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**STAKEHOLDER PARTICIPATION IN POLICY
ON ACCESS TO GENETIC RESOURCES,
TRADITIONAL KNOWLEDGE AND
BENEFIT-SHARING**

**CASE STUDIES AND
RECOMMENDATIONS**

KRYSTYNA SWIDERSKA

Largely based on case studies of:

- **South Africa's Biodiversity Policy (R.Wynberg and K. Swiderska)**
- **The Philippines' Executive Order No.247 (K. Swiderska, E. Dano and O.Dubois)**
- **Peru's *sui generis* law to Protect Traditional Knowledge (B.Tobin and K. Swiderska)**
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For further information contact:
Krystyna Swiderska
Biodiversity and Livelihoods Group, IIED
Tel: +44 (0) 20 7388 2117
Fax: +44 (0) 207 388 2826
Email: krystyna.swiderska@iied.org

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ACRONYMS

ABS	Access and Benefit-Sharing
CBD	Convention on Biological Diversity
CBO	Community Based Organisation
COP	Conference of the Parties
DEAT	Department of Environment and Tourism
DENR	Department of Environment and Natural Resources
DOST	Department of Science and Technology
EO 247	Executive Order No. 247
GEF	Global Environment Facility
INDECOPI	National Institute for Competition and Intellectual Property Protection
IPR	Intellectual Property Rights
IRRs	Implementing Rules and Regulations
LAPC	Land and Agriculture Policy Centre
MAT	Mutually Agreed Terms
NAST	National Academy of Science and Technology
PAWB	Protected Area and Wildlife Board
PBR	Peoples' Biodiversity Register
PCSD	Philippines Council for Sustainable Development
PIC	Prior Informed Consent
PO	People's Organisation
SETAI	Technical Secretariat for Indigenous Affairs
UNCED	United Nations Conference on Environment and Development

EXECUTIVE SUMMARY

The third objective of the 1992 Convention on Biological Diversity (CBD), which has now been ratified by 180 Parties, requires the benefits derived from the commercial and scientific use of genetic resources to be shared fairly and equitably with countries that provide the resources (often biologically rich countries in the South). Parties are required to introduce national policy or legislation on access to genetic resources and benefit-sharing (Article 15(7)), and to encourage equitable benefit-sharing from the use of related knowledge, innovations and practices of indigenous and local communities (Article 8(j)).

Since the Convention entered into force in 1993, there has been a growing awareness of the importance of transparency and participation in the development of law and policy, in order to meet the CBD's objectives. At its first meeting in 1999, the Panel of Experts on Access and Benefit-Sharing (ABS) concluded that "access legislation will only be feasible and implementable if it is developed with the full participation of all those who will be affected by and administering it, such as certain industry sectors, universities, scientific research organisations, *ex-situ* collections and local and indigenous communities".

The Fifth Conference of the Parties in May 2000 called on the Expert Panel on ABS to conduct further work on stakeholder involvement in ABS processes, and requested the Ad Hoc Open-ended Working Group on ABS (which is due to meet in October 2001) to develop guidelines on *inter alia* "the roles, responsibilities and participation of stakeholders" (Decision V/26). COP V also emphasised "the fundamental importance of ensuring the full and effective participation of indigenous and local communities in the implementation of Article 8(j)", and called for mechanisms and guidelines to promote such participation (Decision V/16).

With many countries currently developing ABS policy, and increasingly seeking to protect rights over traditional knowledge, this report examines how to effectively secure stakeholder participation in the policy making process. It presents the main findings of four case studies of fairly comprehensive participatory processes for the development of ABS and traditional knowledge policy: the Philippines, South Africa, India and Peru. The studies examine the strengths and limitations of the processes, drawing on the views of a range of stakeholders. Based on these studies, the report also provides recommendations for securing effective participation which countries may wish to consider in order to establish or enhance participatory processes.

A number of countries have engaged a broad range of stakeholders in the development of ABS policy or law, including different government agencies, scientists and companies involved in the use genetic resources, and indigenous and local communities which are often the ultimate providers of biological resources and related knowledge. In some cases (eg. India and the Andean Community), the development of legislation for ABS or biodiversity has seen an unprecedented level of participation.

In South Africa, the Philippines and India, multi-stakeholder committees were established to draft policy on ABS or biodiversity (including ABS provisions). These were complemented with broader consultative processes involving workshops, conferences and the dissemination of policy proposals. The development of South Africa's 1997 White Paper on Biodiversity involved the establishment of a 28-person multi-stakeholder Reference Group to draft the policy and manage the consultation process, wide dissemination of a Discussion Document setting out policy options, a national multi-stakeholder conference and stakeholder briefings in seven provinces. Local community participation was sought through the simplification and translation of policy documents, a briefing workshop for CBOs held prior to the national conference and the provincial briefings.

Peru's ground-breaking work to develop a *sui generis* law to protect the rights of indigenous and local communities over traditional knowledge related to genetic resources has seen ever increasing levels of participation by indigenous people, culminating in the initiation of a country-wide consultation process to obtain feedback on the proposed regime. The process, which was designed in collaboration with indigenous people, has involved the

training of indigenous facilitators of different ethnic groups to undertake consultations at regional level and the development of information materials to disseminate the proposal to an indigenous audience. Regional workshops are envisaged to consolidate the results of the consultations, followed by a national workshop to develop a common indigenous response.

The case studies show that stakeholder participation plays a critical role in ensuring that policy making efforts are successful and in preventing potential problems at the implementation stage. In all the cases reviewed, participation has brought considerable benefits in terms of building the conditions necessary to facilitate smooth administration and the establishment of ABS partnerships. Participation has generated awareness and capacity amongst stakeholders, helped to build consensus and support for ABS policy, improved trust and collaboration and generated motivation to put policy into practice. It has also brought technical expertise and practical experience into the drafting process, enabling the design and practical feasibility of policy to be improved. Other benefits include a strengthening of national cohesion in internally diverse countries and possible avoidance of future conflict.

Building awareness and capacity amongst stakeholders is perhaps the most important aspect of participation as this will help to ensure that stakeholders are ready to enter into an ABS agreement, without incurring delays which could make a scientific or commercial user lose interest. Building consensus is also important since ABS policy can affect divergent interests and all stakeholders need to support a policy if it is to be readily applied.

It is evident that there is a direct relationship between the level of stakeholder participation in policy formulation and policy effectiveness. Where participation has been most active and extensive (eg. South Africa), the benefits in terms of enhanced awareness, capacity, collaboration and motivation have been particularly notable. Where stakeholders with responsibility for administration (eg. local authorities) have not been involved in policy formulation, this has led to problems with implementation due to lack of awareness and ownership of policy. However, it is clear that participation alone will not guarantee effective implementation. This will also require firm political commitment and sufficient institutional capacity for administration and monitoring.

The case studies underline the importance of engaging a broad range of stakeholders in the development of ABS policy, including relevant government agencies at central, provincial and local level, scientists and companies, and indigenous and local communities. Engaging scientists and industry provides a means to gather valuable information about the collection and use of genetic resources, whilst ensuring that ABS measures do not unreasonably restrict access and enabling priorities for technological capacity building to be identified and taken into account in the provisions on benefit-sharing.

Indigenous and local communities can provide extensive knowledge about biodiversity and its uses which can considerably enrich what a country has to offer and hence its ability to provide access to genetic resources and secure benefits. Community participation in policy making also provides a means to ensure that the resulting policy secures their involvement in ABS partnerships, through appropriate consent procedures. Such involvement is important to channel resources for conservation and development directly to those living close to biodiversity, and hence support the three objectives of the CBD (including the conservation and sustainable use of biodiversity). It also enables the contribution of indigenous and local communities to be recognised and rewarded. Some genetic resources with potentially valuable traits, such as traditional crop varieties, have been developed by local communities through years of breeding and experimentation, and communities often have land use or customary rights over local biological resources. Traditional knowledge has also been developed and inherited by indigenous and local communities for generations. COP V specifically recognised the need “to foster and promote the effective participation of indigenous and local communities” in the development of ABS measures (Decision V/16).

While the participatory processes reviewed had many strengths, they also had some limitations. The studies identified insufficient participation of regional and provincial actors,

including indigenous and local communities, largely because these activities were not adequately planned or budgeted for. Where representatives of indigenous and local communities have been involved, the extent to which they have really been integrated in the decision-making process is often questionable. The involvement of national industry has also been limited due to lack of interest in participating and lack of awareness about the issues. Participation of foreign companies has been even more limited, partly because of logistical difficulties, but perhaps also because some people considered it inappropriate to involve foreign actors in the development of national policy.

The case studies show that the costs of participation need not be high and that the benefits can far outweigh the costs. Costs can be minimised when existing consultation mechanisms at national and regional level are used, and when interested organisations are willing to sponsor consultative events. However, adequate resources need to be secured for engaging regional actors, including indigenous and local communities. The studies also highlight the importance of building awareness and capacity of stakeholders in order to motivate and enable them to participate effectively, in particular of poor and marginalized groups, but also of companies and scientists.

Peru's experience with developing a *sui generis* law to protect rights over traditional knowledge demonstrates the importance of actively engaging traditional knowledge holders in the design of such policy, including procedures for consent and benefit-sharing. Procedures should be designed in accordance with customary law and practice for the use and exchange of knowledge, which is often based on collective ownership. Applying western IPR systems based on private ownership of knowledge could undermine collective knowledge systems and hence accelerate the loss of traditional knowledge. Peru's experience also highlights the need for participatory processes to reflect the cultural diversity of a country by involving representatives of indigenous and local communities from different ethnic groups and regions.

On the basis of these studies, a number of recommendations for securing effective participation have been identified, the most important of which are listed below. The recommendations for access and benefit-sharing are also relevant for the development comprehensive policy on biodiversity.

Recommendations for policy on access and benefit-sharing:

1. For ABS policy or legislation to be feasible and effective, it needs to be developed with the full participation of all those responsible for its administration and affected by it. Countries seeking to develop ABS policy should invest resources and time in stakeholder participation to avoid potential implementation problems and ensure that their efforts are successful.
2. Stakeholder participation builds awareness and capacity so that, when a country is approached, the relevant stakeholders are ready to establish an ABS agreement without incurring delays which could deter a potential ABS partner. Participation also provides a means to generate the consensus and motivation needed to ensure that a policy will be readily applied.
3. Participatory processes will be most effective when they engage representatives of all stakeholders actively in decision-making for policy drafting, allowing them to influence the outcome. A multi-stakeholder drafting committee can provide a useful mechanism to secure such participation. A broader consultative process should also be undertaken to engage a greater number of stakeholders. This might involve the wide dissemination of policy proposals and consultative workshops at national and regional level.
4. Participants should include government agencies responsible for administering access legislation at central, provincial and local level. They should also include scientists and industry to gather information about the collection and use of genetic resource, ensure that policy does not unreasonably restrict access and identify priorities for technological capacity building.

5. Indigenous and local communities often have extensive knowledge about biodiversity and its uses which can considerably enrich what a country has to offer and hence its ability to secure benefits. Their participation also provides a means to ensure that policy promotes community involvement in ABS partnerships, recognizing their contribution to the research process and their rights over local gene pools and related knowledge. ABS policy should seek to maximize such involvement and improve the living conditions of indigenous and local communities in order to support the triple objectives of the CBD.
6. Awareness raising and capacity building are pre-requisites of effective participation. Particular efforts are often required to build the capacity of indigenous and local communities to enable them to participate effectively.
7. Consultation at regional level is likely to be required to effectively engage regional and local authorities and indigenous and local communities from different ethnic groups and regions.
8. Key foreign partners should be informed and consulted on particular issues to ensure that access is not unreasonably restricted. This might also generate motivation to adhere to ABS policy and to facilitate compliance by national partners.

Recommendations for policy to protect traditional knowledge:

1. Whereas States have sovereign rights over genetic resources, and often recognise that others also have rights over genetic resources on their land, the rights over related traditional knowledge are the ancestral rights of indigenous and local communities that have developed it over generations. Therefore, while the development of ABS policy should involve all actors equally, the conditions governing the use of traditional knowledge should be established by indigenous and local communities, with the State and technical experts (eg. NGOs) acting as facilitators.
2. The interests of commercial or scientific users should be considered to ensure that potential development opportunities and beneficial research are not impeded, but should not take priority over the interests of traditional knowledge holders.
3. Designing effective and appropriate legislation to protect rights over traditional knowledge, including consent and benefit-sharing procedures, is likely to be difficult without the active participation of indigenous and local communities. Measures need to be designed in accordance with customary law and practice for the use and exchange of knowledge, which is often based on collective ownership and decision-making. Applying western systems of intellectual property based on private ownership could undermine collective knowledge systems and hence accelerate the loss of traditional knowledge.
4. One way to secure the active participation of traditional knowledge holders in policy development is to establish a drafting committee comprising the relevant authorities, representatives of traditional knowledge holders and technical experts. Participants should reflect the cultural and social diversity of traditional knowledge holders, which may include different ethnic groups, farmers, women's groups and traditional healers.
5. Representatives of traditional knowledge holders should be given the necessary time, resources and technical support to consult more widely amongst their people, including at regional and local level, through processes designed and facilitated by them, in accordance with traditional decision-making processes.
6. Building the capacity of indigenous and local communities to make informed decisions is a pre-requisite of effective participation. Information materials should be disseminated in local languages using appropriate formats for such an audience.
7. Since the full and effective participation of indigenous and local communities can take a few years, it may be advisable to introduce interim measures to protect rights over traditional knowledge, which can later be refined to incorporate the results of a more extensive consultation process.

1. INTRODUCTION

The third objective of the 1992 UNCED Convention on Biological Diversity (CBD) requires the benefits from the use of genetic resources to be shared fairly and equitably. Countries that use genetic resources for commercial or scientific purposes, largely industrialised countries, are obliged to share the benefits they derive with countries that provide genetic resources, usually the biologically rich countries of the South. The benefits may include up-front payments, royalties, participation in research, capacity building and technology transfer.

Parties to the CBD are required to introduce legislative, administrative or policy measures for access to genetic resources and benefit-sharing (Article 15(7)). The Convention also requires Parties to encourage the equitable sharing of benefits derived from the use of knowledge, innovations and practices of indigenous and local communities with the holders of such knowledge (Article 8(j)).

Box 1: CBD provisions on access and benefit-sharing and traditional knowledge protection

Article 15(7) requires Parties to “take legislative, administrative or policy measures... with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilisation of genetic resources with the Contracting Party providing such resources”.

Article 8(j) requires Parties to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”.

Policy or legislation on access and benefit-sharing is unlikely to be effective unless it is developed with the participation of a broad range of stakeholders, including relevant government departments, companies and scientists involved in the collection and use of genetic resources and indigenous and local communities, which are often the ultimate providers of biological resources and related knowledge. Stakeholder participation provides a means to build capacity for implementation, generate consensus and support for the policy amongst those who will need to apply it, and ensure that the policy is feasible in practice. Similarly, policy to protect the rights of indigenous and local communities over traditional knowledge relating to genetic resources is unlikely to be effective unless developed with their active participation.

The importance of stakeholder participation for the development of access legislation was identified by the Panel of Experts on Access and Benefit-Sharing in 1999¹, and by the Fifth Conference of the Parties to the Convention in May 2000 (Decision V/26)². The latter called for the Panel of Experts to conduct further work on the ‘identification of approaches to involvement of stakeholders in access and benefit-sharing processes’, and this issue was considered at the second meeting of the Panel in February 2001³. COP V also established an Ad Hoc Open-ended Working Group on Access and Benefit-Sharing, mandated to develop guidelines and other approaches to assist Parties in addressing, *inter alia*, ‘the roles, responsibilities and participation of stakeholders’. The Working Group is due to meet for the first time in October 2001.

The work programme for the implementation of Article 8(j) agreed at COP V stressed the need ‘to ensure the full and effective participation of indigenous and local communities at all stages and levels of its implementation’, and called for mechanisms and guidelines to promote effective participation of such communities in decision-making (Decision V/16)⁴.

1 UNEP/CBD/COP/5/8

2 UNEP/CBD/COP/5/23

3 The report of the meeting had not yet been published when this report was prepared.

4 UNEP/CBD/COP/5/23

2. OBJECTIVES AND APPROACH

This report examines how to secure stakeholder participation in the development of policy or legislation on access to genetic resources and benefit-sharing, and traditional knowledge protection. It presents the main findings of four case studies of fairly comprehensive participatory processes - the Philippines, South Africa, India and Peru. The studies examine the strengths and limitations of the processes, drawing on the views of a range of stakeholders. Based on these studies, the report provides recommendations for securing effective participation which countries may wish to consider in order to establish or enhance participatory processes. The recommendations may also be relevant for policy processes in other natural resource sectors.

The report focuses on the following case studies:

- Participation in the formulation of the Philippines' Executive Order No. 247 on Access to Genetic Resources. (K. Swiderska, E. Dano and O. Dubois)
- Participation in the development of South Africa's Policy on Biodiversity and Access to Genetic Resources. (R. Wynberg and K. Swiderska)
- Experiences with Participation in Biodiversity Law and Policy Making in India. (R.V. Anuradha, B.Taneja and A.Kothari)
- Speaking in Tongues: A case study of indigenous participation in the development of Peru's *sui generis* regime to protect traditional knowledge. (B.Tobin and K. Swiderska)⁵

The case studies were prepared in collaboration with the South East Asia Regional Institute for Community Education (SEARICE), the Philippines; Biowatch, South Africa; Kalpavriksh, India; and the Association for the Defense of Natural Rights (ADN), Peru. They are based on interviews and workshops with government agencies, NGOs, scientists, companies and indigenous peoples' organisations.

This report is the 'Synthesis Report' of the IIED project on 'Participation in Policy on Access to Genetic Resources and Traditional Knowledge'. As well as the case studies, the report draws on the following outputs/activities of the project:

- an Overview of Experience with Stakeholder Participation (IIED, June 1999);
- Country Reviews of participation in ABS and traditional knowledge policy prepared in March 2000⁶; and
- an International Workshop held in London in March 2000 to discuss the case studies and country reviews and identify recommendations for effective participation.

⁵ Full case study reports are available from IIED and can be downloaded from www.iied.org

⁶ Uganda (Erie Tamale, WWF International), Nigeria (Maurice Iwu and Anthony Onugu, Bioresources Development and Conservation Programme), Costa Rica (Isaac Rojas, Friends of the Earth), Bolivia (Jorge Mariaca) and Mexico (Paul Sanchez, WWF).

3. BACKGROUND

3.1. The commercial use of genetic resources

Genetic resources are used commercially in a range of sectors, including the pharmaceutical, herbal medicine, crop development, biotechnology, cosmetics and ornamental plant sectors.⁷ Overall, the demand for genetic resources from the South is limited, with many genetic resources already available in *ex-situ* collections in the North. However, companies and scientists still turn to developing countries for ‘new’ genetic resources that are not already available in the North, including medicinal plants, wild relatives of crops and traditional crop varieties with economically valuable traits. These resources are often collected directly from the field, for example from protected areas or from the lands of indigenous and local communities. In some cases the traditional knowledge of indigenous and local communities, such as knowledge about the medicinal properties of plants, is used to identify resources with potential commercial value.

7 See ten Kate, K and Laird, A (1999): The Commercial Use of Biodiversity

A number of intermediaries are often involved in the collection and analysis of genetic resources, North and South. These may be scientific organisations, universities, botanic gardens or museums. For example, a pharmaceutical company might contract a university in the North, who in turn contracts a scientific organisation in a developing country to collect the resources.

In the past, there has been no requirement to share the commercial or scientific benefits derived from access to, and use of, the genes and biochemicals that biological resources contain. As a result, the benefits from the use of biodiversity have largely been realised by companies and institutions in the industrialised north.

3.2. The CBD and benefit-sharing

The third objective of the CBD was designed to address developing country concerns about the inequitable way in which the benefits from the use of genetic resources had previously been shared, and to generate resources and economic incentives for biodiversity conservation in the South. The Convention recognises the sovereign right of States to their genetic resources and requires access to be subject to the prior informed consent of the country providing the resources, on mutually agreed terms. Countries need to determine how land tenure and land use rights affect rights over genetic resources and hence which stakeholders are entitled to participate in access and benefit-sharing agreements.

The concept of sustainable development which underlies the CBD and is expressed in Agenda 21 very much supports the idea that local people and communities should participate in genetic resource use and benefit-sharing⁸. The involvement of local communities in ABS agreements can provide resources and incentives for conservation directly to those living close to biodiversity, and contribute to their livelihoods and development needs. Access legislation should therefore require the consent of indigenous and local communities for the use of genetic resources collected from their land, or areas they inhabit, and for the use of related traditional knowledge, in order to support the objectives of the CBD.

8 Background Paper for the Workshop on “Best Practices for Access to Genetic Resources”, Cordoba 1998.

About 50 countries have adopted or are developing legislation to regulate access to genetic resources⁹. In some cases (eg. the Philippines, Peru, Costa Rica and the Andean Community), the prior informed consent (PIC) of indigenous and local communities is required for the collection of genetic resources from areas where they live, and/or the use of related knowledge.

9 RBG Kew pers. comm with countries; and Glowka, L. (2000) Bioprospecting, Alien Invasive Species and Hydrothermal Vents: three emerging legal issues in the conservation and sustainable use of biodiversity, Tulane Law Journal 329. Tulane Law School. New Orleans.

3.3. Protecting traditional knowledge

Experience in Peru and other countries of the Andean Community shows that access to genetic resources cannot be effectively administered without also establishing clear ground-rules for the use of related traditional knowledge. Because genetic resources are either used alone, or together with traditional knowledge, two sets of rules are required to provide legal certainty.

As well as including provisions on traditional knowledge in legislation on access to genetic resources, some countries are developing more detailed *sui generis* legislation to recognise and protect rights over traditional knowledge. The idea of introducing *sui generis* legislation (meaning ‘unique’ or ‘of its own kind’) came with the realisation that the prevailing intellectual property rights system, which recognises rights over individually owned knowledge, does not effectively protect the rights of indigenous and local communities over collectively owned traditional knowledge, or ensure that they receive benefits from its use. *Sui generis* legislation provides a means to protect collective intellectual rights and establish consent and benefit-sharing procedures in accordance with the customary practices that play a key role in maintaining traditional knowledge. Applying a Western IPR model based on individual ownership could undermine collective traditional knowledge systems and hence accelerate the loss of such knowledge.

Peru has developed a draft *sui generis* law to protect the traditional knowledge of indigenous and local communities, while Costa Rica’s Biodiversity Law identifies the need to develop separate *sui generis* legislation. Studies on measures to protect traditional knowledge have been initiated in most countries of the Andean Community in accordance with Decision 391 on access to genetic resources.

Traditional knowledge plays a critical role in the livelihoods of millions of people, and is the basis of traditional culture, but is rapidly disappearing. As well as protecting rights over traditional knowledge, there is a need to preserve traditional knowledge of relevance to biodiversity and of importance to livelihoods. This may require a comprehensive strategy to implement Article 8(j) which includes both legal and non-legal measures.¹⁰

3.4. Defining ‘participation’

Agenda 21 made it clear that achieving sustainable development would require a new approach to governance based on the widest possible participation in decision-making. Experience over the last decade has shown that the strategies, policies and laws that are most effective in practice are usually those which have gained the acceptance of civil society through processes of public participation.¹¹

The term ‘participation’ has become a by-word of development jargon, which is variously interpreted and often misused. It has been used to describe different levels of involvement, ranging from information sharing and gathering, to consultation, negotiation, shared decision-making and transfer of decision-making. To be meaningful, participation needs to be accompanied by a genuine intention to allow participants to influence decision-making. When there is no guarantee that views gathered will actually influence decisions, then what may be termed ‘participation’ is in fact ‘consultation’.

Box 2: Typology of participation in policy making

1. Participants listen only (eg. receiving information from a government PR campaign or open database).
2. Participants listen and give information (eg. through public enquiries, media activities).
3. Participants are consulted (eg. through working groups and meetings to discuss policy).
4. Participation in analysis and agenda-setting (eg. through multi-stakeholder groups, round tables and commissions).
5. Participation in reaching consensus on the main policy elements (eg. through national roundtables, participatory committees, conflict mediation).
6. Participants are involved in decision making on the policy, strategy or its components.

At each level, participation may be narrow (few actors); or broad (involving a range of stakeholders).

Source: Bass S., Dalal-Clayton B. and Pretty J. (1995): Participation in Strategies for Sustainable Development. IIED Environmental Planning Issues No. 7

10 Tobin, B. (2001): Redefining Perspectives in the Search for Protection of Traditional Knowledge – A Case Study from Peru, RECIEL 10 (1)

11 Bass S., Dalal-Clayton B. and Pretty J. (1995): Participation in Strategies for Sustainable Development. IIED Environmental Planning Issues No. 7

While consultation provides a means to gather views and information and raise awareness of stakeholders, real acceptance and 'co-ownership' of policy usually requires active participation in decision making. The level of participation will depend on the mechanisms used to involve stakeholders, the extent to which stakeholders have the information and capacity to participate, the stage in the policy process at which inputs are sought, and, critically, the extent to which views are taken on board in decision-making. It will also depend on the ability to reach consensus and make successful trade-offs where divergent interests are at stake.

4. PARTICIPATORY PLANNING PROCESSES

4.1. Access and benefit-sharing policy

Article 6 of the CBD requires countries to develop national biodiversity strategies, plans or programmes to implement the objectives of the Convention. The 1999 Expert Panel on Access and Benefit-Sharing¹² strongly endorsed the importance of preparing national strategies on access and benefit-sharing prior to developing legislative, policy or administrative measures and as part of comprehensive strategies to implement the CBD. The Expert Panel also concluded that “access legislation will only be feasible and implementable if it is developed with the full participation of all those who will be affected by and administering it, such as certain industry sectors, universities, scientific research organisations, ex-situ collections and local and indigenous communities”.

Strategic planning for ABS should review the ‘status quo’ with respect to access to genetic resources, including existing activities, capacities and resources, and identify priorities for access and benefit-sharing in the context of economic development and biodiversity conservation objectives, taking into account the priorities of different stakeholders.¹³ Whether or not a strategy or plan *per se* is developed, access legislation should be informed by a participatory planning process, and subsequent legislative drafting should also be participatory, allowing stakeholders to play a role in defining the objectives and parameters of the legislation and to bring their knowledge and experience to the policy process.

Over the last few years, the CBD Secretariat and other experts have stressed the importance of stakeholder participation in the development of ABS policy or law as a means to generate capacity for implementation, build consensus and support for a policy, generate motivation to put it into practice, and facilitate ABS partnerships (see Box 3). Emphasis has also been placed on the need for *processes* of stakeholder participation. A ‘process’ implies an ongoing activity and one where stakeholders are actively involved, rather than in a one-off information gathering exercise.

Capacity building is particularly important for ABS because it is a new policy area. Participation builds capacity and stakeholders need capacity to participate effectively. Thus, participation provides a means to ensure that the relevant stakeholders are ready to undertake the necessary procedures for PIC, negotiate MATs and establish an ABS agreement when a country is approached. Otherwise the process could be delayed with the risk that a scientific or commercial user will lose interest.

Building consensus is important because ABS policy can affect divergent interests. For example, collectors and users of genetic resources will want to ensure that their activities are not restricted, in line with the CBD requirement to facilitate access, but countries also need to ensure that access is sufficiently regulated and that the concerns of other stakeholders, such as indigenous and local communities are taken into account. Participation provides a means to identify stakeholder concerns, balance competing interests and promote fairness and equity. It can also generate motivation to put policy into practice because stakeholders are likely to engage actively in the application of a policy when they have played an active role in shaping its provisions.

Stakeholders are often a valuable source of information. Scientists and industry can provide knowledge and practical experience about the collection and use of genetic resources and help to ensure that procedures are feasible in practice. Many indigenous and local communities have extensive knowledge about biodiversity and its uses, which can considerably enrich what a country has to offer and hence its ability to provide access to genetic resources and claim benefits from their use.

COP V recognised the need “to foster and promote the effective participation of indigenous and local communities” in the development of measures for access and benefit-sharing (Decision V/16)¹⁴. Community participation in policy making provides a means to promote their involvement in ABS partnerships and ensure that their contribution to the

12 UNEP/CBD/COP/5/8

13 See ten Kate, K. & Wells, A. (forthcoming) Preparing a National Strategy on Access to Genetic Resources and Benefit-Sharing. A pilot study for the UNDP/UNEP/GEF Biodiversity Planning Support Programme.

14 UNEP/CBD/COP/5/23

Box 3: The role of participatory processes in the development of ABS legislation

Note on Access to Genetic Resources¹⁵: "A number of key strategies have emerged as central to the process by which these [ABS] measures are developed. They are: participation of a wide range of stakeholders; the development of a strategic plan; and coordination with other governments on a regional basis". The emerging practice of involving a broad range of stakeholders "recognises that access legislation will be most effective and likely to achieve the objectives of the Convention if it secures the participation of both those affected by it and those whose motivation will be essential for its implementation."

Review of measures and guidelines for implementing Article 15¹⁶: "As with every law and policy, access legislation is only as good as the process through which it is developed, allowing stakeholders in the field of genetic resources to articulate their concerns and have them taken into consideration, to define the objectives of the legislation, and to develop capacity through the planning process. It is through and with the help of these stakeholders that access legislation will generally be implemented later on."

Options for GEF assistance for ABS¹⁷: "Processes of dialogue and consultation amongst domestic stakeholders are key consensus building tools for the development of a country's approach to benefit-sharing". "Resources employed in supporting dialogue, consultations and capacity building for benefit sharing, can help in 'levelling the playing field' for the various stakeholders, thereby contributing to fairness and equity".

Mugabe J. (1996)¹⁸: "Ultimately, the legislative and institutional framework for access to genetic resources that any country develops will only be as good as the process through which it is developed. To actually work once established, the legislative framework must have the broad support of all relevant sectors of government and society."

Glowka L. (1998)¹⁹: "A critical criterion is making the planning process highly participatory by involving the people, institutions and economic sectors – sometimes called stakeholders – which will be most affected by the plan. Participation then becomes a mechanism for building the political and social consensus needed to implement policies, and, where necessary, legislation".

Chennai Workshop, Madras (1998)²⁰: "In the development of national laws relating to the provisions of CBD, it will be necessary to ensure widespread public and stakeholder participation." "By generating a sense of symbiotic partnership, undesirable practices like biopiracy can give way to an era of biopartnership..."

15 UNEP/CBD/COP/3/20

16 UNEP/CBD/COP/4/23

17 UNEP/CBD/COP/4/22

18 Managing Access to Genetic Resources: Towards Strategies for Benefit-Sharing. Nairobi: ACTS Press

19 A Guide to Designing Legal Frameworks to Determine Access to Genetic Resources. IUCN ELC.

20 Report of the South and Southeast Asia Regional Workshop on Access to Genetic Resources and Traditional Knowledge: From Chennai to Bratislava. An Agenda for Action.

research process and rights over genetic and intellectual resources are recognised. Some genetic resources with potentially valuable traits, notably traditional crop varieties, have been developed by communities through years of experimentation and breeding. Communities often have land use or customary rights over local biological resources and ancestral rights over related knowledge, and are highly dependent on these resources for daily subsistence.

4.2. Traditional knowledge policy

As with ABS legislation, legal measures to protect traditional knowledge are likely to be most effective when developed on the basis of a participatory planning process which reviews potential threats to traditional knowledge, identifies options for its protection, and is conducted as part of a comprehensive strategy to implement Article 8 (j). Here too there is already considerable consensus regarding the importance of participation in policy making.

The work programme for Article 8(j) agreed at COP V emphasised the need for "the full and effective participation of indigenous and local communities at all stages and levels of its implementation", including in decision-making, policy planning and the development of legislation (Decision V/26). Furthermore, Convention 169 of the International Labour Organisation, concluded in 1992, requires countries to consult with indigenous peoples "whenever consideration is being given to legislative or administrative measures which might affect them directly".

21 Posey, D. (1996): Traditional Resource Rights. International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities. IUCN Biodiversity Programme.

22 Swiderska, K. (1999): Overview of experience with stakeholder participation in the development of policy access to genetic resources and traditional knowledge.

Sui generis regimes to protect rights over traditional knowledge need to be “developed in close collaboration with indigenous people and local communities through a broad-based consultative process that reflects a country’s cultural diversity”²¹. Such collaboration is important to ensure that *sui generis* legislation is designed in accordance with customary law and practice for the management of traditional knowledge, and fully recognises and protects the ancestral rights of the holders of traditional knowledge (as explained in section 3.3).

4.3. Overview of country practice

A review of experience with the development of policy and law on access and benefit-sharing in a number of countries (as stand-alone policy and as part of biodiversity policy)²² identified a range of approaches, from small technical drafting groups to quite comprehensive participatory processes. In many cases, countries have sought to engage a broad range of stakeholders in the development of access and biodiversity policy, including different government departments, NGOs, scientists, the private sector and representatives of indigenous and local communities.

A number of countries have established drafting committees involving a range of stakeholders (eg. Peru, Costa Rica, Mexico, South Africa, Ivory Coast, India, the Philippines and Fiji). In some cases, new stakeholder committees have not been established but NGOs and other experts have been consulted, or commissioned to provide inputs (eg. the Andean Community, Bolivia, Uganda and Samoa). In many cases, broader consultative workshops have also been held.

In the more comprehensive examples of participation in biodiversity/access policy design, such as the Philippines, South Africa and India, a wide range of stakeholders actively participated in drafting committees, and this was complemented with a broader consultative process involving workshops, conferences and the dissemination of consultative documents. Those participating in drafting groups have generally been representing their organisations and have initiated broader consultations within their sector. In a few cases, (eg, South Africa) provincial actors have participated in drafting committees and consultative meetings have been held at provincial as well as national level. In some (eg, the Andean Community and India), the development of access/biodiversity policy has seen an unprecedented level of participation.

Nevertheless, in many cases, the involvement of regional stakeholders has been limited and the extent to which indigenous and local communities have really been integrated into the decision making process is questionable. A further limitation has been insufficient involvement of the private sector.

Bolivia, Ecuador and Colombia have initiated participatory processes to develop indigenous proposals on the protection of traditional knowledge related to genetic resources. Costa Rica’s Biodiversity Law requires a *sui generis* law to be developed in association with national platforms of indigenous and peasant organisations and with the participation of local and indigenous communities. In Peru, a country-wide consultation process has been initiated to obtain the views of indigenous people on a proposed *sui generis* regime to protect traditional knowledge.

5. CASE STUDIES OF STAKEHOLDER PARTICIPATION

This section presents four fairly comprehensive examples of participation in the development of policy on access and benefit-sharing, biodiversity (including provisions on ABS) and traditional knowledge protection. For each, the stakeholders that participated, mechanisms used and key steps of the process are reviewed.

5.1. The Philippines E.O. No. 247 and its Implementing Rules (1994-1996)

The process to develop Executive Order 247 on access to genetic resources was initiated and initially led by scientists and academics from leading universities in the capital, members of the Philippines Network for the Chemistry of Natural Products. The scientists secured the involvement of key government departments which later ensured the approval of the regulation. A drafting group was established to develop EO 247, comprising scientists, a legal expert associated with an NGO, the Department of Science and Technology (DOST), the National Academy of Science and Technology (NAST), the Department of Environment and Natural Resources (DENR) and the Protected Areas and Wildlife Board (PAWB).

The development of EO 247 involved a number of broader consultations with stakeholders:

- meetings with scientists;
- a large multi-stakeholder conference convened by NAST;
- consultation with the Philippine Council for Sustainable Development (PCSD) which includes NGOs and People's Organisations; and
- a multi-stakeholder seminar convened by the Asian Institute of Management which provided the main mechanism for engaging the business community.

After EO 247 was approved in May 1995, its Implementing Rules and Regulations (IRRs) were developed as follows:

- an Inter-Agency Committee on Biological and Genetic Resources (IACBGR) was established to draft the IRRs and administer the regulation, composed of DENR/PAWB, DOST, scientists, the departments of health, agriculture and foreign affairs, the National Museum, NGOs and indigenous peoples organisations;
- the IACBGR appointed a small core group to draft the IRRs, composed of the legal staff of DENR, PAWB, DOST and scientists;
- draft IRRs were circulated for comment to the PCSD, scientific organisations, industry groups and national pharmaceutical companies, revised and circulated once again before their approval in June 1996.

The level of participation in the development of EO 247 was probably unprecedented for an executive order in the Philippines, which usually only requires limited consultation. Key government departments, scientists and some NGOs were actively involved in drafting the regulation, and a broad range of actors were engaged in the process through a number of consultative meetings. The process ensured that the capacity building priorities of scientists were addressed in the provisions on benefit-sharing, and that the interests of local communities were taken into account in the provisions on local PIC.

5.2. South Africa's Biodiversity Policy (1995-1997)

The development of South Africa's 1997 White Paper on biodiversity was designed to incorporate both the political process necessary to facilitate ownership and acceptance of the policy, and the technical component required to articulate substantive issues. The following structures were established to manage the policy process:

- A **Steering Committee**, representing the Department of Environmental Affairs and Tourism (DEAT); the Land and Agriculture Policy Centre (LAPC – an NGO working on natural resource policy); the Senate Portfolio Committee on Environmental Affairs, and Danish Cooperation for Environment and Development (DANCED), the primary funders of the process. Most of the day-to-day management was tasked to the LAPC.
- A 28-person **Reference Group**, representing parliament, national and provincial govern-

ment departments, parastatal scientific organisations, NGOs and traditional healers. Its tasks were to guide the Steering Committee in the management of the policy process, accept responsibility for stakeholder consultation and ensure that the content of the policy adequately reflected the concerns of different constituencies. The group met regularly and was the primary decision-making body for the drafting and consultation process.

- An **Editorial Committee**, comprised of the Steering Committee and an independent editorial consultant, who was responsible for drafting policy documents, incorporating diverse views and undertaking research to support emerging policy positions. An independent **Secretariat** provided support for communications and logistical tasks.

The broader consultation process involved the following steps:

- a Discussion Document presenting policy options, and a summary of the document, were widely circulated;
- an educational leaflet about the Discussion Document was translated into five languages and distributed throughout the country;
- a pamphlet inviting people to participate in the process was also distributed;
- stakeholder briefings were held in seven provinces;
- independent sectoral workshops were organised by different stakeholder groups;
- a national conference was held, involving a wide range of stakeholders, including CBOs; and
- a consultative Green Paper was published and circulated.

The biodiversity policy process was well managed, planned and resourced from the outset, with emphasis on ensuring good communication and feedback within key sectors. The Reference Group allowed a wide range of stakeholders to participate actively in policy drafting, and broader consultations were held at both national and provincial levels. Community participation was sought through the simplification and translation of policy documents, a briefing workshop for CBOs held prior to the conference and provincial stakeholder briefings. The majority of people interviewed felt that the process was extremely successful. It was praised for striking a good balance between securing technical inputs and broader public consultation, in contrast to many other policy processes in South Africa at the time which involved very extensive consultation.

5.3. India's Biodiversity Law and Peoples' Biodiversity Registers (1994-2000)

The process to develop India's draft biodiversity law was initiated by the Ministry of Environment and Forests in 1994 and has involved the following steps:

- establishment of a drafting group of experts from NGOs and research institutes, including activists and organisations involved in biodiversity initiatives at community level;
- a national multi-stakeholder consultative seminar to discuss possible elements of the law;
- circulation of the proposed legislation to relevant experts and organisations;
- a second national multi-stakeholder seminar; and
- further discussions with NGOs and research institutes.

The level of consultation in the development of India's biodiversity law has been unique in the history of legal drafting in India. The process has involved a high level of informed debate and numerous consultations with a variety of stakeholders, including NGOs, research and academic institutes and industry. Local communities were not directly consulted, but NGOs and researchers were able to provide the perspectives of the communities with which they worked. NGOs in India have played an important role in raising awareness and stimulating discussion on access issues at local level, including through the development of peoples' registers of biodiversity and related knowledge.

Experience in the states of Kerala and Karnataka with formulating peoples' biodiversity registers (PBRs) in close collaboration with local communities has shown that PBRs are a potentially valuable tool for the conservation and sustainable use of biodiversity and the preservation of related knowledge. PBRs may also provide a means to enhance community control over local genetic resources and related knowledge and to promote com-

munity involvement in ABS partnerships. In Kerala, the latest Five Year Development Plan has identified the development of PBRs as an important priority. However, there is concern that PBRs could facilitate unapproved access to genetic resources and related knowledge unless legislation is introduced to ensure that control over the registers is vested in local communities.

5.4. Peru's *sui generis* regime to Protect Traditional Knowledge (1996 – 2000)

A working group was established to develop the proposed regime, led by the national patent office (INDECOPI) and including representatives from the National Institute for Natural Resources, the Ministry of Industry, Tourism, International Negotiations and Commerce, the Peruvian Indigenous Institute and two NGOs, one with expertise in Andean communities, the other in ABS and traditional knowledge issues. Indigenous organisations did not form part of the group, but attended a couple of meetings during the first two years of the process. The working group developed a good technical proposal in this new area of law, but found that a number of key issues relating to consent and benefit-sharing procedures could not be resolved without engaging indigenous people more actively in the process.

Greater participation of indigenous people and other actors was sought through:

- consultative workshops with indigenous people in Lima and Cuzco (the Andean capital), convened by the Secretariat for Indigenous Affairs (SETAI);
- an international seminar in Lima;
- official publication of the proposed regime in the national press;
- a Roundtable with indigenous organisations, relevant government agencies and NGOs to design a more extensive consultation process (October 1999);
- establishment of a Working Group on Indigenous Participation to coordinate the indigenous consultation process, involving SETAI, INDECOPI and key indigenous organizations; and
- publication of a revised proposal in August 2000.

Participants at the Roundtable called for a country wide indigenous consultation process to enable an effective response to the proposal. A workshop has been held to train indigenous facilitators of different ethnic groups to undertake consultations at regional and local level, and an illustrated document has been prepared to explain the proposal and the issues surrounding it to indigenous people, highlighting key questions to be considered. Regional workshops are envisaged to consolidate the results of the consultations in each region, followed by a national workshop to develop a common indigenous response.

A process to develop a national strategy for the implementation of Article 8(j), including legal and non-legal measures to protect traditional knowledge, has recently been initiated. The sub-commission on Article 8(j) of the National Commission on Biological Diversity, which is responsible for developing the strategy, is chaired by an indigenous representative. INDECOPI has also begun work to develop *sui generis* legislation to protect rights over traditional crop varieties, and to establish a system of registers of traditional knowledge, in collaboration with leading NGOs with expertise in ABS issues and Andean communities.

6. ANALYSIS OF THE CASE STUDIES

6.1. The political context

In the four case studies described above, the political context played a critical role in enabling public participation. In the Philippines, the very assertive civil society, strong democratic movement and networking culture that emerged during the struggle to overthrow the Marcos regime were key factors in ensuring broad and active participation.

In South Africa, the biodiversity policy process came at a time when the newly established democratic government was handing over control of policy to the people. Here too, civil society organisations had become very active in the struggle against the apartheid regime. NGOs with a people-centred agenda had previously been excluded from the biodiversity conservation sector. It was pressure from these NGOs, coupled with the enabling political context, that resulted in the initiation of a broad and inclusive consultation process, probably the most comprehensive of all the cases reviewed.

In India, where civil society and democratic movements are strong, NGOs stressed the importance of developing the biodiversity law in a participatory manner. Activists and NGOs working closely with grassroots communities participated actively in the drafting process and helped to promote recognition of the interests of local communities.

In Peru, the initiation of a country wide consultation process with indigenous people on the proposed *sui generis* regime coincided with a growing political influence of indigenous organisations and increased recognition of the importance of indigenous participation.

6.2. The benefits of participation

In all of the cases reviewed, participation has brought considerable benefits in terms of improving the content of policy and building the conditions necessary to facilitate effective implementation. Participation has brought technical expertise and practical experience to inform the drafting process, enabled the interests of different stakeholders to be identified and helped to build consensus. It has also built awareness and capacity, enhanced trust and collaboration, and generated motivation to put policy into practice. Other benefits include a strengthening of national cohesion in internally diverse countries, possible avoidance of future conflict, and strengthening of government capacity for public consultation. Specific examples from the case studies are included in Box 4.

Where participation has been most active and extensive (eg. South Africa) the impacts in terms of enhanced capacity, collaboration and motivation for implementation have been particularly notable. In South Africa, those interviewed were at one as to the benefits they gleaned from involvement in the process and the positive impacts of such involvement for the conservation and sustainable use of biodiversity.

Where the participation of certain stakeholders has been limited, it is evident in some cases that this has led to problems with implementation. In the Philippines, local authorities, which were given responsibility for local PIC procedures but not consulted during policy formulation, often lack awareness about EO 247 or tend to ignore it due to lack of ownership.

In all the case studies, participation has generated improved understanding between organisations with different agendas and helped to build consensus. However, experience with EO 247 shows that access and benefit-sharing issues can become very contentious and building consensus can be difficult, particular when detailed procedures are developed.

The process to develop EO 247 built broad consensus amongst government agencies, NGOs and a number of scientists which generally support the regulation, but did not gain the support of some organisations involved in the scientific and commercial use of

genetic resources. These organisations consider EO 247 to be too restrictive because its scope includes academic research and feel that the procedures for local PIC are too cumbersome. Their concerns could have been better addressed if there had been more time for developing the policy but time was limited because of the need to take advantage of a favourable political climate for the approval of EO 247. However, the process did enable the concerns of these organisations to be identified and, since the approval of EO 247, multi-stakeholder meetings have been convened by research institutes and NGOs to identify priorities for making the regulation less restrictive.

While the case studies demonstrate the importance of participation for developing effective policy, they also show that participation alone will not guarantee effective implementation. This will also require firm political commitment and sufficient institutional capacity for administration and monitoring. Thus, commitment must be made not only to participation, but also to ensuring that biodiversity is used equitably and sustainably.

In the Philippines, the change in government soon after EO 247 was approved brought less clear political commitment to biodiversity and EO 247. Effective administration and monitoring of EO 247 has been hampered by limited financial and human resources and it appears that little progress has been made in addressing the priorities for making the regulation less restrictive.

Three years after the approval of South Africa's biodiversity policy, little progress had been made in implementing its eight priority actions, including the development of access legislation, and much of the momentum and enthusiasm generated by the consultation process had been lost. Continued meetings of the multi-stakeholder Reference Group established to develop the policy and its evolution into a more formal structure could have enabled this transition to happen in a more concerted manner. Funding constraints, combined with a lack of political commitment, precluded further meetings of the group. One provincial official commented "DEAT went into a different mode with different priorities immediately after the policy was produced". However, implementation of the policy has been given new impetus with the allocation of human and financial resources and legislation on access and benefit-sharing is now being developed.

6.3. The costs of participation

Opening up a policy process to engage a broad cross-section of society has obvious cost implications – more time and resources are needed to solicit and incorporate different perspectives. An effective participatory process requires management and secretarial support, as well as funding for consultations at national and regional level and for community participation. However, investing in participation is important to ensure that ABS policy is effective and the benefits of participation can far outweigh the costs. In South Africa, the many gains of participation certainly outweighed the possible drawbacks or costs, such as the use of resources and donor funds that could perhaps have been channeled elsewhere and the "locking up of people's time".

The case studies also show that the costs of participation need not be very high. In South Africa, the two-year process, including management, secretarial support, a large conference and community participation cost \$90,000. In the Philippines, a fairly broad consultation process was undertaken in the capital region with very little funding because a few organisations contributed to the process. UNESCO's Regional Network for the Chemistry of Natural Products provided some funding for initial drafting and consultations with scientists, the National Academy of Science and Technology sponsored the multi-stakeholder conference and the Asian Institute of Management sponsored the multi-stakeholder seminar. However, these processes did not provide sufficient resources for adequate participation of regional stakeholders and indigenous and local communities.

The costs of consultation at national and regional level can be minimised by making use of existing consultation mechanisms such as councils for sustainable development, regional development councils and protected area management boards, and by targeting representative organisations and sectoral networks. Since it is not feasible to engage a large

Box 4: The role of participation: examples from the case studies

Improving the content of policy

In *South Africa*, the consultation process enabled the content of the policy to be continuously improved through technical inputs, dialogue and debate, and identification of the needs and priorities of different sectors. In *India*, participation and informed debate amongst experts from NGOs and research institutes generated a wealth of ideas and possibilities. In *Peru*, the active participation of indigenous people was necessary to develop appropriate procedures for consent and benefit-sharing with indigenous communities.

Building capacity and motivation for implementation

In *South Africa*, the process built capacity amongst participants in various ways, including enhanced understanding of national and international biodiversity issues, increased capacity for implementation and enhanced capacity to undertake participatory processes. The process also generated considerable motivation and enthusiasm to put the policy into practice, particularly amongst those who participated actively in policy drafting through the Reference Group.

Promoting equitable benefit-sharing

In the *Philippines*, the active involvement of NGOs ensured that the regulation included a requirement to obtain the Prior Informed Consent of indigenous and local communities for collection of genetic resources in areas where communities live. The active involvement of the scientific community ensured that their concerns for capacity building and technology transfer were addressed in the provisions on benefit-sharing. In *India*, NGOs helped to ensure recognition of the contribution and interests of local and indigenous communities in the proposed Biodiversity Law, as is evident from the provisions that support the concept of benefit-sharing.

Building trust and collaboration

In *South Africa*, the process improved relationships, trust and understanding between groups which had historically been in conflict, such as socially oriented NGOs and conservation authorities, and NGOs subscribing to different conservation agendas. The process also catalysed various groups, such as museums, government agencies and protected areas, to establish networks amongst themselves for dialogue and co-ordination on biodiversity issues. Indigenous participation in the development of *Peru's sui generis* regime has led to a much closer working relationship between indigenous groups and the relevant authorities. As a result, indigenous organisations are participating in the national committee to develop a strategy for implementing Article 8(j) and have participated in Peruvian delegations to international CBD meetings.

Changing policy perspectives

In *South Africa*, the conservation sector had been dominated for many years by natural scientists and wildlife enthusiasts who often disregarded social impacts. The public consultation process to develop a biodiversity policy was enormously significant in the history of conservation in the country. It opened up the field of biodiversity conservation to civil society organisations concerned with social justice, secured a shift in attitudes towards a more people-centred approach and won a place for social concerns in the national biodiversity agenda. This new policy perspective has led to biodiversity conservation assuming greater political credibility and a higher profile in the country.

number of people in decision-making, the selection of stakeholders that can best represent their sector or group becomes important.

South Africa's experience with developing an Environment Policy suggests that there may be a limit to consultation beyond which there is not necessarily a net gain. Very extensive public consultation can delay a policy process, hinder progress with the delays and place excessive demands on both those undertaking the consultation and those participating, resulting in 'consultation fatigue'.

6.4. Limitations and constraints of the participatory processes

This section highlights some of the limitations of the participatory processes reviewed as case studies, as identified by the different stakeholders involved, in order to provide a better understanding of what constitutes an effective participatory process. Many of the limitations were the inevitable consequence of constraints that existed at the time.

In all the case studies, it was felt that regional (ie, sub-national) stakeholders were not sufficiently involved. Consultations were largely held in capital regions, limiting the scope for involvement of regional and local actors. In the Philippines, this has led to problems with implementation because many local authorities lack of awareness of the policy or tend to ignore. The case studies also identified insufficient participation of indigenous and local communities from different ethnic groups and regions, which often requires participation of representatives based at regional or local level.

Lack of funding was a key constraint to regional consultation and community participation. In all the cases reviewed, these activities were not adequately budgeted for or planned in advance. In the Philippines, this was partly because the drafting process was initiated by the scientific community rather than a particular government department. In Peru, the development of a funding proposal for indigenous participation may have been hampered by insufficient collaboration between different stakeholders at the start of the process and by differing perceptions of the time required for participation. Limited time also prevented more extensive participation in the Philippines because of the need to get the regulation approved in order to take advantage of the encouraging political processes at that time.

The participation of indigenous and local communities may require particular investment of resources and time to overcome constraints such as the difficulty in defining representation, the geographical dispersal of communities, large population size, lack of awareness, limited access to information, low literacy levels, the complexity of the issues, and a lack of formal mechanisms/structures for participation of indigenous and local communities in policy making. In some cases, migration or displacement has fragmented communities and weakened their structures and organisations.

Lack of experience with participatory processes, and institutional capacity to undertake them, has also been an obstacle to participation in some cases. In Peru, participation of indigenous groups was limited during the early years of the process partly because of limited experience with securing indigenous participation. However, lessons were learnt from early efforts to engage indigenous people and a much better understanding of how this can best be achieved emerged as the process unfolded.

The participation of national industry has also been limited in many cases, despite efforts to engage this sector in access/biodiversity policy development. Reasons for this include lack of interest in participating and lack of awareness about the issues. In the Philippines, some key users/collectors of biodiversity only became interested in the policy once it had been approved and its impact became evident.

The involvement of foreign companies and organisations engaged in the use of genetic resources has been even more limited, partly due to logistical difficulties. Where such companies have offices in-country, these often deal with marketing rather than product development. However, industry associations with foreign membership may provide a useful mechanism to reach companies in the North. The involvement of foreign actors may also have been limited because it was felt inappropriate to engage them in the development of national policy. While some people interviewed expressed this view, they also recognised the value of informing key foreign partners and consulting them on particular issues to avoid unreasonably restricting access. This might also generate commitment to adhere to the policy and to facilitate compliance by in-country partners.

It is clear from the case studies and experience in other countries that the level of participation that is possible depends largely on the level of democracy. Even where a democratic political system exists and public participation is legally required, participation can be hampered by a lack of participatory tradition and resistance from those with vested economic or political interests. Thus, the level of participation will often depend on the attitude and experience of particular government agencies and officials, and on the political influence of civil society organisations and their ability to mobilise public involvement.

Where the political system is not conducive to public participation, it may be possible to consult civil society through a research process. In Laos PDR, which was a communist state until fairly recently, international NGOs operating locally have assisted with village level research on the use of biodiversity to feed into the development of legislation on access to genetic resources and traditional knowledge.

Box 5: Limitations and constraints of the participatory processes – A stakeholder assessment

The participatory processes reviewed had many strengths (see section 6.2) but also had some limitations, which are summarised below. These were identified in consultation with different stakeholders involved in the processes.

The Philippines: The main limitation of the process was a lack of consultation outside the capital due to limited funding. This meant that there was little participation of regional and local officials and representatives of local and indigenous communities. It was also felt that the drafting group for EO 247, which was composed mainly of scientists and bureaucrats, should have included representatives of indigenous people, the business community and more NGOs. The representivity of some of the NGOs and POs on the PCSD was questioned, while some key scientific and business organisations felt their concerns were not sufficiently addressed. Awareness raising efforts before EO 247 was approved were also limited.

South Africa: Criticism of the process came mainly from socially oriented NGOs which felt that consultation with the public and local communities should have been more extensive. Many people agreed that there was insufficient involvement of rural communities that rely on biodiversity for subsistence, despite efforts to simplify and translate policy proposals and to engage CBOs through a briefing workshop held prior to the national conference. The provincial briefings were generally fairly limited in scope because provincial governments were not given adequate financial support or guidance. They were held in urban centres and were not well attended by rural communities and, overall, community participation was not adequately budgeted for. The business sector was also weakly involved, as was the Department of Agriculture, which at the time may not have fully appreciated the relevance of the policy for its own work.

India: The consultation process has been criticised for being rather ad-hoc, with no planned or sustained approach and insufficient allocation of resources. The process has extended over more than six years, with the first drafting committee disbanded, a lull of a couple of years and a new committee established, resulting in some concern about continuity and duplication of effort. Some State officials felt that they were not sufficiently involved and that their views were not adequately taken on board. It was also felt that representatives of local and tribal communities from different regions and ethnic groups should have participated directly in the process. Some industry representatives felt that they had not been sufficiently involved.

Peru: Participation of indigenous organisations was limited during the first two years of the process. Although they were invited to meetings of the drafting group, indigenous representatives only attended two meetings. Possible reasons for the lack of subsequent attendance include a lack of confidence in the authorities, limited understanding of the issues being discussed and a desire not to legitimise a process over which they felt they had little influence. The consultative workshops held in Lima and Cuzco were useful as awareness raising activities, but many participants felt that they should have been better informed and given more time to consult their communities in advance of the workshops. More extensive indigenous participation was constrained by lack of funding. A country-wide consultation has now been initiated and indigenous groups are hoping that they will be able to participate in the subsequent revision of the draft to ensure that the results of the consultation process are fully incorporated.

7. RECOMMENDATIONS FOR ACCESS AND BENEFIT-SHARING POLICY

There is no blueprint for a participatory process that will suit every context and situation. However, the case studies have enabled identification of key requirements, steps and considerations for securing effective participation in the development of ABS policy or legislation, which countries may wish to consider in order to establish or enhance a participatory process. The recommendations for ABS policy can equally apply to the development of broader biodiversity policy which includes ABS issues.

7.1. Overall approach

1. For ABS policy or legislation to be feasible and effective, it needs to be developed with the full participation of all those responsible for its administration and affected by it. Countries seeking to develop ABS policy should invest resources and time in stakeholder participation to avoid potential implementation problems and ensure that their efforts are successful.
2. Stakeholder participation builds awareness and capacity so that, when a country is approached, the relevant stakeholders are ready to establish an ABS agreement without incurring delays which could deter a scientific or commercial user. Since ABS policy can affect divergent interests, participation is important to build the consensus needed to ensure that the policy will be readily applied. It also provides a means to generate a policy of 'ownership' and motivation for implementation, and to obtain useful information.
3. Participatory processes will be most effective when they engage representatives of all stakeholders actively in decision-making for policy drafting, allowing them to influence the outcome. A multi-stakeholder drafting committee can provide a useful mechanism to secure such participation. A broader consultative process should also be undertaken to engage a greater number of stakeholders. This might involve the wide dissemination of policy proposals and consultative workshops at national and regional level.
4. A broad range of stakeholders should participate in the development of ABS policy, including:
 - government agencies responsible for administering access legislation at central, provincial and local level;
 - user organisations seeking access to genetic resources;
 - intermediary organisations that collect and supply biological samples;
 - local resource providers (eg, indigenous and local communities) and their representatives (eg. Peoples' Organisations, CBOs); and
 - NGOs.
5. The participation of scientists and industry provides a means to gather information about the use of genetic resources, ensure that policy does not unreasonably restrict access and identify priorities for building technological capacity.
6. Indigenous and local communities often have extensive knowledge about biodiversity and its uses which can considerably enrich what a country has to offer and hence its ability to secure benefits. Their participation also provides a means to ensure that policy promotes community involvement in ABS partnerships, recognizing their contribution to the research process and their rights over local gene pools and related knowledge. ABS policy should seek to maximize such involvement and to improve the living conditions of indigenous and local communities, in order to support the objectives of the CBD.
7. Consultation at regional level is likely to be required to effectively engage regional and local authorities and indigenous and local communities of different ethnic groups and regions.

8. Awareness raising and capacity building are pre-requisites of effective participation. Particular efforts are often required to build the capacity of indigenous and local communities to participate effectively and on equal footing as those stakeholders with better access to information and political processes. Information materials should be disseminated in appropriate formats and languages.
9. Particular efforts may also be required to actively engage companies and scientific organisations by ensuring they are well informed and presenting the issues in ways that are meaningful to them.
10. Key foreign partners should be informed and consulted on particular issues to ensure that access is not unreasonably restricted and to encourage them to apply the regulation and facilitate compliance by national partners.
11. A participatory process should be planned at the start, and the necessary resources identified early in the process, including for management, communications, regional consultation and community participation.
12. The cost of a participatory process need not be very high, particularly when maximum use is made of existing consultation mechanisms (eg. councils for sustainable development, regional development councils, protected area management boards, environment management committees and related policy processes); and when interested organisations sponsor consultative events.
13. In addition to stakeholder participation, effective policy requires firm political commitment and adequate capacity for administration and monitoring. Such commitment should be secured at the start of the process, which may require careful strategising by those seeking to develop ABS policy. Ideally, multi-party commitment should be secured in case there is a change in government. The design of effective ABS policy will also require strategic planning to maximise support for economic and conservation priorities, and regional coordination amongst countries with similar resources to reduce the risk of deterring users.

7.2. Identifying stakeholders

14. A stakeholder analysis should be conducted at the start of the process to identify key sectors and organisations. Care should be taken to ensure that the process involves not only interested parties, but also those that are most affected and less able to participate. Processes should give priority to organisations or individuals that officially and legitimately represent their sector/group and to those that are linked to a broader constituency (eg, networks or associations).
15. Relevant ministries and agencies are likely to include those responsible for biological resources (eg. environment, forests, wildlife, agriculture, fisheries/marine resources), science and technology, health, indigenous affairs, foreign affairs and exports. Regional authorities, such as protected area and local authorities, may also have responsibility for administering legislation and be strategically positioned to monitor collection in the field. Customs officials can help to monitor the export of genetic resources.
16. End-users include companies and scientific institutes and can span a range of sectors, such as the pharmaceutical, herbal medicine, crop research, cosmetics and ornamental plants sectors. Many end-users are based in the North, and in some cases can be reached through business associations based in developing countries.
17. Domestic end-users might include parastatal scientific organisations with capacity to develop active ingredients for pharmaceuticals and herbal medicine companies. Some countries, such as South Africa, have significant domestic capacity for the commercial use of genetic resources.

18. Intermediaries include organisations involved in the collection, analysis and supply of biological samples, such as scientific organisations, universities and ex-situ conservation facilities (eg. botanic gardens and museums).
19. Local and indigenous communities are often a diverse and geographically dispersed group of people, which cannot be represented by a single organisation. Processes should seek to reflect the ethnic, regional and socio-economic diversity of local communities by engaging organisations representing different ethnic groups, farmers, foresters, peasants, traditional healers etc, including those at provincial level.
20. NGOs and research institutes working on biodiversity issues can provide valuable technical expertise about access issues and legal approaches. They can also assist the participation of indigenous people and local communities by providing technical support to representative organisations and assistance for awareness raising and consultation activities. NGOs working actively with indigenous and local communities on biodiversity issues may be able to reflect their perspectives.

7.3. Designing and implementing a participatory process

21. High level political commitment may be required to secure adequate resources for participation and motivate stakeholders to participate actively. One way this commitment can be expressed is through the active involvement of high-ranking officials in decision-making structures set up to develop a policy.
22. Representatives of all stakeholder groups should participate in the design of the participatory process to ensure that it is effective, build trust between stakeholders and bring people on board.
23. In large, regionally diverse and decentralised countries, it may be more appropriate to develop framework legislation at national level and establish regional stakeholder committees to develop more detailed legislation at regional level.
24. Participatory processes should be designed to incorporate both the political process necessary to facilitate ownership and acceptance of the policy, and the technical component required to articulate substantive issues. The need to balance representation and technical inputs should be taken into account in the composition of any drafting body and in the design of the broader consultation process.
25. The extent of public consultation will largely depend on the nature of the policy and the external political climate. Where certain sectors of society have previously been marginalised and trust is poor, a more extensive public consultation process is likely to be required. More extensive consultation may also be necessary where representation and feedback structures within civil society are weak.
26. Stakeholders participating in drafting committees should have an official mandate to speak on behalf of their organisation in order to ensure institutional commitment to the process and its output, and regular feedback within organisations. Participating organisations should also maximise feedback to other organisations in their sector.
27. Adequate management is important for an effective participatory process, including: an overall manager to drive the process; support for communications and organisation of events; and an independent drafter with good understanding of the issues to prepare policy drafts and integrate views obtained. The provision of management support by an NGO or external organisation can bring additional capacity.
28. Clear drafting, explanation of technical concepts and the identification of different policy options facilitates participation and allows for more focused and productive discussion.

29. Conflicts of interest may arise when access policies are developed, for example between collectors of biological resources and local resource providers. To facilitate the building of consensus, efforts should be made to understand the underlying concerns of different stakeholders and to communicate the issues clearly and appropriately to them. Facilitation and mediation skills may be required to assist with process design, build trust and resolve disagreements. However, full consensus is rarely possible.
30. Organisations undertaking participatory processes should record and institutionalise lessons learnt about the process. Government departments may wish to dedicate a permanent unit for participation to ensure that institutional memory and learning is retained.
31. The multi-stakeholder committee established to develop the policy should be maintained after the policy has been approved to enable stakeholders to continue to participate so that policy can be refined and improved.
32. If there is limited time for the development of a policy, it may be best to introduce an interim measure which can later be refined through a more extensive participatory process.
33. Where the political tradition or system is not very conducive to public participation, it may be possible to consult key stakeholders through a research process or survey. For example, international NGOs could conduct village level research on biodiversity and its uses.
34. Given the very practical nature of regulating access, it may be useful to complement a consultation process with field testing, so that the regulation can be refined on the basis of practical experience.

7.4. Engaging indigenous and local communities

35. As well as engaging representatives of indigenous and local communities in drafting committees, effective community participation is likely to require the simplification, translation and dissemination of policy proposals, consultations at regional level, briefing workshops for CBOs prior to national events, and assistance from NGOs and indigenous organisations.
36. Processes should engage a representative sample of indigenous and local communities from each region, which may require the involvement of a number of community representatives, and consultations in rural as well as urban areas. Consultations should target in particular communities living in areas of high biodiversity and embodying traditional lifestyles, and seek out representatives with a mandate to speak on behalf of communities, who can articulate the common feeling of the people. Community participation should not be a one-off step but should be followed up with feedback and opportunities to provide further inputs at successive stages in the drafting process.
37. National policy on access to genetic resources should require the prior informed consent of indigenous and local communities so that particular communities with a stake in the resources can participate in access decisions on a case by case basis. Policy should also require collectors to respect community protocols and customary law and practice for the collection and use of biological materials and related knowledge.
38. Communities should be allowed to negotiate a wide range of relationships from which more equitable benefit-sharing will flow (eg. tenurial rights and rights over local gene pools).
39. The development of community registers of biodiversity and related knowledge in close collaboration with local communities can enhance community control over such resources and facilitate community participation in ABS partnerships.

40. The participation of indigenous and local communities will be facilitated when it is required by law and structures have been established to enable representatives to participate in policy decisions at national, regional and local levels.

7.5. Key steps for securing participation

1. *Establish a management structure.* A multi-stakeholder committee with an official mandate should be established to represent the different stakeholders in the drafting process, design the broader consultation process, initiate sectoral consultations and manage the consultation process. A focal point or editor should be appointed to integrate the results of the consultations.
2. *Undertake a situation analysis and a stakeholder analysis.* An analysis of the status quo with respect to access and benefit-sharing should be undertaken, and key stakeholders affected by the policy and responsible for its administration should be identified.
3. *Design the consultation process.* Countries should take account of the lessons of past participatory processes in the design of the process; identify stakeholder interests and concerns; make maximum use of existing legal, institutional and social/cultural mechanisms for participation at all levels; identify additional mechanisms required (eg. workshops, conferences) including at regional and local level; allocate funding for each activity; and identify the necessary administrative and logistical support for the process.
4. *Build public awareness and capacity for participation.* Participants should be fully informed about the policy proposal and the objectives of the process before they participate. Information should be translated into local languages and culturally suitable materials should be used (eg. simple illustrated briefing documents).
5. *Build consensus.* To facilitate the process of building consensus, representatives should ensure regular feedback within and between organisations. It may be necessary to use (and develop) facilitating and mediating capacities to resolve conflicts of interest.

8. RECOMMENDATIONS FOR TRADITIONAL KNOWLEDGE POLICY

Analysis of Peru's experience with developing a *sui generis* regime to protect rights over traditional knowledge, innovations and practices related to genetic resources has identified the following recommendations which countries may wish to consider in order to secure effective participation in the development of such legislation. The recommendations on indigenous and local community participation in ABS policy (7.4) are also relevant for the development of traditional knowledge policy.

8.1. The role of different stakeholders

1. Whereas States have sovereign rights over genetic resources, and often recognise that others (eg. local communities and private land owners) also have rights over genetic resources on their land, the rights over traditional knowledge are ancestral rights of the indigenous and local communities that have developed it over generations. Therefore, while the development of policy on access to genetic resources should involve all stakeholders equally, the conditions governing the use of traditional knowledge should be established by indigenous and local communities, with the State, NGOs and other experts acting as facilitators.
2. The interests of commercial and scientific users of traditional knowledge should be considered to ensure that the legislation does not impede potential development opportunities or beneficial research. However, since indigenous and local communities have ancestral rights over traditional knowledge and are solely responsible for its existence, their interests should take priority over those of potential users.
3. Legislation to protect traditional knowledge is unlikely to be effective unless it is designed in accordance with customary law and practice for the use and exchange of knowledge, which is often based on collective ownership. Applying western systems of intellectual property based on private ownership could undermine collective knowledge systems and hence accelerate the loss of traditional knowledge. The design of such legislation, including procedures for consent and benefit-sharing, is therefore likely to require the active participation of indigenous and local communities.
4. The challenge facing governments and holders of traditional knowledge is to design innovative legal mechanisms that bridge the gap between the customary law and practices of indigenous peoples and western legal regimes.
5. NGOs can provide valuable technical assistance to inform the drafting process and to facilitate participation by indigenous people and local communities.

8.2 Designing and implementing a participatory process

6. Any effort to develop legislation to protect traditional knowledge should ensure that the holders of such knowledge, including their representative organisations, participate actively in policy drafting and can influence the outcome. One way to secure such participation is to establish a drafting committee comprising the relevant authorities, representatives of traditional knowledge holders and technical experts.
7. To actively engage representatives of indigenous and local communities, policy makers should seek to gain their confidence by clearly explaining the nature of the process, the extent to which they can influence it and the issues to be addressed. Indigenous organisations may be reluctant to participate in a process over which they feel they have little influence.
8. Participants should reflect the cultural and social diversity of traditional knowledge holders, which may include different ethnic groups, peasants, farmers, womens' groups and traditional healers. Processes should ensure balanced representation, recognising that some groups may have stronger organisational structures and political influence, which may not necessarily be relative to population size.

9. Representatives of indigenous people and local communities should be given the time, resources and technical support required to develop a full understanding of the issues and to consult more widely amongst their people, in accordance with traditional decision-making processes. This is likely to require a parallel process of capacity building and consultation at regional and local level which can feed into the drafting process.
10. A plan for participation should be established at the start of the process and the necessary funding identified. Indigenous and local community representatives should participate actively in the design, coordination and implementation of the participatory process to ensure that it is effective.
11. As an initial step, it may be useful to convene a meeting of the relevant authorities, indigenous organisations and technical experts to agree the broad steps for the participatory process and appoint representatives to manage the process and participate in the drafting group.
12. Effective participation requires the capacity to make informed decisions. Information materials should be developed in formats suitable for an indigenous and local community audience (eg. illustrated briefing documents with clear explanations and examples) and translated into local languages. They should include background information on the protection of traditional knowledge and highlight key issues to be considered, including different policy options. It may be necessary to use non-written forms of communication where literacy levels are low.
13. A participatory process might involve the development of an initial proposal in collaboration with indigenous representatives as the basis for wider consultation; the preparation of a consultative document designed for an indigenous audience; training of indigenous facilitators to undertake consultations with different ethnic groups at regional and local level; regional workshops to integrate the results of the consultations; a national workshop to develop a common indigenous response; and revision of the proposal by a drafting committee (which includes indigenous representatives) to incorporate the results of the consultation process.
14. The full and effective participation of indigenous people and local communities can take a few years. If there is limited time to develop legislation, it may be advisable to introduce interim measures to protect traditional knowledge, which can later be revised to incorporate the results of a more extensive consultation process.

8.3. Key steps for securing participation

1. *Undertake a situation analysis and identify critical issues.* This should involve the identification of potential threats to traditional knowledge; possible impacts of existing legal regimes and principles (eg. IPRs, public domain); existing customary law and practice for the management of traditional knowledge; and potential strategies to protect traditional knowledge.
2. *Make use of existing local/traditional decision-making processes* and institutions (the diversity of local systems may require a flexible approach) and create links between these and government decision-making processes.
3. *Provide information for participants* about the proposed policy, the issues at stake and the nature of the policy process, using appropriate forms of communication for an indigenous audience.
4. *Build capacity to make informed decisions:* Capacity building efforts should focus on areas identified by indigenous people, in particular regarding their rights, options and opportunities.
5. *Provide financial support.* Countries should provide financial support to indigenous organisations to undertake regional/local consultations, including for training indigenous facilitators, preparing information materials and holding consultative meetings/workshops.

Box 6: Principles of effective participation in ABS and traditional knowledge policy

1. ABS and traditional knowledge policy processes should:

- secure official commitment to the process and its output;
- engage stakeholders actively in decision-making, allowing them to influence the outcome;
- establish a plan for participation and identify resources at the start of the process;
- engage stakeholders in the design and management of the process;
- provide incentives for participation (eg, by identifying links to issues of concern to stakeholders);
- build the capacity of participants to make informed decisions;
- be democratic, transparent and accessible;
- be held at regional and local level as well as national level;
- involve all relevant government agencies from national to local levels;
- engage indigenous and local communities through their representative organisations;
- respect traditional decision-making processes; and
- ensure the lessons from the process are learnt and institutionalised (eg. by establishing monitoring and evaluation systems on process effectiveness).

2. ABS policy processes should:

- engage a broad range of stakeholders;
- be equally conducive to the participation of all stakeholders; and
- ensure a balanced representation of the different viewpoints and interests.

3. Traditional knowledge policy processes should:

- actively engage traditional knowledge holders and ensure that their rights are protected;
- be facilitated by indigenous people;
- maintain a broad definition of traditional knowledge; and
- reflect understanding of the extent as well as the limits of commercial and scientific interest in traditional knowledge.



**Biodiversity &
Livelihoods Group
International Institute
for Environment and
Development
3 Endsleigh Street
LONDON
WC1H 0DD
UK
Email:
biodiversity@iied.org**

Stakeholder participation in policy on access to genetic resources, traditional knowledge and benefit-sharing: Case studies and recommendations

The Convention on Biological Diversity requires the benefits from the scientific and commercial use of genetic resources to be shared fairly and equitably. To be effective, national policy or legislation on access to genetic resources and benefit-sharing (ABS) needs to be developed with the active participation of a range of stakeholders, including different government agencies, scientists, companies and indigenous and local communities. Participation builds capacity so that ABS policy can be readily applied without incurring delays that could deter a user of genetic resources. It also provides a means to identify stakeholder concerns, build consensus and gather valuable information. Similarly, policy to protect the rights of indigenous and local communities over traditional knowledge relating to genetic resources is unlikely to be effective unless developed in close collaboration with such communities.

This report presents the main findings of four case studies of stakeholder participation in ABS and traditional knowledge policy – Peru, India, South Africa and India. It also provides recommendations for securing effective participation.

The **Biodiversity and Livelihoods Group** of IIED aims to develop and promote tools, processes and institutions to create positive synergies between biodiversity conservation and development. The work focuses in particular on improving the integration of biodiversity and livelihoods policies and understanding the value of biodiversity to different groups. The Group also aims to strengthen the ability of marginalised groups to realise the full spectrum of values of biodiversity. BLG undertakes policy research, capacity strengthening and awareness raising activities, working with other programmes at IIED and with a range of Southern and international organisations.

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