

Biodiversity & Biotechnology Department Ministry, Ballabh Bhawan, Bhopal

Bhopal the 17th December 2004

No. F. 1-2/2003/LVII - In exercise of the powers conferred by sub section (1) of Section 63 of the Biological Diversity Act, 2002 (No. 18 of 2003), the State Government hereby makes the following Rules, namely: .

RULES

1. Short title and commencement -

- (1) These Rules may be called Madhya Pradesh Biological Diversity Rules, 2004.
- (2) They shall come into force on the date of their publication in the "Madhya Pradesh Gazette".

2. Definitions - In these Rules, unless the context otherwise requires -

- (a) "Act" means the Biological Diversity Act, 2002 (No. 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 Madhya Pradesh State Biodiversity Board established under Section 22 of the Act;
- (d) "Committee" means Biodiversity Management Committee established by the local bodies under Section 41 of the Act;
- (e) "Chairperson" means the Chairperson of the State Biodiversity Board;
- (f) "Fee" means any fee stipulated in these Rules;
- (g) "Form" means form appended to these Rules;
- (h) "State Government" means the Government of Madhya Pradesh;
- (i) "Member" means member of the National Biodiversity Authority or a State Biodiversity Board, and includes the chairperson as the case may be thereof;
- (j) "Section" means section of the Act;
- (k) "Member Secretary" means the Member-Secretary of the Board;
- (l) Words and expressions used but not defined in these Rules and defined in the Act shall have the same meaning respectively assigned to them in the Act.

3. Manner of selection and appointment of the Chairperson –

- (1) The Chairperson of the Board shall be a minister or a serving officer of the State Government or an eminent person having adequate knowledge and experience in the conservation and sustainable use of biodiversity and in matters relating to the equitable sharing of the benefits.

- (2) The Chairperson of the Board shall be appointed by the State Government.
- (3) In case the appointment under sub-rule (2) is not that of a minister or serving officer of the Government, it shall be done on the recommendation of a three member search committee, headed by the Chief Secretary, appointed for the purpose; provided that in case of a serving officer of the State Government, he shall not be of a rank below that of a Principal Secretary to the government.

4. Term of Office of the Chairperson –

- (1) The Chairperson of the Board shall hold the office for a term of three years' and shall be eligible for re-appointment. Provided that no Chairperson shall hold office beyond the age of 65 years.
- (2) The Chairperson may resign from his office by giving at least one month notice in writing to the State Government.
- (3) Notwithstanding any other provision of these Rules, continuance of the chairperson in the office shall be at the pleasure of the State Government.

5. Pay and Allowances of the Chairperson - The Chairperson shall be entitled to such salary, allowances, leave, pension, provident fund, house and other perquisites, as may be determined by the State Government from time to time.

6. Nomination and Term of office and Allowances of non-official member –

- (1) Five non-official members from amongst the experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources shall be nominated by the State Government. At least two of these members shall be experts from local communities, nominated by the community concerned.
- (2) The non-official Member of the Board shall hold the office for a term not exceeding three years at a time from the date of his nomination.
- (3) The non-official Member shall be entitled to sitting allowance, traveling expenses, daily allowance and to such other allowances, as may be fixed by the State Government for attending the meeting(s) of the Board.

7. Filling up of vacancies of non-official member –

- (1) A non-official member of the Board may resign from his office at any time by giving in writing under his hand addressed to the State Government and the seat of that member in the Board shall become vacant.
- (2) A casual vacancy in the Board shall be filled up by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term of the member, in whose place he was nominated.

8. Removal of the Members of the Board - No member of the Board shall be removed from the office on any grounds specified in Section 11 of the Act, without due and proper enquiry by an officer not below the rank of Principal Secretary appointed by the State Government for the purpose and without giving a reasonable opportunity to the member of being heard.

9. **Appointment of the Ex-officio Members** - Five ex-officio members shall be appointed from the following departments/organizations of the State Government as long as they hold their respective office: -

- (1) Agricultural Production Commissioner,
- (2) Principal Secretary/Secretary, Department of Biodiversity and Biotechnology,
- (3) Principal Chief Conservator of the Forest,
- (4) Vice-Chancellor, JNKVV, Jabalpur,
- (5) Member-Secretary of State Biodiversity Board.

10. **Head Office of the Board** - The Head Office of the Board shall be at Bhopal.

11. **Member Secretary of the Board** –

- (1) The Member-Secretary shall be appointed by the State Government on deputation. His terms and conditions of appointment shall be determined by the State Government.
- (2) The Member-Secretary shall be responsible for day today 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 included in the budget of the Board.
- (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/State Government.
- (7) The Member-Secretary shall write and maintain confidential reports of all the officers and staff of the Board and shall get them countersigned by the Chairperson.
- (8) The Member-Secretary shall exercise such other powers and perform such other function, as may be delegated to him from time to time by the Board.

12. **Meetings of the Board** –

- (1) The Board shall meet at least four times in a year normally after three months at the Head quarters of the Board or at such other 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 State Government, call a special meeting of the Board.

- (3) Fifteen days notice of an ordinary meeting and three days notice of a special meeting specifying the purpose, the time and the place, at which such meeting is to be held, shall be given to the members.
- (4) Every meeting shall be presided over by the chairperson and in his absence, by a presiding officer to be elected by the members present from amongst themselves.
- (5) The decision of the Board shall, if necessary, be taken by a simple majority of the members present and voting and the Chairperson or in his absence; the member presiding shall have a second or casting vote.
- (6) Each member shall have one vote.
- (7) Quorum for the meeting of the Board shall be five.
- (8) No member shall be entitled to bring forward for the consideration of a meeting any matter of which he has not given 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 messenger or sending it by registered post to his last known place of residence or business or in such other manner, as the Member-Secretary of the Board 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 at and proper.

13. Appointment of Expert Committee by the Board and their Entitlements –

- (1) The Board may constitute any number of committees for such purposes as it may deem fit consisting wholly of members or wholly 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 for attending the meetings, as the Board may deem fit.
- (3) The Board may invite any person, whose assistance or advice is considered useful to obtain in any of its functions, and to participate in the deliberations of any of its meetings.

Person associated with the Board shall be entitled to get allowances, as prescribed by the Board from time to time.

14. General functions of the Board - In particular and without prejudice to the generality of other provisions, the Board may perform the following functions: -

- (i) Lay down the procedure and guidelines to govern the activities provided under Section 23
- (ii) Advise the State Government on any matter concerning conservation of biodiversity, sustainable of its components and fair and equitable sharing of benefits arising out of the use of biology resource and knowledge.

- (iii) Provide technical assistance and guidance to the departments of the State Government.
- (iv) Regulate by granting of approvals or otherwise requests for commercial utilisation or bio-survey a bio-utilisation of any biological resource by Indian Nationals.
- (v) Facilitate updating and implementation of State Biodiversity Strategy and Action Plan.
- (vi) Commission studies and sponsor investigations and research.
- (vii) Engage consultant for a specific period, not exceeding three years, for providing technical assistance to the Board in the effective discharge of its functions. Provided that if it is necessary and expedient to engage any consultant beyond the period of three years, the Board shall seek prior approval of the State Government for such an engagement.
- (viii) Collect, compile and publish technical and statistical data, manuals, codes or guides relating to conservation of Biological biodiversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge.
- (ix) Organise through mass media a comprehensive programme regarding conservation of biological biodiversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge.
- (x) Plan and organise training of personnel engaged or likely to be engaged in programmes for the conservation of biological biodiversity and sustainable use of its components.
- (xi) Take steps to build up database and to create information and documentation system for biological resources and associated traditional knowledge through biodiversity registers and electronics databases, to ensure effective management, promotion and sustainable uses.
- (xii) Give directions to the local bodies/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.
- (xiii) Report to the State Government about the functioning of the Board and implementation of the Act and the Rules made there under.
- (xiv) Recommend, prescribe, modify, collect fee of biological resources from time to time.
- (xv) 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 the protection of the information recorded in People's Biodiversity Registers.

- (xvi) Sanction grants-in-aid and grants to Biodiversity Management Committees for specific purposes.
- (xvii) Undertake physical inspection of any area in connection with the implementation of the Act.
- (xviii) 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.
- (xix) 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 provisions approved by the Central Government.
- (xx) Board shall have full powers for granting administrative and technical sanctions to all the estimates; it may however delegate such administrative and technical sanction powers to the Member Secretary of the Board, as may be deemed necessary.
- (xxi) Recommend creation of posts to State Government, for effective discharge of the functions by the Board and to create such posts, provided that no such post whether permanent/temporary or of any nature, would be created without prior approval of the State Government.
- (xxii) Perform such other functions, as may be necessary to carry out the provisions of the Act or as may be prescribed by the State Government from time to time.
- (xxiii) Shall have power to acquire, hold and dispose of property, both movable and immovable and enter into contract for the same.

15. Powers and Duties of the Chairperson –

- (1) The chairperson shall ensure that the affairs of the Board are run efficiently and in accordance with the provisions of the Act and the rules made there under.
- (2) The Chairperson shall have the powers of general superintendence over the officers and staff of the Board and the Chairperson may issue necessary directions for the conduct and management of 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.
- (4) The Chairperson shall exercise such other powers and perform such other functions as may be delegated to him from time to time by the Board.

16. Terms and Conditions of Service of employees of the Board –

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

- (2) The board shall approve the method of recruitment/promotion to the posts in the Board.

17. Procedure for access to/collection of biological resources –

- (1) Any person seeking access to/collection of biological resources and associated knowledge for research or for commercial utilization shall make an application to the Board in Form-1 appended these rules. Every application shall be accompanied by a fee of Rs. 100/- in case such access is for research purpose and Rs. 1000/- for commercial utilization, and shall be in the form of a cheque or demand draft.
- (2) The Board after due appraisal of the application and after consultation with the concerned local bodies and after collecting such additional information, as it may deem necessary shall decide the application, as far as possible within a period of 3 months of receipt of the same. In this context, the word "consult", for the purposes of the act, includes the following steps, inter alia: (a) issuing of public notice, in local languages, of the proposal for access/collection; (b) discussion/dialogue with the general assembly of the local body; and (c) formal consent from the assembly after being provided adequate information about the proposal and its implications for conservation and livelihoods.
- (3) On being satisfied with the merit of the application, the Board may allow the application or restrict any such activity if it is of the 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.
- (4) A written agreement duly signed by an authorized officer of the Board and the applicant shall govern the access/collection. The form of the agreement shall be decided by the Board.
- (5) The conditions for access to/collection may specifically provide measures for conservation and protection of biological resources to which the access to/collection is being granted.
- (6) The Board may reject the application if it considers that the request cannot be acceded to after recording the reasons therefor. Before passing an order of rejection the applicant shall be given a reasonable opportunity on being heard.
- (7) Any information given in the form referred to in the sub-rule (1) for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.

18. Revocation of access/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) When the person has failed 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 the rights, livelihoods, and knowledge of local communities.
- (2) The revocation order shall be made only after making such inquiries as required and after giving the person so affected an opportunity of being heard.
- (3) The Board shall send a copy of such revocation order to the Biodiversity Management Committees for prohibiting the access and also to assess the damage, if any, caused and take steps to recover the damage.

19. 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 are 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) Any order of restriction shall be made only after making such inquiries as required; consulting the concerned local bodies and Biodiversity Management Committees, and giving the person so affected an opportunity of being heard.

20. Operation of State Biodiversity Fund –

- (1) The State Biodiversity Fund shall be operated by the Member-Secretary of the Board or by such any other officer of the Board as may be authorized by the Board in this behalf.
- (2) The State Biodiversity Fund shall have two separate heads of accounts, one relating to the receipts (grants and loans) from the Central Government/ National Biodiversity Authority and State Government, including receipts from such other sources as decided by the Board and the other concerning the fee, licence fee, royalty and other receipts of the Board.
- (3) The State Government, shall after due appropriation made by the State legislature by the law in this behalf, pay to the Board such sum of money, as

the State Government may think fit for being utilized for the purpose of the Act.

- (4) 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.

21. 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 State Government.
- (2) The Board shall lay down the procedure for upkeep of the 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 accounts 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 State Government by September each year so as to enable the State Government to lay the reports before the Legislative Assembly.

22. Establishment and Management of Biodiversity Heritage Site –

- (1) The Board shall, in consultation with the local bodies and other key stakeholders, take necessary steps to facilitate setting up of areas of significant biodiversity values as Heritage Sites. Following recommendation from the Board and after consultation with the Central Government, the State Government shall issue notification to this effect.
- (2) The Board shall frame guidelines on the selection, management and other aspects of Heritage Sites, ensuring that these provide decision-making role for relevant Biodiversity Management Committees.

23. Constitution of Biodiversity Management Committees –

- (1) Every local body shall constitute a Biodiversity Management Committee within its area of jurisdiction. Accordingly, Biodiversity Management Committees are to be constituted at Zila Panchayat, Janpad Panchayat, Gram Panchayat and Gram Sabha level as well as at (Nagar Panchayat)¹, Municipality and Municipal Corporation level.
- (2) If the local body is satisfied that the function of the BMC can be discharged by the general assembly of the local body, or by one of its existing committees, the same should be recorded as resolution passed by such local body, following due procedure.
- (3) The Biodiversity Management Committees constituted under sub-rule (1) shall have seven persons nominated by the local body, of whom not less than one third shall be women. Seven local knowledgeable persons being so nominated should be drawn from amongst the herbalists, agriculturist, Non

Timber Forest Produce collectors/ traders, fisher-folk, representatives of user associations, community workers, academicians and any person/ representative of organization, on whom the local body trusts that he can significantly contribute to the mandate of the Biodiversity Management Committee. The proportion of members belonging to the Scheduled Caste and the Scheduled Tribe should not be less than Scheduled Caste/Scheduled Tribe percentage of the District, where such a committee is set up. All the above should be residents within the said local body limits and be in the voters list.

- (4) The local body shall nominate six special invitees from forest, agriculture, livestock, health, fisheries and education department.
- (5) The chairperson of the Biodiversity Management Committee shall be elected from amongst the members of the committee in a meeting to be presided over by the chairperson of the local body. The chairperson of the local body shall have the vote in case of a tie.
- (6) The chairperson of the Biodiversity Management Committee shall have a tenure of five years.
- (7) The local Member of the Legislative Assembly and Member of Parliament would be special invitees to the meetings of the Biodiversity Management Committees at different levels.
- (8) A technical support group comprising of experts in the field of biodiversity drawn from Government agencies, Non Government Organisations, academic field, community and individuals shall be established by Zila Panchayat/district administration. The expert group shall lend support to Biodiversity Management Committees.
- (9) The key mandate of the Biodiversity Management Committees will be to ensure conservation, sustainable utilization and equitable sharing of benefits from the biodiversity. The Biodiversity Management Committees shall facilitate preparation of People's Biodiversity Registers. The Register shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them. The Zila Panchayat Biodiversity Management Committee shall be responsible for developing a district wide network of People's Biodiversity Registers database. The People's Biodiversity Registers shall be prepared at the Gram Sabha/(Gram)¹Panchayat/(Nagar Panchayat/¹ Municipality/ Municipal Corporation Biodiversity Management Committee level by using the process and the format set by the Board. The Biodiversity Management Committees and local bodies will be responsible for ensuring the protection of the knowledge recorded in the People's Biodiversity Registers, especially to regulate its access to outside agencies and individuals.

- (10) The other functions of the Biodiversity Management Committees are to advise on any matter referred to it by the State Biodiversity Board or Authority for granting approval, to maintain data about the local vaidis and practitioners using the biological resources.
- (11) The Zila and Janpad Biodiversity Management Committees shall strive to (incorporate)¹ biodiversity conservation concerns in the development planning at the local level.
- (12) The Board shall provide guidance and technical support to the Biodiversity Management Committees for preparing People's Biodiversity Registers, and shall ensure that all information recorded in such Registers receives legal protection against misuse and appropriation by outside agencies and individuals.
- (13) The Committee shall also maintain a Register giving information about the details of the access to biological resources and traditional knowledge granted, details of the collection fee imposed and details of the benefits derived and the mode of their sharing.
- (14) The Biodiversity Management Committee at Gram Sabha/(Gram)¹ Panchayat/ (Nagar Panchayat/¹ Municipality/Municipal Corporation level may decide the terms on which it would permit access to biodiversity resources and associated knowledge to different parties for various purposes within their jurisdiction and levy charges by way of collection fees from any person for accessing or collection any biological resource for commercial purpose from the area falling within its jurisdiction. The major share of levy charged for the material collected/cultivated from private land should be given to the owner/cultivator of the land/knowledge holder/s and the balance should be deposited in Local Biodiversity Fund of Biodiversity Management Committee. The levy charged for the material collected/cultivated from Government land should be totally deposited in Local Biodiversity Fund of Biodiversity Management Committee.
- (15) The Board shall provide guidelines for terms of access and fee collection by the Biodiversity Management Committees.
- (16) The Gram Sabha/Gram Panchayat/(Nagar Panchayat/¹ Municipality/Municipal Corporation level Biodiversity Management Committees shall prepare a Biodiversity Management Plan using output from People's Biodiversity Register and will be responsible for or participate in its implementation.
- (17) The local bodies shall ensure that the Biodiversity Management Committees are integrated with the functioning of existing local institutions by cross-membership, regular coordination meetings, and other such measures, as determined by the local bodies or as specified by the Board.

24. Local Biodiversity Fund –

- (1) At the level of local body, the local biodiversity fund shall be constituted.
- (2) The Board shall provide to the local body any loan or grant received by it from State Government, Central Government or from the Authority for the purposes of the Act. The local body can also access such funds from other sources as it identifies, or as 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 its functioning is transparent and accountable to all members of the relevant local body.
- (4) The fund shall be used for the conservation and promotion of biodiversity in the areas 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.
- (5) The account of the local biodiversity fund shall be prepared in such forms as may be specified by the Board and during each financial year at such time, as may be prescribed.
- (6) The Biodiversity Management Committees shall prepare its annual report, giving full account of its activities during the previous financial year, and submit a copy thereof to the Board and a copy to the general assembly of the local body.
- (7) The accounts of the local biodiversity fund shall be maintained and audited in such manner, as may be specified by the Board.

25. Appeal for settlement of disputes –

- (1) If a dispute arises between the Authority and Board or between one Board and other Board(s) on account of implementation of any order/direction or on any issue of policy decision, either of the aggrieved parties i.e., Authority or the Board, as the case may be, prefer an appeal under Section 50 of the Act, in form II appended to these rules to the Secretary, Ministry of Environment and Forests Government of India or to the Chairperson, National Biodiversity Authority in the case of dispute between one Board and other Board(s).
- (2) The memorandum of appeal shall state the facts of the case, the grounds relied upon by the appellant and the relief sought for, for preferring the appeal and shall be accompanied by an authenticated copy of the order, direction or policy decision, as the case may be, by which the appellant is aggrieved. The memorandum of appeal shall be duly signed by the authorized representative of the appellant.
- (3) The memorandum of appeal shall be submitted in quadruplicate accompanied with the authenticated copy of the order, directions or policy decisions as the case may be, by which the appellant is aggrieved, either in person or through a registered post with acknowledgement due, within 30 days from the date of the

order, direction or policy decision. Provided that if the appellate authority is satisfied that there was good and sufficient reason for the delay in preferring the appeal, the appellate authority, for reasons to be recorded in writing allow the appeal to be preferred after the expiry of the aforesaid period of 30 days but before the expiry of 45 days from the date of the order, direction, or policy decision as the case may be.

- (4) The notice for hearing of the appeal shall be given in Form III by a registered post with an acknowledgement due.
- (5) Every memorandum of appeal shall be accompanied by a fee of Rs. 100/-.
- (6) The Board shall similarly lay down the procedure for settlement of disputes between Board and the Biodiversity Management Committees or amongst Biodiversity Management Committees, and between Biodiversity Management Committee and relevant local bodies.

**By order and in the name of the Governor of Madhya Pradesh,
ANURAG SHRIVASTAVA, Addl. Secy.**