

BIODIVERSITY MANAGEMENT COMMITTEES

Facts and Fears

What is a BMC?

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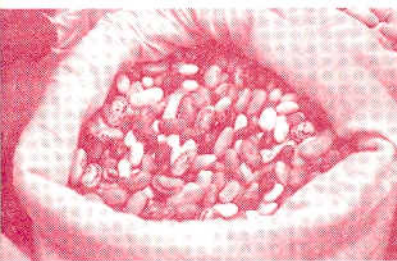


A Biodiversity Management Committee (BMC) is required to be set up by every local body as part of the institutional structure for the implementation of the Biological Diversity Act (BDA) 2002. Section 41 of the Act lays down this direction. More detailed provisions of which are mentioned in the Biological Diversity Rules, 2004 issued under the Act.

The ministry in-charge of the implementation of the BDA is the Union Ministry of Environment and Forests. The Act puts forth a new institutional structure in the form of three rungs, whereby decision making on access, conservation and commercial utilization of biological resources can take place. The highest rung is the National Biodiversity Authority (NBA), this is the nodal body based in Chennai. The second rung of the institutional structure are the State Biodiversity Boards (SBBs) to be established in every State. BMCs are the third rung (local level) of this new institutional structure.

Who can set up a BMC?

2



The BMC is to be set up by the local body both in urban and rural areas. In rural areas, local body refers to Panchayats or any other equivalent body (e.g. Autonomous District Council, Hill Council). In cities and towns local body refers to Municipalities. In areas where there are no Panchayats or Municipalities, the BMC is to be set up by any constitutionally or legally recognized institution of self government.

What if a local community refuses to set up a BMC?

3

The Act does not envisage such a situation. The forming of BMCs has been made mandatory (*Section 41.1 and Rules 22.1*). However, constitutional provisions of decentralization can be explored, whereby, a village can refuse to set up a BMC if it so desires.

What is the prescribed composition of a BMC?

4

The BMC composition consists of a Chairperson and not more than six persons nominated as members by the local body. At least one third of the nominated members should be women and at least 18% of the nominated members should belong to the SC/ST. The Chairperson of the BMC is to be elected from amongst the members of the committee (*Rules 22.2 and 22.3*)

Can a BMC be set up in a State where there is no SBB formed?

5



As per the BDA, the BMC is to be formed by the local body and is not dependent for either its formation or its functioning on the existence of the SBB.

What is the role of a BMC?

6



The Act gives broad powers to the BMC to promote conservation, sustainable use and documentation of biological diversity. This includes the preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms. It is also required to document biological resources and chronicle knowledge related to those resources (*Section 41.1*).

However the Rules (*Rules 22*) made under the Act reduces the role of the BMCs to only the documentation (of resources and knowledge) functions with the primary function being the preparation of People's Biodiversity Registers (PBRs). SBBs will guide the BMCs In this primary function. The PBRs would need to contain comprehensive information on availability and knowledge of local biological resources, their medicinal use, other use or any other traditional knowledge associated with them (*Rules 22.6*).

The BMC also needs to maintain data about the local *vaids* using biological resources (*Rules 22.7*).

The Rules also states that the BMCs will advise the NBA and SBB on any matter that is referred to them (*Rules 22.7*). This implies that the BMCs cannot proactively guide or advise the NBA or SBB, but will need to await a request from these institutions. Moreover, the advice which given when sought by the higher authority is not binding to the decision making process.

The BMC will also need to maintain a separate register (other than the PBR) which gives information about the details of access to biological resources and traditional knowledge granted, details of the collection fee imposed and details of benefit sharing derived and the mode of sharing (*Rules 22.11*).

However there are no guidelines set up on how this information will reach a BMC from the NBA or a relevant SBB which are the access and permission granting bodies. There is also no provision in either the Act or the Rules which elaborate on the conservation functions of BMCs.

Are there any guidelines towards formation of BMCs at the National or State level?

7

As of May 2008, there are no guidelines or basic principles that have been laid down to facilitate the formation of BMCs.

What are the implications of preparing PBRs?

8



Documentation of biological resources *per se* is not an irrelevant task for the local community to take on. In fact communities have been documenting the availability of biological resources and related traditional knowledge in written, oral and other folk forms for centuries. The current PBR methodology being considered for widespread official use has been developed by the NBA Expert Committee on Database on Biodiversity and Traditional Knowledge. This official PBR methodology presents a set format (with tables and kind of

information required) that needs to be filled by BMCs with the help of researchers and students and be validated by scientists. This information will then be computerized and compiled in the electronic Indian Biodiversity Information System (IBIS).

As of now it is not clear whether the BMCs will be the only custodians of these PBRs. Although the Rules state that PBRs shall be maintained and validated by the BMCs (*Rules 22.10*), the method to be used to do this has not been elaborated. There is no legal protection to ensure that the knowledge documented within the PBRs is not misused or misappropriated. Also once the PBR information becomes a part of the IBIS it would be in a format that would not be easily accessible to the BMCs and local communities.

Serious concerns have been expressed about carrying out the country wide PBR exercise without any adequate framework for the formation of BMCs, or the necessary protection of the knowledge recorded. It is evident that the knowledge once recorded in the PBRs is likely to be in a format that cannot be used by most members of local communities without external help.

9 Does the BMC have the right to deny or approve access to biological resources around their area?

No, the BMC has not been given the authority to approve or deny anyone access to biological resources in its area for research, commercial utilization or seeking Intellectual Property Rights (IPRs) like Patents, Geographical Indications etc. In the case of a foreign entity the approval is granted by the NBA which needs to mandatorily "consult" the concerned BMC (*Section 41.2*). In the case of an Indian entity, the entity only needs to intimate the concerned SBB(s), which further need to mandatorily "consult" with concerned BMCs before laying down conditions (*Section 24.1, 24.2 and 41.2*).

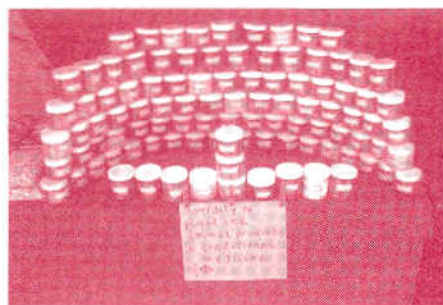


10 What does the term "consult" imply?

While it is mandatory for the NBA and the SBB to consult with the BMC before granting approval, opinion of the BMC is not binding on them. For the BMC's decision to be given more weightage, the term consult has been defined in some state level Rules (e.g. Madhya Pradesh and Sikkim) to include prior informed consent. However these state level Rules are to be followed by the relevant SBBs only, and are not applicable to the NBA.

11 What happens to the process of consultation in case a BMC has not been set up?

As of now, the NBA goes ahead with granting approvals. There is no clause in the Act or Rules that prevents the NBA from doing so.



Can the BMC levy any fee or charge for access to biological resources?

12

The BMC can levy charges as 'collection fees' from any entity for accessing or collecting biological resource for commercial purposes from areas falling within their territorial jurisdiction (*Section 41.3*). For foreign and Non-Resident Indian (NRI) entities (defined in the Act), this is likely to be following an approval from NBA.

Who decides the mechanisms based on which fees can be levied and collected?

13

For foreign entities and NRIs that have been granted approval for access to biological resources and related knowledge for commercial utilization, it is the NBA which determines the terms and mechanisms of benefit sharing wherein both financial and procedural conditions are laid down (*Section 21.2*). The NBA has put together a draft agreement which is modified on a case to case basis and used. This agreement is signed by the NBA and the applicant seeking access.

For Indian entities accessing biological resources and related knowledge for commercial purposes, the mechanism by which the BMC can levy charges as 'collection fees' has not been specified in the Act.

What happens to the funds collected in the Local Biodiversity Fund and who controls its utilisation?

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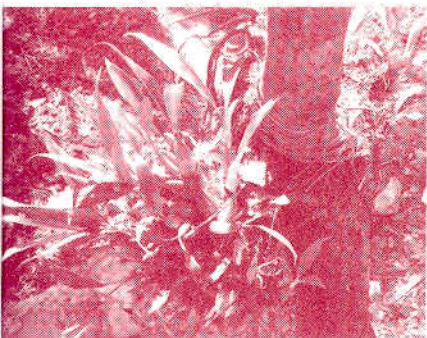
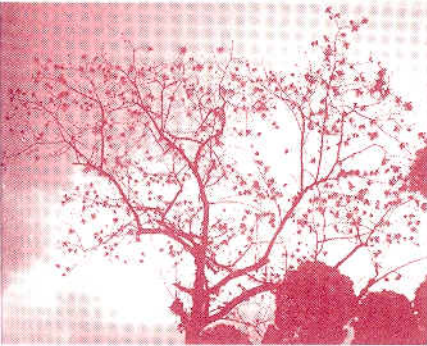
Local Biodiversity Funds are to be constituted in every area notified by the State Government where an institution of self government is functioning (*Section 43*). The Local Biodiversity Fund can be built with fees and charges levied by the BMC, and grants from the State Government, SBB and NBA.

A mechanism for the management of the fund will be prescribed by the State Government (*Section 44.1*). The fund is to be used for conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the community as long as it is consistent with conservation of biodiversity (*Section 44.2*).

How is the Local Biodiversity Fund audited and monitored?

15

The person holding custody of the Local Biodiversity Fund will prepare an annual report for each financial year giving a full account of all its activities in the previous year. The concerned person will also maintain the accounts and get it audited as prescribed in consultation with the Accountant General of the State. The concerned person will then need to submit a copy of the annual report, the audited copy of accounts together with the auditors report to the concerned local body. The concerned local body will in turn hand over the same to the concerned District Magistrate having jurisdiction over the area (*Section 45, 46 and 47*).



16 What are the different kinds of benefit sharing arrangements that the Act allows for, and do BMCs have any say in the arrangement?

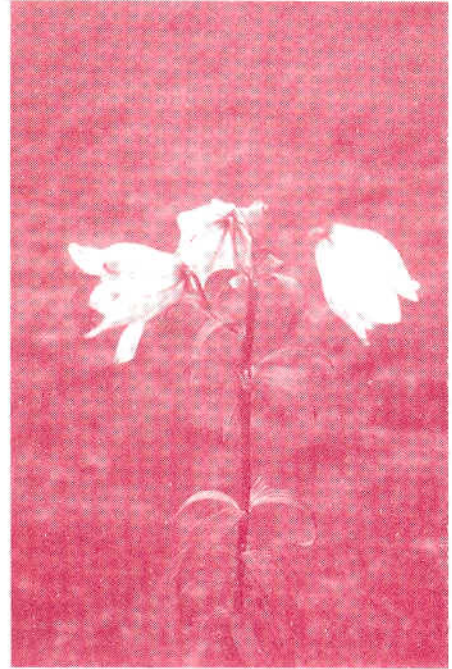
An instance of benefit sharing arises when a foreign or Indian entity gains profit out of accessing resources or knowledge from community(s) that is/are the custodian(s) of the same. A mechanism then needs to be arrived at.

As per the Act (*Section 21.2*), benefit sharing can include joint Intellectual Property Rights (IPRs) like Patents, Geographical Indications etc shared between the applicant and the NBA or any other benefit claimer identified. The benefit claimer could include one or more BMC(s)/village(s). Benefit sharing can also take the form of joint associations or venture capital funds between benefit claimers, scientists and the applicant. This could be towards research, joint survey etc.

Both monetary compensation and non-monetary benefits will be given to any "benefit claimer" that the NBA deems fit.

BMCs and local communities have no role in determining who the benefit claimers are as well as determining what the benefit sharing arrangement should be. This is done by the NBA.

As mandated under the Act, within the present system, most of the benefits will flow into the National Biodiversity Fund (*Section 21.3*).



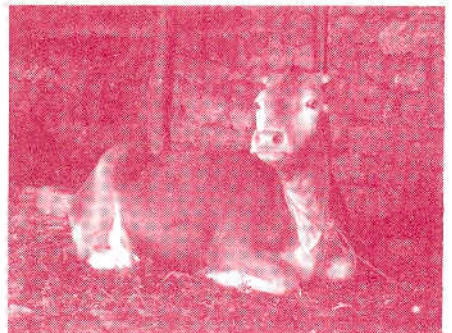
17 How does a local community member know if an approval which affects his/her local livelihood has been granted? Would the BMC maintain a record of approvals granted ?

In theory, every approval of the NBA is supposed to be public information. However, as of now only some information is available on the NBA web site, which is not an adequate mechanism of ensuring transparency.

If the Act were to be implemented in its true spirit, the NBA would consult the relevant BMC(s) before granting of approval, and thereby the BMC(s) would have knowledge that could then be accessed by local community members. The BMC is supposed to maintain a register with the same information (See Q.6).

18 What happens in a situation of conflict with the grant of an approval or improper benefit sharing mechanism? What if the BMC does not agree with the decision of the NBA or SBB?

As per the Act, the BMC has no power, to revoke or restrict access to biological resource and knowledge. There is no specific mechanism prescribed under the Act or Rules wherein a BMC can appeal against the decision of the NBA or SBB. The mechanism of appeal applicable to the BMC is the same as any other common citizen of the country. According to this, any person, aggrieved by a decision of the NBA or SBB under the Act, may file an appeal in the High Court within thirty days from the date of communication to him/her, of the determination or order (*Section 52*).



How does one BMC challenge the stand of another BMC in case of approvals, levying of fees and charges and so on?

19

No specific mechanism is prescribed within the Act whereby one BMC can challenge the stand or claim of another BMC.

How does the BMC relate to other already existing bodies within a village/town like Village Forest Committees (VFC), Eco-development Committees (EDC) etc?

20

Neither the Act nor the National level Rules prescribe any particular mechanism whereby BMCs can relate to other existing bodies within a village/town. Some State level Rules (e.g. Madhya Pradesh, Sikkim) have stated that in case the local body feels that any other existing body can carry out the functions of the BMC then it can be allowed to do so. In such cases an existing Village Forest Committee (VFC) or Eco-Development Committee (EDC) or even the entire gram sabha can act as a BMC.

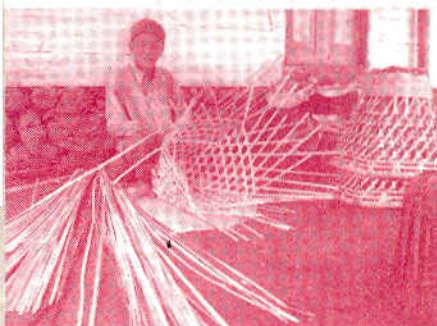
Do BMCs have a role to play in the declaration of Biodiversity Heritage Sites?

21

Biodiversity Heritage Sites are to be identified and declared by the State Government as areas of biodiversity importance after consultation with local bodies (*Section 37*). As of May 2008, there are no guidelines or provisions that require local bodies to coordinate with the BMCs in this regard.

What can the BMC do in cases of "biopiracy"?

22



The provisions of the Act or those of the Rules do not mention what a BMC can do in a situation where traditional knowledge or biological resources of a community have been misappropriated or commercialized without due consultation or benefit sharing. The assumption is that the only recourse that the BMC would probably have is to approach their SBB or raise the matter with the NBA. However there is no mention of such possibilities in the Act or the Rules.

This note has been put together by Kalpavriksh under an ongoing collaboration on biodiversity issues with GRAIN.

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