

GLOSSARY

Glossary of
**Access
and Benefit
Sharing
Terms**



About ICIMOD

The International Centre for Integrated Mountain Development (ICIMOD) is an independent 'Mountain Learning and Knowledge Centre' serving the eight countries of the Hindu Kush-Himalayas –  Afghanistan,  Bangladesh,  Bhutan,  China,  India,  Myanmar,  Nepal, and  Pakistan – and the global mountain community. Founded in 1983, ICIMOD is based in Kathmandu, Nepal, and brings together a partnership of regional member countries, partner institutions, and donors with a commitment for development action to secure a better future for the people and environment of the extended Himalayan region. ICIMOD's activities are supported by its core programme donors: the governments of Austria, Denmark, Germany, Netherlands, Norway, Switzerland, and its regional member countries, along with over thirty project co-financing donors. The primary objective of the Centre is to promote the development of an economically and environmentally sound mountain ecosystem and to improve the living standards of mountain populations.

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Introduction

Developments in biotechnology and the expansion of global markets have changed the economic and social value of the world's biological and genetic resources and related traditional knowledge dramatically. In 1992, the Convention on Biological Diversity (CBD) came up with a framework that recognised that sovereignty over biological and genetic resources should be with the nation-states. It emphasised the authority of national governments to determine access to biological resources, subject to national legislation. Since then, over 189 countries, including all of ICIMOD's regional member countries, have signed the Convention. The CBD thus encouraged countries to facilitate access to biological resources and take measures to ensure fair and equitable sharing of benefits derived from the use of such resources, known as 'access and benefit sharing' or 'ABS'. In the eastern Himalayan region, some countries such as India and Bhutan have developed ABS laws, while the others are still progressing in this respect.

The objectives of the CBD are the conservation of biodiversity, its sustainable use and, as set out in Article 1 of the Convention, the "fair and equitable sharing of the benefits arising out of the utilisation 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".

In 2002, the sixth Conference of the Parties (COP) to the CBD adopted the 'Bonn Guidelines' on access to biological resources and fair and equitable sharing of the benefits arising out of their utilisation. The guidelines are voluntary and

were designed to facilitate the development of national access and benefit sharing processes. While the ABS process moved steadily at the international level, incorporation of the complex array of new ABS concepts and definitions into national policies and legislation remained a challenge. New or newly adapted concepts have emerged which require definition and explanation. Core concepts like *prior informed consent*, *mutually agreed terms*, and *clearing house mechanism*, are typical examples.

In order to facilitate the regional ABS processes, the International Centre for Integrated Mountain Development (ICIMOD), supported by the German Federal Ministry for Economic Cooperation and Development (BMZ) through the German Agency for Technical Cooperation (GTZ), entered into a project supporting this process. One of the key objectives of the project in ICIMOD is to raise awareness among partners and stakeholders on ABS.

Several terminologies are currently used in scientific and legal literatures for policy and legal frameworks. Understanding terminologies and definitions related to access and benefit sharing in litigation is important in understanding the process of introducing the ABS regime. Many project partners and organisations working on ABS in the eastern Himalayan region felt a greater need to understand the terminologies used in the context of ABS. This Glossary has been prepared as a response.

The purpose of the Glossary is to collate and provide the terminologies used in the context of CBD and the ABS regime as published in various documents, in order to facilitate the ABS process in the eastern Himalayan countries. The Glossary tries to bring together different definitions used in the

context of the ongoing ABS debate. Many of the definitions are still being discussed and debated; some of them have been adopted by the COP. The Glossary is aimed at stakeholders who are engaged in the development and interpretation of an ABS regime. We hope it will be useful to policy makers, members of the legal fraternity, civil society organisations, and other stakeholders engaged in developing and implementing ABS regimes in the Himalayan region and beyond, particularly stakeholders who do not have easy access to information through electronic media.

The Glossary comprises definitions for over 70 relevant terminologies used in ABS-related documents and has been drawn from various sources including legal documents in the region. We have used internationally agreed upon definitions wherever available, but many of the terms are still under discussion. In these cases, we used suitable versions from the international literature, or drew on national legislation that used their own definitions adapted to the national context. Considering the still ongoing national and international debate, ICIMOD does not claim that the proposed definitions are final, nor do they necessarily reflect the views of ICIMOD. Some of the definitions have been left open to the interpretation of readers and users.

The Glossary has been considerably enriched by comments and suggestions from Dr. Andreas Drews and Dr. Dagmar Lohan from GTZ Germany. The ABS team expresses its heartfelt thanks to them. The team is confident that the Glossary will help facilitate better understanding of the complex ABS regime currently being developed in the eastern Himalayan region.

We are grateful for feedback and recommendations for further editions of this Glossary. Please send them to abs@icimod.org or contact the authors.



ABS regime – The Conference of the Parties to the Convention on Biological Diversity (CBD) decided in 2004 to create an international regime on access to genetic resources and sharing of the benefits arising out of their utilisation through an ABS regime. Negotiations on an international ABS regime started in 2005, but it is predicted that it will take up to ten years to complete the establishment of such a regime [22].

Access – Access to genetic resources is not defined in the CBD or the Bonn Guidelines and, therefore, definition varies according to national legislation and practice. Access may consist of various activities including entering a location or place where genetic resources are found, surveying activities, obtaining or acquiring genetic resources, the use of genetic resources, and the study or systematic investigation of genetic resources for scientific and/or commercial purposes [22]. The Organization of African Unity's (OAU) African model legislation defines 'access' as acquisition of biological resources, their derivatives, community knowledge, innovations, technologies, or practices [9].

Accessing party – Sections 3 (1) and (2) of the Indian Biodiversity Act defines an 'accessing party' as any person (including foreigners, non-resident Indians, foreign companies) who intends to obtain any biological resource or knowledge associated occurring in a provider country for research, or for commercial utilisation, or for bio-survey and bio-utilisation, or the transfer of the results of any research relating to biological resources or associated traditional knowledge. The accessing party has to obtain prior approval of the National Biodiversity Authority [20].

Agrobiodiversity – The variety and variability of animals, plants, and microorganisms used directly or indirectly for food and agriculture including crops, livestock, forestry, and fisheries; it comprises the diversity of genetic resources (varieties, breeds) and species used for food, fodder, fibre, fuel, and pharmaceuticals, and also includes the diversity of non-harvested species that support production (soil microorganisms, predators, pollinators), and those in the wider environment that support agro-ecosystems (agricultural, pastoral, forest, and aquatic), as well as the diversity of the agro-ecosystems [10].

Benefit sharing – IUCN defines it as sharing of whatever accrues from the utilisation of biological resources, community knowledge, technologies, innovations, or practices. It also means all forms of compensation for the use of genetic resources, whether monetary or non-monetary [16].

Monetary benefits may be upfront payments, access fees, milestone payments, license fees, research funding salaries and infrastructure, joint ventures, and joint ownership of intellectual property rights; non-monetary benefits may include sharing of research results, collaboration in scientific research, participation in product development, collaboration in education and training, and technology transfer [4].

‘Fair and equitable sharing of benefits’ has been stressed in the benefit-sharing process. Section 21 (1) of the Indian Biodiversity Act defines it as, benefits arising out of the use of accessed biological resources, their byproducts, innovations, and practices associated with their use and application and knowledge thereto, in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned, and the benefit claimers [20].

Benefits – Economic or academic advantages arising from research on the utilisation of genetic resources [22]

Biodiversity acts – National statutory legal instruments developed to implement CBD obligations, including regulation of the access and benefit sharing mechanism from genetic resources and associated traditional knowledge; these are currently operational, amongst others, in India and Bhutan.

Biodiversity management committee – A committee established under the national government for the management of genetic resources and associated traditional knowledge at the local level; Section 41 of the Indian Biodiversity Act stipulates that every local body shall constitute a biodiversity management committee within its area for the purpose of promoting conservation, sustainable use, and documentation of biological diversity [20].

Biological diversity – Variability among living organisms from all sources including, inter alia, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species, and of ecosystems [1].

Biological resources – These include genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity [1]. Section 1 (c) of the Indian Biodiversity Act defines it as plants, animals, and microorganisms, or parts thereof, their genetic material and byproducts (excluding their value added products) with actual or potential use value, but does not include human genetic material [20].

Biopiracy – Utilisation and/or appropriation of genetic resources that is not based on necessary access permits, or does not fulfill the agreed conditions and is therefore illicit [22]

Bioprospecting – The collection of biological materials such as genes, plants, animals, of economically valuable species for future pharmaceutical products, improved food crops, or new compounds for industrial products; the survey and collection of species, sub-species, genes, compounds, and extracts of biological resources for any purpose; includes characterisation, inventorisation, and bio-assay (expert submission from India to the Ad hoc Open Ended Working Group on ABS) [6]

IUCN defines it as “the research, collection and utilisation of biological and genetic resources for purposes of applying the knowledge derived therefrom for scientific and/or commercial purposes” [16].

Section 52 (e) of the Bhutan Biodiversity Act 2003 defines bio-prospecting as the systematic search, classification, and research of new sources of chemical compounds, genes, proteins, and microorganisms with real or potential economic value for commercial purposes, which are found in biodiversity [18].

Biosafety – Describes efforts to reduce and eliminate the potential risks resulting from biotechnology and its products; for the purposes of the Biosafety Protocol, this is based on the precautionary approach whereby the lack of full scientific certainty should not be used as an excuse to postpone action when there is a threat of serious or irreversible damage.

Biosphere reserve – These are areas of terrestrial or coastal/marine ecosystems or a combination thereof, which are internationally

recognised within the framework of UNESCO's programme on Man and the Biosphere (MAB), in accordance with the present statutory framework [24].

Biotechnology – Any technological application that uses biological systems, living organisms, or derivatives thereof to make or modify products or process them for specific use [1]

Biotope – The collection, production, transformation, and commercialisation of goods and services derived from native biodiversity under the criteria of environmental, social, and economic sustainability [23]

Bonn Guidelines (BGL) – The guidelines adopted by Decision VI/24 during 2002 of the Conference of the Parties to the CBD; the aim of the Bonn Guidelines is to clarify regulations on ABS contained in the CBD. They provide guidance for drafting national legislation and for negotiating ABS agreements in the absence of national legislation. The BGL are an interpretative instrument and are not binding in themselves [22].

Byproduct – A molecule or a combination or mixture of natural molecules including crude extracts of live or dead organisms of biological origin that comes from the metabolism of living beings [21]

Any part taken from biological and genetic resources such as hides, antlers, feathers, fur, internal organs, roots, trunks, branches, leaves, stems, flowers and the like, including the compound indirectly produced in a biochemical processor cycle [16]

Centre of origin – A geographical area where plants or animals, microbial species, either

domesticated or wild, first developed their distinctive properties and characteristics

Commercial utilisation of biological resources – Section 2 (f) of the Indian Biodiversity Act defines it as end uses of biological resources for commercial utilisation such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifier, oleoresin, 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 agriculture, horticulture, poultry, dairy farming, animal husbandry, or beekeeping [20].

Community biodiversity registers – The community resource registry has, to date, been a loosely defined term referring broadly to the processes by which communities seek to protect resources and associated knowledge through some method of documentation. Although documentation is not a necessarily contemporary phenomenon per se (many societies have historically documented their knowledge in various manners), the registry has more recently arisen out of community concerns for diminishing biological and cultural diversity and the increasing prevalence of bioprospecting activities [13].

Competent authorities – To facilitate access and benefit sharing from genetic resources, the Bonn Guidelines introduced the term 'competent authority'. Competent authorities refer to agencies or institutions designated by national legislation as competent to facilitate and negotiate the access and benefit sharing process and grant access [4].

Conference of the Parties (COP) – The governing body of the Convention on

Biodiversity, the Conference of the Parties (COP) advances implementation of the Convention through the decisions it takes at its periodic meetings. Until 2007, the Conference of the Parties has held nine ordinary meetings, and one extraordinary meeting (the latter, to adopt the Biosafety Protocol, was held in two parts). To date, the COP has taken a total of 216 procedural and substantive decisions [8].

Convention on Biological Diversity (CBD) – An international treaty, enforced in 1993, that guarantees individual states sovereign rights over their biodiversity resources and the pattern of their utilisation; the Convention established three main goals: the conservation of biological diversity, sustainable use of its components, and the fair and equitable sharing of the benefits from the use of genetic resources. There are 190 parties to the Convention including all the Himalayan countries [7].

Country of origin – The country which possesses those genetic resources in or under in situ conditions [1]

Country providing genetic resources – The country supplying genetic resources collected from in situ sources, including populations of both wild and domesticated species or taken from ex situ sources which may or may not have originated in that country [1]

Cultivar – Variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation [20, section 41(1a)]

Cultural diversity – Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of groups and societies making up humankind. As a source of exchange, innovation, and creativity,

cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognised and affirmed for the benefit of present and future generations [24].

Derivatives – A product including information developed, or part taken, or extracted from a biological or genetic resource, e.g., varieties, strains or breeds, blood, proteins, oils, resins, gums, genes, seeds, spores, bark, wood, leaf matter, or formulae; includes products incorporating material or formulae as above [6]

Designated authority – Authority designated by the competent authority to monitor and enforce the policy and legal instruments with respect to the access and benefit sharing from genetic resources

Disclosure – Article 29 of Trade Related Aspects of Intellectual Property Rights (TRIPS) refers to it as a disclosure of the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art, and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application [33]

In the CBD, disclosure is associated with Article 8 (j) and Article 15. The Bonn Guidelines provide voluntary guidelines for improving ABS agreements, and recommends that Parties encourage disclosure of origin as a mechanism for compliance with ABS requirements [4].

Domesticated or cultivated species – Species in which the evolutionary process has been influenced by humans to meet their needs [1]

Ecosystem – A dynamic complex of plant, animal, and microorganism communities and their nonliving environment, interacting as a functional unit [1]

Ex-situ conservation – The conservation of components of biological diversity outside their natural habitats (e.g., in gene banks) [1]

Genetic diversity – The variety of genes within a particular species, variety, or breed [25]

Genetic material – The Convention on Biological Diversity defines genetic materials as materials of actual or potential value. They may be any material of plant, animal, microbial, or other origin, containing functional units of heredity. These may include a whole organism, parts of an organism, or biochemical extracts from tissue samples that contain deoxyribonucleic acid (DNA), or in some cases ribonucleic acid (RNA). In the context of an ABS regime, this is the key element and is the ultimate biological information that can be used to develop and derive a new product or transgenic biological material [5]. This definition excludes sources that may contain units of heredity in other forms. Therefore, in the context of discussion on access and benefit sharing a political decision to solve problems of definition becomes necessary.

Genetic resources – All genetic materials of actual or potential value; the value need not be commercial or monetary, but may be scientific or academic in nature.

Genetically modified organism (GMO) – A microorganism, plant, or animal whose genetic characteristics have been modified by inserting a modified gene or a gene from another variety or species; genetically modified organisms (GMOs) may be microorganisms designed for

use as biopesticides, or seeds that have been altered genetically to give a plant better disease resistance or growth [16].

Habitat – A place where an organism or population naturally occurs [1]; this definition excludes organisms that have been artificially introduced.

Indigenous peoples – Peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions, or by special laws or regulations [15]

In-situ conservation – The 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 [1]

Intangible component – Any knowledge, innovation, or individual or collective practice of actual or potential value associated with genetic resources, its derivatives, or the biological resource containing them, whether or not it is protected by an intellectual property system

Intellectual property (IP) – Refers to creations of the mind: inventions, literary and artistic work, and symbols, names, images, and designs used in commerce; intellectual property may be divided into two categories: industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and copyright, which includes literary and artistic work such as novels, poems, plays, films, musical work, artistic work such as drawings, paintings, photographs, sculptures,

and architectural designs; rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programmes [28].

Intellectual property rights (IPRs) – The legal protection given to persons over their creative endeavours; usually gives the creator an exclusive right over the use of his/her creation or discovery for a certain period of time; IPRs also refer to the recognition that the inventor should be granted a reward such as exclusive rights to use it or to earn royalties from renting out its use [31].

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) – A global treaty adopted by the 31st session of the Food and Agriculture Organization (FAO) in November 2001 that aims to ensure food security and sustainable agriculture; the treaty came into force on 29 June 2004. It aims at conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use, in harmony with the CBD [11].

International Union for the Protection of New Varieties of Plant (UPOV) – An intergovernmental organisation established by the International Convention for the Protection of New Varieties of Plants, UPOV's mission is to provide and promote effective systems of plant variety protection. Its aim is to encourage the development of new varieties of plants for the benefit of society. The Convention was adopted in 1961 and revised as deemed necessary in 1972, 1978, and 1991. The objective of the Convention is the protection of new varieties of plants through intellectual property rights [26].

Invention – Section 1 (l) of the Patent Amendment Act of India refers to it as any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of a patent application with complete specification; i.e., the subject matter has not fallen in the public domain, or does not form part of the state-of-the-art [19].

Inventive step – A feature of an invention that involves technical advance as compared to the existing knowledge, or having economic significance, or both, that makes the invention not obvious to a person skilled in the art [20, section 1]

Landrace – A crop cultivar or animal breed that evolved with and has been genetically improved by traditional agriculturalists or farmers, but has not been influenced by modern breeding practices; also a cultivar that was grown by ancient farmers and their successors [20, section 41(1)]

Local knowledge – see ‘traditional knowledge’

Material transfer agreements – A legal agreement between the owner of a genetic material and the recipient of the material [22]; they are contracts which are used for the transfer of genetic materials and knowledge and which contain the terms and conditions on which the material is transferred.

Mutually agreed terms – The terms and conditions agreed by the contracting parties at the time of entering into a contract; various types of authorisations defining the conditions for access and benefit sharing by means of which users obtain access to/permission to collect, study, and utilise genetic resources commercially [22]

National Biodiversity Authority – Section 8 (2) of the Indian Biodiversity Act defines it as, “a body corporate having perpetual succession and a common seal, with a power to acquire, hold, and dispose of property, both movable and immovable, and to enter into contract and shall by the said name sue and be sued [20]”

Patent – A form of intellectual property protection available for inventions, whether products or processes, that are new, involve an (non-obvious) inventive step, and are useful or capable of industrial application; a patent is a legal grant by the State to an inventor allowing the right to exclude others from making, using, exercising, and marketing his/her invention within its geographic territory for a stipulated duration in lieu of disclosing the invention in a patent specification.

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem [33].

Plant variety – A plant grouping within a single botanical taxon of the lowest known rank, defined by the reproducible expression of its distinguishing and other genetic characteristics [27]

Prior art – The existing knowledge base before the invention was discovered, or before the invention was disclosed by filing a patent application

Prior informed consent (PIC) – Prior informed consent is not defined within the Convention on Biological Diversity, but authors have commonly identified the key elements as: (a) *Prior*: before access to knowledge or genetic resources

takes place, (b) *informed*: based on truthful information about the use that will be made of the knowledge or genetic resources that is adequate for the authority to understand the implications, and (c) *consent*: the explicit consent of the government, and stakeholders or rights holders according to national law [14]. Thus, prior informed consent is an approval in advance for the use of one's genetic resources and any associated traditional knowledge [12].

Property rights – Rights to own, control, and alienate property within the system of property law established by the State; property rights may be over material or tangible property such as the land and crops. They may also be rights over intangible property, including knowledge, information, or innovations such as patent rights or a plant breeder's right.

Protected area – An area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means [25]

Providers (providing countries) – All contracting parties to the CBD that provide access to resources situated in their country to users [22]

Public domain – The information and knowledge already available in published or other forms; the realm of publications, inventions, and processes that are not protected by copyright or patent

Public registries – When information or knowledge is placed in the public domain and serves as a form of prior art or defensive disclosure, it is known as 'public registries'. The information in such registries can be accessed

without permission and payment (e.g., traditional knowledge, the Documentation Library of the Ministry of Science and Technology Government of India).

Regime – A set of rules, policies, and norms of behaviour that cover any legal issue and that facilitates substantive or procedural arrangements for deciding that issue [1]

Sovereign rights – Rights which appertain to independent sovereign states to legislate, manage, exploit, and control access to their natural resources; they include the right to determine the property regimes applicable to those resources, what rights of ownership can be entertained, and how ownership is established.

Sovereignty – The power of the State to independently regulate its own internal and external affairs; it is not ownership, it is the power to regulate ownership [16].

Species diversity – Refers to the variety of species [25]

Species – A group of organisms capable of interbreeding freely with each other, but not with members of other species [25]; (morphological definition) a group of individuals, animals, or plants that is morphologically, physiologically, or biochemically distinct from other groups in some characteristics

Sui generis – Literally one of 'its own kind'

Sustainable use – The use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations [1]

Traditional knowledge – Refers to the knowledge, innovations, and practices of indigenous and local communities around the world; developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, and forestry (definition adopted from [5]).

World Intellectual Property

Organization (WIPO) – A specialised agency of the United Nations dedicated to developing a balanced and accessible international intellectual property (IP) system which rewards creativity, stimulates innovation, and contributes to economic development while safeguarding the public interest; WIPO was established by the WIPO Convention in 1967 with a mandate from its member states to promote the protection of intellectual property throughout the world through cooperation among States, and in collaboration with other international organisations. Its headquarters is in Geneva, Switzerland [29].

World Trade Organization (WTO) – The world's primary organisation working towards setting the rules of trade between nations; at its heart are the WTO agreements negotiated and signed by the majority of the world's trading nations and ratified in their parliaments. The organisation is based in Geneva and currently has 150 countries as members [32].

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