



## UNEP - GEF - MoEF & CC-ABS Project

*“Strengthening the implementation of the Biological Diversity Act and Rules with focus on its Access and Benefit Sharing (ABS) Provisions”*



**TELANGANA STATE BIODIVERSITY BOARD**

*Govt. of Telangana*





## Convention on Biological Diversity (CBD)

Convention on Biological Diversity (CBD) is an international Treaty which came into force in 1993 with three core objectives: the conservation of biological diversity; the sustainable use of the components of biological diversity; and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

India is a party to the United Nations Convention on Biological Diversity (CBD) signed at Rio de Janeiro on the 5th day of June, 1992 and the convention reaffirms the sovereign rights of the States over their biological resources.

## The Biological Diversity Act, 2002

The Biological Diversity Act was enacted by the Parliament, Government of India in 2002 and it came into force from 5th February, 2003 to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources and traditional knowledge.

The **Telangana State Biodiversity Board** is a statutory & autonomous body corporate constituted by the Government of Telangana in the year 2014 under the Provisions of the Biological Diversity Act, 2002.

## The Biological Diversity Act & Rules

Biodiversity encompasses the variety of all life on earth. India is rich in biological diversity and associated traditional knowledge. With only 2.5% of the land area, India accounts for about 7.8% of the global recorded species and it is one of the 12-mega biologically diverse countries of the world.

The Government of Telangana made the **Telangana Biological Diversity Rules, 2015** which envisage regulating the mechanism for access to / collection of biological resources, constitution of biodiversity management committees at local body level and establishment and management of biodiversity heritage sites.



## Procedure for Access to / collection of Biological Resources

**Biological resources** means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material.

**Commercial utilization** means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping.

### **The Biological Diversity Act, 2002 (Section-7)**

Stipulates that no person, who is a citizen of India or a body corporate, association or organization which is registered in India, shall obtain any biological resource for commercial utilization, or bio-survey and bio-utilisation for commercial utilization except after giving prior intimation to the State Biodiversity Board concerned.

### **Telangana Biological Diversity Rules, 2015 (Rule 16-(1))**

Stipulates that any person seeking access to / collection of biological resources and associated knowledge for research or for commercial utilization shall make an application to the Board in Form-I appended to the above rules (*Please visit <http://tsbiodiversity.org/>*).

## **Nagoya Protocol**

To further advance the implementation of the third objective, the World Summit on Sustainable Development (Johannesburg, September 2002) called for the negotiation of an international regime, within the framework of the Convention, to promote and safeguard the fair and equitable sharing of benefits arising from the utilisation of genetic resources. The Convention's Conference of the Parties responded at its seventh meeting, in 2004, by mandating its Ad Hoc Open-ended Working Group on Access and Benefit sharing to elaborate and negotiate an international regime on access to genetic resources and benefit sharing in order to effectively implement Articles 15 (Access to Genetic Resources) and 8(j) (Traditional Knowledge) of the Convention and its three objectives.

The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.



## What is access and benefit-sharing?

Access and benefit-sharing (ABS) refers to the way in which genetic resources may be accessed, and how the benefits that result from their use are shared between the people or countries using the resources (users) and the people or countries that provide them (providers).

Providers of genetic resources are governments or civil society bodies, which can include private land owners and communities within a country, who are entitled to provide access to genetic resources and share the benefits resulting from their use. The access and benefit-sharing provisions of the Convention on Biological Diversity (CBD) are designed to ensure that the physical access to genetic resources is facilitated and that the benefits obtained from their use are shared equitably with the providers. In some cases this also includes valuable traditional knowledge associated with genetic resources that comes from Indigenous and local communities (ILCs).

The benefits to be shared can be monetary, such as sharing royalties when the resources are used to create a commercial product, or non-monetary, such as the development of research skills and knowledge. It is vital that both users and providers understand and respect institutional frameworks such as those outlined by the CBD and in the Bonn Guidelines. These help governments to establish their own national frameworks which ensure that access and benefit-sharing happens in a fair and equitable way.

- Prior informed consent (PIC): is the permission given by the competent national authority of a provider country to a user prior to accessing genetic resources, in line with an appropriate national legal and institutional framework.
- Mutually agreed terms (MAT): is an agreement reached between the providers of genetic resources and users on the conditions of access and use of the resources, and the benefits to be shared between both parties.

## How does it work?

Access and benefit-sharing is based on prior informed consent (PIC) being granted by a provider to a user and negotiations between both parties to develop mutually agreed terms (MAT) to ensure the fair and equitable sharing of genetic resources and associated benefits.





## Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014.

G.S.R 827.—In exercise of the powers conferred by section 64 read with sub-section (1) of section 18 and sub-section (4) of section 21 of the Biological Diversity Act, 2002 (18 of 2003), hereinafter referred to as the Act, and in pursuance of the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the Convention on Biological Diversity dated the 29th October, 2010, the National Biodiversity Authority hereby makes the following regulations, namely.—

The Ministry of Environment, Forests and Climate Change, Govt of India, has notified the "Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014" in the extraordinary gazette of India No.612 dt.21.11.2014.

### 1) Procedure for access to biological resources and/ or associated traditional knowledge for research or bio-survey and bio-utilization for research. —

- 1) Any person referred to under sub-section (2) of section 3 of the Act, who intends to have access to biological resources and/ or associated traditional knowledge for research or bio-survey and bio-utilization for research shall apply to the National Biodiversity Authority (NBA) in Form I of the Biological Diversity Rules, 2004 for obtaining access to such biological resource and/or associated knowledge, occurring in India.
- 2) The NBA shall, on being satisfied with the application under sub-regulation (1), enter into a benefit sharing agreement with the applicant which shall be deemed as grant of approval for access to biological resource for research referred to in that sub-regulation: Provided that in case of biological resources having high economic value, the agreement may contain a clause to the effect that the benefit sharing shall include an upfront payment by applicant, of such amount, as agreed between the NBA and the applicant.

## 2) Procedure for access to biological resources, for commercial utilization or for bio-survey and bio-utilization for commercial utilization. —

- 1) Any person who intends to have access to biological resources including access to biological resources harvested by Joint Forest Management Committee (JFMC)/ Forest dweller/ Tribal cultivator/ Gram Sabha, shall apply to the NBA in Form-I of the Biological Diversity Rules, 2004 or to the State Biodiversity Board (SBB), in such form as may be prescribed by the SBB, as the case may be, along with Form 'A' annexed to these regulations.
- 2) The NBA or the SBB, as the case may be, shall, on being satisfied with the application under sub-regulation (1), enter into a benefit sharing agreement with the applicant which shall be deemed as grant of approval for access to biological resources, for commercial utilization or for bio-survey and bio-utilization for commercial utilization referred to in that sub-regulation.

## 3) Mode of benefit sharing for access to biological resources, for commercial utilization or for bio-survey and bio-utilization for commercial utilization.—

- 1) Where the applicant/ trader/ manufacturer has not entered into any prior benefit sharing negotiation with persons such as the Joint Forest Management Committee (JFMC)/ Forest dweller/ Tribal cultivator/ Gram Sabha, and purchases any biological resources directly from these persons, the benefit sharing obligations on the trader shall be in the range of 1.0 to 3.0% of the purchase price of the biological resources and the benefit sharing obligations on the manufacturer shall be in the range of 3.0 to 5.0% of the purchase price of the biological resources:

Provided that where the trader sells the biological resource purchased by him to another trader or manufacturer, the benefit sharing obligation on the buyer, if he is a trader, shall range between 1.0 to 3.0% of the purchase price and between 3.0 to 5.0%, if he is a manufacturer:

Provided further that where a buyer submits proof of benefit sharing by the immediate seller in the supply chain, the benefit sharing obligation on the buyer shall be applicable only on that portion of the purchase price for which the benefit has not been shared in the supply chain.



- 2) Where the applicant/ trader/ manufacturer has entered into any prior benefit sharing negotiation with persons such as the Joint Forest Management Committee (JFMC)/ Forest dweller/ Tribal cultivator/ Gram Sabha, and purchases any biological resources directly from these persons, the benefit sharing obligations on the applicant shall be not less than 3.0% of the purchase price of the biological resources in case the buyer is a trader and not less than 5.0% in case the buyer is a manufacturer.
- 3) In cases of biological resources having high economic value such as sandalwood, red sanders, etc. and their derivatives, the benefit sharing may include an upfront payment of not less than 5.0%, on the proceeds of the auction or sale amount, as decided by the NBA or SBB, as the case may be, and the successful bidder or the purchaser shall pay the amount to the designated fund, before accessing the biological resource.

#### 4) Option of benefit sharing on sale price of the biological resources accessed for commercial utilization under regulation 2.—

When the biological resources are accessed for commercial utilization or the bio-survey and bio-utilization leads to commercial utilization, the applicant shall have the option to pay the benefit sharing ranging from 0.1 to 0.5 % at the following graded percentages of the annual gross ex-factory sale of the product which shall be worked out based on the annual gross ex-factory sale minus government taxes as given below:

<b>Annual Gross ex-factory sale of product</b>	<b>Benefit sharing component</b>
Up to Rupees 1,00,00,000	0.1%
Rupees 1,00,00,001 up to 3,00,00,000	0.2%
Above Rupees 3,00,00,000	0.5%

- 5) Collection of fees.— Collection of fees, if levied by Biodiversity Management Committee (BMC) for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction under sub-section (3) of section 41 of the Act, shall be in addition to the benefit sharing payable to the NBA/SBB under these regulations.



## 17. Certain activities or persons exempted from approval of NBA or SBB. —

The following activities or persons shall not require approval of the NBA or SBB, namely:--

- a. Indian citizens or entities accessing biological resources and/ or associated knowledge, occurring in or obtained from India, for the purposes of research or bio-survey and bio-utilization for research in India;
- b. Collaborative research projects, involving the transfer or exchange of biological resources or related information, if such collaborative research projects have been approved by the concerned Ministry or Department of the State or Central Government and conform to the policy guidelines issued by the Central Government for such collaborative research projects;
- c. Local people and communities of the area, including growers and cultivators of biological resources, and vaidas and hakims, practising indigenous medicine, except for obtaining intellectual property rights;
- d. Accessing biological resources for conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping, in India;
- e. Publication of research papers or dissemination of knowledge, in any seminar or workshop, if such publication is in conformity with the guidelines issued by the Central Government from time to time;
- f. Accessing value added products, which are products containing portions or extracts of plants and animals in unrecognizable and physically inseparable form; and
- g. Biological resources, normally traded as commodities notified by the Central Government under section 40 of the Act.



# GLOSSARY

## Biodiversity

Refers to the variability that exists among living organisms from all sources including among other things, terrestrial, marine and other aquatic ecosystems and the ecological complexes which they are part of. This includes diversity within species, between species and their ecosystems.

## Biological resources

Includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

## Genetic material

Means any material of plant, animal, microbial or other origin containing functional units of heredity.

## Genetic resources

Refers to the genetic material from plants, animals or microbes that has actual or potential value to be used. These uses can range from basic research that seeks a better understanding of the world's natural resources to development for commercial products.

## In situ and ex situ

Genetic resources can be wild, domesticated or cultivated. "In situ" genetic resources are those found within ecosystems and natural habitats. "Ex situ" genetic resources are those found outside their normal ecosystem or habitat, such as in botanical gardens or seed banks, or in commercial or university collections

## Prior informed consent (PIC)

Is permission given by the Competent National Authority (CNA) of a country to an individual or institution seeking to obtain access to genetic resources, in line with an appropriate legal and institutional framework.

## Mutually agreed terms (MAT)

Is an agreement reached between the providers of genetic resources and users on the conditions of access and use of the resources, and the benefits to be shared between both parties.

## State sovereignty

The CBD recognizes the sovereign rights of States over their natural resources in areas within their jurisdiction. Therefore it is their responsibility to develop the appropriate framework to create conditions to facilitate access to their genetic resources and to ensure fair and equitable sharing of the benefits derived from their use.

## Providers of genetic resources

States have sovereign rights over natural resources under their jurisdiction. They are obligated to put in place conditions that facilitate access to these resources for environmentally sound uses. Providers agree terms, which include PIC and MAT, for granting access and sharing benefits equitably. Laws within the provider country may entitle others, such as indigenous and local communities (ILCs), to also negotiate terms of access and benefit-sharing. The participation of ILCs is necessary in instances where traditional knowledge associated with genetic resources is being accessed.

## Users of genetic resources

Users are responsible for sharing the benefits derived from genetic resources with the providers. They seek access to genetic resources for a wide range of purposes, from basic research to the development of new products. They are a diverse group, including botanical gardens, industry researchers such as pharmaceutical, agriculture and cosmetic industries, collectors and research institutes.

## National Focal Points (NFPs)

To facilitate access, users need a clear and transparent process that details who to contact and what the requirements and processes are in provider countries in order to gain access. National Focal Points are responsible for providing this information.

## Competent National Authorities (CNAs)

CNAs are bodies established by governments and are responsible for granting access to users of their genetic resources, and representing providers on a local or national level. National implementation measures establish how CNAs work in a given country.

## About the project

National Biodiversity Authority (NBA) is implementing the First Global Environment Facility (GEF) project on “Strengthening the Implementation of the Biological Diversity Act, 2002 and Rules, 2004, with focus on its Access and Benefit Sharing Provisions”, with the support of United Nations Environment Programme (UNEP) and the Ministry of Environment, Forests and Climate Change (MoEF& CC), Government of India.

This project is being implemented in the 12 states of India viz., Andhra Pradesh, Gujarat, West Bengal, Himachal Pradesh, Sikkim, Karnataka, Goa, Orissa, Tripura, Andaman and Nicobar Islands, Delhi and Telangana and it is funded by Global Environmental Facility (GEF) and Government of India.

## Objective of the project

The Objective of the project is to increase the institutional, individual and capacities of stakeholders to implement effectively the Biological Diversity Act, 2002 and also implementation of Access and Benefit Sharing provisions in India.

## The Components and activities of the project

- To Develop Standardized economic valuation methods for valuing biodiversity in the selected ecosystems.
- Developing database on biological resources to tap ABS potential in Project implementing States.
- Assessing and quantifying the economic value of biological diversity present at local, state and national levels using appropriate methodologies.
- Determining benefit sharing and informing national decision makers on prioritizing conservation action.
- Developing legal tools, methodologies, guidelines and frameworks for ABS mechanism.
- Capacity Building for stakeholders in decision-making process.
- Piloting ABS agreements in Project States.
- Promotion and strengthening of biodiversity funds at national, state and local levels.
- Strategizing public awareness programs and facilitating level playing for public, NGOs, private sector etc., on ABS.

## Address

### State Project Unit

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