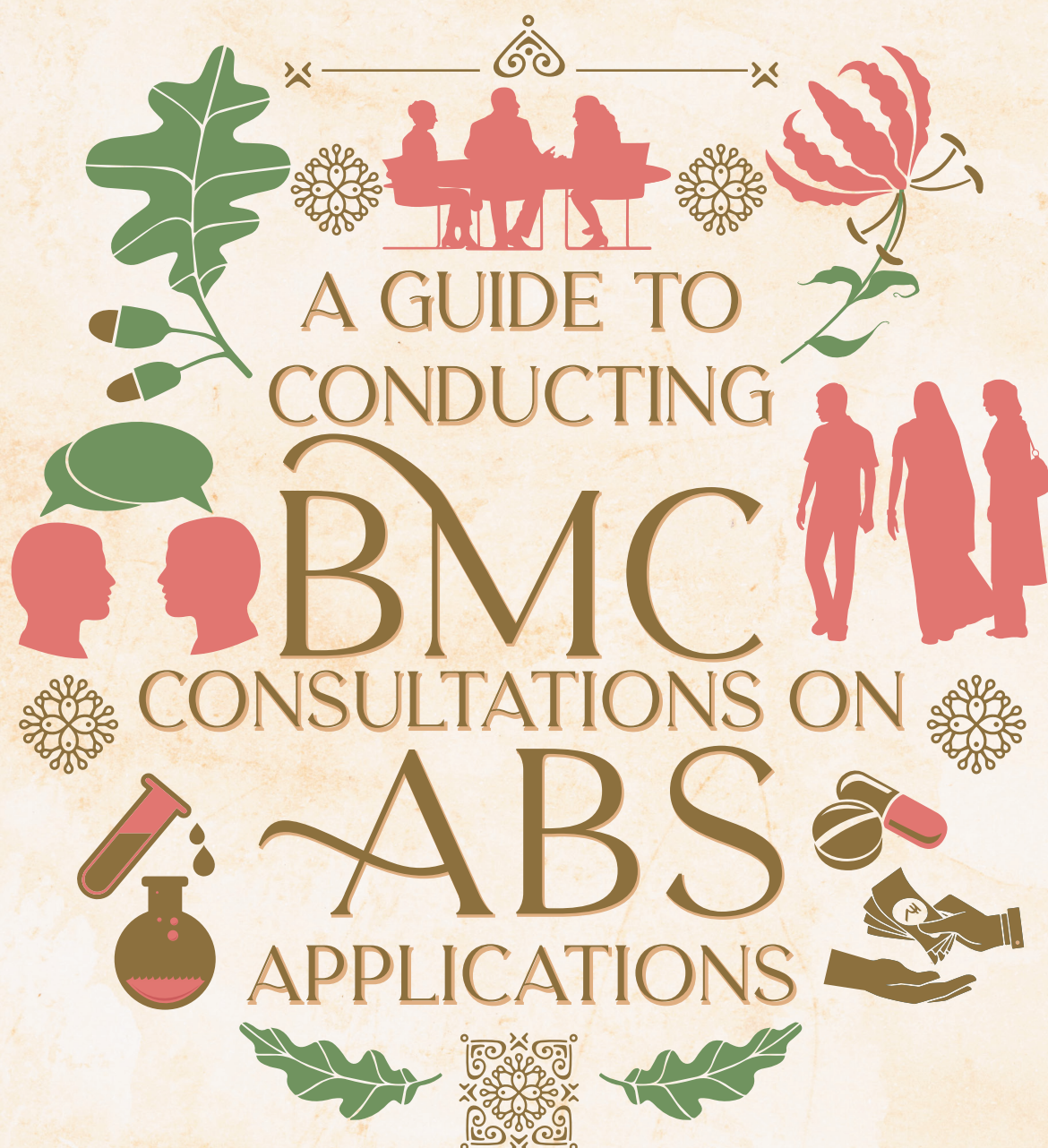




Implemented by
giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH



As a federally owned enterprise, GIZ supports the German Government in achieving its objectives in the field of international cooperation for sustainable development

PUBLISHED BY

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

REGISTERED OFFICES

Bonn and Eschborn

ADDRESS

Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH
Indo-German Biodiversity Programme (IGBP),
GIZ-India, A-2/18, Safdarjung Enclave,
New Delhi - 110029, India
E-Mail: biodiv.india@giz.de
Web: www.giz.de &
www.indo-germanbiodiversity.com

PROGRAMME/PROJECT DESCRIPTION

Access and Benefit Sharing Partnership Project
Indo-German Biodiversity Programme

IMPLEMENTING PARTNERS

Ministry of Environment, Forest and Climate Change, New Delhi
National Biodiversity Authority (NBA), Chennai
State Biodiversity Boards of Maharashtra, Tamil Nadu and Uttarakhand
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

RESPONSIBLE

Vinod B. Mathur, Chairman, National Biodiversity Authority
J. Justin Mohan, IFS, Secretary, National Biodiversity Authority
Ravindra Singh, Director, Indo-German Biodiversity Programme, GIZ
Geetha Nayak, Team Leader, Access and Benefit Sharing Partnership Project, GIZ

AUTHORS

Shameeka Rao, Geetha Nayak

CONTRIBUTORS

A. Udhayan, IFS & APCCF, Tamil Nadu Forest Department,
J. Justin Mohan, IFS, & Secretary, National Biodiversity Authority,
Md. Sajid Sultan IFS, Member Secretary, Ladakh Biodiversity Council
Stanzin Namdol, Member, Ladakh Biodiversity Council
Priya Davidar, Professor(Rtd), Pondicherry University
T. Narendran, K. Chitrarasu, K. P. Raghuram, P. Jaishankar, J. Soundrapandi,
K. Satheesh, M.Sundar Rajan - National Biodiversity Authority

EDITOR

Neha Owaisy, GIZ India

PAGE LAYOUT & ILLUSTRATIONS

Tryphena Kirubakaran, tryphenaa@gmail.com

PHOTO CREDITS/SOURCES

GIZ/ABS Partnership Project

DISCLAIMER

This publication will be used only for educational purposes, free of cost. The content in this publication is not meant to be used or treated as legal interpretation under the Biological Diversity Act, 2002 or any Rules made thereunder. The views expressed are purely those of the authors and may not in any circumstance be regarded as stating an official position of the Ministry of Environment, Forest and Climate Change (MoEFCC), National Biodiversity Authority (NBA) or German Federal Ministry for Economic Cooperation and Development (BMZ)

ON BEHALF OF

German Federal Ministry for Economic Cooperation and Development (BMZ)

GIZ is responsible for the content of this publication

PUBLISHED

Chennai, 2020



CONTENTS

| | |
|--|----|
| Introduction | 1 |
| Biodiversity Management Committees | 2 |
| Role of BMCs in the ABS process | 2 |
| Why is traceability of bio-resources important for benefit-sharing? | 3 |
| Establishing traceability of bio-resources through BMCs | 4 |
| Process of BMC Consultation | 5 |
| Conducting BMC consultation on ABS application | 8 |
| The Pre-Consultation | 9 |
| The Consultation Process | 10 |
| The Post-Consultation | 11 |
| Case Study 1: Consultation meeting with Kodaikanal Biodiversity Management Committee in Tamil Nadu for accessing Kurinji honey from <i>Strobilanthes kunthiana</i> | 11 |
| Case Study 2: Meeting with Shey Biodiversity Management Committees for accessing Sea buckthorn from Ladakh | 13 |
| Conclusions | 16 |



ABBREVIATIONS

| | |
|-------------|---|
| ABS | - Access and Benefit-Sharing |
| BMC | - Biodiversity Management Committee |
| BR | - Bio-resources or Biological Resources |
| MAT | - Mutually Agreed Terms |
| NBA | - National Biodiversity Authority |
| NTAC | - Normally Traded as Commodities |
| PBR | - People's Biodiversity Register |
| PIC | - Prior Informed Consent |
| SBB | - State Biodiversity Board |





INTRODUCTION

We write this introduction in a year that history will remember for its impact on people and nature. The devastation of nature by humankind has resulted in increasing species extinctions, escalating climate change impacts and pandemics. The Global Assessment Report (2019) on Biodiversity and Ecosystem Services from IPBES clearly stated that one million plant and animal species might soon be extinct from the face of the earth. It may be hard for many of us to imagine the repercussions of such extinctions unless there is a rapid change, of course.

India is a megadiverse country. It is endowed with a great diversity of plants and animals and a range of habitats and ecosystems from deserts to wetlands. We benefit from nature through the services that it performs be it in the form of clean water, air or healthy food. Many communities living in or close to these habitats survive on natural resources and have accumulated traditional knowledge on how to use this biological heritage sustainably. Realising the potential of India's biodiversity and the traditional knowledge associated with it, the Biological Diversity Act was instituted in 2002 to fulfil its commitment to the global Convention of Biological Diversity (CBD) 1992. The Act adopted the principle of fair and equitable sharing of benefits arising from the utilisation of resources.

The Biodiversity Act has established institutional structures and appropriate processes through its various rules, regulations and notifications to regulate and protect the use of bio-resources and traditional knowledge while at the same time sharing the benefits with local communities. In-line with India's Panchayati Raj system of local self-governance, India formed a three-tier decentralised structure at the national (National Biodiversity Authority), state (State Biodiversity Board) and local (Biodiversity Management Committees) levels. The Act views the community as the custodian of the biodiversity in their area and has instituted the Biodiversity Management Committees (BMCs) oversee this process. The BMC is a seven-member body appointed by the Local Body to conserve and promote the sustainable use of biodiversity at the local level. At the

next level above the BMC is the State Biodiversity Board (SBB), and then the National Biodiversity Authority (NBA).

Presently there are 2,69,433 BMCs in India. The constitution of BMCs at the local level was a mammoth task since acceptance of new concepts such as trade of biological resources, accountability of conservation, sustainable utilisation and sharing of benefits requires time and understanding. Therein lies the need for capacity building.

Access and benefit-sharing is a concept that promotes fair processes and protects the rights of the community and biodiversity. Lack of awareness of this concept can harm those directly dependent on biological resources to secure livelihoods.

A key element in the ABS process is establishing traceability of a bio-resource. Informal markets selling bio-resources by their very nature hinder traceability. Once the bio-resource is traded into larger markets (national, global), its difficult to trace the source such as: where was it collected, who grew it, how much of it remains, and many such questions. A fully functional BMC will help in ensuring traceability in the trade of bio-resources by setting up a process that regulates access. In turn, this will support in effectively operationalising access and benefit-sharing mechanisms.

Starting an open and clear-cut conversation is a step in this long but empowering process, and that is what this document is all about. We still have a long way to go, but the end is definitely worth the while!

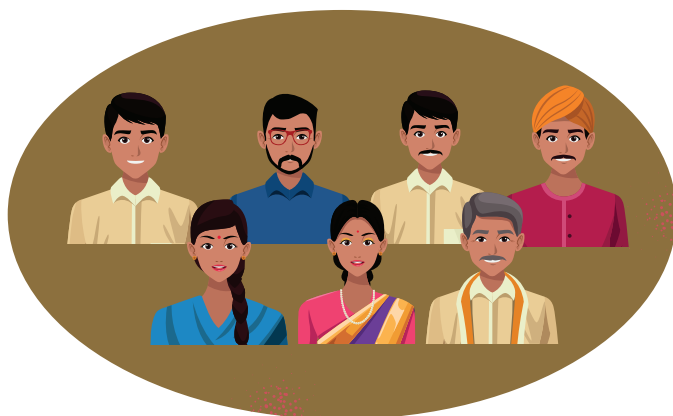
TARGET GROUP

This guide is for the State Biodiversity Boards and Biodiversity Councils or organisations authorised by them to support the Biodiversity Management Committees in fulfilling their role prescribed in the Biological Diversity Act, 2002 and rules therein. The topics discussed in this guide are also useful in training sessions for the secretaries of BMCs and Technical Support Groups.

BIODIVERSITY MANAGEMENT COMMITTEES

The Biodiversity Management Committee (BMC) is a seven-member committee at every local body consisting of people enlisted in the local electoral rolls. The BMC is formed under the Biological Diversity Act, 2002 for the management, conservation, and sustainable utilisation of bio-resources.

Section 41(1) of the Biological Diversity Act, 2002 describes the constitution of the BMC and its roles and responsibilities under Rule 22 of the Biological Diversity Rules, 2004.



The key functions and responsibilities of BMCs include:

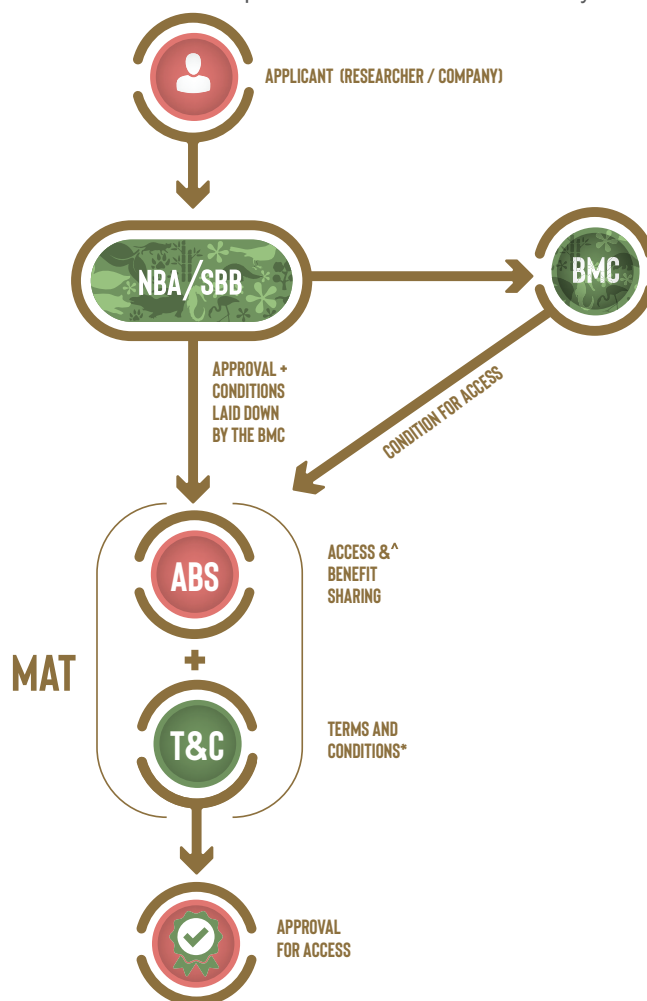
- Preparation of People's Biodiversity Registers (PBR)
- Advising and providing feedback to the National Biodiversity Authority (NBA) and State Biodiversity Boards (SBB), for granting approval or otherwise, on any matter under the Access and Benefit-Sharing application.
- Conservation of local varieties of plants, livestock breeds, and traditional knowledge.
- Raising awareness about biodiversity and the need for sustainable use.

This document will define the steps to be followed while conducting the consultation meeting with the BMC and explain its role in the access and benefit-sharing process, and the significance of BMCs in establishing traceability of trade in biological resources.

ROLE OF BMCs IN THE ABS PROCESS

India has sovereign rights over its natural resources which include bio-resources within its boundary. The Biological Diversity Act, 2002 bestows the authority of regulating the use of bio-resources and associated knowledge upon the NBA, the SBBs and BMCs. Since the ecology and cultural history of India are intertwined, the BMC and local people are regarded as the custodians of biodiversity and its associated traditional knowledge.

As custodians of bio-resources, the BMCs are responsible for the management of biodiversity within their territorial jurisdiction. The BMCs are a link between the local people and the users of biological resources. Ensuring their active participation is fundamental to the successful implementation of the Biodiversity Act. Since the establishment of BMCs in India is ongoing, its members have limited knowledge about their role and responsibilities under the Biodiversity Act.



[^]Schedule A of the ABS Agreement contains the details of the monetary or non-monetary benefit-sharing component

^{*}Schedule B consists of details of the biological resources used, quantity, associated knowledge, geographical locations, reporting requirements, the period of access, details of the activity etc.

A fully functional BMC will speed up the access and benefit-sharing (ABS) process, by connecting the providers and users of bio-resources. Since there are BMCs at every village level, their role is to keep records and exchange information on the trade of bio-resource, traders, intermediaries, agents or companies that procure bio-resources from the territorial jurisdiction of the BMCs. These records are key to establishing traceability and efficiently operationalising ABS, eventually sharing the benefits with the benefit claimers or the BMCs.

WHAT DOES THE BIODIVERSITY ACT AND RULES SAY ABOUT FUNCTIONS OF BMCs?



Section 41. (1) of the Biological Diversity Act, 2002.

Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.

Rule 14(3) of the Biological Diversity Rules, 2004

The Authority shall after consultation with the concerned local bodies and collecting such additional information from the applicant and other sources, as it may deem necessary, dispose of the application, as far as possible, within a period of six months from the date of its receipt.

Rule 22(11) of the Biological Diversity Rules, 2004

The Committee shall also maintain a Register giving information about the details of the access to biological resources and traditional knowledge granted, details of the collection fee imposed, and details of the benefits derived and the mode of their sharing.

Rule 22(6) of the Biological Diversity Rules, 2004

The main function of the BMC is to prepare People's Biodiversity Register in consultation with local people. The Register shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them.

WHY IS TRACEABILITY OF BIO-RESOURCES IMPORTANT FOR BENEFIT-SHARING?

India is home to unique ecosystems and rich biodiversity with over 1,00,690 species of fauna and 47,480 species of flora in ten biogeographical zones of the country. Many of these plant species are bought from various parts of the country and commercially used. They are also exported to other countries as raw materials or semi-processed products. The trade of bio-resources in India is opaque involving multiple actors, and it is challenging to establish the origin of most traded bio-resources due to a wide variety of trade channels such as traditional markets or mandis (wholesale/big markets), export agencies and companies. Unlike agricultural commodities, these traditional markets are highly informal, which makes it difficult to trace the movement of bio-resources.

Contributing to the opacity of the trade is the sheer volume of bio-resources traded. For example, of the 1178 species traded annually, around 198 species weight over 100 metric tons. These plants are either collected from forests, and common lands or are cultivated by the farmers

A study commissioned by the ABS Partnership Project to the Covenant Centre for Development, Madurai provided insights into the plant trade in Tamil Nadu. They analysed the value-chain of 20 highly traded medicinal plant species in Tamil Nadu. The study was on the demographics of persons involved in the trade, the various stages of the trade, and identifying possible areas to implement benefit-sharing. The trade of medicinal plants involved stakeholders from primary gatherers to cultivators, agencies, agents, traders, processors, exporters, traditional healers, and research stations. Often, the process involved multiple levels of aggregators and traders which made the traded bio-resources nearly untraceable.

Due to the highly informal nature of the bio-resource trade in India, many industries applying for access to particular bio-resources were not able to provide the exact source locations. This situation raised concerns on how NBA or SBBs can share the obtained benefits with the providers of these bio-resources when they cannot determine the benefit claimers. To address this challenge, some SBBs have facilitated ABS application forms by asking users (companies) to provide details of the traders or markets through which they procured their bio-resources, to trace these resources back to their origins eventually.

Tracing the bio-resources back to their source locations is essential because the Biodiversity Act mandates that 95% of the benefits received are to be shared with the providers of the bio-resources. Identifying the providers of the bio-resources, their source locations or even the BMC of origin of the bio-resources is an integral part of the ABS process, to ensure the effective implementation of the benefit-sharing mechanism.



ESTABLISHING TRACEABILITY OF BIO-RESOURCES THROUGH BMCs

A particular bio-resource can be traced to its source using information given in the access application, and documentation in the PBR. The BMCs with similar bio-resources can form a network through which they can regularly communicate to identify routinely traded bio-resources, traders, and traditional markets.

HOW CAN PBRs HELP ESTABLISH TRACEABILITY?

One of the primary duties of BMCs is to prepare the People's Biodiversity Registers (PBRs) which records all bio-resources and associated knowledge holders within their jurisdiction using both registers and bioinformatic databases. PBRs will immensely help BMCs, SBBs and

NBA in the ABS process, as traders or aggregators from different locations that link multiple BMC's for a common bio-resource can be used to trace the resource to its source locations to enable benefit sharing with the providers. Besides PBR, the BMCs also maintain a register of all traded bio-resources within their jurisdiction, as described in Rule 22(11) of the Biological Diversity Rules, 2004.

The PBR can provide a clear picture of the bio-resources available within the BMC's jurisdiction, the number of bio-resources accessed by users, and the traders or traditional markets through which they trade. For instance, PBR format 6 on the trade of domesticated animals has included a section on the markets through which they trade animals. These records are also useful when the NBA or SBBs consult BMCs before making any decisions regarding the use of bio-resources or any associated knowledge from their jurisdictions.



However, not all bio-resources found within the jurisdiction of BMCs come under the scope of the Biodiversity Act. For example, in consultation with the NBA, the Government of India has notified a list of 421 items including bio-resources, called as normally traded as commodities (NTAC). These items, when traded as commodities, are exempt from the ABS provisions of the Act.

PROCESS OF BMC CONSULTATION

Potential users apply to the NBA or SBBs for access to specific bio-resources, and the NBA or SBBs then provide a Prior Informed Consent (PIC) for access to the bio-resource. If, however, upon consultation with BMCs, the NBA or SBBs it is recognised that access to that particular bio-resource is counterproductive to the objectives of the Biological Diversity Act, 2002, the application can be turned down or restrictions applied.



Photo Credits: GIZ/Suddhabrata Chakraborty

However, in the case of bio-resources falling within the forested areas or private lands, it is essential to consult other stakeholders as well. Some case scenarios are presented in the textbox.

Scenario 1: A company has applied to NBA or SBB for access to a bio-resource under the Biological Diversity Act, 2002. The bio-resource is commonly available in public areas of the village. Should the local BMCs be consulted before the NBA or SBBs grants approval?

Yes, the NBA or SBBs should consult the BMC before granting approval for access as per Section 41(2) of the Biological Diversity Act, 2002.

Scenario 2: A company has requested access to bio-resources collected from a forested area in a village. Should the local BMCs be consulted before the NBA or SBBs grants approval?

In this case, the BMC, as well as the authorities who govern the forested area, should be consulted. It is essential to check with the concerned authorities that collection of bio-resources

from the area is legally carried out as per the extant laws and that such collection does not adversely affect the ecosystem or species and to ensure sustainable collection. The BMCs, in this case, may help in identifying benefit claimers and facilitate in disbursing the ABS amount at a later stage.

The provisions of the Biological Diversity Act, 2002 shall be implemented besides the provisions in any other law, for the time being in force, relating to forests or wildlife. Therefore, it is essential to check whether the bio-resource in question is under the purview of any other rules and regulators.

Section 59 of the Biological Diversity Act, 2002 reads as "The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wildlife".

Scenario 3: A company has applied for access to bio-resources grown in a private property by farmers/growers/ cultivators. Should the BMCs be consulted before the NBA or SBBs grants approval?

Yes, the local BMC and other stakeholders have to be consulted. In the present scenario the benefit claimers are the farmers themselves. The BMC shall convene the consultation meeting, and the views and concerns of the farmers/ growers/ cultivators and other stakeholders taken to provide feedback on the ABS applications. Further, the benefit-claimers shall receive their share of the resulting ABS amount.

Section 2(a) of the Biological Diversity Act, 2002 defines "benefit claimers" as the conservers of biological resources, their by-products, creators and holders of knowledge and information relating to the use of such biological resources, innovations, and practices associated with such use and application.

Scenario 4: A company has applied for access to bio-resources grown in its own land but falling within the territorial jurisdiction of BMCs. Should the BMCs be consulted before the NBA or SBBs grants approval?

Yes, the BMC concerned has to be consulted and may solicit the company's views and concerns while submitting the feedback to NBA/SBBs. Furthermore, as per Regulation 16(iv) of ABS Regulations, 2014, the NBA may consider several factors while processing the application for access, and that includes biological resources developed or maintained under 'ex-situ conditions'.

Scenario 5: A company has submitted form-1 to SBB/NBA for accessing to bio-resources collected from a forest area governed by the State Forest Department. Should the local BMCs be consulted before the NBA or SBBs grants approval?

In this scenario, the state Forest Department should be consulted to check that collection of bio-resources has due permits, is legally carried out as per extant laws. Once the permit from the Forest Department is obtained, the BMCs come into the picture to do the needful. The BMCs have to be consulted to obtain feedback on ABS applications and identify benefit claimers. The ABS amount will be utilised to support the objectives of the Biodiversity Act.

Scenario 6: A company has requested access to bio-resources from a village/tribal hamlet located within the forest area. Should the local BMCs and/or State Forest Department be consulted before the NBA or SBBs grants approval?

Yes, the local BMC in the village or tribal hamlet has to be consulted along with the State Forest Department to check for additional permit requirements. Furthermore, some states have cooperative societies or self-help groups that facilitate trade. The consultation meeting should include these groups with the ultimate objective of ensuring that benefit claimers are identified, and that the ABS amount is utilised to support the goals of the Biodiversity Act.

Scenario 7: A company requests access to species of plants or animals (e.g.: snake venom) covered under the Wildlife (Protection) Act, 1972, which are collected from common lands or private lands. Should the local BMC be consulted before the NBA or SBBs grants approval?

In this scenario, the BMCs will have to be consulted only if the collection is legal and on the orders of the Chief Wildlife Warden/Forest Department. The Chief Wildlife Warden of the state is the sole authority to permit the collection or use of all species of plants and animals covered under the Wildlife (Protection) Act, 1972. Therefore, the NBA or SBBs should first consult the concerned state forest department to obtain their consent before granting approval for access as reiterated by Section 59 of the Biological Diversity Act, 2002.

Scenario 8: A company is growing plants species that are listed in section 38, which are on the verge of extinction for the products manufactured by them. They have applied to SBB/NBA for accessing the plant materials. Should the local BMC be consulted before the NBA or SBBs grants approval?

Collection of section 38 species is prohibited. However, in the case where the plant materials are accessed from cultivated sources, it may be allowed after examining the proof of documentation that the plant materials are indeed cultivated by the company. In this scenario, the BMC and the forest department should be consulted to obtain their feedback. Cultivation of endangered or threatened species should be encouraged to support its conservation.



WHAT DOES THE BIODIVERSITY ACT SAY ABOUT CONSULTING BMC ON ABS APPLICATIONS?

Section 24(2) of the Biological Diversity Act, 2002

On receipt of an intimation under sub-section(1), the State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquiries as it may deem fit, by order, prohibit or restrict any such activity if it is of the opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity:

Provided that no such order shall be made without giving an opportunity of being heard to the person affected. The National Biodiversity Authority while taking any decision on the application relating to the use of biological resources and/or knowledge associated thereto may consult through the State Biodiversity Boards, the Biodiversity Management Committees within whose jurisdiction the biological resources and/or the knowledge occur.

Section 41(2) of the Biological Diversity Act, 2002

The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee.

Rule 22(7) of the Biological Diversity Rules, 2004

The other functions of the Biodiversity Management Committee are to advise on any matter referred to it by the State Biodiversity Board or the National Biodiversity Authority for granting approval, to maintain data about the local vairs and practitioners using biological resources.

Some states specifically have defined the term "consult". For example, the Tamil Nadu Biological Diversity Rules 2017 determines 'consult' to be (a) issuing a public notice, in the local language, of the proposal for access or collection or (b) discussion with the general assembly of the local body about the proposal and its implications for conservation and livelihoods. Therefore, the consultation process may be determined by the individual state based on their requirements and capacities. Readers are advised to check state rules for more information.





CONDUCTING BMC CONSULTATION ON ABS APPLICATION

CONCEPTS OF PIC AND MAT

The ABS process in general has two key elements – Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT). PIC is the permission given by the competent authority to the applicant before accessing bio-resources based on the legal framework of the country. In India, the NBA or SBBs grant the PIC that sets the conditions for access. The NBA or SBBs, as trustees of bio-resources, are required to consult BMCs or benefit-claimers when taking any decisions regarding the access of bio-resources or associated

knowledge from the BMCs jurisdiction. This element is an integral part of the MAT, which is an agreement signed between users of bio-resources and NBA/SBBs.

As part of the consultation process, the BMCs or benefit-claimers, need to know their rights and responsibilities towards conservation of these bio-resources and the implications - both positive and negative - of users accessing these resources. They also need to provide their opinions and recommendations on access to the specific bio-resources discussed during the consultation meeting. The NBA/SBBs need to provide all necessary information in a format where the roles and responsibilities of the BMC members are outlined clearly.



Photo Credits: GIZ / Geetha Nayak

STEPWISE APPROACH TO CONDUCTING THE BMC CONSULTATION MEETING IN THREE STAGES:

1. The Pre-Consultation
2. The Consultation Process
- 3.. The Post-Consultation

1 The Pre-Consultation

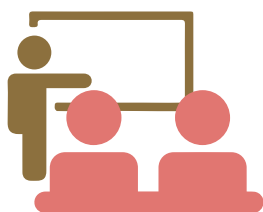


Photo Credits: GIZ / Suddhabrata Chakraborty

LOGISTICAL PREPARATIONS:

- Identify and confirm the date
- Choose a neutral venue, for example, a community hall, public office etc.

ADMINISTRATIVE PREPARATIONS:

- Provide the details of the company, bio-resources requested, the purpose for which it will be used to the nodal officer of the district where the BMC is located.
- Request the nodal officer to inform the Secretary of the BMC about the upcoming consultation.
- Notify all BMC members, the local body about the date and venue of the meeting
- Identify a suitable moderator with an excellent grasp of the vernacular language.
- Invite primary collectors, aggregators, traders and other government line departments dealing with biological resources such as agriculture, horticulture, animal husbandry etc.

TECHNICAL PREPARATIONS:

All technical presentations, brochures/documents to be shared during the meeting should be easy to understand and in the vernacular language. The technical presentations should focus on the following topics:

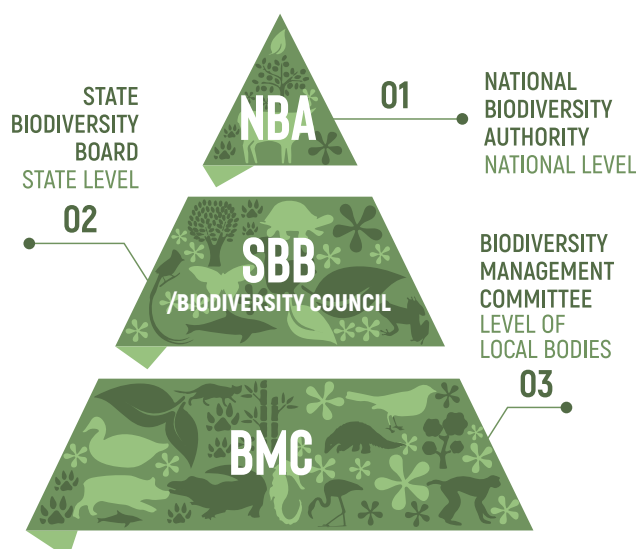
1. WHAT IS BIODIVERSITY? WHY THERE IS A LAW TO PROTECT BIODIVERSITY?

Biodiversity is often associated with nature or forests, although it is much more than that. Hence, it is necessary to explain the term 'biodiversity' and the different types of biodiversity with locally relevant examples. This session

provides a synopsis of the global concern on the decline of biodiversity to describe why India enacted a law to protect biodiversity and all associated knowledge, with an emphasis on traditional knowledge.

2. THE BIOLOGICAL DIVERSITY ACT, 2002 AND ITS OBJECTIVES

The participants are educated about the spirit of the Act and its objectives - conservation, sustainable use, and access and benefit-sharing. The participants also receive information on the different institutional structures involved in the ABS process, and the role of BMCs as custodians of biodiversity.



3. BIODIVERSITY MANAGEMENT COMMITTEE AND ITS FUNCTIONS

This section reinforces the information already provided to the BMCs and reiterates their roles and responsibilities. It is also helpful if the BMC members have changed recently or there has been less interaction between the BMC and the SBBs in the past. The discussions may also include the operational aspects of running the BMC.

4. IMPLEMENTATION OF BIODIVERSITY ACT

The summary of the activities of the specific SBB or Biodiversity Council of the State or Union Territory should be provided to the participants. Training sessions and workshops conducted for various actors can be included and interactions with other BMCs in the state highlighted.

5. THE DETAILS OF THE ABS APPLICATION FOR WHICH THE CONSULTATION IS BEING CONDUCTED SHOULD BE SHARED WITH THE BMC MEMBERS.

The positive and negative implications of the bio-resource collection should be discussed in detail. This is the most crucial part of the consultation meeting.

The Biological Diversity Act, 2002, being relatively new, is not very well-known to many government departments. The ABS Partnership Project observed that nearly 70% of line department officers first heard about the Act during the awareness workshops. Therefore, the officers from the line departments should be supported and provided with in-depth information during the consultation.

2 The Consultation Process



The main focus of the consultation meeting should be to ensure that the BMC members and other participants are aware of their responsibilities regarding the ABS application under discussion. The NBA and/or SBBs should clarify and address all doubts, questions, and queries of the participants regarding this activity.

PARTICIPANTS:

Besides BMC members, participants may include delegates from NBA, SBBs, Government line departments, all local stakeholders involved in the collection process, such as collectors, aggregators, and traders.

THE CONSULTATION MEETING:

- 1. Introduction:** The participants introduce themselves. The moderator should be present at the venue throughout the meeting to support the participants and ensure that they receive answers to their queries.
2. Discuss the purpose of the meeting.
3. Technical sessions on biodiversity, the Biological Diversity Act, 2002, its ABS provisions, BMCs and their roles in the ABS process and the ABS application under discussion. Use examples wherever possible. All sessions should be in the vernacular language.



Photo Credits: GIZ/Nischita Nagappa

4. Invite the participants to ask questions/provide information about the status of the biological resource, its habitat and any other information regarding the biological resource.

5. At this stage, it is recommended that government officials, traders, and intermediaries leave the venue to enable free discussion among BMC members.

6. BMC members complete their deliberation and arrive at a decision. At this stage, the BMC members should have obtained complete answers to all queries and questions. Traders, companies and any other individuals with a financial interest in the activity should not be allowed to participate in the discussion. Their participation is only clarifying doubts of BMC members at the beginning. BMC members should have ample time for their deliberation.

7. BMC members provide their feedback on the ABS application.

Since BMCs are in the nascent stages, the first meeting needs to be detailed and structured. For subsequent meetings, a 'consultation form' may be used to record the feedback (see page 16). The BMC members then discuss the same in their meeting. They may also seek necessary inputs from primary collectors, local communities, local traders, other government agencies etc.

3 The Post-Consultation



The following documents are prepared by BMCs and submitted to the State Biodiversity Boards or Biodiversity Councils.

- Feedback from the BMC or the Local Body
- Detailed minutes with a list of BMC members along with their signatures
- Photo documentation with the consent and signatures of all participants.

The NBA or SBBs or Biodiversity Councils will then arrive at a final decision on whether or not to provide consent for access to the specific bio-resource. They must inform the particular BMCs about the final decision on the ABS application. This process will help foster and build trust between the BMCs and SBBs or Biodiversity Councils.

CASE STUDY 1: CONSULTATION MEETING WITH KODAIKANAL BIODIVERSITY MANAGEMENT COMMITTEE IN TAMIL NADU FOR ACCESSING KURINJI HONEY FROM *STROBILANTHES KUNTHIANA*

Firmenich Grasse, a fragrance and flavour company based in France, applied to the NBA to collect 1 kg of Kurinji honey from *Strobilanthes kunthiana* (neelakurinji plants) for research. Kurinji is a shrub found in forests of high altitudes known as "shola forests" of the Western Ghats in southern India. The Kurinji plants flower once in 12 years. The Adivasi communities, Paliyan and Toda tribals in Tamil Nadu harvest honey from the forests for their consumption as well as for sale in markets. This honey, bought by an enterprise based in Kodaikanal called "Hoopoe on a Hill", is run by a group of women who work together to bring wild honey gathered by Adivasi communities of the Palani Hills in Tamil Nadu.

As part of the ABS process, the NBA through the Tamil Nadu Biodiversity Board consulted the Kodaikanal BMC in Dindigul district before approving the access to Kurinji honey. In August 2019, a consultation meeting was held with the Kodaikanal Biodiversity Management Committee in Tamil Nadu to get their feedback on the ABS application.

District Forest Officers of Kodaikanal and Dindigul districts, four members of the BMC, including the Chairperson, representatives from Hoopoe on a Hill participated in the consultation. The Range Forest Officer of the Tamil Nadu Forest Department (designated as the Secretary of the BMC until 2019) and a representative of the Block Development Officer of the region facilitated the meeting.

The access and benefit-sharing provisions of the Biological Diversity Act, 2002 and its implementation, the establishment of BMCs and its functions were explained in detail. The ABS application and purpose for which the Kurinji honey will be accessed from Kodaikanal was also discussed.

The nuances of the ABS process were explained in simple terms and in vernacular language to ensure that all participants in the meeting were well-informed about the different aspects of ABS and how the ABS agreements are negotiated. All queries from the participants were clarified and answered in full. The four BMC members, after much deliberation, resolved to provide their consent for access to the bio-resource requested by the user. Upon receiving feedback from the BMC members, the NBA signed an ABS agreement with the company and charged an upfront payment of Rs. 7000. The NBA has transferred the amount to Tamil Nadu Biodiversity Board to be further disbursed to Kodaikanal Biodiversity Management Committee.



Photo Credits: Aravind Madhyastha



Photo Credits: GIZ/Geetha Nayak

CASE STUDY 2: MEETING WITH SHEY BIODIVERSITY MANAGEMENT COMMITTEES FOR ACCESSING SEA BUCKTHORN FROM LADAKH

A well-known cosmetics company from Europe applied for access to biological resources occurring in India for its commercial utilisation. In particular, the company was interested in purchasing approximately 500 kilos of oil extracted from the seeds of various species of Sea buckthorn from the genus *Hippophae*, family Elaeagnaceae. These are deciduous shrubs growing in the high altitudes of the Himalayas.

Sea buckthorn fruits would be collected from the wild within the Union Territory of Leh and Ladakh through an Indian oleoresin extraction firm, which would also clean, dry and extract the oil. The extracted oil would be used as raw material in existing skincare products.

In its application, the cosmetic company proposed sharing benefits by paying three per cent of the price of raw material - that is, the sea buckthorn oil purchased from an Indian intermediary company. Upon receiving the application, the NBA forwarded the application to the newly established Ladakh Biodiversity Council for consultation of the BMCs concerned.

As part of the approval process, a meeting was held in September 2020 at Shey 'B' Panchayat Ghar to discuss the application for access to Sea buckthorn from Shey village, Leh District, for commercial purposes. Representatives of the Ladakh Biodiversity Council and the BMC members attended the meeting. They discussed the application requesting access to the bio-resources in detail for the participants' inputs.

During the discussions, the BMC members expressed concern that they have not received any benefits from the existing system of collection and marketing of Sea buckthorn – which is through contractors who in turn engage labourers to collect and sell the product to cooperatives and traders. Traders and the forest department representatives stated that the Panchayat body is authorised to collect and market the Sea buckthorn. However, as the harvesting of crops and Sea buckthorn overlap, the Panchayat and the community members are not involved in the collection process. This paves the way for external contractors to engage their labourers to harvest and market the produce.

The officials of the Ladakh Biodiversity Council explained the ABS process in detail to the BMC members. Once the company signs the ABS agreement with the NBA, the company will be permitted to collect the bio-resource, i.e Sea buckthorn. BMCs must to ensure that the collection is sustainable.





Photo Credits: Wikimedia Commons

The members of the BMC and other stakeholders provided their inputs based on their knowledge of the availability of the bio-resource, local use, knowledge associated with it, its trade, etc. The Committee was then requested to make their decision, keeping in mind the status and importance of the resource in their landscape.

Sea buckthorn is a bio-resource available and collected from different types of land (private, community and forest). The challenge here is to identify precisely how much Sea buckthorn was collected from each type of land, as the benefits obtained will be distributed among the benefit claimers, i.e. individuals, community, and the forest department.

Another concern of the BMC was that while the application requested approval for only a specific quantity of Sea buckthorn, in reality, large volumes of this bio-resource were being collected and sold from Shey and other places in Ladakh such as Thiksey, Chichot and Nubra. The organisers suggested that the participants identify these companies and request that they submit their applications for access to the bio-resources under the Biological Diversity Act, 2002. The BMCs can help identify such companies accessing these resources from their jurisdiction.

After detailed deliberation, the Shey 'A' and Shey 'B' BMCs provided their consent for the access of Sea buckthorn from their jurisdiction. The BMC's feedback was forwarded to the National Biodiversity Authority through Ladakh Biodiversity Council (since Leh is a Union Territory).

Following the BMC consultation, the cosmetic company withdrew its application submitted to the NBA without citing the specific reasons for the withdrawal. This case indeed demonstrates the challenges in ABS implementation, and highlights that not all potential ABS cases succeed, resulting in the loss of potential benefits to the providers of the resources. Therefore, a mechanism to establish traceability through a network of BMCs, intermediaries such as agents and traders of resources is vital in the ABS process.

WHAT DOES THE BIODIVERSITY ACT SAY ABOUT BENEFIT-SHARING?

REGULATION 15 OF THE GUIDELINES ON ACCESS TO BIOLOGICAL RESOURCES AND ASSOCIATED KNOWLEDGE AND BENEFITS SHARING REGULATIONS, 2014

SHARING OF BENEFITS:

1. Where approval has been granted by the NBA for research or for commercial utilisation or for transfer of results of research or for Intellectual Property Rights or for third party transfer, the mode of benefit sharing shall be as under: –

- a) 5.0% of the accrued benefits shall go to the NBA, out of which half of the amount shall be retained by the NBA and the other half may be passed on to the concerned SBB for administrative charges.
 - b) 95% of the accrued benefits shall go to the concerned BMC(s) and/or benefit claimers:
 - Provided that where the biological resource or knowledge is sourced from an individual or group of individuals or organisations, the amount received under this clause shall directly go to such individuals or group of individuals or organisations, in accordance with the terms of any agreement and in such manner as may be deemed fit:
 - Provided further that where benefit claimers are not identified, such funds shall be used to support conservation and sustainable use of biological resources and to promote livelihoods of the local people from where the biological resources are accessed.
2. Where approval has been granted by State Biodiversity Board under these regulations:
- The sharing of accrued benefits shall be as under—the SBB may retain a share, not exceeding 5% of the benefits accrued towards their administrative charges and the remaining share shall be passed on to the BMC concerned or to benefit claimers, where identified:
 - Provided that where any individual or group of individuals or organisations cannot be identified, such funds shall be used to support conservation and sustainable use of biological resources and to promote livelihoods of the local people from where the biological resources are accessed.



CONCLUSIONS

We have seen throughout this document that the BMC is at the heart of the ABS process and a fundamental link in establishing traceability. The case studies showed us how the collaboration of the relevant stakeholders and awareness creation can resolve an imminent problem despite complications. Some lessons learnt during this process include:

1. Promising that benefits will immediately start flowing should be avoided.
2. Consultation with BMCs should not be a quid pro quo arrangement, i.e., obtaining positive feedback on the ABS application with the promise of benefits is strictly not done.
3. BMC members and all other stakeholders including traders, collectors and local body authorities should be informed about why this meeting is conducted to dispel any misconceptions.

Empowered with the knowledge of the law and supported by the local, state and the national body, BMCs can contribute to the conservation and sustainable utilisation of bio-resources.

INDICATIVE FORMAT FOR PROVIDING FEEDBACK ON ABS APPLICATIONS

(For the use of BMC)

Ref.No:

Date:

Date of Receipt of Form-1: DD/MM/YYYY

Name of BMC: _____

A consultation meeting was held with members of Biodiversity Management Committees on the date DD/MM/YYYY at HH:MM in premises of _____ to discuss the access application from (applicant's name/name of the entity) _____ to procure (name of the biological resource) _____

The Biodiversity Management Committee/ Local body of _____ after thoroughly scrutinising the application, hereby gives its feedback on the application for further consideration of SBB/Biodiversity Council

- Biological resource(s) may be accessed without any conditions/reservations ☐
- Biological resource(s) may be accessed with conditions (see below) ☐
- It is recommended to restrict or deny access to the biological resource(s) (provide reasons) ☐

Condition for access (if any how many kgs, from which location etc) _____ -

Reasons for rejection (if any) (please indicate if all members recommended to impose restrictions or denied access or only certain members). Enclosed detailed meeting minutes capturing concerns of all participants.

Any other remarks _____

For other inputs, if any, please attach a separate sheet of paper.

* Attach minutes of the meeting on BMC/Local Body

* Strike out whichever is not applicable

Signature and Seal

(For the SBB use only)

Date of receipt of BMC meeting minutes _____

Feedback from BMC received may be placed in the Sub-Committee on ABS

Observations: _____

Secretary SBB



giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

Registered Offices:

Bonn and Eschborn, Germany
Friedrich-Ebert-Allee 32 + 36
53113 Bonn, Germany

Dag-Hammarskjöld-Weg 1-5
65760 Eschborn, Germany
Email: info@giz.de

2nd Floor, B-5/1, Safdarjung Enclave
New Delhi-110029, India
Tel: +91 11 4949 5353
Fax: +91 11 4949 5391

Email: biodiv.india@giz.de