

#### 1-2-4. 日本・中国 2 国間ワークショップ

##### 「遺伝資源と伝統的知識へのアクセスと利益配分に関する政策と法令」

2014年1月24日、JBAは中国より中国民族大学の生命&環境科学カレッジに籍を置き、中国におけるABS法案起草委員会の委員でもあるXUE Dayuan教授、武漢大学の法学部副部長であり、XUE教授と共にABS法案起草委員会の委員でもあるQIN Tianbao教授、また中国民族大学の生命&環境科学カレッジでXUE教授と共同で中国における伝統的知識（TK）に関する調査を行っているGUO Sophia Luo教授を招聘し、2国間ワークショップを開催した。

前回（2010年）開催の日中2国間ワークショップに引き続き、中国のABS国内制度についてその後の進捗を聞くことが主な目的であった。

#### プログラム

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| 1. Implementation of ABS in Japan 名古屋議定書に関する日本の検討状況について<br>JBA 井上 歩  |
| 2. ABS Policies in China<br>Dr. XUE Dayuan, Professor, College of Life and Environmental Science,<br>Minzu University of China     |
| 3. 中国のABS国内法の検討状況について<br>Dr. QIN Tianbao, Professor, Vice dean, School of Law, Wuhan University,<br>China                          |
| 4. 中国の伝統的知識に関するデータベースの開発<br>Dr. GUO Sophia Luo, Professor, College of Life and Environmental<br>Science, Minzu University of China |

冒頭JBA井上は、日本のABSに係る長年の啓発・支援活動と国内遵守措置の検討状況について話した。続いて、XUE教授は中国のABS政策について、QIN教授（XUE教授が代理で講演）は中国のABSに関する法律について、GUO教授は中国におけるTKの実態とそのデータベース作成について講演した。

#### 講演

##### 講演2「ABS Policies in China」（発表資料1参照）

名古屋議定書には派生物の定義があり、また、名古屋議定書前文には中国が名古屋議定書の交渉に当たり長年要求していた文言「Publically Available TK」を“documented or in other forms”と記載していることから、それらを利益配分の対象と考えている。したがって、中国は公知である（書物に記載の）TKを利益配分の対象としてABSの検討を行っている。

中国は生物多様性の豊かな国（世界第 3 位）であり、米、大豆、果樹等の原産国でもある。また、56 の少数民族を抱えている。現在、中国は自らを提供国と考え（利用国でもあるとは考えていない）提供国措置を講ずるとしている。

中国は CBD 加盟以来、省庁横断的な会議を開催してきた。現在、最高レベルの会議として、國務院副総理の張高麗氏がヘッドを務め 25 部が出席する「国家多様性保全会合」がある（2011 年設置）。

政策としては、2004 年の國務省による「種の保存と管理を強化する宣言」がある。これには生物多様性と ABS 問題に対する権限ある当局として、環境保護部が係わっている。この宣言では遺伝資源という語より「種」の方が分かりやすく包括的であるということから、「種」が採用されている。

2010 年の國務院による「中国国家多様性戦略とアクションプラン」には、ABS に関する事項が含まれている。

中国には、利益配分規定を含んではいないが、生物種又は遺伝資源へのアクセスに関する既存法がある。

関連法として 2009 年に改正された特許法「中華人民共和國専利法」では、発明の元となった生物遺伝資源の出所開示が義務付けられている。出所不明な場合には申請者にその説明が求められ、違法に取得された遺伝資源による特許は認められない。ただし、「違法の定義」が定められていないため、運用されてはいない。そこで、中国特許庁（中国国家知識産権局）は「違法」であることを確認するために、早期の法律策定を求めている。

2005 年に策定された家畜法には、初めて利益配分のコンセプトが導入されている。

既存法の中には、外国人による生物遺伝資源の入手や調査を規制するものが多い。

生物遺伝資源のみならず、伝統的中医学、遺伝資源に関する伝統的知識へのアクセスと利益配分に関して、立法化を検討中である。

中国は ABS 法令を策定するに当たって、解決しなければならない下記のような多くの検討事項を抱えている。

遺伝資源や派生物とは何か、一般に貿易で取り引きされている漢方薬原料の扱い、過去に取得された生物遺伝資源等の新たな利用の扱い、TK の定義、文章化され公開されている公知 TK の扱い、生息域内外の規定、少数民族のアクセスに対する規定、内外無差別の有無、商業利用・学術利用の扱い、利益の配分先は誰（どこ）か、国内遵守措置を執るか、能力構築の実施、外国における第 3 者の生物遺伝資源利用の追跡とモニターの方法、チェックポイントをどこにするのか、またその組織は中央統一型か地方型か、名古屋議定書の批准国と非批准国に対する扱い方の違い、等々。

### 講演 3 「ABS Legislation in China: An academic perspective」 (発表資料 3 参照)

予定演者が当日体調不良のため、代わって XUE 教授が講演した。

既存法については XUE 教授の講演と重複するところもあるが、法律家である QIN 教授のスライドではより詳しく説明されていた。ただし、QIN 教授は XUE 教授ほどには ABS に精通していないと思われるので、スライドは両者を併せて参照した方が良いと思われる。

発表スライドから読み取れることは、中国には生物遺伝資源に関する数々の法律が既に存在し、生物遺伝資源を中国国内で採取すること、また無形文化遺産について調査すること等は規制されているということである。また、多くの場合、外国人は内外差別されているようだ。

### 講演 4 「Category, Documentation and Database for Traditional Knowledge in China」

(発表資料 2 参照)

中国における伝統的知識を調べ、カテゴリーに分けて TK データベースを作成している。中国には 56 の少数民族があり、現状では調査は容易ではないようだ。

いずれこのデータベースは、TK の保護、利益配分の対象として検討するためのベースとなるだろう。

## ABS Policies in China

XUE Dayuan

College of Life and Environmental Science,  
Minzu University of China  
and  
Nanjing Institute of Environmental Science, Ministry of  
Environmental Protection of China

Tokyo, Jan. 24, 2014

## Topics

- Main points on ABS (access and benefit-sharing) in CBD and Nagoya Protocol
- China's GR and TK
- ABS policies in China
- Issues for ABS regulation

## Main Points in CBD & NP

### CBD's main points on Genetic Resources and associated TK

#### 1. Three objectives of the CBD

- (1) Conservation of biological diversity
- (2) Sustainable use of the components of biodiversity
- (3) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources (and associated traditional knowledge)

## Main Points in CBD & NP

### CBD's main points on Genetic Resources and associated TK

#### 2. Article 15 of the Convention

- (1) Sovereign rights principle (the authority to determine access to genetic resources rests with the national governments and is subject to national legislation)
- (2) Prior Informed Consent (PIC)
- (3) Mutually agreed terms (MAT)
- (4) Benefit Sharing (BS)
- (5) Endeavour to develop and carry out scientific research in the Contracting Party providing genetic resources
- (6) Cope with the relationship between IP and the access and benefit-sharing of genetic resources

## Main Points in CBD & NP

### CBD's main points on Genetic Resources and associated TK

#### 3. Article 8, (j) of CBD

- Each Contracting Party shall, as far as possible and as appropriate: Subject to its national legislation, 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;

## Main Points in CBD & NP

- **NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY**
- **SCOPE (Article 3)**
- This Protocol shall apply to **genetic resources** within the scope of Article 15 of the Convention and to the benefits arising from the **utilization of such resources**. This Protocol shall also apply to **traditional knowledge** associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.

## Main Points in CBD & NP

- **NAGOYA PROTOCOL**
- **USE OF TERMS (Article 2)**
- (a) "Utilization of genetic resources" means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of **biotechnology** as defined in Article 2 of the Convention;
- (b) "**Biotechnology**" as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or **derivatives** thereof, to make or modify products or processes for specific use;
- (c) "**Derivative**" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, **even if it does not contain functional units of heredity**

## Main Points in CBD & NP

- **NAGOYA PROTOCOL**
- **TK forms (Preamble)**
- **Further recognizing** the unique circumstances where traditional knowledge associated with genetic resources is **held in countries**, which may be oral, **documented or in other forms**, reflecting a rich cultural heritage relevant for conservation and sustainable use of biological diversity.

## Main Points in CBD & NP

- **NAGOYA PROTOCOL**
- **FAIR AND EQUITABLE BENEFIT-SHARING (Article 5)**
- **Para.2.** Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, **in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources**, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.
- **Para.5.** Each Party shall **take legislative, administrative or policy measures**, as appropriate, in order that the benefits arising from the **utilization of traditional knowledge associated with genetic resources** are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

## Main Points in CBD & NP

- **NAGOYA PROTOCOL**
- **ACCESS TO GENETIC RESOURCES (Article 6)**
- **Para 6.** In the exercise of sovereign rights over natural resources, and **subject to domestic access and benefit-sharing legislation or regulatory requirements**, access to genetic resources for their utilization shall be **subject to the prior informed consent of the Party providing such resources** that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party.

## China's Rich GR & TK

### 1. Genetic resources

- China has known 34,984 species of higher plants, ranking the third in the world, with 51% species are originated in China.
- China also has 6,445 vertebrate animal species, accounting for 13.7% of the total in the world. The fungi species proven in China are about 10,000, making up 14% of the total in the world.
- China has rich genetic resources and is a country of origin of many important agricultural crops such as rice and soybean, as well as a key center of origin of wild and cultivated fruit trees.

## China's Rich GR & TK

### 2. Traditional Knowledge

- China has a long history over 5000 years. During the living and agricultural activities, Chinese people has created a great deal of traditional knowledge, renovations and practices.
- China has 56 ethnic groups for its population. Many of these ethnic groups now still keep their traditional living and cultivation styles.
- Based on a wide work in investigation and documentation of TK in China during the past years, a classification system for 5 TK categories is proposed.

## ABS Policies in China

### 1. China is a Party of CBD

- China became the Party of Convention on Biological Diversity (CBD) in early 1993, is one of the earliest countries for CBD ratification.
- China approved Cartagena Protocol on Biosafety (CPB) in 2005.
- China is underway to approve Nagoya Protocol and Nagoya-Kuala Lumpur Supplementary Protocol to CPB
- China has actively participated in all the activities under CBD

## ABS Policies in China

### 2. Coordinating Mechanisms for Biodiversity

- Immediately after approval of CBD, Chinese government established the National Coordination Committee for CBD Implementation in 1993 with 25 sectors, headed by Ministry of Environmental Protection (MEP).
- To correspond ABS issue, the State Council set up the Joint-Ministerial Meeting for Genetic Resources, headed by MEP and joined by other 16 ministries.
- To correspond UN Biodiversity Decade, China established a National Biodiversity Conservation Commission in 2011, headed by Premier Li Keqiang (now Vice Premier, Zhang Gaoli) and joined by 25 ministers (or vice ministers)
- An office to serve the above three coordination mechanism of CBD Coordinating Committee, Joint-Ministerial Meeting for ABS and National Biodiversity Commission for high level decision-making, was set up in Dept of Natural Conservation and Ecological Protection, under Ministry of Environmental Protection (MEP) of China.

## ABS Policies in China

### 2. Coordinating Mechanisms for Biodiversity

- In March 2004, the State Council issued "Announcement to Enhance Protection and Management for Species Resource (Genetic Resources)".
- This document put forward 15 policies and tasks, including survey, inventory, protection plan, legislation, policy, coordinating mechanism, inspection for import and export goods.
- The document designed Ministry of Environmental Protection (MEP) as the national competent authority for biodiversity conservation and ABS issue

## ABS Policies in China

### 3. Policies Related to ABS Issue

#### (1) The Outline of the National IP Strategy

- On June 5, 2008, the State Council issued "the Outline of the National Intellectual Property Strategy", and genetic resources and traditional knowledge have been incorporated into the strategy Objectives and the strategy tasks in the Outline.

## ABS Policies in China

### 3. Policies Related to ABS Issue

#### (1) The Outline of the National IP Strategy

- 1) Improve the protection, exploration and utilization of genetic resources, preventing the loss and abuse of genetic resources. Coordinating the relationship of the protection, exploration and utilization of Genetic Resources, and **establishing a reasonable mechanism of Access to Genetic Resources and Benefit Sharing**. Guarantee the rights of awareness and consent of the providers of Genetic Resources .

## ABS Policies in China

### 3. Policies Related to ABS Issue

#### (1) The Outline of the National IP Strategy

- 2) Construct a comprehensive IP system. **Support the compilation and passing-down of traditional knowledge**, and promote the development of TK. Improve the coordinative mechanism of the management, **protection and utilization of traditional pharmaceutical intellectual property**, and strengthen the protection, development and utilization of traditional arts and crafts.

## ABS Policies in China

### 3. Policies Related to ABS

(2) China National Biodiversity Strategy and Action Plan (2011-2030) approved by the State Council on Sept 15, 2010

#### Strategy Tasks

#### 6) Improve benefit sharing of biological and genetic resources and associated traditional knowledge. China will

- Rescue, protect and inherit related traditional knowledge by improving the protection system of traditional knowledge.
- Explore the establishment of a system for access to and benefit sharing of biological and genetic resources and associated traditional knowledge, and coordinate the interests between the protectors, developers and users of biological and genetic resources and associated traditional knowledge to ensure that the interests of all stakeholders will be protected.

## ABS Policies in China

### 3. Policies Related to ABS

(2) China National Biodiversity Strategy and Action Plan

#### Action Plan

#### • Action 7 Carry out baseline surveys on biological resources and ecosystems

- Carry out comprehensive baseline surveys in the priority areas of biodiversity conservation.
- Carry out surveys on key species and in key areas.
- Establish baseline database of species surveyed at both national and local levels.
- Regularly organize nationwide surveys on wild flora and fauna and establish archives and catalogues of these resources.
- Carry out baseline and diversity surveys on aquatic species of rivers and wetlands.
- Establish national biodiversity information management system.

## ABS Policies in China

### 3. Policies Related to ABS

(2) China National Biodiversity Strategy and Action Plan

#### Action Plan

#### • Action 8 Survey and catalogue genetic resources and related traditional knowledge

- Survey, collect and classify local crops, domesticated animals, wild edible and medical plants and animals and fungi with focus on remote and minority-inhabited regions and store the accessions in the national germplasm resource bank.
- Focus on the survey of germplasm resources of major timbers, wild flowers, medicinal species and aquatic species, and collect, store, catalogue these resources and establish databases.
- Survey traditional knowledge, innovation and practices related to genetic resources in the ethnic minority-inhabited areas and establish databases and undertake studies and demonstration projects concerning benefit sharing.

## ABS Policies in China

### 3. Policies Related to ABS

(2) China National Biodiversity Strategy and Action Plan

#### Action Plan

#### Action 21: Establish rules and mechanisms of conservation, access to and benefit sharing of genetic resources and related traditional knowledge

- Develop policies of and regulations on access to and benefit sharing of genetic resources and related traditional knowledge.
- Improve regulations on disclosure of origin of genetic resources in patent applications and establish procedures of mutually agreed terms and prior informed consent for access to and benefit sharing of genetic resources and related traditional knowledge, and ensure that inspection of the import & export of biological resources will be operating effectively.
- Establish administration mechanisms, administrative agencies and technical supporting systems for access to and benefit sharing of genetic resources and improve related information exchange mechanisms.

## ABS Policies in China

### 3. Policies Related to ABS

(2) China National Biodiversity Strategy and Action Plan

#### Action Plan

#### • Action 22 Establish a system of examination and inspection of import and export of genetic resources

- Establish a system for examination and inspection of import & export of genetic resources, coordinate domestic management and import & export law enforcement, and develop effective penalties and strengthen supervision on import & export.
- Develop an administrative list of import and export of genetic resources and strengthen professional training for customs and quarantine and inspection staff to improve the accuracy of examination and inspection.
- Undertake research on rapid inspection and identification methods and equip advanced examination and inspection facilities at major ports of passengers and international mail processing centers as well as establish and complete related laboratories.
- Raise the awareness of departing passengers especially scientific and research professionals and foreign service personnel of protection of genetic resources through various educational programs

## ABS Policies in China

### 4. Legislation

#### (1) The laws existed for access to genetic resources

- China has issued a series of laws concerning access to biological species and genetic resources, e.g.
- Wild Animal Protection Law (aim to nationally protected animal species)
- Regulation on Protection of Wild Plants (aim to nationally protected plant species)
- Seed Law (Principally, it declaims the state sovereignty on crop germplasm)
- Regulation on the Management of Trade in Endangered Wild Animals and Plants
- Regulation on the Protection of Wild Medicine Resources.
- However, all above legislation are short of Benefit-sharing, though some regulatory articles for access.

## ABS Policies in China

### 2. New legislation reflecting ABS

(1) Newly revised **Patent Law** (Entered into force on Oct 1, 2009)

- **Article 5:** inventions violating laws, social morals, and damaging public interest will not be granted a patent right. Inventions created on the **genetic resources illegally acquired or utilized will not be granted a patent right.**

## ABS Policies in China

### 2. New legislation reflecting ABS

(1) Newly revised **Patent Law** (Entered into force on Oct 1, 2009)

- **Article 26:** for inventions and creations made on genetic resources **to apply patents, the applicant shall disclose the direct resources and origin of the genetic resources;** if the applicant cannot clarify the origin, an explain shall be provided.

## ABS Policies in China

### 2. New legislation reflecting ABS

(2) **Animal Husbandry law** - (enacted on Dec. 2005) , Put forward the concept of benefit sharing for the first time

- **Article 16:** for export and cooperation with foreign organizations, the utilization of animal and poultry resources in the protection name list, the user shall apply husbandry administration department at the provincial level, and **provide a measure of benefit sharing at the same time.**
- The animal and poultry resources **newly found** is prohibited to provide to foreign companies before identification by the state authority.

## ABS Policies in China

### 2. New legislation reflecting ABS

(3) **The Measures of the People's Republic of China for the Examination and Approval of Entry & Exit and the Foreign Cooperative Research on the Application of Genetic Resources of Livestock and Poultry** (Entered into force on Oct 1, 2008) .

It prescribed the conditions for access to livestock genetic resources and the contents of benefit sharing more specifically

## ABS Policies in China

### 2. New legislation reflecting ABS

(4) **The Law of Cultural Heritage for Intangible Goods** (Enforced on June 1, 2011)

- It provided that the culture sector is responsible to protection, investigation, preservation, identification and databases for intangible goods. It is also **in charge of review and approval for application of foreigners' investigation work.**
- But, many kinds of TK can be incorporated into this law for protection.

## ABS Policies in China

### 3. New legislation underway on ABS

The follow legislation is underway for drafting with linkage with the Nagoya Protocol.

- (1) Law of Traditional Chinese Medicines
- (2) Regulation on Access and Benefit Sharing for Genetic Resources and Associated Traditional Knowledge.



## Issues for ABS Regulation

### 1. Scope

**Genetic resources** (excluding food and agricultural GRs under ITPGRFA; expansion of the Annex 1; GRs beyond country's jurisdictions (polar regions, high seas))

#### Derivatives

exporting raw materials, extractives for traditional medicine products)?

#### Traditional knowledge

definitions? category; documented TK (汉方) ?

## Issues for ABS Regulation

### 2. Access

processing procedures for various situations

Access from *in situ*

Access from *ex situ* collections

Access from indigenous and local communities

Access by domestic users (research or commercial)

Access by joint venture?

Access by foreigner for science and exhibition?

Who will receive the access applications and who can issue the internationally-recognized certificates?

## Issues for ABS Regulation

### 3. Benefit-sharing

Who are beneficiaries for *ex situ* collections?

Who are beneficiaries for TK or documented TK? (《神农本草经》、《本草纲目》等)

Who can represent ILCs for signing contracts?

How to share the benefits from the new uses of the collections accessed before CBD?

How to share the benefits for the exported medicinal extracts (derivatives)?

How to share the benefits for border species (more than one origin)

## Issues for ABS Regulation

### 4. Compliance, monitoring and capacity-building

How to identify the origins;

Multi-lateral benefit-sharing (border species and third user)?

How to trace and monitor the use in foreign countries and transfer to the other users?

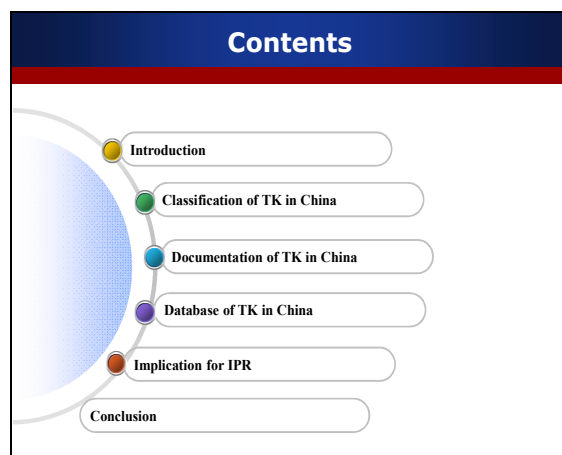
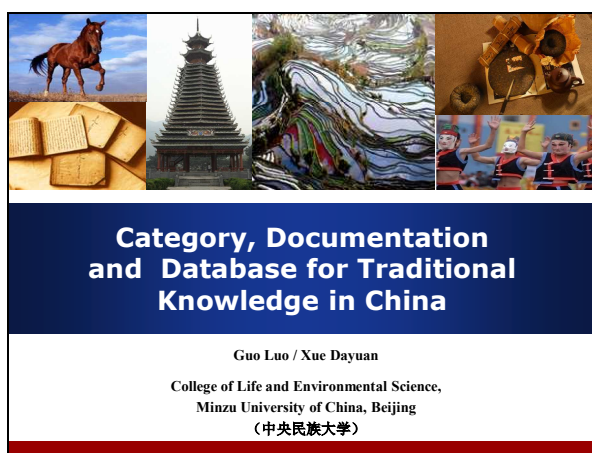
Where are check points?

Institutional arrangement in central and local?

The capacity of negotiation for ILCs?

How to deal with the ABS with non-Parties of NP?

## 發表資料 2



## 1、 Introduction

### ❖ Concept of TK under CBD

- ❖ **CBD Article 8(j)**: “knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”;
- ❖ **Nagoya Protocol** in its Preface: Further recognizing the unique circumstances where traditional knowledge associated with genetic resources is held in countries, which may be oral, **documented or in other forms**, reflecting a rich cultural heritage relevant for conservation and sustainable use of biological diversity,

## 1、 Introduction

### ❖ Concept of TK in China

- ❖ China is rich in TK with **oral and documented types**, as China has a long civilized history over 5000 year and a lot of TK have been recorded literally.
- ❖ China has 56 ethnic groups (nationalities). Except Han, the other **55 ethnic groups** are called “minorities”, including Tibetan, Inner-Mongolian, etc.
- ❖ The minorities in China is **similar to indigenous and local communities (ILCs)** because they are basically kept their traditional lifestyles.
- ❖ 55 minorities together has less **10% of whole China’s population**, but occupying 62% of China’s land territory.

## 2、 Classification of TK in China

### ❖ TK’s categories

- ❖ Based on the concept of TK in CBD, WIPO and WTO, incorporation of Chinese domestic situation, we divide the TK into **5 categories**, according to their attributes and usages.
  - (1) Knowledge for use of traditional genetic resources in agriculture  
(simple as: traditional genetic resources )
  - (2) Knowledge of traditional medical and medicines for healthy  
(simple as: traditional medicines knowledge )
  - (3) Knowledge of traditional technologies, cultivation modes and lifestyles  
(simple as: traditional technology and practices )
  - (4) Knowledge of traditional cultures reflecting biodiversity conservation and sustainable use of bio-resources  
(simple as: traditional cultures )
  - (5) Knowledge of geographical biological indicators  
(simple as: traditional indicators )

## 2.1 Use of the genetic resources for agriculture

This kind of TK refers to

- knowledge about **domesticating, cultivating and using of cultivated plants or varieties and domesticated animal species or breeding varieties**, and utilization of other biological resources;
- knowledge created and cultivated by local community and its people through production and living process in long history.
- knowledge of this kind mainly based on the exploit and utilization of biological resources and genetic resources, such as the **local crop varieties, indigenous animal breeds, traditional fruit trees and flowers, and their preservation.**

## 2.1 Use of the genetic resources for agriculture

### ❖ It includes the following 8 classes:

- (1) Knowledge of traditional usage of crop varieties
- (2) Knowledge of traditional usage of domestic animal varieties resources
- (3) Knowledge of traditional usage of aquatic organisms
- (4) Knowledge of traditional usage of forest and trees
- (5) Knowledge of traditional usage of ornamentals
- (6) Knowledge of traditional usage of wild plants
- (7) Knowledge of traditional usage of wild animals
- (8) Knowledge of traditional usage of microorganism and others

## 2.2 Use of medicinal species

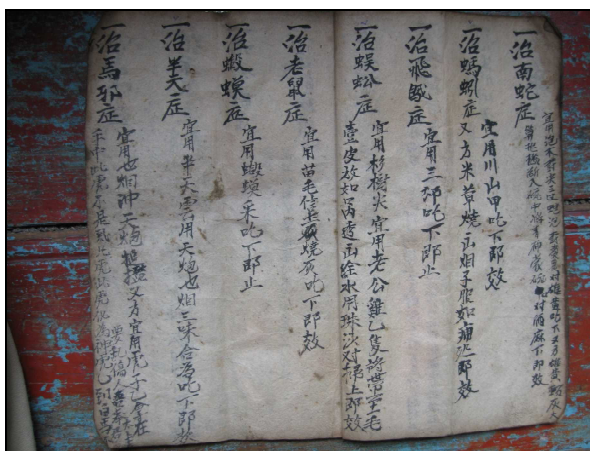
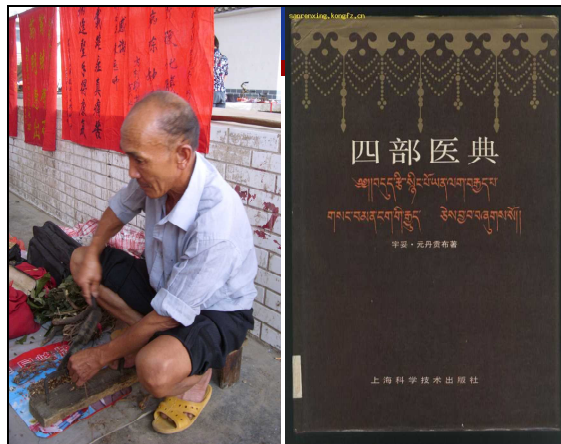
This kind of TK refers to

- knowledge of **creative, inherited, cumulative medical knowledge, technology and innovation of using medical biological resources.**
- knowledge created and cultivated by local community and its people in the long-term **fight against nature and diseases.**

## 2.2 Use of medicinal species

❖ It includes the following 6 classes:

- (1) Traditional medicinal organisms
- (2) Traditional medical theory
- (3) Traditional therapy and treatment
- (4) Traditional pharmaceutical technology
- (5) Traditional prescriptions
- (6) Traditional knowledge of health care and others



## 2.3 Technical innovations for use of biological resources and traditional farming and lifestyle practices

This kind of TK means practical technologies created by ethnic people and communities in long-term agriculture production and life practices. These technologies, which have positive effects on biodiversity protection and sustainable utilization of biological resources and which are valuable for improving food quality and ensuring food safety, are comprised by [traditional ecological agricultural technology and biological resources process technology](#).



The paddy-field-fish-culture



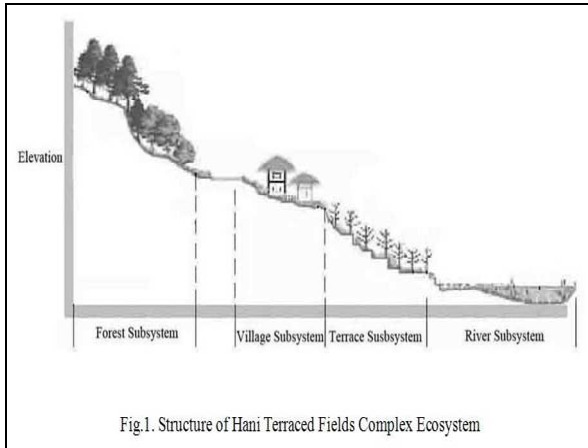
Dongba paper-making

## 2.3 Technical innovations for use of biological resources and traditional farming and lifestyle practices

❖ It includes the following 5 classes:

- (1) Traditional farming system technology
- (2) Traditional print processing technology
- (3) Traditional food processing technology
- (4) Traditional construction planning and design processing technology
- (5) Traditional craftsmanship and others





### 2.4 Traditional cultures and customary laws related to conservation and sustainable use of biological resources

Knowledge of this kind includes [folk art, literature, artificial, and painting that embody biodiversity protection and sustaining use](#); [traditional religion culture](#), such as totem, religion practices (rituals), and sacred mountains, sacred forest and geomantic omen (Fengshui) with environmental protection awareness in the religion; [customary law, village protocol](#), including biological resources protection and utilization practice of township regulations, clan system, and ethnic customs.

**Drung's totemism**

**Sacred forest**

### 2.4 Traditional cultures and customary laws related to conservation and sustainable use of biological resources

❖ It includes the following 6 classes:

- (1) Traditional religious beliefs and ecological ethics
- (2) Traditional festivals
- (3) Customary laws
- (4) Art Culture
- (5) Traditional food and drink culture
- (6) Others

### 2.5 Traditional geographical indicators (GI) for biological products

Biodiversity-related GI mainly refers to [biological resources products](#) in specific areas with excellent reputation and a long history, embodying the special biological resources, environment, social economic and ethnic culture characteristics, blended with traditional variety resources, traditional cultivate technology, traditional sale and diet culture and other traditional knowledge.

**Pu'er Tea**

### 2.5 Traditional geographical indicators (GI) for biological products

❖ It includes the following 3 classes:

- (1) Traditional geographic indicators—Foods
- (2) Traditional geographic Indicators—Medicines
- (3) Traditional geographic indicators—Others

### 3、Documentation of TK in China

TK is facing a lot problems, such as:

- 1) The complicated right-belonging relationship of TK sets back to formulate relevant laws;
- 2) The actual patent system neglects the protection on TK;
- 3) Bio-piracy events occur so frequently that TK are accessed overseas illegally;
- 4) TK also faces the threaten of lose by introducing alien cultures.

To protect TK, we need to consider the following actions.

**TK documentation**

- ✓ Survey on TK, and set up registration system
- ✓ Documentation on TK

➔

**TK Database**

- ✓ On the basis of survey, registration and organization, set up TK database

### 3、 Documentation of TK in China

#### Classification system of TK

- ❖ TK has 5 categories.
- ❖ Each category of TK can be classified into different sub-categories, total is 28 classes.
- ❖ Each sub-category contains a series of vocabulary entries.
- ❖ Entry is the basic unit of TK, described by a series of data

### 3.1 Contents of Documentation

The basic unit of TK is vocabulary entry (lemma)  
Each entry contains information as follows:

Title	Specification of TK	Owners	ABS	Conservation & utilization	Evaluation	Proof materials
<ul style="list-style-type: none"> <li>✓TK name</li> <li>✓Code</li> <li>✓Attribute</li> <li>✓Privilege</li> </ul>	<ul style="list-style-type: none"> <li>✓Background</li> <li>✓Description</li> <li>✓Characteristics of TK</li> <li>✓Spatial and temporal distribution</li> <li>✓Others</li> </ul>	<ul style="list-style-type: none"> <li>✓Family or personal</li> <li>✓Community or group</li> <li>✓Linn</li> <li>✓Nation</li> </ul>	<ul style="list-style-type: none"> <li>✓Internationally recognized certificate</li> <li>✓Access progressing</li> <li>✓Common agreed conditions.....</li> </ul>	<ul style="list-style-type: none"> <li>✓Status of Utilization</li> <li>✓Threatened</li> <li>Status and factor analysis</li> <li>✓Protecting measures</li> <li>✓Case</li> </ul>	<ul style="list-style-type: none"> <li>✓Economic sense</li> <li>✓Cultural sense</li> <li>✓Ecological sense</li> <li>✓Threatened level</li> <li>✓Total</li> </ul>	<ul style="list-style-type: none"> <li>✓Specimen</li> <li>✓Images</li> <li>✓Related database</li> <li>✓Multimedia</li> <li>✓References</li> <li>✓Others</li> </ul>

### 3.2 Example

#### Jin ping cao guo(金平草果)

##### 1、 Title

Name: Jin ping cao guo  
Code: CN HN 160 010  
Attribute: Open  
Privilege: Public

##### 2、 Specification of TK

Background: It is an evergreen perennial herbage with a sharp flavor of whole plant, each fruit contains 20-66 seed with rich spicy aroma, and the shape of seed is polygon.

Description: It is closely related to the life of Hani people. It is not only a kind of flavor spices, but also a medicinal plant. As a flavor for dishes of Hani, it can increase one's appetite, removing gamey smell. Especially, Hani people know the edible spicy hot amomum can remove body's raw, enhanced physique and prevent disease in their long-time living environment of Hani people are humid and rainy.

### 3.2 Example

Species name: *Erigeron breviscapus* (Vaniot) Hand.-Mazz.

Common name: caoguo (amomum )

#### TK Characteristics:

- 1) Hani people has rich experience in the use of amomum in the long-term production practice ;
- 2) It has wide applications: edible flavor and medicine;
- 3) It can be used in the treatment of nausea and vomiting, abdominal pain, dysentery other diseases .

#### Spatial and temporal distribution:

- 1)Origin: Jinping County, Honghe Prefecture, Yunnan province.
- 2)Date Back: more than one thousand years ago, "Tu jing de yan yi" (图径的衍义) written by Guan Zongshuang(冠宗爽) in the Song Dynasty.

#### 3、 Owner

Hani people

#### 4、 ABS

none

### 3.2 Example

#### 5、 Conservation & utilization

**Status of utilization:** Wild resources of caoguo are reduced ,but artificial cultivation were generally carried out. At the same time , the application of Geographical Indication Products is carrying out.

**Threatened status & factors:** 1) Habitats destruction ; 2) Natural disasters

**Measures:** The artificial cultivation of caoguo is benefit for the protection of wild resources, and it is helpful to commercial production.

#### 6、 Evaluation

Economy:5 Culture:4 Ecology:3 Threaded level:1 Total:13

#### 7、 Materials

Images:



#### Reference:

- (1) (2006). *Hani dictionary of Honghe Hani & Yi Autonomous Prefecture*. Kunming: the Nationalities Publishing House of Yunnan, pp:180.
- (2) <http://www.hhzw.gov.cn/Html/Study/2008-1/25/194029334.html>

### 3.3 Status

Completed	Documenting	To be collected
26	15	14
Maonan, Man, Uighur, Salar, Tujia, Zhuang , Jing, Korean,Bouyei, Mongolia, Dai, Miao, Dong, Ha'ni, Daur.....	Tibetan, Lahu, Yi, Gaoshan, Yugu, Naxi, Mulam, Lahua .....	Tu, Hui, Tatar, Oroqen, Russian, Moinba, Kirgiz, Ozbek, Jino .....





## 4、 Database for TK in China

### Objectives

- ◆ Management and protect TK in China
- ◆ Promote the sustainable use of TK widely
- ◆ Link TK to modern scientific and patent literature
- ◆ Use database for defensive and positive legal protection
- ◆ Increase International recognition of TK in China

### Target Audience

- ◆ International Patent Offices
- ◆ Public
- ◆ Professional Research Experts

## 4.1 Code of TK in China

### Standards

#### Country - Ethnic Group - Classification of TK

◎ Country : Codes for the representation of names of countries and their subdivisions (ISO 3166)

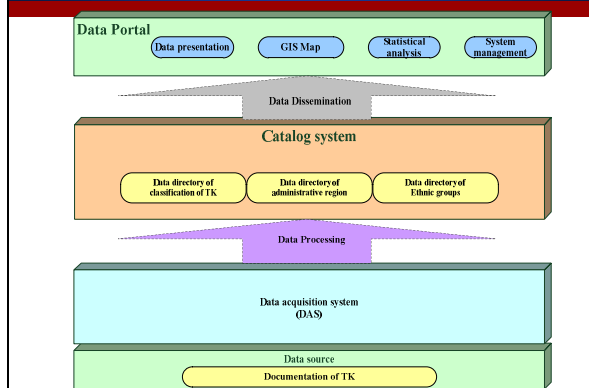
◎ Ethnic Group: Names of nationalities of China in Romanization with codes (GB 3304-91)

◎ Classification of TK: 5 categories, 28 groups

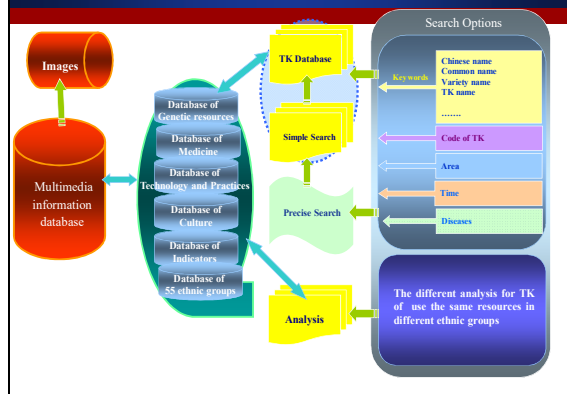
#### Example:

CN JP 120 003  
 China Jingpo Group Domestic Animal Varieties resources Diannan Smalleared Pig

## 4.2 Framework of TKDL of China



## Design of TKDL in China



## 4.3 The index of TKDL in China

According to the classification and documentation system above, the TKDL of China is underway for development.



## 4.4 Area Search Based on GIS



## 5、 Implication for IPR

### The purpose of TKDL

- ❖ To identify TK's holder and beneficiary
- ❖ To ensure fair and equitable benefit sharing with the indigenous and local communities in minority areas
- ❖ To protect and inherit TK by generations
- ❖ To promote the IPR protection of TK by the procedure of PIC for TK access, by the system of contracting agreements for benefit sharing under the mutually agreed terms, by "internationally recognized certification" for monitoring TK's follow-up use, and by "disclosure" the TK's source and origin when applying for IPR.

## 5、 Implication for IPR

### PROPOSED BASIC ELEMENTS OF *SUI GENERIS* SYSTEMS FOR THE PROTECTION OF THE KNOWLEDGE, INNOVATIONS AND PRACTICES OF INDIGENOUS AND LOCAL COMMUNITIES

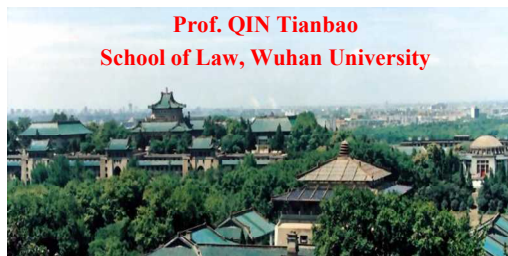
- ❖ (a) Statement of purpose, objectives and scope;
- ❖ (b) Clarity with regard to ownership of traditional knowledge associated with biological and genetic resources;
- ❖ (c) Set of relevant definitions;
- ❖ (f) Rights of traditional knowledge holders and conditions for the grant of rights.
- ❖ (g) The rights conferred;
- ❖ (h) A system for the registration of indigenous/local knowledge/Systems for the protection and preservation of indigenous/local knowledge;
- ❖ (i) The competent authority to manage relevant procedural/administrative matters with regard to the protection of traditional knowledge and benefit-sharing arrangements;
- ❖ (j) Provisions regarding enforcement and remedies;
- ❖ (k) Relationship to other laws, including international law;
- ❖ (l) Extra-territorial protections;

## Conclusion

- ❖ Conservation and inheritance of TK is beneficial for whole human beings, while loss of TK would lead damage to the human civilization.
- ❖ The best way is to establish a special IPR system for TK, such as a *sui generis*, to ensure the ILCs' rights and benefits.
- ❖ TKDL of China will technically support ILCs to get benefits from the use of their TK and associated genetic resources
- ❖ TKDL can promote the capacity building of ILCs to manage their TK, trace TK's use and prevent them from bio-piracy.
- ❖ TKDL is an efficient tool to promote TK's protection and sustainable use, resulting in more benefits to ILCs.
- ❖ There is a trends to develop legislation on TK protection and benefit sharing both in international and national level, but face to a lot of challenges.

## 発表資料 3

### ABS Legislation in China: An academic perspective



Prof. QIN Tianbao  
School of Law, Wuhan University

January 25, 2014  
Tokyo, Japan

## OUTLINE

1. Necessity of Legislation
2. Problems to be solved by Legislation
3. Legislation experience from other countries
4. Difficulties of Legislation
5. Legislative Foundation
6. Structure of Legislation



## Abbreviation

ABS	Access and Benefit-sharing
BGR	Biological Genetic Resource
BR	Biological Resource
CBD	The Convention on Biodiversity
IP	Intellectual Property
MEP	Ministry of Environment Protection
NP	Nagoya Protocol on Access and Benefit-sharing
GR	Genetic Resource



## 1. Necessity of Legislation

### 1.1 To implement national policies

- *Notice on Strengthening the Protection and Management to Biological Resource* by General Office of the State Council in March, 2004
- *The Decision on Implement the Concept of Scientific Development and Strengthen the Environment Protection* by General Office of the State Council, December, 2005



## 1. Necessity of Legislation

- *The Action on Utilization Plan and Protection to Biological Species Resource* by Ministry of Environment Protection of P.R.C, ect (almost 10 central competent authority) in November, 2007
- *The Outline of the National Intellectual Property Strategy* by the State Intellectual Property Office of P.R.C in June, 2008
- *The Action and Strategy for Protection to Biological Diversity in China (2011-2030)* by General Office of the State Council of P.R.C in 2010



## 1. Necessity of Legislation

### 1.2 To fulfill international obligations

- CBD signed by and is binding to China.
- NP is not becoming effective for the reason of the number of ratified country but will be in force in the ending of 2014.
- China gets ready for the ratification of NP.



## 1. Necessity of Legislation

### 1.3 To improve the GR administration

- Nowadays in China, the laws relates to GR or ABS are rare.
- Missing legislations for certain types of GR
  - > marine biological genetic resources
  - > microbial genetic resource
  - > flower plants genetic resource
  - > genetic resource of wild fauna with economic value
  - > new microbial species



## 1. Necessity of Legislation

- There is no specific administrative system to the BGR management that relates to the competent authority such as agriculture, environment protection, forestry, etc.





## 2. Problems to be solved by Legislation

- 2.1 To regulate access
- 2.2 To require PIC
- 2.3 to share benefits



## 3. Legislation Experiences from other Countries

### 3.1 Modes of Legislation

#### *The mode of public law*

- This mode sets out the role of government is critical to the BR management

#### *The mode of private law*

- The contract law and the IP law can be suited to this mode

#### *The mode of self-regulation*

- The mode encourage stakeholder to decide the voluntary guideline and standard



## 3. Legislation Experiences from other Countries

### 3.2 Mode of public law

#### 3.2.1 Enabling Clauses from basic environment law

- *The Environment Law of the State* and its authorized regulation in 1995, Ugandan
- *The Environment Protection and Biodiversity Conservation Act* in 1999, Australia
- *The Law on Environment Protection* in 1996 and *The Regulations on Environmental Protection (Biological Prospecting)* in 2001, Guyana



## 3. Legislation experiences from other countries

### 3.2.2 To revise/amend existing legislations

- To expand the scale of current legislation or revise the legislation relates to forestry, land and wildlife
- *The Law on Environment Protection* in 1994 and *The Law on Intellectual Property* in 2002, Egypt
- *The Regulation on Forestry* in 1994 and *The Central Regulation on Biodiversity* in 1998, Sarawak, Malaysia



## 3. Legislation experiences from other countries

### 3.2.3 Comprehensive legislation on biodiversity

- *Law on the Conservation and Sustainable Use of Biological Diversity* in 1997, Peru
- *The Law on Biodiversity* in 1998, Costa Rica
- *The Law on Biodiversity* in 2002, India
- *National Environment Management: Biodiversity Act* in 2004, South Africa



## 3. Legislation experience from other countries

### 3.2.4 Specific law on ABS

- *The Executive Order No.247* which called *Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resource, their By-product and Derivatives for Scientific and Commercial Purposes and for other Purpose* in 1995, Philippines
- *The Department Administrative Order No.96-207* which called *Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resource* in 1996, Philippines



### 3. Legislation experience from other countries

#### 3.2.5 Super-national legislation

- Decision 391: *The Common Regime on Access to Genetic Resource* in 1996, Andean Community
- *African Model Legislation for the Protection of the Rights of Local Communities, Farmer and Breeders, and for the Regulation of Access to Biological Resource* in 2000, Organization of African Unity



### 3. Legislation experience from other countries

#### 3.3 Trends

- The tendency of law on ABS is clean and clear.
- Specific law on ABS is the consensus and actual choice.



### 4. Difficulties of Legislation

#### 4.1 The widely scale of GR

- The rank of species includes animals, plants and microorganism.
- Under the rank of species includes subspecies, variants and organ, tissue, bacteria, gene, chromosome, DNA or RNA fragments which contains genetic function.



### 4. Difficulties of Legislation

#### 4.2 Fragmented management of GR

MEP  
MOA  
MOC  
SFA  
SOA  
.....



### 5. Legislative Foundation

#### 5.1 Establishing the multi-sectoral coordination mechanism

- The coordinate body on implementation of CBD lead by MEP
- The meeting on protection and management of GR lead by Multi-sectors
- The National Committee on biodiversity



### 5. Legislative Foundation

#### 5.2 Existing Laws and Regulations

##### Article 9 of the *Constitution* --- Ownership

- Mineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches and other natural resources are owned by the state, that is, by the whole people.
- The state ensures the rational use of natural resources and protects rare animals and plants.
- The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited.



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Property Law 2007*

**Article 48** Natural resources such as forests, mountains, grasslands, waste lands and tidal flats shall be **owned by the state**, except those that shall be collectively owned as prescribed by law.



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Law on Animal Husbandry 2005*

##### Chapter II Protection of GR (Articles 9-17)

**Article 16:** To **export or to research/utilize** any livestock or poultry genetic resource, the applicant shall file an application and prepare a plan on sharing the benefits with the state.

A newly found livestock or poultry genetic resource is not allowed to be exported from China nor be researched and utilized



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Law on Animal Husbandry 2005*

**Measures for the Examination and Approval of the Entry and Exit As Well As Foreign-Related Cooperative Research and Utilization of Livestock and Poultry Genetic Resources, 2008**

[http://www.fdi.gov.cn/1800000121\\_39\\_611\\_0\\_7.html](http://www.fdi.gov.cn/1800000121_39_611_0_7.html)



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Law on Seeds* amended in 2013

##### Chapter II (Articles 8-10)

**Article 8:** Collecting and cutting natural germ plasm resources that are under special protection of the State are prohibited. Where such **collecting** or cutting is required for scientific research or other special purposes, the matter shall be subject to **approval** by the administrative department for agriculture or for forestry.



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Law on Seeds* amended in 2013

##### Chapter II (Articles 8-10)

**Article 10** The State has the sovereign right over germ plasm resources. Any units or individuals that wish to provide germ plasm resources to people **outside China** shall apply to the administrative department for agriculture or for forestry under the State Council for approval; A



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Law on Wildlife 1989*

**Article 16** The **hunting, catching** or killing of wildlife under special state protection shall be prohibited. Where the catching or fishing for wildlife under first class state protection is necessary for scientific research, domestication and breeding, exhibition or other special purposes, the unit concerned must apply to the department.

Wildlife under second class state protection --- provincial department



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Law on Wildlife* 1989

**Article 22** The sale and purchase of wildlife under special state protection or the products thereof shall be prohibited.

Where the sale, purchase or utilization of wildlife under first class state protection or the products thereof is necessary for scientific research, domestication and breeding, exhibition or other special purposes, the unit concerned must apply for approval by the department .

Wildlife under second class protection - provincial department



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Regulations on Terrestrial Wildlife* 1992

**Article 20** Any **foreigner** intending to make field surveys or to collect specimens or to make film or videos of wildlife under special protection by the State in the territory of China must apply to the provincial competent department of forestry administration, and then get approval by the competent department of forestry administration under the State Council or by a body authorized thereby.



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Regulations on Protection of Wild Medicinal Resources* 1987

**Article 6** Wild medicinal species under class 1 shall be prohibited from being gathered.

**Article 9** Wild medicinal species under class 2 and 3 shall be gathered with **Drugs Gathering Certificate**. After acquiring the Drugs Gathering Certificate, they shall also apply for the Cutting Certificate or Hunting Certificate from concerned departments if cutting or hunting is to be conducted.



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Regulations on Wild Plants Protection* 1996

■ **Article 16** The collecting of wild plants under **first class** state protection shall be prohibited. Where the collecting of wild plants under first class state protection is necessary for some special purposes such as scientific research, cultivation or cultural exchanges, the unit concerned must seek comments from provincial the department, and then apply for a collecting **permit** to the department of wild plants administration under the State Council.



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Regulations on Wild Plants Protection* 1996

**Article 18** The sale or purchase of wild plants under first class state protection shall be prohibited.

Those intending to sell or purchase wild plants under second class state protection shall apply for approval from the department of wild plants administration under provincial.



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Regulations on Wild Plants Protection* 1996

**Article 21** **Foreigners** may not, in the territory of China, collect or purchase wild plants under special state protection.

Where any foreigner intends, in the territory of China, to make surveys of wild plants under special state protection in the field, he must submit an application to provincial department, which, after examination, shall submit it to the department under the State Council.



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Regulations on Nature Reserves 1994*

**Article 28** Tourism, production and trading activities are prohibited in the **buffer zone** of nature reserves. In buffer zone of nature reserves, the non-destructive activities such as scientific research, educational practice and specimen collection for teaching or scientific research, applications and activity plans shall be submitted to the administrative agency of the nature reserves in advance, and be approved by the same agency.



## 5. Legislative Foundation

### 5.2 Existing Laws and Regulations

#### *Regulations on Nature Reserves 1994*

**Article 27** Nobody shall be allowed to enter **the core area** of nature reserves. Where scientific observations and investigation thereto are necessary for scientific research, the unit concerned shall submit the applications and activity plans to the administrative agency of the nature reserves in advance, and shall be approved by the competent administrative department of nature reserves in the people's government at or above the provincial level..



## 5. Legislative Foundation

### *Law on Intangible Cultural Heritage 2011*

The term "intangible cultural heritage" shall refer to all forms of traditional culture which are deemed by generations of Chinese people of all ethnic groups as part of their cultural heritage, and material objects and places in relation to the traditional culture, including:

3. **Traditional skills, medicine and calendars;**
4. Folk customs such as traditional etiquettes and festival celebrations;
6. Other intangible cultural heritage.



## 5. Legislative Foundation

### *Patent Law 2008*

**Article 5.2** No patent will be granted for an invention **based on genetic resources** if the access or utilization of the said genetic resources is in violation of any law or administrative regulation.

**Article 26.5** For an invention based on genetic resources, the applicant shall **state the direct source and the original source** of the genetic resources in the application documents. If the applicant is not able to state the original source, it or he shall state the reasons.



## 6. Structure of Draft Legislation

### 6.1 Table of Contents

1. General provision
2. Access to biological genetic resources
3. Benefit sharing
4. Administration of biological genetic resources
5. Legal liability
6. Supplementary provisions



## 6. Structure of Draft Legislation

### 6.2 Key points of the legislation

#### 6.2.1 Objectives

- To promote the conservation and sustainable use of BGR;
- To regulate the access to BGR;
- To ensure the fair and equitable benefit sharing of BGR;
- To achieve social and economic sustainable development



## 6. Structure of Draft Legislation

### 6.3 Guiding principles

- effective conservation
- sustainable use
- scientific management
- fair and equitable benefit sharing



## 6. Structure of Draft Legislation

### 6.4 Institutional Arrangement

- Guideline: keep the *Status quo* of existing division of authorities among relevant departments
- Principle: Unified Coordination with Respective Administration
- Competence:
  - MEP: mainly coordinator
  - MOA、SFA: competent authorities



## 6. Structure of Draft Legislation

### 6.5 Coordination, consultation and Management Bodies

#### 6.5.1 Coordination Body: National ABS Committee

- Coordination;
- Planning
- Identification and monitoring
- Lists
- Capacity building
- International cooperation
- Others



## 6. Structure of Draft Legislation

### 6.5.2 Approval procedure on Access Consultation Body: Subsidiary Committee on Science and Technology (SCST)

- To provide scientific supports and advices

#### 6.5.3 Management Body

- National ABS Office under the Ministry of Environmental Protection of P. R. China



## 6. Structure of Draft Legislation

### 6.6 Approval procedure on Access

- Application
- Consultation (SCST)
- Review
- Approval



## 6. Structure of Draft Legislation

### 6.7 Specific regimes

#### 6.7.1 Planning

- The plans for national economy and social development, single or multi competent authorities should incorporate the strategic, program and project of BGR.
- And the emergency plans of injury or injury threat initiated by BGR also should be made.





## 6. Structure of Draft Legislation

### 6.7.2 Survey

- Survey on BGR organized by the nation in a fix date.
- To establish the BGR database and the information exchange and sharing system.

### 6.7.3 Directory

- National directory of BGR
- Provincial directory of BGR



## 6. Structure of Draft Legislation

### 6.7.4 The regime of protection

- Prior to in situ protection.
- Supplement to the ex-situ protection.
- To set up protected area to the nature centralized zone where BGR is distributed.



## 6. Structure of Draft Legislation

### 6.7.5 Classified management of access

- Written application to National Commission; export application when applied
- Cooperative R&D between Chinese and foreigners included
- Contract on ABS between the applicant and competent authority
- Exemption: domestic academic access
- Monetary or Non-monetary benefits



## 6. Structure of Draft Legislation

### 6.7.6 voluntary Guidelines and Simplified Application

- Only following situation can be suit to simply submission:
  - Organization or person who comply with the ABS guideline formulated by national competent authority voluntarily.
  - Epidemic disease or should be access to genetic resource urgently.



## 6. Structure of Draft Legislation

### 6.7.7 Benefit-sharing

- Contract on ABS between the applicant and competent authority.
- Exemption: domestic academic access.
- Monetary or Non-monetary benefits.



## 6. Structure of Draft Legislation

### 6.7.8 Export or Import management

The citizen, legal person or other organization who import the genetic resource from aboard should:

- (1) Submit application to the provincial coordination body
- (2) The provincial coordination body submit to the national commission on biological genetic resource for prediction by the consultation body



## 6. Structure of Draft Legislation

### 6.7.9 Disclosure

- The applicant should disclose the source or direct source of biological genetic resource.
- If the competent authorities should offer the Certification on access and benefit-sharing to biological genetic resource stipulated by *Nagoya Protocol*.



## Contact Information

- Professor of Biodiversity and Biotechnology Law
- Vice Dean, School of Law, Wuhan University
- Secretary-General, Chinese Society of Environmental Law
- Member, IUCN Academy of Environmental Law
- Tel: +86 27 6875 3694
- Fax: +86 27 6875 2091
- Email: [tianbaoq@hotmail.com](mailto:tianbaoq@hotmail.com)

