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# Explaining and Defining Traditional Knowledge Terminology



**EXPLAINING AND DEFINING  
TRADITIONAL KNOWLEDGE  
TERMINOLOGY**

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## Preface

The role and relevance of traditional knowledge and knowledge associated with biological resources in conservation and sustainable management of biodiversity in a country like India is immense and important. The importance of such knowledge in realizing the current and future potential of managing our resources is amply captured in many legislations, policy frameworks and action programmes in the country.

Being an issue that means different to different sectors and stakeholder groups, it is important to clarify the concept of traditional knowledge, elaborate the terms and terminologies, bring focus on key issues related to traditional knowledge. The current attempt of National Biodiversity Authority (NBA) to prepare a user-friendly compilation of explaining key terms, terminologies and concepts in traditional knowledge is a step towards ensuring broader awareness raising, inclusive approach to traditional knowledge related issues to implement the Biological Diversity Act effectively.

Chennai  
August, 2013

Dr. Balakrishna Pisupati  
Chairman, NBA





## EXPLAINING AND DEFINING TRADITIONAL KNOWLEDGE TERMINOLOGY

**Access** - To obtain biological resources or knowledge associated thereto within national jurisdiction for the purpose of research, or for commercial utilization, or for bio-survey and bio-utilization<sup>1</sup>.

**Agreement** - The consent of two or more persons concurring respecting the transmission of some property, right, or benefits, with the view of contracting an obligation, a mutual obligation<sup>2</sup>. For example, University of California, Berkeley, has signed an agreement with the Samoan government to isolate gene for a promising anti-AIDS drug, Prostratin from an indigenous mamala tree and to share any royalties from sale of the drug with the people of Samoa.

**Associated Traditional Knowledge** - The “Like-Minded Countries Contribution to the Objectives and Principles on the Protection of Genetic Resources and Preliminary Draft Articles on the Protection of Genetic Resources” (document WIPO/GRTKF/IC/19/11) provides the following definition of “associated traditional knowledge” at Article 1(2)(a): “knowledge which is dynamic and evolving, generated in a traditional context, collectively preserved and transmitted from generation to generation including but is not limited to know-how, skills, innovations, practices and learning, that subsist in genetic resources”<sup>3</sup>.

<sup>1</sup> Defining and Explaining ABS terminology, National Biodiversity Authority (NBA), India (2013).

<sup>2</sup> Black , HC 1968 Black’s Law Dictionary. Revised Fourth Edition by The Publisher’s Editorial Staff, St. Paul, Minn, West Publishing Co, USA, page 89

<sup>3</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/25/INF/7, Annex, page 2

**Beneficiaries** - There is no universally accepted definition of the term. However, it has been argued by many stakeholders that traditional knowledge and traditional cultural expressions are generally regarded as collectively originated and held, so that any rights and interests in this material should vest in communities rather than individuals. In some cases, however, individuals, such as traditional healers, might be regarded as the holders of traditional knowledge or traditional cultural expressions and as beneficiaries of protection<sup>4</sup>.

**Benefit Claimers** - means the conservers of biological resources and their by-products, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application<sup>5</sup>.

**Benefit Sharing** - Equitable sharing of benefits (both monetary and non-monetary), arising out of the use of accessed biological resources, their by products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers<sup>6</sup>. As per the Biological Diversity (BD) Act benefits can be shared by all/any of the following manner:

- a) Grant of Joint ownership of intellectual property rights;
- b) Transfer of Technology;
- c) Location of production, research and development unit in such areas which will facilitate better living standards to the benefit claimers;

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<sup>4</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/25/INF/7, Annex, page 2

<sup>5</sup> Section 2(a) of the Biological Diversity Act, 2002 (Government of India).

<sup>6</sup> Section 21 (1&2) of the Biological Diversity Act, 2002 (Government of India).

- d) Association of Indian scientist, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilization;
- e) Setting up of venture capital fund for aiding the cause of benefit claimers;
- f) Payment of monetary and non-monetary benefits to the benefit claimers<sup>7</sup>.

**Biocultural community protocols** - are community-led, rights-based instruments that enable communities and their local institutions to affirm their right to self-determination in ways commensurate with their values, customary laws, and traditional institutions<sup>8</sup>.

**Biodiversity Heritage Site (BHS)** - Areas that are unique, ecologically fragile ecosystems. They are spread over terrestrial, coastal and inland and marine waters having rich biodiversity<sup>9</sup>. Examples of some of the declared BHSs are Nallur Tamarind Grove and Hogrekan of Karnataka.

**Biodiversity Management Committee (BMC)** - As per Indian BD Act, BMCs are constituted by every local body in their territorial jurisdiction for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity<sup>10</sup>. As on June 2013, NBA has facilitated SBBs to establish 32,210 BMCs.

<sup>7</sup> Defining and Explaining ABS terminology, National Biodiversity Authority (NBA), India (2013).

<sup>8</sup> Jonas. H, Shrumm. H and Bavikatte. K (2010) Biocultural Community Protocols and Conservation Pluralism, Policy matters 17 IUCN & CEE SP.

<sup>9</sup> <http://nbaindia.org/uploaded/ut/Final%20BHS%20guidelines%20approved%20in%20the%2019th%20Authority.pdf>  
<http://nbaindia.org/uploaded/ut/Final%20BHS%20guidelines%20approved%20in%20the%2019th%20Authority.pdf>

<sup>10</sup> Section 41(1) of the Biological Diversity Act, 2002 (Government of India).

**Biological diversity/Biodiversity** - variability among living organisms from all sources and the ecological complexes of which they are part; and includes diversity within species or between species and of eco systems<sup>11</sup>.

**Biological Material** - The term is defined in the European Union Directive on the legal protection of biotechnological inventions as “material containing genetic information and capable of reproducing itself or being reproduced in a biological system<sup>12</sup>.

**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<sup>13</sup>.

**Biopiracy** - The appropriation of biological resources without prior informed consent (PIC) of owners or local people or government<sup>14</sup>.

**Bioprospecting** - Bioprospecting or prospecting refers to collection, research and use of biological and/or genetic material for purposes of applying the knowledge derived there from for scientific and/or commercial purposes. Bioprospecting entails the search for economically valuable genetic and biochemical resources from nature<sup>15</sup>.

**Bio-survey and Bio-utilization** - Survey or collection of species, subspecies, genes, components and extracts of biological resource for any

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<sup>11</sup> Section 2(b) of Biological Diversity Act, 2002 (Government of India).

<sup>12</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GTRKF/IC/25/INF/7, Annex, page 3.

<sup>13</sup> Section 2(c) of the Biological Diversity Act, 2002 (Government of India).

<sup>14</sup> Balakrishna, P (2007) UNU-IAS Pocket Guide, Access to Genetic Resources, Benefit Sharing and Bioprospecting, United Nations University-Institute of Advanced Studies, Japan, page 11&12.

<sup>15</sup> Ibid

purpose and includes characterization, inventorisation and bioassay<sup>16</sup>.

**Biotechnology** - means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify<sup>17</sup>.

**Clearing House Mechanism** - Clearing-House Mechanism (CHM) is a worldwide network of government and partner organizations facilitating scientific and technical cooperation through information exchange<sup>18</sup>.

**Codified Traditional Knowledge** - It refers to TK which is in some systematic and structured form, in which the knowledge is ordered, organized, classified and categorized in some manner. Traditional medicinal team of World Health Organization (WHO) distinguishes traditional medicinal knowledge into a) Codified system, which have been disclosed in ancient Sanskrit scriptures and b) non-codified system of traditional medicinal knowledge, often remains undisclosed by TK holders, is passed on in oral tradition from generation to generation<sup>19</sup>.

**Collective Traditional Knowledge** - It refers to TK developed collectively and/or regarded as belonging collectively to an indigenous or local community or to groups of individuals within such a community<sup>20</sup>.

**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

<sup>16</sup> Section 2(d) of the Biological Diversity Act, 2002 (Government of India).

<sup>17</sup> Article 2 Convention on Biological Diversity (CBD) ([www.cbd.int](http://www.cbd.int))

<sup>18</sup> <http://www.chm-cbd.net/> accessed on 15.06.2013

<sup>19</sup> List and Brief technical explanation of various forms in which traditional knowledge may be found, WIPO/GRTRF/IC/17/INF/9, page 6 & 7.

<sup>20</sup> Ibid, P 13

does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping<sup>21</sup>.

**Commodities** - Commodities are goods and services normally intended for sale on the market at a price that is designed to cover their cost of production<sup>22</sup>.

**Common Property Resource** - A property on which well defined collective claims by and exclusive group are established, the use of the resource is subtractive, having the characteristic of a public good such as indivisibility shall be termed as common property<sup>23</sup>.

**Consultation** - According to Black's Law Dictionary, consultation is the act of asking the advice or opinion of someone. One source indicates that consultation refers to the process whereby people exchange views and information. It is not just a one-way process, but a process of sharing knowledge and opinions. Consultation means working together, listening to what the other party has to say and acting upon it. According to some, consultation and consent in indigenous communities are interrelated. Through consultation, a third party user can come to understand what requires consent and the correct people to whom to give it, and the people giving consent can more fully understand what they are consenting to. The International Labour Organization (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989) states that

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<sup>21</sup> Section 2(f) of the Biological Diversity Act, 2002 (Government of India).

<sup>22</sup> OECD Glossary of Statistical Terms (<http://stats.oecd.org/glossary/detail.asp?ID=1816>)

<sup>23</sup> Pati, A (2006) Development Paradigms, Feminist Perspectives and Commons: A Theoretical Intersection, paper presented at the 11th Biennial Conference of the International Association for the Study of Common Property (IASCP), Bali, Indonesia, page 17

consultations should be undertaken “in good faith and in a form appropriate to the circumstances, with the objective of achieving the agreement or consent to the proposed measures” (Article 6(2)).<sup>24</sup>

**Convention on Biological Diversity (CBD)** - The Convention on Biological Diversity (CBD), known informally as Biodiversity Convention, is an international legally binding treaty entered into force on 29th December 1993 with three main aims: a) Conservation of biological diversity b) Sustainable use of its components and c) fair & equitable sharing of benefits arising from the use of genetic resources<sup>25</sup>.

**Copyright** - Copyright is a legal term used to describe the rights that creators have over their literary and artistic works, such as novels, poems and plays, films, musical works, drawings, paintings, photographs and sculptures, computer software, databases, and architectural designs<sup>26</sup>.

**Country of Origin** - The country from where the genetic resources and/or biological material originated<sup>27</sup>.

**Cultural Diversity** - Is the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies<sup>28</sup>.

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<sup>24</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GTRKF/IC/25/INF/7, Annex, page 5

<sup>25</sup> [http://en.wikipedia.org/wiki/Convention\\_on\\_Biological\\_Diversity](http://en.wikipedia.org/wiki/Convention_on_Biological_Diversity) accessed on 18.06.2013

<sup>26</sup> <http://www.wipo.int/copyright/en/> accessed on 21.07.2013

<sup>27</sup> Balakrishna, P (2007) UNU-IAS Pocket Guide, Access to Genetic Resources, Benefit Sharing and Bioprospecting, United Nations University-Institute of Advanced Studies, Japan, page 12

<sup>28</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GTRKF/IC/25/INF/7, Annex, page 6.

**Cultural Expressions** - Is defined as those expressions that result from the creativity of individuals, groups and societies, and that have cultural content<sup>29</sup>.

**Cultural Impact Assessment** - a process of evaluating the likely impacts of a proposed development on the way of life of a particular group or community of people, with full involvement of this group or community of people and possibly undertaken by this group or community of people<sup>30</sup>.

**Custodian** - It refers to those communities, peoples, individuals and other entities which, according to customary laws and other practices, maintain, use and develop the traditional knowledge<sup>31</sup>.

**Customary Law** - locally recognized principles, and more specific norms or rules, which are orally held and transmitted, and applied by community institutions to internally govern or guide all aspects of life<sup>32</sup>.

**Derivatives** - Naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity<sup>33</sup>.

**Direct use values** - Economic values derived from direct use or interaction with a biological or resource system<sup>34</sup>.

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<sup>29</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/25/INF/7, Annex, page 6

<sup>30</sup> Akwé: Kon Guidelines (2004) The Secretariat of the Convention on Biological Diversity (CBD) page 6

<sup>31</sup> [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_iwg\\_2/wipo\\_grtkf\\_iwg\\_2\\_inf\\_2.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_iwg_2/wipo_grtkf_iwg_2_inf_2.pdf)

<sup>32</sup> [http://www.wipo.int/export/sites/www/tk/en/jgc/ngo/iied\\_commrights.pdf](http://www.wipo.int/export/sites/www/tk/en/jgc/ngo/iied_commrights.pdf)

<sup>33</sup> Article 2 (e) of Nagoya Protocol on Access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the CBD, The Secretariat of the CBD, Montreal.

<sup>34</sup> <http://biodiversity-chm.eea.europa.eu>



**Disclosed Traditional Knowledge** - It refers to TK which is accessible to persons beyond the indigenous or local community which is regarded as the “holder” of the TK. Such TK might be widely accessible to the public and might be accessed through physical documentation, the internet and other kinds of telecommunication or recording. TK might be disclosed to third parties or to non-members of the indigenous and local communities from which TK originates, with or without the authorization of the indigenous and local communities<sup>35</sup>.

**Disclosure** - It is a revelation of facts or act or process of making known something that was previously unknown<sup>36</sup>.

**Documentation** - The Oxford English Dictionary defines “documentation” as the accumulation, classification and dissemination of information; the material as collected. Documenting traditional knowledge and traditional cultural expressions may include recording them, writing them down, taking pictures of them or filming them—anything that involves recording them in a way that preserves them and could make them available for others. It is different from the traditional ways of preserving and passing on traditional knowledge and traditional cultural expressions within the community. Documentation is especially important because it is often the way people beyond the traditional circle get access to traditional knowledge<sup>37</sup>.

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<sup>35</sup> List and Brief technical explanation of various forms in which traditional knowledge may be found, WIPO/GRTKF/IC/17/INF/9.

<sup>36</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/25/INF/7, Annex, page 11

<sup>37</sup> Ibid.

**Ecosystem** - A structural and functional unit of biosphere or segment of nature consisting of community of living beings and the physical environment, both interacting and exchanging materials between them<sup>38</sup>.

**Ecosystem Diversity** - The variety of species and ecological processes that occur in different physical settings<sup>39</sup>.

**Endogenous development** - a development based mainly, though not exclusively, on locally available resources, local knowledge, culture and leadership, with openness to integrating traditional as well as outside knowledge and practices. It has mechanisms for local learning and experimenting, building local economies and retention of benefits in the local area<sup>40</sup>.

**Environmental Impact Assessment (EIA)** - a process of evaluating the likely environmental impacts of, and proposing appropriate mitigation measures for, a proposed development, taking into account interrelated socio-economic, cultural and human health impacts, both beneficial and adverse<sup>41</sup>.

**Expression by Action** - It is referred as “expressions of the human body”. They can include folk dances, plays and artistic forms of rituals, and need not be reduced to material form, e.g., be written down in choreographic notation<sup>42</sup>.

**Expressions of folklore** - In the WIPO-UNESCO Model Provisions, 1982, “expressions of folklore” are productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community of a country or by individuals reflecting the traditional artistic expectations of such a

<sup>38</sup> <http://www.tutorvista.com/content/biology/biology-iv/ecosystem/ecosystem-> accessed on 11.06.2013

<sup>39</sup> [http://en.wikipedia.org/wiki/Ecosystem\\_diversity](http://en.wikipedia.org/wiki/Ecosystem_diversity) accessed on 11.06.2013

<sup>40</sup> Learning Endogenous Development- Building on Bio-cultural Diversity (2007) Forward by Rigoberta Menchú, COMPAS, ISBN 978 185339 664 9

<sup>41</sup> Akwé: Kon Guidelines (2004) The Secretariat of the Convention on Biological Diversity (CBD), page 7

<sup>42</sup> [http://www.wipo.int/export/sites/www/tk/en/igc/ngo/iied\\_commrighs.pdf](http://www.wipo.int/export/sites/www/tk/en/igc/ngo/iied_commrighs.pdf)

community, in particular: Verbal expressions (folk tales, folk poetry and riddles); Musical expressions (folk songs and instrumental music); Expressions by action (folk dances, plays and artistic forms or rituals) and Tangible expressions. In the context of the Intergovernmental Committee (IGC), the terms “traditional cultural expressions” and “expressions of folklore” are synonyms and used alternatively<sup>43</sup>.

**Fixed Traditional Knowledge** - It means TK recorded in some sufficiently stable material or tangible form<sup>44</sup>.

**Folk Variety** - a cultivated variety of plant that was developed, grown and exchanged informally among farmers<sup>45</sup>.

**Folklore** - As defined in the United Nations Education, Science And Culture Organization (UNESCO) Recommendation on the Safeguarding of Traditional Culture and Folklore (1989), “folklore (or traditional and popular culture) is the totality of tradition-based creations, of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts”<sup>46</sup>.

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<sup>43</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/25/INF/7, Annex, page 13

<sup>44</sup> List and Brief technical explanation of various forms in which traditional knowledge may be found, WIPO/GRTKF/IC/17/INF/9, page 4

<sup>45</sup> Section 41(1) of the Biological Diversity Act, 2002 (Government of India).

<sup>46</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/25/INF/7, Annex, page 15

**Genetic Material** - Any material of plant, animal, microbial or other origin containing functional units of heredity<sup>47</sup>.

**Genetic Resources** - means genetic material of actual and/or potential value<sup>48</sup>.

**Gram Sabha (in the context of India)** - means a village assembly which shall consist of all adult members of a village and in case of states having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women<sup>49</sup>.

**Heritage of indigenous people** - The heritage of indigenous peoples is comprised of all objects, sites and knowledge the nature or use of which has been transmitted from generation to generation, and which is regarded as pertaining to a particular people or its territory. The heritage of an indigenous people also includes objects, knowledge and literary or artistic works which may be created in the future based upon its heritage<sup>50</sup>.

**Indigenous** - Dictionary defines “indigenous” as “originating or occurring naturally (in a country, region etc.); native; innate (to); inherent (in)”<sup>51</sup>.

**Indigenous Knowledge (IK)** - Traditional knowledge of Indigenous people is said to be Indigenous knowledge. Therefore, Indigenous knowledge is part of the traditional knowledge, but traditional knowledge is not necessarily indigenous<sup>52</sup>.

<sup>47</sup> Balakrishna, P (2007) UNU-IAS Pocket Guide, Access to Genetic Resources, Benefit Sharing and Bioprospecting, United Nations University-Institute of Advanced Studies, Japan, page 13

<sup>48</sup> Article 2 Convention on Biological Diversity (CBD) ([www.cbd.int](http://www.cbd.int))

<sup>49</sup> Section 2(g) of Forest Rights Act, 2006 (Government of India)([www.fra.org.in/laws/fra06.pdf](http://www.fra.org.in/laws/fra06.pdf))

<sup>50</sup> <http://ankn.uaf.edu/iks/protect.html> access on 11.06.2013

<sup>51</sup> <http://www.thefreedictionary.com/indigenous> access on 21.07.2013

<sup>52</sup> Intellectual property needs and expectations of traditional knowledge holders. WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999). WIPO, Geneva, Switzerland, April 2001. P 23.

**Indigenous people** - Indigenous people are those whose ancestors inhabited a place or country when persons from another culture or ethnic background arrived on the scene and dominated them through conquest, settlement, or other means and who today live more in conformity with their own social, economic, and cultural customs and traditions than with those of the country of which they now form a part<sup>53</sup>.

**In-situ Conservation** - Conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties<sup>54</sup>.

**Intellectual property (IP)** - Creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce<sup>55</sup>.

**Local Biodiversity Fund (LBF)** - Fund created at every area notified by the State Government in India where any institution of self government is functioning and shall be credited thereto- any grants and loans made under section 42 of BD Act; any grants or loans made by the National Biodiversity Authority; any grants or loans made by the State Biodiversity Boards; fees referred to in sub section (3) of section 41(BD Act) received by the Biodiversity Management Committees (BMCs); all sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government. This fund shall be used for conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the community<sup>56,57</sup>.

<sup>53</sup> [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_iwg\\_2/wipo\\_grtkf\\_iwg\\_2\\_inf\\_2.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_iwg_2/wipo_grtkf_iwg_2_inf_2.pdf)

<sup>54</sup> Article 2 of the Convention on Biological Diversity (CBD), 1993

<sup>55</sup> <http://www.wipo.int>

<sup>56</sup> Section 43(1) of the Biological Diversity Act, 2002 (Government of India).

<sup>57</sup> Section 44(2) of the Biological Diversity Act, 2002 (Government of India).

**Local communities** - The human population in a distinct ecological area who depend directly on its biodiversity and ecosystem goods and services for all or part of their livelihood and who have developed or acquired traditional knowledge as a result of this dependence, including farmers, fisher folk, pastoralists, forest dwellers and others<sup>58</sup>.

**Material Transfer Agreement (MTA)** - A set of administrative procedures agreed by the provider and user of genetic resources on how the accessed material could be sourced, used as well as issues of compliance to benefit sharing principles<sup>59</sup>.

**Misappropriation** - The act of accessing/using resources without free and prior informed consent or turning to a wrong purpose<sup>60</sup>.

**Mutually Agreed Terms (MAT)** - A set of terms and conditions agreed between the provider and user of genetic resources for prospecting purposes<sup>61</sup>.

**National Biodiversity Fund (NBF)** - A Fund created at National level in India consisting of all grants and loans made by the Central Government to the NBA<sup>62</sup>. All charges, royalties received by the NBA and all sums received from other sources as may be decided upon by the Central Government<sup>63</sup>.

**Ownership** - Legal right to the possession of a thing<sup>64</sup>.

<sup>58</sup> WIPO Traditional Knowledge Documentation Toolkit, Consultation Draft, 1st November, 2012.

<sup>59</sup> Balakrishna, P (2007) UNU-IAS Pocket Guide, Access to Genetic Resources, Benefit Sharing and Bioprospecting, United Nations University-Institute of Advanced Studies, Japan.

<sup>60</sup> Black, HC 1968 Black's Law Dictionary. Revised Fourth Edition by The Publisher's Editorial Staff, St. Paul, Minn, West Publishing Co, USA

<sup>61</sup> Balakrishna, P (2007) UNU-IAS Pocket Guide, Access to Genetic Resources, Benefit Sharing and Bioprospecting, United Nations University-Institute of Advanced Studies, Japan, page 14

<sup>62</sup> Defining and Explaining ABS terminology, National Biodiversity Authority (NBA), India (2013).

<sup>63</sup> Section 27(1) of the Biological Diversity Act, 2002 (Government of India).

<sup>64</sup> <http://www.thefreedictionary.com/ownership> accessed on 12.06.2013

**Patents** - A patent is an exclusive right granted for an invention – a product or process that provides a new way of doing something, or that offers a new technical solution to a problem<sup>65</sup>.

**Peoples' Biodiversity Register (PBR)** - The Register developed under India's Biological Diversity Act (2002) that contains comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them<sup>66</sup>. As of July 2013, there are 1684 PBR's are documented in twelve states.

**Prior Art** - Prior art is, in general, all the knowledge that existed prior to the relevant filing or priority date of a patent application, whether it existed by way of written and oral disclosure<sup>67</sup>.

**Prior Informed Consent (PIC)** - A set of administrative procedures for deciding on whether to grant access to biological resources on defined terms<sup>68</sup>.

**Property** - Any physical or intangible entity that is owned by a person or jointly by a group of people or a legal entity like a corporation<sup>69</sup>.

**Protected area** - means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives<sup>70</sup>.

**Protection** - It refers to protection of TK and Traditional Cultural Expressions (TCEs) against some form of unauthorized use by third parties. Two forms like positive and defensive protection have been developed and applied<sup>71</sup>.

<sup>65</sup> WIPO Traditional Knowledge Documentation Toolkit, Consultation Draft, 1st November, 2012.

<sup>66</sup> [http://www.ces.iisc.ernet.in/biodiversity/sahyadri\\_enews/newsletter/issue15/index.htm](http://www.ces.iisc.ernet.in/biodiversity/sahyadri_enews/newsletter/issue15/index.htm)

<sup>67</sup> WIPO Traditional Knowledge Documentation Toolkit, Consultation Draft, 1st November, 2012.

<sup>68</sup> Defining and Explaining ABS terminology, National Biodiversity Authority (NBA), India (2013).

<sup>69</sup> <http://en.wikipedia.org/wiki/Property>

<sup>70</sup> Article 2 Convention on Biological Diversity (CBD), 1993

<sup>71</sup> WIPO Traditional Knowledge Documentation Toolkit, Consultation Draft, 1st November, 2012.

**Protocol** - Protocols are legal agreements, codes of conduct, guidelines or sets of manners that explain how people should behave in certain circumstances. They can be used to set community standards around knowledge circulation and use for outsiders as well as help change attitudes and set new standards. Generally, protocols are flexible and can change over time. They may be used as tools to help achieve certain goals that other areas of law have been unable to fulfill. As formal or informal guidelines for behavior, protocols can help build relationships and make new ones possible<sup>72</sup>.

**Public Domain** - In general, a work is considered to be in the public domain if there is no legal restriction for its use by the public. Black's Law Dictionary defines the public domain as "the universe of inventions and creative works that are not protected by intellectual property rights and are therefore available for anyone to use without charge. When copyright, trademark, patent, or trade-secret rights are lost or expire, the intellectual property they had protected becomes part of the public domain and can be appropriated by anyone without liability for infringement<sup>73</sup>.

**Publicly Available** - The experts at the Meeting of the Group of Technical and Legal Experts on Traditional Knowledge Associated with Genetic Resources in the Context of the International Regime on Access and Benefit-Sharing discussed the terms "public domain" and "publicly available" with special reference to traditional knowledge associated with genetic resources: "The term public domain, which is used to indicate

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<sup>72</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/25/INF/7, Annex, page 33

<sup>73</sup> Ibid.



free availability, has been taken out of context and applied to traditional knowledge associated with genetic resources that is publicly available. The common understanding of publicly available does not mean available for free. The common understanding of public availability could mean that there is a condition to impose mutually agreed terms such as paying for access. Traditional knowledge has often been deemed to be in the public domain and hence freely available once it has been accessed and removed from its particular cultural context and disseminated. But it cannot be assumed that traditional knowledge associated with genetic resources that has been made available publicly does not belong to anyone. Within the concept of public availability, prior informed consent from a traditional knowledge holder that is identifiable, could still be required, as well as provisions of benefit-sharing made applicable, including when a change in use is discernible from any earlier prior informed consent provided. When a holder is not identifiable, beneficiaries could still be decided for example by the State<sup>74</sup>.

**Research** - A study or systematic investigation of any biological resource or technological application, that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for any use<sup>75</sup>.

**Royalties** - Sources of payment for an inventor who holds the patent for a particular product or process. Royalties accrue when someone uses the patented product or process<sup>76</sup>.

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<sup>74</sup> Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GTRKF/IC/25/INF/7, Annex, page 34

<sup>75</sup> Section 2(m) of the Biological Diversity Act, 2002 (Government of India).

<sup>76</sup> Balakrishna, P (2007) UNU-IAS Pocket Guide, Access to Genetic Resources, Benefit Sharing and Bioprospecting, United Nations University-Institute of Advanced Studies, Japan, page 15

**Sacred site** - a site, object, structure, area or natural feature or area, held by national Governments or indigenous communities to be of particular importance in accordance with the customs of an indigenous or local community because of its religious and/or spiritual significance<sup>77</sup>.

**State Biodiversity Boards (SBBs)** - The SBBs are body corporate established as per Section 22 of Biological Diversity Act (2002), in India, by the State Governments to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources<sup>78</sup>. As of 2013, NBA has supported the creation of SBB's in 28 states in India.

**Stewardship** - the conducting, supervising, or managing of something; especially: the careful and responsible management of something entrusted to one's care<sup>79</sup>.

**Sui generis** - A Latin phrase means "of its own kind or class"; unique or peculiar. It is a system specifically designed to address the needs and concerns of a particular issue. Calls for a "sui generis system" for TK protection are sometimes heard. This could mean a system entirely separate from and different from the current IP system<sup>80</sup>.

**Sustainable Use** - means the use of components of biological diversity in such manner and at such rate that does not lead to the long term decline of the biological diversity thereby maintaining its potential to meet the needs and

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<sup>77</sup> Akwé: Kon Guidelines (2004) The Secretariat of the Convention on Biological Diversity (CBD), page 7

<sup>78</sup> Section 23 of the Biological Diversity Act, 2002 (Government of India).

<sup>79</sup> <http://www.merriam-webster.com/dictionary/stewardship> accessed on 13.06.2013

<sup>80</sup> Intellectual property needs and expectations of traditional knowledge holders. WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999). WIPO, Geneva, Switzerland, April 2001.

aspirations of present and future generations<sup>81</sup>.

**Technology Transfer** - To collaborate and cooperate among the parties in technical and scientific research and development programmes, including biotechnological research activities<sup>82</sup>.

**Third Party Transfer** - Transfer of material, knowledge and/or products arising from access to a party other than the user as identified in the PIC, MAT and/or benefit sharing agreements<sup>83</sup>.

**TK 'as such'** - It refers to knowledge systems, creations and innovations which have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and, are constantly evolving in response to a changing environment<sup>84</sup>.

**Trade** - Trade is the transfer of ownership of goods and services from one person or entity to another by getting something in exchange from the buyer<sup>85</sup>.

**Trade Agreements** - A negotiated agreement among two or more countries, individuals or organisations to limit or alter their policies with respect to trade<sup>86</sup>.

**Traditional Healers** - Someone who uses traditional medicine to cure people who are ill or injured.<sup>87</sup>

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<sup>81</sup> Section 2(o) of the Biological Diversity Act, 2002 (Government of India).

<sup>82</sup> Article 23 Nagoya Protocol on Access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the CBD, The Secretariat of the CBD, Montreal.

<sup>83</sup> Balakrishna, P (2007) UNU-IAS Pocket Guide, Access to Genetic Resources, Benefit Sharing and Bioprospecting, United Nations University-Institute of Advanced Studies, Japan, page 16

<sup>84</sup> List and Brief technical explanation of various forms in which traditional knowledge may be found, WIPO/GRTKF/IC/17/INF/9, Annex, page 12.

<sup>85</sup> Defining and Explaining ABS terminology, National Biodiversity Authority (NBA), India (2013), p 19.

<sup>86</sup> Ibid.

<sup>87</sup> <http://www.macmillandictionary.com/us/dictionary/american/traditional-healer> accessed on 14.06.2013

**Traditional Knowledge (TK)** - There is as yet no accepted definition of traditional knowledge (TK) at the international level<sup>88</sup>. It can be broadly defined as “tradition-based literary, artistic or scientific works, performances, inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields”<sup>89</sup>.

**Traditional Knowledge Digital Library (TKDL)** - TKDL is a database provides information on codified traditional knowledge existing for the Indian system of medicine including ayurveda, siddha, unani and yoga as prior art. It is a collaborative project, launched in the year 2001, between CSIR, ministry of science & technology, department of AYUSH & ministry of health & family welfare, Government of India<sup>90</sup>. It prevents misappropriation of traditional knowledge belonging to India. As of 2013, TKDL has transcribed 150 books, and containing more than 2.83 lakh formulations. As many as 75 books from Ayurveda, 10 books from unani, 50 books of siddha and 15 books of yoga were included and 96,781 ayurveda formulations, 1,63,174 formulations of unani and 22,264 siddha formulations are also included in it. TKDL is also planning to include additional one lakh formulations and another move is to make it available to publically funded research and development institutions for promoting research in the field<sup>91</sup>.

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<sup>88</sup> Intellectual property needs and expectations of traditional knowledge holders. WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999). WIPO, Geneva, Switzerland, April 2001.

<sup>89</sup> Suneetha, MS (2008) A Primer on Sectoral Linkages to Traditional Knowledge, UNU-Institute of Advanced Studies (UNU-IAS), Japan.

<sup>90</sup> <http://www.tkdil.res.in/tkdil/langdefault/common/Home.asp?GL=Eng> accessed on 05.08.2013

<sup>91</sup> <http://tkbulletin.wordpress.com/2013/07/24/this-week-in-review-tkdil-to-sign-agreements-with-more-countries-add-formulations/> accessed on 05.08.2013

**Traditional knowledge holder** - All persons who create, originate, develop and practice traditional knowledge in a traditional setting and context. Indigenous communities, peoples and nations are traditional knowledge holders, but not all traditional knowledge holders are indigenous<sup>92</sup>.

**Traditional Medicine (TM)** - Traditional medicine is the sum total of the knowledge, skills, and practices based on the theories, beliefs, and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness<sup>93</sup>.

**Traditional Resources** - Tangible or intangible assets of biological, spiritual, aesthetic, cultural and economic value<sup>94</sup>.

**Traditional Territories** - Lands, forests and waters traditionally occupied, used or conserved by indigenous peoples and local communities<sup>95</sup>.

**Verbal** - means finding expression in words only, without being manifested in action<sup>96</sup>.

**Written** - means composed, recorded, preserved or mentioned in writing<sup>97</sup>.

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<sup>92</sup> Intellectual property needs and expectations of traditional knowledge holders. WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999). WIPO, Geneva, Switzerland, April 2001.

<sup>93</sup> <http://www.who.int/medicines/areas/traditional/definitions/en/index.html> accessed on 14.06.2013

<sup>94</sup> [http://www.wipo.int/export/sites/www/tk/en/igc/ngo/iied\\_commrighits.pdf](http://www.wipo.int/export/sites/www/tk/en/igc/ngo/iied_commrighits.pdf) accessed on 14.06.2013

<sup>95</sup> Ibid

<sup>96</sup> List and Brief technical explanation of various forms in which traditional knowledge may be found, WIPO/GRTKF/IC/17/INF/9

<sup>97</sup> Ibid.



*Anniversary*  
2003 -2013

## About NBA

The National Biodiversity Authority (NBA) was established in 2003 to implement India's Biological Diversity Act (2002). The NBA is a Statutory, Autonomous body and it performs facilitative, regulatory and advisory functions for Government of India on issues of conservation, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources.

The Biological Diversity Act (2002) mandates implementation through a decentralized approach with the NBA focusing on advising the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources; and advising the State Governments in the selection of areas of biodiversity importance to be notified under Sub-Section (1) of Section 37 as heritage sites and measures for the management of such heritage sites besides supporting conservations and sustainable management of biodiversity.

The State Biodiversity Boards (SBBs) focus on advising the State Governments, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources. The State Biodiversity Boards (SBBs) also regulate, by granting of

approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians.

The local level Biodiversity Management Committees (BMCs) are responsible for promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.

The NBA with its headquarters in Chennai, Tamil Nadu, delivers its mandate through a structure that comprises of the Authority, Secretariat, SBBs, BMCs and Expert Committees.

Since its establishment, NBA has supported creation of SBBs in 28 States and facilitated establishment of around 33,000 BMCs at local level.



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