

# Draft Framework Agreement for the Hindu Kush-Himalayan Region

## Preamble stating key principles

The Islamic Republic of Afghanistan, the People's Republic of Bangladesh, the Kingdom of Bhutan, the People's Republic of China, the Republic of India, Myanmar, the Federal Democratic Republic of Nepal, and the Islamic Republic of Pakistan, all Parties to the Convention on Biological Diversity (hereinafter referred to as signatory countries)

**Proud** of the enormous richness in biological and cultural diversity of the Hindu Kush-Himalayan region shared among all of them

**Aware** that the maintenance of this biological and cultural diversity is of immense and crucial common interest because of its:

1. identity, cultural and spiritual value for the peoples of the region;
2. livelihood and economic value (e.g., for food, medicinal substances, building and handicraft materials, commercial and industrial applications, carbon sequestration, tourism, and so forth); and
3. strategic value (e.g., as it relates to water purification and water absorption, the prevention of disastrous floods, and the provision of the headwaters of the ten major rivers of the region)

**Informed** that all such values are also embedded in the genetic information of the biodiversity that has the Hindu Kush-Himalayas as the 'region of origin', and that the economic and strategic importance of such information is likely to increase exponentially as part of the ongoing biotechnology revolution

**Mindful** that biological and cultural diversity are profoundly inter-related and that native communities and indigenous peoples of the region have historically contributed to the conservation of such biodiversity and its enrichment through the selection and development of new cultivars and breeds (agro-biodiversity)

**Conscious** that the native communities and indigenous peoples of the region have historically developed a variety of institutions for the governance of local biodiversity, and that such institutions comprise traditional knowledge, skills, practices, organisations, values, worldviews and languages adapted over time to the local context and generally acting as a whole

**Recalling** the main objectives of the Convention on Biological Diversity, i.e., the conservation of biological diversity, the sustainable use of natural resources, and the fair and equitable sharing of the benefits arising from the utilisation of genetic resources, as well as the provision of the Convention that declares nation states as having sovereignty over genetic resources

**Noting** the numerous decisions of the Conference of the Parties to the Convention on Biological Diversity promoting and encouraging regional approaches to access and benefit sharing arrangements

**Recognising** that access to genetic resources, their derivatives and associated traditional knowledge is formally regulated in some, but not yet all, of the countries of the region and that effective protection from 'biopiracy' should be prudently and rapidly set in place at the regional level

**Stressing** that benefits of scale, equity and collaboration among the countries of the region are to be expected upon the establishment of a regional framework that upholds the

conservation of the genetic resources, derivatives and associated traditional knowledge of the region, regulates access to the same, and ensures the fair and equitable sharing of the benefits deriving therefrom

**Valuing** the proud characteristics of strength, spirituality and ingenuity of the people in the Hindu Kush-Himalayan region and their capacity to live in difficult and demanding Environments

**Highlighting** that eradicating the scourge of poverty as agreed in the Millennium Development Goals and ensuring respect for human rights have great relevance in the Hindu Kush-Himalayan region

**Upholding** both the precautionary principle and the primacy of the individual and collective rights of the Hindu Kush-Himalayan people in particular, but not solely, in relation to traditional knowledge of biological and genetic diversity

### **AFFIRM THEIR STRONG RESOLVE TO COLLABORATE TO**

**Conserve** the biodiversity and natural resources of the Hindu Kush-Himalayan region, embedded within which are the region's identity and its cultural, spiritual, economic and strategic values, for all its peoples

**Respect** and **value** the traditional knowledge of the region's peoples and the customary institutions and laws that have developed and maintained this knowledge and that have governed natural resources through the test of time – which are both fundamental tenets of the cultural diversity of the region

**Ensure** the maintenance of the regional biocultural diversity as a sacred heritage of humankind, rejecting the application of any patent system thereon

**Facilitate** the transparent, fair and well-regulated access to genetic resources, their derivatives and associated traditional knowledge from the Hindu Kush-Himalayan region for the benefit of the people of the region and the rest of the world

**Adhere** to the fundamental principle that the prior informed consent (PIC) of provider countries and communities needs to be secured before regulated access can take place

**Develop** mutually agreed terms (MAT) to regulate access to genetic resources, their derivatives and associated traditional knowledge within the Hindu Kush-Himalayan region and to ensure a fair sharing of the related monetary and non-monetary benefits among the concerned countries and indigenous and local communities, the stewards of that biodiversity and providers of that knowledge

**Uphold** the basic principle that the benefits from access to genetic resources, their derivatives and associated traditional knowledge should reward both the countries and the indigenous and local communities that actively engage in the stewardship, conservation and sustainable use of these resources and knowledge, and that traditional knowledge should be accessed in conformity with the customary institutions and laws of the concerned communities

**Strive** to ensure the uniformity and consistency of mutually agreed terms and related regulations in the Hindu Kush-Himalayan region to maximise monetary and non-monetary benefits for the concerned countries and peoples

**AND HEREBY AGREE AS FOLLOWS**

## Objectives

- i. To preserve the biological and cultural diversity of the Hindu Kush-Himalayan region, promote the use of its natural resources in ways that are sustainable and equitable, and promote human wellbeing and security through the maintenance of ecosystem functions and integrity;
- ii. To strive towards food sovereignty based on local food crop germplasm and traditional knowledge already widely dispersed and utilised in the Hindu Kush-Himalayan region;
- iii. To develop an ABS framework to provide certainty about origin/source/legal provenance and set the minimum requirements for access to, and benefit sharing from, genetic resources, derivatives and associated traditional knowledge from the Hindu Kush-Himalayan region;
- iv. To ensure and enforce the rights and obligations of users who comply with agreed requirements and prevent the misappropriation and misuse of genetic resources, their derivatives and associated traditional knowledge from the Hindu Kush-Himalayan region;
- v. To enhance economic and social welfare and ensure that maximum and equitably shared benefits from access to genetic resources, their derivatives and associated traditional knowledge from the Hindu Kush-Himalayan region accrue to both countries and communities of origin, consistent with the principle of prior informed consent;
- vi. To accord respect, recognition, protection and support to the traditional knowledge of the indigenous and local communities and customary institutions governing natural resources in the Hindu Kush-Himalayan region, ensuring that access to such knowledge properly compensates the rightful individuals and communities;
- vii. To ensure that the customary uses of biological and genetic resources, their derivatives and associated traditional knowledge by indigenous and local communities are maintained unencumbered in accordance with customary practices and local traditions;
- viii. To promote scientific, technical and economic cooperation among the countries in the Hindu Kush-Himalayan region and ensure that access regulations to genetic resources, derivatives and associated traditional knowledge are uniform and consistent with the minimum requirements set out in this Framework Agreement; and
- ix. To strengthen capacities and initiatives dealing with access to and benefit sharing from genetic resources, their derivatives and associated traditional knowledge from the Hindu Kush-Himalayan region at the regional, national and community levels.

## Definition of terms

Under this Framework Agreement, the following terms shall mean:

**Biological resources** – Genetic resources, organisms or parts thereof, populations or any other biotic component of ecosystems with actual or potential use or value for humanity

**Genetic resources** – Information and materials, organisms or any other biotic component of ecosystems that contain functional units of biological heredity with actual or potential use and monetary or non-monetary value for humanity

**Derivatives** – Any extract from biological and genetic resources such as blood, oil, resin, genes, seeds, spores, pollen and the like, as well as the products derived from, patterned on, or incorporating manipulated compounds and/or genes

**Traditional knowledge** – Knowledge, skills, practices and innovations of indigenous and local communities mostly, but not exclusively, as they relate to the properties, values, processes and use of biological resources [Traditional knowledge is usually embedded in traditional knowledge systems, uniquely related to local institutions, local languages and culture-specific worldviews.]

**Access to genetic resources** – The acquisition and use of genetic information and samples and/or their derivatives for the purpose of industrial application, commercial use, bioprospecting, research and conservation, among others [It can be granted via a suite of possible permits, licences, contracts or other relevant instruments.]

**Bio-prospecting** – The active search for genetic resources, including in wild and domesticated biodiversity, and associated knowledge for any type of industrial, commercial or intellectual use

**Biopiracy** – The unauthorised and uncompensated collection for commercial ends of genetic resources and/or traditional knowledge (including when acquired by deception or failure to fully disclose the motive behind the acquisition) and/or the theft or misappropriation of, or unfair free-riding on, genetic resources and/or traditional knowledge through the patent system

**Resource providers** – Legal and customary owners of natural resources at federal, state and local levels, with emphasis on the traditional institutions of the indigenous peoples and local communities that have governed natural resources in ways that have withstood the test of time, developed associated traditional knowledge systems, and are actively engaged in the preservation and sustainable use of biocultural diversity

**Indigenous peoples and local communities** – Human groups defined according to the International Labour Organization (ILO) Convention 169 by characteristics related to their identity, territory, culture, tradition and knowledge.

**Prior informed consent** – Prior informed consent is the approval in advance for the use of genetic resources and any associated traditional knowledge. Originally conceived (in ethics) in reference to the individual as a protection from physical harm, it is increasingly being extended to collective and non-physical contexts. Consent is a process clearly different from and more demanding than consultation.

**Region of origin** – Region where relevant plants, animals or microbial species developed their distinctive properties and characteristics.

**Certificate of origin /source /legal provenance** – A certificate of origin is a passport for genetic resources that enables the tracking of resources to the physical point of in situ collection and which is checked by the patent authorities at border crossings or in view of commercial applications. A certificate of source is similar, but tracks the genetic resource only as far as the place where the user obtained it, which may be a collection or depository, and not necessarily the country of origin. A certificate of legal provenance in addition, documents evidence that the resources have been obtained from a legally entitled provider.

## **Scope and coverage**

In accordance with international obligations and national legislations, this Framework Agreement:

- applies to all biological and genetic resources that originate in the Hindu Kush-Himalayan region (see Map 3) and the traditional knowledge associated therein [access to biological and genetic resources shall not automatically mean access to the

traditional knowledge associated with the resource, which shall be explicitly indicated in the application for access]; and

- does not apply to the uses and sharing of biological and genetic resources by indigenous peoples and local communities of the region in accordance with their customary practices and traditions [all other individuals, agencies and institutions shall comply with the access regulations established by the Framework Agreement].

The countries signatory to this Framework Agreement:

- shall not allow the prospecting, patenting and/or application of any intellectual property rights on genetic materials of human origin;
- shall not allow the patenting of plants, animals, micro-organisms or any parts thereof, and traditional knowledge originating from the Hindu Kush-Himalayan region;
- shall consider any biological or genetic material originating from the Hindu Kush-Himalayan region and collected prior to the adoption of the Convention on Biological Diversity as ex situ materials held in trust for the benefit of humankind in relation to which the application of intellectual property rights shall not be allowed.