one side the biodiversity, and on another, a separate Bill that takes care of the intellectual property right that goes along with it. It is not necessary that both have to be put into one. Sometimes it becomes operationally difficult to execute it. It is quite likely that one may like to examine whether it can be made into a sort of a package in which one flows into the other, in which case there can definitely be other systems or paraphernalia.

Getting into the issues of knowledge, documenting the knowledge, creating a registry, giving them certain rights is altogether a different issue. Then there have to be registrars, and the registrars have to have magisterial powers. There has to be something like PVG, where indigenous knowledge that is going to be registered has to be published; there has to be an opposition; there has to be a way of evaluation; and there has to be a sequence of operations that have to follow that are not necessarily at the moment in the manner in which the National Biodiversity Authority is following. So it should be examined whether it should be in one package or two standalone ones with near similar objectives.

The other aspect that comes into mind, as pointed out by one of the colleagues is that there has to be an appellate. Once a decision is made, it is not that they have to go to a High Court. There are difficulties because the appellate is part of the Ministry of Justice and one has to interact with both the department of Agriculture and Law. But of course, the appellate acts as cushion between the two systems over there, and then goes over to the normal judiciary system. So appellate will be the proper way of examining it in the long run.

Looking into the fee structure that was talked about, the biodiversity fund can be a corpus; any type of fee can flow into that. It can have a book-keeping method just like there is in the Gene Fund where the annual fee comes in along with the various grants from the government. It is a corpus fund. There is a financial and administrative procedure of handling that particular money for a given cause that has been spelt out in the Act. Therefore, there is not going to be a conflict if there is more than one fee, but then, if there is no schedule, there is no way the fee structure can be put in place. At some place the Rule or the Act should be given provision for having a schedule for various payments of fees, the various forms that have to be filled up. Dr. Bala Ravi is very conversant with this and he will be able to advise on this matter.

Now once an application is received for traditional knowledge, it is not clear how it is going to be evaluated. Is it like the patent system that is examined on paper, additional information if necessary need to be obtained and then the rights are given? Or is it going to be like Ayurveda? Or is there going to be a biomedical evaluation of test procedures, just like in the case of entomology there is LD 50 and all those documents have to be provided for purposes of registration. So this registration issue is a very tricky one and one may have to decide how to handle this exercise. It is not still explicit in this present document.

Evaluations and registration have to have a certain period, as in the case of plant varieties, 15 and 18 years of valid duration with a mid course review. Then there is the

procedure of retaining the registration that has been granted. Many of these things will need reexamination if you want to include traditional knowledge within the existing Act and Rules. It appears better to have an Act by itself, even though it would be a little more time consuming, in which case it may be possible to elaborate it further, give it a little more legal teeth. Otherwise, there will be difficulty in managing the Biodiversity Authority itself, which has been given a very wide mandate compared to the very small mandate given to PPV and FRA. It would be advisable to examine internally whether by adding on top of this dimensionless workload, another dimensionless workload, it will destabilize NBA, or add strength to it.

The information that Dr. Gupta presented was not covered or discussed by anybody. But in the event that a corresponding Rule or Act comes in place, very similar to the provisions made by the TKDL, there can be computerized documentation system of indigenous traditional knowledge on plant germplasm material. If there is possibility of developing such a database, based on that, it would enable one to plead one's cases globally, whenever an infringement happens of a material that emanates from here.

One or two points that are also involving that of PPV and FRA Act are regarding farmers' varieties, a wild relative or landrace of which farmers have a common knowledge. The word "knowledge" is already there provided in case you have a landrace, the performance of which is known. So it is already partially covered and if there is good material there, it can be taken care of under the farmers' variety. It will have to be seen that there is no clash between the farmer's variety that is already there under PPV and FRA, and then look at the biological diversity and genetic resource per se, through the one being considered. So the landraces and other material that is taken care of by biodiversity authority. There is space for both Authorities provided it is understood where one's responsibility ends and other's begins. A farmer's material is the elite one amongst the landraces, which is almost all acceptable characters except that it has not gone through the system of seed maintenance that a breeder does. There will be a certain amount of variation. In a field there would be about 4 or 5 varieties mixed together and grown, that is what is done through mass selection. So there is available space between germplasm and farmer's variety. Barring that, there is nothing that is so obvious now conflicting the interests of both the PPV and FRA or the Biodiversity Authority. Either the identification of the agro biodiversity hotspots that we have tried to make, may be this is an area where the scope could be enlarged further to find out if a knowledge base or information base we could be established for the purposes elaborating it further.

Agenda 13. 3: Directives to State Government for threatened areas, habitats and biological resources (Section 36 (2) of the Biological Diversity Act, 2002)

The authority approved the constitution of an Expert Committee for framing the Rules for declaring threatened areas. It was decided that Shri G. K. Prasad may be the Chairman of the Expert Committee with Dr. A. K. Ghosh, CED, Kolkatta, Dr. E.A.Siddique former DDG Crop Science, ICAR/Hyderabad, Shri Asish Kothari, Kalpaviriksh, Pune, Dr.A.Joshi, HESCO and one representative each from WII, BNHS, CES, IISC, MSSRF, PVP&FRA, SBB as members. Chairman NBA is authorised to constitute and restructure the Expert committee.

Action: Secretary

Agenda 13. 4: Delegation of Powers - Section 16 of the Biological Diversity Act

The Authority approved the proposal of delegation of powers to the Secretary in principle. The members advocated enhancing the budget of NBA substantially.

Action: Secretary

Agenda 13. 5: Guidelines on National Biodiversity Fund (Section 26 (2))

The authority approved the constitution of an Expert Committee for framing the guidelines for application of National Biodiversity Fund with Terms of Reference as per the provisions of Biodiversity Act and Rules. The authority further authorised the Chairman NBA to constitute/restructure the Expert Committee.

The Authority shall recommend to the Government for its contribution towards National Biodiversity Fund and in this connection a letter will be written to MoEF by the NBA

Action: Secretary

Agenda 13. 6: Protection of Traditional Knowledge (Section 36(5))

It was informed that various groups are working in this aspect. A two day National level Consultation Meeting with brainstorming session shall be organized by NBA in collaboration with suitable agencies.

Chairman NBA requested the members to participate and represent the NBA in relevant regional events on behalf of the NBA. The NBA will bear the expenditure of such visits undertaken by the members. The report of the experience of the members shall be shared in the following authority meeting.

Action: Secretary

Agenda 13. 7: Meeting held at NBA with Director UNESCO

Prof. Anil Gupta, Member, NBA opined that such agenda should not be placed in the authority meeting and Chairman, NBA himself can approve and the same may be noted for future reference. While approving the proposal, it was decided that in future, such matters be decided at the level of Chairman/NBA.

Action: Secretary

If approved, NBA can initiate action for constituting an Expert Committee for preparing detailed guidelines on **National Biodiversity Fund** as per Section 26.2. Authority is also requested to suggest the name of the Chairman and the Members of the Expert Committee.

The Authority is requested to Approve

Agenda 6: Protection of Traditional Knowledge (Section 36(5))

Under Section 36(5) of the Biological Diversity Act, 2002 *'The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including sui generic system.'*

If approved, NBA can initiate action for constituting an Expert Committee for preparing **guidelines on Protection of Traditional Knowledge**. Authority is also requested to suggest the name of the Chairman and the Members of the Expert Committee.

The Authority is requested to Approve

Agenda 7: Meeting held at NBA with Director UNESCO (Appendix 4)

The fund earmarked for printing of the proceedings of the International Workshop on "Gulf of Mannar Biosphere Reserve: an Ecological model for biodiversity conservation, livelihood and sustainability" from the funds released by UNESCO was **Rs.1,40,385/-**. Out of which an amount of **Rs.1,19,288/-** has been utilized for printing. The UNESCO delegates in the meeting held on 8.8.2008 wanted NBA to utilize the balance amount of **Rs.21,097/-** (Rupees Twenty one thousand and ninety seven only) available after printing the proceedings, to print pamphlets (3 or 4 fold) containing information regarding objectives of Biological Diversity Act, a brief introduction about Biosphere reserve and details about Gulf of Mannar Biosphere Reserve with a view to create awareness amongst public. The Authority is requested to approve.

The minutes of the meeting held with the representatives from UNESCO in Chairman's Chamber, Office of the National Biodiversity Authority held on 8th August, 2008 are available in the **Appendix 2** for information and approval.

The Authority is requested to Approve

Agenda 8: Tour Report by Dr. S. Subramaniam Member NBA on Gulf of Mannar Biosphere Reserve (Appendix 5)

Dr. S. Subramaniam, Member, NBA, Chennai conducted a study visit on the project 'Gulf of Mannar Biosphere Reserve's Coastal Biodiversity' from 25 -30, September, 2008. The Project funded by UNDP / GEF, MoEF & Government of Tamil Nadu is being implemented by the Gulf of Mannar Biosphere Reserve Trust (GOMBRT), Ramanathapuram.



भारत सरकार
पर्यावरण एवं वन मंत्रालय
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT & FORESTS

NATIONAL BIODIVERSITY AUTHORITY
CHENNAI

DIARY No. 261
RECEIVED ON 21/10/08

No.28-8/2008-CS-III(NBA)

To

Dated the 10th October, 2008

Dr. K. Venkataraman,
Secretary,
National Biodiversity Authority (NBA),
475, 9th South Cross Street,
Kapaleeswarar Nagar, Nelankarai,
Chennai-600 041
Email: nba_india@vsnl.net
Telefax No.044-244 91390

Subject :- Review of Implementation of the Biological Diversity Act

Sir,

This has reference to this Ministry's earlier communication of even number dated 17.03.2008 on the above-mentioned subject. Following review of the matter in the Ministry, the undersigned is directed to communicate the following requests to you for early action:

1. Section 13(4): Allowances or fees to members of committees set up by NBA.

NBA to inform about the current practice and whether it is as per the Central Govt.'s norms/rules.

2. Section 36 (2): Directives to State Government for threatened areas, habitats and biological resources.

NBA to initiate action for setting up of an expert committee for preparing guidelines for management of such areas.

3. Section 16: Delegation of Powers.

Provisions of this section may be discussed in the next meeting of NBA for appropriate decision.

4. Section 21 (4): National Biodiversity Fund.

NBA to initiate preparation of detailed guidelines for the purpose of this Section. This too may be discussed in the next meeting of NBA.

5. Section 36(5): Protection of Traditional Knowledge.

As communicated earlier vide letter of even number dated 17.03.08, this may also be discussed in a meeting of NBA.

Yours faithfully,

Sujata Arora
(Dr. Sujata Arora)
Additional Director



जहाँ है हरियाली।
वहाँ है खुशहाली।।

पर्यावरण भवन, सी.जी.ओ. कॉम्प्लेक्स, लोदी रोड, नई दिल्ली - 110 003
PARYAVARAN BHAWAN, C.G.O. COMPLEX, LODHI ROAD, NEW DELHI - 110 003



NATIONAL BIODIVERSITY AUTHORITY

Dr. K. VENKATARAMAN
Secretary
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E-mail: nba_india@vsnl.net

475, 9th South Cross Street,
Kapalceswarar Nagar,
Neelankarai,
Chennai - 600 041.
Tamil Nadu. India

No. 8-3/2008..NBA/134

Dated 26th March, 2008.

To

Dr. Sujata Arora,
Additional Director,
Ministry of Environment and Forests
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi- 110003.

Madam,

Sub: Measures for protection of traditional knowledge - reg
Ref: Your letter No.28-8/2008-CS-III(NBA) dated 17.3.2008

With reference to your letter cited above for taking measures for protection of traditional knowledge vide Section 36(5) of the Biological Diversity Act, National Biodiversity Authority has taken initiative to prepare the People's Biodiversity Register. Also a proposal has been prepared and sent (EFC Memo) to the Ministry of Environment & Forests for the establishment of Indian Biodiversity Information System (IBIS) for funding under the 11th Five Year Plan. Recently under the 10th Authority meeting under Sub-section 2, Section 13 of the Biological Diversity Act, an Expert Committee on Traditional and Tribal Knowledge has been constituted. However, as suggested by you, an Agenda for "Measures for protection of Traditional Knowledge" will be placed before the forthcoming 11th Authority meeting for discussion. This is for your kind information and necessary action.

Thanking you,

Yours sincerely,

(Dr. K. Venkataraman)

-MAR-2008 11:08
-MAR-2008 10:29

P. 04

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Government of India
Ministry of Environment & Forests

Paryavaran Bhawan
CGO Complex, Lodi Road
New Delhi-110 003
Telefax: 24361601
Email : sulata@nic.in

No.26-2/2006-CS-III(NBA)

Dated the 17th March, 2008

To

Dr. K. Venkataraman,
Secretary, NBA
475, 6th South Cross Street,
Kapaleeswarar Nagar,
Nelankaral,
Chennai-600 041
Email: nba_india@vsnl.net
Telefax No.044-244 91390

NATIONAL BIODIVERSITY AUTHORITY
CHENNAI.

DIARY No. 239
RECEIVED ON 20/3/08

Subject :- Measures for protection of traditional knowledge

Sir,

The undersigned is directed to request that action may be initiated by the NBA at the earliest, to make recommendations to the Central Government for undertaking measures for protection of traditional knowledge, as provided for in Section 36 (5) of the Biological Diversity Act, under intimation to the Ministry.

It is suggested that the issue may be discussed in a meeting of the NBA.

Yours faithfully,

Sujata Arora
(Dr. Sujata Arora)
Additional Director

20/3/08

With Authority memo
Des

2/N

So now we have funds crunch, but
we may be in readiness by completing
all requirements of conducting a national
consultation.

Good attempt.

Let us consolidate
or pick up people from
different sectors viz NGOs,
Industry, Acad, R&D Orgs
Chairman.

22/10

Sguy

22/10/09
22/10/09

22/10

Dr. Y. K. Chaudhary

As directed by The Chairman NBA and The Secretary NBA
I have consolidated the lists of participants/invitees
different categories and also included some of the
into the lists advised by the Secretary, NBA.

Submitted for further orders please.

YK
3/11/09
(Consultant)

Sir,

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Sub: Safeguards on Traditional Knowledge Consultation meeting - reg.

Ref: Email dt. 10.07.09

Hon'ble Minister of Environment and Forests on 5th July announced that the National Biodiversity Authority will soon embark to develop a Safeguards approach to protect traditional knowledge. Following this announcement by the Hon'ble Minister Jagan Ramesh, a working group consisting of seven participants was proposed during consultation and all together to draft notification and present it to the NBA.

After Secretary NBA spoke to Dr. Goswami Forum Biotechnology and Food Security, New Delhi for modalities to conduct the meeting on 19th and 20th July at New Delhi as proposed by Dr. Goswami. Followed by National Consultation on framing legal provisions for protecting and conserving Traditional Knowledge held at TERI, Khetri, Gurgaon and framed rules that can be incorporated under NBA act and will do justice to the communities protecting traditional knowledge associated with Biodiversity.

The core group comprised of Ms. Sunita Sreedharan, Mr. T.C. James, Prof. T.R. Ramakrishna, Mr. Sridhar, Mr. Bhaskar Goswami, Ms. Tulika Rastogi and Dr. Divender Sharma have prepared draft Rules on The protection, Conservation and Effective management of Traditional Knowledge and submitted.

We may send this draft to the invites and give about one month time and fix the date for the seminar to seek the opinion from the participants.

Submitted for further orders please.

YK
22/10/09
(Consultant)

- Submitted for kind approval
- 121 sheets shortlisted to 60 & placed below
- we may call this meeting in the month of Dec. 2009 preferably first week if funds are available.

As directed by The Chairman NSA and Secretary NSA, I have deleted some of the names from the lists of invitees for the National Consultation on IPR - Sui Generis and also included some other names suggested by The Chairman and The Secretary, NSA.

Submitted for the further approval Please.

~~Secretary pls:~~

YB
10/11/09
(Consultant)

283/ENNS/09
14/11/09

* Kindly see 17/c for categorisation of delegates and total no. which is coming to 150.

* we could not get details of Upadhyay - Botech; Dr. ^(my) Suman Lakhtapal.

Chairman may like to take a decision.

OT
12/11/09

Chairman.

Add Chairmen of the SBBs who are fulltime. Director WLI, DG ICFRE are to be included ICAR CSIR DRDO relevant persons from CBE of Min. A TREE etc are missing. Add your predecessor and his.

LISTS OF INVITEES FOR NATIONAL CONSULTATION ON IPR SUI GENERIS:

(A) Members of the National Biodiversity Authority	= 15 ✓
(B) Traditional Knowledge Rules Draft Committee	= 07 ✓
(C) Member Secretaries of all State Biodiversity Boards	= 21 ✓
(D) Scientists/ Agriculture Scientists	= 18
(E) Academicians	= 14
(F) Commerce/Industries/Professionals/R&D organisations/Trade	= 08
(G) Professional managers of Natural Resources	= 20
(H) Non Government organisations	= 07
(I) Miscellaneous	= 12
Total Delegates	= 122

Submitted for further orders please.

YB
4/11/09
(Consultant)

Furnished information on 14 pages. 122
delegates have been identified. The
meeting on SUI GENERIS will be held during first
fortnight of March, 2009 as decided
on 3/11/09 as a part of

celebration of IYB-2010. maximum we
may go upto 125 delegates and we may have to engage
a professional agency to hold this meeting with the help of
a Event manager
Submitted for kind information and
order.

YB
4/11/09

Chairman.

Discussed with chairman, some
names added/deleted. Please
do the needful.

YB
4/11

Consultant

checked by
4/11/09

As per the direction of The Chairman, NBA, I have included the names of all full time chairman SBB's, Dir of ICFRE, ICAR, CSIR, Director CEE, member from ATREE, former chairman, NBA, former Secretary NBA, Divya Yog Acharya, M.P. minor forest product, Dr. Sankar Nath Mishra, Head of HEBCO, IVRI and ICAB.

Submitted for the further order Pl.

Secretary Pl.

YB
24/11/09
(Consultant)

May kindly be seen and approved.

Also include those mentioned about regarding MoEF initiatives on on AP. Let us have total then prioritize 2. Venugopal? Chairman.

Copy

27/11

Pl. Speak
27/11

Dr. Yogeshwar

As per the direction of The Chairman, NBA, I have included the names of Prof. Dr. Sudhir Krishnaswamy, Ms. Sachitha Jindal, Additional Director MOEF and Dr. B. Venugopal, Director, NMNH, MOEF. Add name of Sri Alok P. Nigam, Associate Professor, Forest Academy, Dehradun.

Submitted for further approved Pl.

Secretary Pl.

YB
(Consultant)

The National Consultation on IPR/TK Sui Generis is going to be held as a part of "International Year of Biodiversity" - IYB 2010 celebrations in the month of March 8th and 9th 2010. The venue may please be decided so that action plan can be devised.

Submitted for kind information please.

YB
(Consultant)

Admin. Officer. Submitted pl
SP
4/14/09

Secretary

TO (BS)
Secretary

It was decided on 5/12/09 at the Chairman Chamber, that the National Consultation workshop may combine ^{with} IPR/TK Sui Generis. and ABS on successive dates. Also Venue was decided to have either in Goa or Hyderabad.

Pi. Submitted for further orders pl.
4/14/09.

Secretary.

In view of the opinion that first preference may be given to Goa for which we may provide funds to Goa Forest Development Corporation a ^{state} Govt. owned organisation. They may charge

11/Say NSA/09
4/12/09.

21/secretary/09
7/12/09

8/12

204

which substituted it not functioning
 properly which I have personally
 been doing my ^{best} about 7 months
 ago. They (CSE) do not have
 adequate idea of such a responsible
 thing.

Therefore, I will be contacting GFDC
 (an Indian Gov. Corp) which is headed
 by CSE rank officer and assisted by
 an General manager and field + office
 staff and has well equipped staff.
 This is to make a preliminary enquiry
 whether they can up this responsibility
 by changing home service charges.
 Submitted for kind approval.

8/12/09

OK
 (Signature)
 Chairman.
 8/12

457/62 not 'sp
 08/12

Self

pl. put up 19/c as correction
 effected

(Signature)
 8/12


Dr. V. Lakshmi

7/2

5% to 10% of total cost as "service charges" for making arrangements.

If approved I will contact M.D. Goa
Foreign Dev Coop'n parasi, whether they
can take up this work or not.

- Second preference is Hyd, where
M. Sany, App B is there to make
arrangements subject to his consent
to undertake this job
- Third preference is Bangalore, where
Karnataka B.B. may take responsibility.
- Dated 8th + 9th ~~2010~~ March 2010.
- A Special Committee ^{may have to} ~~will~~ be formed
to prepare programme, ^{schedule,} conduct-
meeting + draw proceedings.
- The NBA with its skeletal staff
cannot independently conduct such
a huge ^{and important} meeting.
- Submitted for kind orders.


7/2/09


Chairman

As discussed it is to be submitted
to the Con. Executive Board

Sir,

Draft Concept Note on National Consultation on Evolving Sui generis Model on Protection of Traditional Knowledge and Amendments to the Biological Diversity Act, 2002 & Rules made under it put up for approval.

C. H.
19/01/2010

- corrected
- pl. put up fair copy

C. H.
21/01/10

Dr. Thumbar

Sir,

Draft modified as instructed by the secretary.

C. H.
22/01/10

I have made corrections pl.
put up fair draft

C. H.
22/01/10

Dr. Thumbar

Dr. Secretary
21/1/10

2/N.

Sir,

Corrected version is purys for approval.

C. St
23/01/2010


Secretary.

Submitted for kind perusal + approval.

01
23/01/10


Chairman 23/1

pl. incorporate corrections
effected by chairman


23/1/10

As Thmn.

Sir,

As instructed, enclosing the corrected
draft for approval,

C. St
23/1/10

Secretary

01
23/1

chairman

It was decided to advertise in the National dailies for inviting suggestions/comments on the International Regime on ABS, evolving Singapore's System for the Protection of P.K. and Amendments to the BD Act 2002 + Rules 2004.

Draft notice is submitted for review + approval pls.

Per 28/1/10

Secretary Pls.

28/1

Per 28/1/10
Chairman

Permission to publish the notice in "THE HINDU" + "THE NEW INDIAN EXPRESS" all India edition on 30.01.2010. at DARP rates. may be given.

Submitted for orders pls.

Per 28/1/10

Secretary Pls.

28/1

Per 28/1/10
Chairman

17/1/2010
16/1/2010
28/1/10