

# **Regulatory Challenges in Enforcing Intellectual Property Rules in Sri Lanka: the Fine Line between Bio-piracy and Bio-prospecting**

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Intellectual property (IP) laws pose unique challenges to policymakers; the territorial nature of IP rules makes it difficult, if not virtually impossible, to set a viable international standard. This paper deals with the regulatory framework required to achieve the optimum results with regard to access and benefit-sharing (ABS) of biological and genetic resources of states, for purposes of scientific research.

Throughout much of the 20<sup>th</sup> century, the lack of regulation of the process of gathering biological and genetic material required for scientific research and innovation resulted in takings without compensation to either the state or the individual or group from whom the material was taken. Several incidents of bio-piracy of well-known traditional herbs and plants from developing nations, including Sri Lanka, have been recorded.

The Convention on biological diversity (CBD) was one of the first international instruments to propose effective mechanisms for access and benefit sharing. This Convention aimed to vest ownership of natural resources in the state, and encourage the state to provide access to researchers. In turn, it sought to incentivize this access by calling for benefit-sharing mechanisms that would foster meaningful working relationships between the researchers (often from the West) and the States (often bio-diversity-rich nations of the East).

SL, though a ratified party to the CBD (but not to its Nagoya Protocol on ABS) has, as yet, no laws on access and benefit-sharing. The draft law on plant variety protection aims primarily at protecting plant breeders' rights. This legislation proposes a few sections on the protection of farmers' rights, such as the right to save, exchange and re-use seeds, but there is no comprehensive mechanism for ABS. While a state may deny access to its natural resources, the absence of a regulatory framework encourages illicit activity, such as bio-piracy.

It is proposed that this situation has to be changed, by strengthening the regulatory framework supporting ABS. As a first step, it is proposed that the IP Act of Sri Lanka be amended to accommodate ABS. A sui generis law that deals exclusively with ABS, is another, possible solution. Some countries have promoted the creation of private contracts between bio-prospectors and groups holding biological and genetic material. Such contracts can be effective only where there is strong regulation to ensure that the weaker parties do not get manipulated in the process.

**Key words:** *Access and Benefit-sharing, Bio-piracy, Bio-prospecting, Regulatory Framework*

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