

FOREST AND ENVIRONMENT DEPARTMENT
Notification
Sachivalaya, Gandhinagar, 18th February, 2010.

BIOLOGICAL DIVERSITY ACT, 2002.

No. WLP/2003/1777/2009(45)/W (Part-II)- In exercise of the powers conferred by section 63 read with section 23 of the Biological Diversity Act, 2002 (18 of 2003), the Government of Gujarat hereby makes the following rules, namely:-

1. Short title and commencement

- (1) These rules may be called the Gujarat Biological Diversity Rules, 2010.
- (2) They shall come into force on the date of their publication in the official Gazette.

2. Definitions

In these rules, unless the context otherwise requires,-

- (a) "Act" means the Biological Diversity Act 2002 (18 of 2003);
- (b) "Authority" means the National Biodiversity Authority established under sub-section (1) of Section 8 of the Act,
- (c) "Board" means the Gujarat Biodiversity Board established under section 22 of the Act;
- (d) "Biodiversity Management Committee" means Committee constituted by the local bodies under section 41 of the Act;
- (e) "Chairperson" means the chairperson of the Gujarat Biodiversity Board.
- (f) "Fee" means any fee stipulated in these rules;
- (g) "Form" means form appended to these rules;
- (h) "Government" means the Government of Gujarat;
- (i) "Member" means a member of the National Biodiversity Authority or a Gujarat Biodiversity Board, as the case may be, and includes the chairperson;
- (j) "Section" means a section of the Act;
- (k) "Member Secretary" means the Member Secretary of Gujarat Biodiversity Board.

3. Manner of selection and appointment of the Chairperson.

The Chairperson of the Board shall be appointed by the State Government in accordance with the provision of clause (a) of sub-section (4) of section 22 of the Act, either on deputation of a person not below the rank of secretary to the Government or by selection of a person outside the Government.

4. Term of Office, pay and allowance of the Chairperson

- (1) The term of office of the Chairperson of the Board shall be three years from the date of appointment and shall be eligible for re-appointment,
Provided that no Chairperson shall hold office as such after he attains the age of sixty five year or his term of office expires which is earlier.
- (2) The Chairperson may by writing under his hand addressed to the Government, resign his office.
- (3) The salaries and other emoluments and perquisites of the Chairperson shall be determined by the Government from time to time:

Provided that in case of appointment on deputation, such amount shall not be less than that the incumbent may be drawing on his last appointment.

5. Terms of Office and Allowances of non-official Members:

- (1) The term of office of non-official members of the Board shall be three years from the date of their nomination.
- (2) The non-official members shall be entitled to travelling expenses, daily allowance, sitting allowance and other allowances as he Board.

6. Filling up of vacancies of non-official members

- (1) A non-official member of the Board may, by writing under his hand addressed to the Government, resign from office.
- (2) A vacancy occurring due to such resignation shall be filled up by nominating other person who shall hold office for the remaining term of the member, in whose place he was nominated.

7. Removal of the members of the Authority.

No member of the Board shall be removed from his office on any ground specified in section 11 of the Act, without due and proper enquiry by an officer appointed by the Government, who shall may be below the rank of a Principal Secretary:
Provided that the member shall not be removed from his office unless an opportunity of being heard is given.

8. Head Office of the Board.

The Head Office of the Board shall be at Gandhinagar.

9. Appointment of the ex-officio member.

The Following shall be the ex-officio members who shall be appointed by the Government

- (1) Secretary to the Government of Gujarat, Forests and Environment Department
- (2) Principal Chief Conservator Forests, Gujarat State,

- (3) Member Secretary of the Board shall be ex-officio member of the Board,
- (4) Two Members from the departments of Agriculture, Biotechnology, Indian Systems of Medicine Fishers or Tribal Development.

10. Member Secretary of the Board

- (1) The Government may appoint on deputation any officer not below the rank of conservator of forests as a Member Secretary of the Board.
- (2) The Member Secretary shall be responsible for day to-day administration of the Board, management of funds and implementation of various activities of the programme under the guidance of the Chairperson of the Board.
- (3) All orders or instructions to be issued by the Board shall be under the signature of the Member Secretary or of any other officer authorized in this behalf by the Board.
- (4) The Member Secretary either himself or through an officer authorized for the purpose may sanction and disburse all payments against the approved budget.
- (5) The Member Secretary shall have powers to give administrative sanctions to the estimates of works, in the limit of the approved and en-block sanctioned budget and work programme of the Board. He shall have power to give technical sanction also to the estimates for which he is competent in his parent department.
- (6) The Member Secretary shall be in charge of all the confidential papers of the Board and shall be responsible for their safe custody, he shall produce such papers whenever so directed by the Board or the Government.
- (7) The Member Secretary shall write and maintain confidential reports of all the officers and employees of the Board and shall put before the Chairperson for review and approval.
- (8) The Member Secretary shall have powers to give grants to various individuals and organizations including Non Government Organizations, Biodiversity Management Committee, Joint Forest Management Committee, Eco Development Committee,

Eco Tourism Committee and others as per the approved and en-block sanctioned budget and work programme of the Board. The Member Secretary shall also have the powers to frame Terms of Reference for the same.

- (9) The Member Secretary shall have powers to sign Memorandum of Understanding with various local, national and international organization to which due approval of the Board is received.
- (10) The Member Secretary shall exercise such powers and perform such other functions as may be delegated to him from time to time by the Board;

11. Meeting of the Board.

- (1) The Board shall meet at least four times in a year normally at the interval of three months at the Head quarters of the Board or at such place, as may be decided by the Chairperson.

- (2) The Chairperson shall. Upon a written request from not less than five Members of the Board or upon a direction of the Government, or if exigency of business requires, call a special meeting of the Board.
- (3) The members shall be given at least fifteen days' notice for holding an ordinary meeting and at least three days' notice for holding a special meeting. Such notice may specify the purpose of the meeting, the time and the place, at which such meeting is to be held.
- (4) Every meeting shall be presided over by the Chairperson and in his absence, by the Secretary, Forest and Environment Department. Who is an ex-officio member of the Board.
- (5) Each member shall have one vote.
- (6) The quorum at every meetings of the Board shall not be less than six members.
- (7) The decision of the Board shall, if necessary, be taken by a simple majority of the Members present and voting. The Chairperson or in his absence, the member presiding shall have a second or casting vote.
- (8) No Member shall be entitled to bring forward for the consideration of a meeting any matter of which he has not given at least ten days' notice unless the Chairperson in his discretion permits him to do so.
- (9) Notice of the meeting may be given to the Member by delivering the same by messengers or sending it by registered post to his last known place of residence or business or in such other manner, as the Secretary of the Authority may, in the circumstances of the case, think fit.
- (10) In addition, the Board may evolve such other procedure for the transaction of its business as it may deem fit and proper.
- (11) The Board may invite any person, whose assistance or advice is considered useful to obtain in performing any of its functions, and to participate in the deliberations of any of its meetings.

12. Appointment of Experts Committee by the Board and their Entitlements.

- (1) The Board may constitute any number of Committees for such purposes as it may deem fit to carry out the provisions of the Act consisting wholly of members or wholly of other persons or partly of members or partly of other persons.
- (2) The members of the expert committee other than the members of the Board shall be paid such fees and allowances for attending the meetings, as the Board may decide.
- (3) The members of the committee may include the local knowledgeable experts of the Biodiversity Management Committee in herbal medicine, agriculture, horticulture, animal husbandry, fishing, handicrafts, handloom, nomadic herding, non timber forest produce, culture, tradition and folklore, tourism, wildlife, value addition.

13. Functions of the Board.

The Board may perform the following functions; namely:-

- (a) Lay down the procedure and guidelines to govern the activities provided under sections 23 of the Act;
- (b) Advise the State Government on any matter concerning conservation of bio-diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge;
- (c) the board shall in consultation with the local bodies and other stakeholders, take necessary steps to facilitate setting up of areas of Biodiversity importance as “biodiversity heritage sites” and recommend to the state Government to declare such area as “biodiversity heritage sites” as provided in section 37 of Act. Board shall also frame guidelines for selection, Management and other aspects in confirmation with the guidelines issued by the Central Government or National Biodiversity Authority;
- (d) Provide technical assistance and guidance to the department of the Government and Biodiversity Management Committees;
- (e) coordinate the functioning of the Biodiversity Management Committees;
- (f) regulate by granting of approval or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indian nationals;
- (g) facilitate updating and implementation of State Bio-diversity Strategy and Action Plan;
- (h) commission studies and sponsor investigations and research ; engage consultant for a specific period, not exceeding three years for providing technical assistance to the Board for effective discharge of its functions:
Provided that for the purpose of engaging consultant beyond the period of three years, the Board shall seek prior approval of Government.
- (i) collect, compile and publish technical and statistical data, manuals, codes or guides relating to conservation of Biological bio diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge;
- (j) Organize through media a comprehensive programme regarding conversation of bio-diversity , sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge.
- (k) Plan and organize training of personnel engaged or likely to be engaged in programmes for the conservation of bio-diversity and sustainable use of its components;
- (l) Take steps to build up data base and to create information and documentation system for biological resources and associated traditional knowledge through bio-diversity registers and electronics data bases, to ensure effective management, promotion and sustainable uses;
- (m) Give direction to local bodies or Biodiversity Management Committees in writing and through appropriate oral means, for effective implementation of the Act , and to facilitate their meaningful participation in all measures relating to conservation, sustainable use, and equitable benefit-sharing:

- (n) Report to the Government about the functioning of the Board and implementation of the provisions of the Act and the rules made there under;
- (o) Recommend, prescribe, modify, collection of fee of biological resources from time to time;
- (p) to devise methods to ensure protection of rights including intellectual property rights over biological resources and associated knowledge including systems of maintaining confidentiality of such information as appropriate, including protection of information recorded in People's Biodiversity Registers;
- (q) sanction grants-in-aid and grants to Biodiversity Management Committees for specific purpose;
- (r) Undertake physical inspection of any area in connection with the implementation of the Act;
- (s) ensure that biodiversity and biodiversity-dependent livelihoods are integrated into all sectors of planning and management, and at all levels of planning from local to State, to enable such sectors, and administrative levels to contribute effectively for conservation and sustainable use;
- (t) Prepare the annual Budget of the Board incorporating its own receipts as also the devaluation from the State and Central Government provided that the allocation by the Central Government shall be operated in accordance with the budget provision approved by the Central Government;
- (u) Recommend the Government for creation of posts for the purpose of effective discharge of the functions of the Board and to create such posts, provided that no post whether permanent/temporary or of any other nature, be created without prior approval of the Government.
- (v) acquire, hold and dispose of property, both movable and immovable and enter into contract for the same;
- (w) award individually or as a group, or both for innovation and contribution in the biodiversity sector in the State;
- (x) formulate indicators to evaluate the performance of the Biodiversity Management Committees, and annual reward for the best performance to Biodiversity Management Committees at each level in the State:
 Provided that based on the evaluation, Biodiversity Management Committees having poor performance may be dissolved by the Board on the recommendation of the concerned local body and new Biodiversity Management Committees may be constituted in its place;
- (y) Such other function, as may be necessary to carry out the provisions of the Act.

14. Powers and Duties of the Chairperson.

- (1) The Chairperson shall ensure that the affairs of the Board are run effectively and in accordance with the provisions of the Act and the rules made thereunder.
- (2) The Chairperson shall have the powers of general superintendence over the officers and employees of the Board and may issue necessary directions for the conduct and management of the affairs of the Board.
- (3) The Chairperson shall convene and preside over all the meetings of the Board and shall ensure that all decisions taken by the Board are implemented in proper manner.

15. Terms and Conditions of Service of employee of the Board.

(1) The terms and conditions of the services of employees of the Board shall be the same as those of corresponding cadre under the Government. The appointments in general shall be on contractual basis or on deputation, unless otherwise decided by the Government.

(2) The Board shall subject to the approval of the Government may provide the method of recruitment or promotion, remuneration of the staff and other condition of service.

16. Procedure for access to or collection of biological resources.

(1) Any person intending access to or collection of biological resources and associated knowledge for research or for commercial utilization shall give prior intimation as provided in section 24 of the Act, to the Board in Form I. Every application shall be accompanied with intimation or process fees of Rs. 500/- in case of research purpose and Rs. 5000/- in case of commercial utilization, in the form of a demand draft drawn in favour of the "Gujarat Biodiversity Board".

(2) The Board after due appraisal of the application and after consultation with the concerned Biodiversity Management Committees and local bodies and after collecting such additional information, as it may deem necessary shall decide about the intimation as far as possible within a period of three months of receipt of the same.

Explanation:- For the purpose of these rules, the word "consultation", includes the following steps, inter alia; (a) issuing of public notice, in local languages, of the proposal for access or collections; (b) discussion or dialogue with the general assembly of the local body; and (c) formal consent from the assembly of local body after being provided adequate information about the proposal and its implications for conservation and livelihood.

(3) On being satisfied with the merit of the intimation, the Board may allow the intimation or by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity:

Provided that no such order shall be made without giving an opportunity of being heard to the person affected.

(4) A written agreement duly signed by an authorized officer of the Board and the applicant shall govern the access or collection. The form of agreement shall be decided by the Board.

(5) The conditions for access to or collection may specifically provide measures for conservation and protection of biological resources to which the access to or collection is being granted, along with other measures decided by the Board.

17. Revocation of access or approval.

- (1) The Board may either on the basis of any complaint or suo moto withdraw the access granted and revoke the written agreement under the following conditions:
 - (i) On the basis of reasonable belief that the person accessing the said bio-resource has violated any of the provisions of the Act or the condition on which application was allowed;
 - (ii) of the person fails to comply with the terms of agreement;
 - (iii) on failure to comply with any of the conditions of access;
 - (iv) on account of overriding public interest with reference to protection of environment and conservation of biological diversity, and protection of rights, livelihood, and knowledge of local communities.
- (2) The revocation order shall not be made without making such inquiry as deem fit and without giving an opportunity of being heard to the person affected.
- (3) The Board shall send a copy of such revocation order to the concerned Biodiversity Management Committees for prohibiting the access and also to assess the damage, if any, caused and take steps to recover the damage.

18. Restriction on activities related to access to biological resources.

- (1) The Board, if it deems necessary and appropriate shall take the steps to restrict or prohibit the proposal for access to biological resources for the following reasons:-
 - (i) The request for access is for any threatened taxa, or taxa that is likely to become threatened due to such access,
 - (ii) The request for access is for any endemic and rare species;
 - (iii) The request for access may likely to result in adverse effect on the livelihoods, culture, or indigenous knowledge of the local people;
 - (iv) The request to access may result in adverse environmental impact which may be difficult to control and mitigate.
 - (v) The request for access may cause genetic erosion or affecting the ecosystem function;
 - (vi) Use of resources for purposes contrary to national interest and other related international agreements entered into by the country.
- (2) No order of restriction shall be made without making such inquiry as deem fit, consulting the concerned local bodies and Biodiversity Management Committees and without giving an opportunity of being heard to the person affected.

19. Operation of State Biodiversity Fund.

- (1) The State Biodiversity Fund shall be operated by the Chairperson or Member Secretary or an officer of the Board authorized by the Board in this behalf.

(2) The fund shall have two separate heads of accounts, one relating to the receipts (grants and loans) from the Central Government or National Biodiversity Authority and State Government, including receipts from such other sources as may be decided

Upon by the Government and the other concerning the fee, license fee, royalty and other receipts of the Board.

(3) A bank account shall be opened for this purpose in any of the Nationalized bank at Gandhinagar and the same shall be operated by the officer duly authorized by the Board in this behalf.

(4) The State Government may, after due appropriation made by the State legislature by law in this behalf, pay to the Board such sum of money as the State Government may think fit for being utilized for the purposes of the Act.

(5) The Board shall have powers to receive funds from national and international donor agencies duly complying with the provisions of the Foreign Contribution (Regulation) Act, 1976. The Member Secretary shall have power to prepare and submit proposals and execute projects after obtaining approval of the Board.

(6) The Board shall frame guidelines on ways to ensure that decisions regarding the management and use of the Fund are transparent and accountable to the public.

(7) The Board may frame its own guidelines regarding limit of quotation or tender for disbursement or payment for purchase or any works under the available budget for the purpose.

20. Annual Report and Annual Statement of Accounts.

(1) The Board shall prepare its annual report for each financial year giving detailed account of its activities and annual statement of accounts and submit the same to the Government within the period specified under sub-rule (3).

(2) The Board shall lay down the procedure for upkeep of accounts. The accounts of the Board shall be audited annually by the Chartered Accountant appointed for the purpose by the Board. The Accountant General of the State may as well audit the account and the expenditure towards this shall be payable by the Board.

(3) The Board shall submit the Annual Report together with the audited statement of accounts for each Financial year to the Government by September each year.

(4) The Government shall cause the annual reports and auditor's report to be laid before the House of state legislature.

21. Powers of search, seizure and custody of illegal material.

(1) Notwithstanding anything contained in any other law, for the time being in force, if any officer of the Board authorized by the Board or any forest officer, agriculture officer or officer of related field authorized by the Board, has reasonable grounds for believing that an offence or contravention under the Act has been committed,

(i) require any such person to produce for inspection biological resources in his control, custody or possession, or any license, permit or any other document related to it or required to be kept by him under the provisions of the Act;

- (ii) stop any person, vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle, or vessel in the occupation of such person, and open and search any baggage or other things in his possession including various analog or digital data storage devices like computers, cameras, video cameras, digital cameras and their accessories;
- (iii) stop and detain any person, whom he sees doing any act for which a license or permit is required under the provisions of the Act. If such person fails to produce the license or permit, he may inform the Biodiversity Management Committees concerned and the member secretary of the Board and hand over the case to the authorized officer having jurisdiction over the biological resources concerned in respect of which the offence has been committed, for further proceeding,
- (iv) seize any biological resource or derivative thereof in respect of which an offence against the Act appears to have been committed together with any tool, vehicle, vessel, or weapon and material involved in offence and inform the Biodiversity Management Committees concerned and the member secretary of the Board and hand over the case to the authorized officer having jurisdiction over the biological resource concerned in respect of which the offence has been committed; for further proceeding.
- (v) may give the seized biological resource for safe custody on the execution by any person on a bond for the production of the same if and when so required, before the court of law to try the offence on account of which the seizure has been made.

(2) Any person detained, or things seized under the foregoing power, shall forthwith be taken before the Court of law to be dealt with according to law.

(3) Any person who, without reasonable cause fails to produce anything, which he requires to produce under this section, shall be guilty of an offence against the Act.

(4) No suit, prosecution or other legal proceedings shall lie against the members of the Biodiversity Management Committees or the officers authorized in sub-rule (1) for anything which is in good faith done or intended to be done under the Act or the rules or regulations made there under.

22. Local Biodiversity Fund.

(1) The local Biodiversity fund shall be constituted at every area notified by the Government where any institution of self Government is functioning.

(2) The Board shall provide to such local body loan or grant received by it from State Government, Central Government or from the National Biodiversity Authority.

The local body may also access such funds from other sources as it identifies, or as may be specified by the Board.

(3) The local biodiversity fund shall be operated by the Biodiversity Management Committees. The Board shall lay down the operational guidelines for operation of the

fund by the Biodiversity Management Committees including ways in which it's functioning is transparent and accountable to all members of the relevant local body.

(4) The Biodiversity Management Committees shall maintain a bank account, for the local biodiversity fund in any nationalized bank. The Chairperson and one of the members nominated by the Biodiversity Management Committees shall jointly operate this account. The withdrawal of funds shall be made only after obtaining the written approval from majority of the members of the Biodiversity Management Committees.

(5) At the time of implementation of any work by the Biodiversity Management Committees before actual commencement of works, Community Information Board shall be installed at prominent public place within the village like Panchayat Ghar, School, Public Health Center, etc. enumerating the following details, namely:-

- (i) Year of establishment of the Biodiversity Management Committees.
- (ii) Name of the work or initiative,
- (iii) Duration of work,
- (iv) Annual Physical and Financial target,
- (v) List of beneficiaries,
- (vi) Item of work to be undertaken along with their location and estimated cost.

(6) The fund shall be specifically used for providing livelihood support to those villagers who have shifted out or are in the process of shifting from unsustainable livelihoods to sustainable one.

(7) In case where an offence or contravention under the Act has been detected with the assistance of the Biodiversity Management Committees, the Board shall credit fifty percent of the amount of fine in the Local Biodiversity Fund of the concerned Biodiversity Management Committees.

(8) The fund shall be used for the conservation and promotion of biodiversity in the area falling within the jurisdiction of the concerned local body and for the benefit of the local community in so far such use is consistent with conservation of biodiversity.

(9) The Biodiversity Management Committees shall prepare its annual report in such form and at such time as may be specified

By the Board, giving full account of its activities during the previous financial year, and submitted a copy thereof to the Board and a copy to the general assembly of the local body.

(10) The accounts of the local Biodiversity fund shall be prepared in such form as may be specified by the Board and audited in such manner and shall be furnished to concerned local body before such date as may be specified by the Board.

FORM I
(Rule 16(1))

**Application form for access to or collection of Biological Resources for
commercial utilization and associated traditional knowledge**

PART A

1. Full particulars of the applicant
 - (a) Name:
 - (b) Permanent address:
 - (c) Address of the contact person / agent, if any, in India:
 - (d) Profile of the organization (personal profile in case the applicant is an individual).
Please attach relevant documents of authentication):
 - (e) Nature of business:
 - (f) Turnover of the organization in US\$:
2. Details and specific information about nature of access sought and biological material and associated knowledge to be accessed:-
 - a) Identification (scientific name) of biological resources and its traditional use:
 - b) Geographical location (including village, Taluka and district) of proposed collection:
 - c) Description / nature of traditional knowledge and its existing manifestations and uses (oral / documented):
 - d) Any identified individual / community holding the traditional knowledge:
 - e) Quantity of biological resources to be collected.
 - f) Time span in which the biological resources is proposed to be collected:
 - g) Name and number of person authorized by the company for making the collection:
 - h) The purpose for which the access is requested including the type and extent of research, commercial use being derived and expected to be derived from it:
 - i) Whether any collection or use of the resource endangers any component of biological diversity and the risks which may arise from the access:
3. Details of any national institution which will participate in the Research and Development activities.

4. Primary destination of accessed resource and identity of the location where the R&D will be carried out.
5. The estimated economic and other benefits arising out of the use or research of accessed biological resources and knowledge that are intended, or may accrue to the application or to the country that he/she belongs.
6. The biotechnological, scientific, social or any other benefits obtained out of accessed biological resources and knowledge that are intended, to be accessed.
7. Estimation of benefits, that would flow to communities arising out of the use of accessed bioresarches and traditional knowledge.
8. Proposed mechanism and arrangements for benefit sharing.
9. Any other information considered relevant.

PART B:
DECLARATION

I/we declare that:

- Collection and use of proposed biological resources shall not adversely affect the sustainability of the resources ;
- Collection and use of proposed biological resources shall not entail any environmental impact;
- Collection and use of proposed biological resources shall not pose any risk to biodiversity, including ecosystems, species and genetic diversity;
- Collection and use of proposed biological resources shall not adversely affect the local communities;

I/we undertake to pay any fee and/or royalty, as may be levied by the Board or Biodiversity Management Committees. I/we further undertake to furnish any irrevocable bank guarantee, as may be prescribed by the Board.

I/we further declare the information provided in the application form is true and correct and I/ we shall be responsible for any incorrect / wrong information.

Place : _____

Date : _____

Signed : _____

Name : _____

Title : _____

By order and in the name of the Governor of Gujarat,

MAULIK KHARADI,
Under Secretary to Government