

CAMPAIGN FOR CONSERVATION AND COMMUNITY CONTROL OVER BIODIVERSITY

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21st October 2009

Raj K. Verma
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Subject: Response to the Questionnaire and Press Release on Nagaland State Biological Diversity Rules

Dear Shri Verma,

This is with reference to the process undertaken by the Nagaland State Government seeking inputs prior to the drafting of the Nagaland State Biological Diversity Rules as prescribed under the Biological Diversity (BD) Act, 2002. It is heartening to see the State Government using the provisions of Article 371A and it's seeking widespread public feedback on the same. This truly shows that there is a well-intentioned process in mind towards developing legislative measures which are of, for and by Nagaland. In that spirit we offer a few specific comments for possible consideration.

- a) As the introduction to your questionnaire itself states Article 371A puts the State in a unique position "to frame the Rules that suits us best". However, Article 371A allows Nagaland to take a step forward and draft its own BD Act, on the grounds that the current national legislation is not adequate to protect the cultural or social practices of the Nagas or conserve Naga customary law and procedure. We have shared our concerns regarding the national BD Act with members of the committee and others in Nagaland during regional meetings and through dissemination of research findings, and are attaching some documents related to these. Given these concerns, we would urge you to use the opportunity to draft a state-specific Biodiversity Act.
- b) We are also concerned about some aspects of the state government's questionnaire on the subject. There have been several concerns that have been expressed nationally as well as locally on the centralised documentation of traditional knowledge. This centralisation can take place at various scales: international, national and even at state level. The questionnaire asks for information related to biodiversity based traditional knowledge and customary practices. In many ways seeking such details also amounts to initiating a documentation exercise that the state government might subsequently take up in written format. Nagaland as a state has several diverse cultures and natural resource management systems that thrive on biodiversity based traditional knowledge. You would agree that this knowledge base needs to be allowed to creatively thrive in its myriad local settings, which an innovative legal framework that is both conservation and community oriented, should ensure. Subjecting such cultures to modern day documentation formats may undermine such an objective. We therefore request you to consider modifying those questions so that you can ascertain the extent of traditional knowledge in the state but without necessitating any

voluntary or involuntary disclosure upfront.

Keeping the above two imperatives in mind, we feel that the Nagaland State legislation can closely examine the following issues:

1. Since the BD Act legislation is about three main issues – *biodiversity*, biological resources, and related traditional knowledge, it is first to be shown what as per the local people is the status of these. Are these considered by the Naga tribes to be commonly held or privately held property, a shared heritage or an alienable resource? The central legislation moves on the premise that biological resources and traditional knowledge can be traded at national and global scales. If this in itself is against how Naga peoples view these issues, then that point needs to be made vis-a-vis the Central law. We do understand that the purpose of the questionnaire is to determine local responses to the biodiversity conservation and the whether the current legal process is adequate. However, we feel that in Nagaland such a consent building process can think beyond the box of the available legal framework at the national level. In fact discussions with local communities can actually inform what the state level law should contain, along with definite link to existing analysis for the national law itself.
2. Likewise, specific to traditional knowledge the Biological Diversity Act, 2002 does not say “NO” to privatisation through Intellectual Property Rights (IPR). Is this for instance in consonance with Naga customary law? The questionnaire needs to seek inputs on the subject of 'biopiracy' and elicit views on the several IPR legislations that have a bearing on the subject (such as the domestic Plant Varieties Protection law or the Patent Law amendments). As you are aware, there is a serious lack of awareness of these issues, which itself can be grounds for seeking more time to devise appropriate legislation.

Do also consider that after several interactions with the National Biodiversity Authority (NBA) and one with the Minister himself, we had pointed to the duty of the NBA to take measures to protect traditional knowledge under Section 36(5) of the Biodiversity Act. This provision allows for a *sui generis* – specific, unique, locally suited - position to be taken rather than a more mainstream approach. The Central Government is thus seized of the matter and is also open at this point to receive concrete suggestions for such a custom-made system of protection, so this opportunity should not be lost.

3. If the state government does decide to take on the task of formulating a new law, it does not necessarily have to form any Biodiversity Management Committee (as prescribed in the national Act). Instead it can uphold customary tribal structures, with additional checks and balances to ensure conservation and equity, if need be. Similarly, it can be stated upfront that no IPR will be sought on Nagaland's biological resources or its traditional knowledge or their derivatives. It can also prohibit the introduction of genetically modified organisms, as Kerala has done, with the justification that these could threaten Nagaland's many unique and endemic species/varieties. Many other such progressive clauses can be built in a state law which can be a model to even amend the national legislation.

You are also perhaps aware that the NBA has publicly sought inputs for the amendment of the Biodiversity Act. If Nagaland does come forward and present a state law which is truly for ensuring a community led process towards ensuring ecological and livelihood security, it can act as a critical way forward to in influencing the national level amendments. Many points and suggestions also did emerge from the four regional workshops that this Campaign organised. Some of the Nagaland Rules drafting committee members also attended the North- Eastern region event at Guwahati. The minutes/decisions of that meeting are also enclosed.

We are attaching with this letter some material which will point you to the inherent lacunae in the BD Act. For instance, the redressal process prescribed within the law is extremely weak and is likely to centralise and undermine the current practices of Naga customary law to check criminal actions. This highlights several threats with the setting up of BMCs, documentation through People's Biodiversity Registers (PBRs), allowing for trade (both access and seeking IPRs) on all biological resources even if within a regulatory framework, and so on.

We sincerely urge you to consider making a new legislation specific to Nagaland, rather than preparing Rules under the national Act, which will not be able to overall question the lacunae of the parent legislation. It will also not be able to impact the national level process of granting access to non-Indian entities for which the BD Act does not mandate local consent or the consent of the State Biodiversity Board.

We do hope you would consider this feedback. As mentioned earlier, we would be open to discussing these concerns in further detail, whenever it is mutually convenient, and assist in realising the true potential of Article 371A.

Sincerely,



Kanchi Kohli/ Ashish Kothari
Kalpavriksh



Shalini Bhutani
GRAIN

Enclosed: 1. Six Years of Biological Diversity Act, 2002: A Status Report
2. Brochures on Facts and Fears related to BMCs and Redressal and Disputes
3. Submission to NBA on the critical amendments to the BD Act.
4. Submission to NBA on the concerns with the documentation through PBRs.

CC: All members of the committee drafting the Nagaland State Biodiversity Rules.