

NATIONAL BIODIVERSITY STRATEGY AND ACTION PLAN - INDIA

POLICIES, LAWS, INSTITUTIONS AND PLANNING **Thematic Concept Note¹**

There is a need to analyze the existing policies, laws, and planning processes that have a direct or indirect impact on biodiversity. This also includes a scrutiny of the existing institutions which have been created through legislation, policy and custom and through which present laws, policies and practices operate. The analysis of existing situation(s) will need to be located within a brief review of the historical context. Such an analysis would lead to a gender & equity sensitive action plan in terms of recommendations/ strategies/suggestions.

Elements to look at: POLICIES AND PLANNING

1. Analysis of policies of the Central Government and of the State Governments directly related to natural ecosystems, wild species and varieties, agricultural ecosystems, domesticated species and varieties, and human genetic diversity. Policies which indirectly influence the above aspects of biodiversity (e.g. water, industry, mining, macro-economic) will also be analyzed. Each policy to be assessed in itself and in relation to others;
2. Special focus on how State Governments have handled Central policies in the case of concurrent list subjects.
3. Locating and highlighting any successful policies of State Governments which might exist and which could be recommended for replication or learning at national/other state levels.
4. An analysis of the forces behind planning/formulating policy; assessment of planning processes (e.g. 5 year plans) and related institutions.
5. Issues of harmonising various sectors with biodiversity concerns, inter-dept. coordination, participatory and decentralised planning and the extent to which this recognises gender and socio-economic differences in biodiversity use and knowledge systems.
6. The impact of pressure groups from differing backgrounds, political will, impacts of fluctuating and indefinite 'policy'.
7. Defining an international funding/investment agenda and a strategy to help international agencies and donors understand what the priorities for funding are.

Elements to look at: LAW AND INSTITUTIONS

1. Analysis of the existing domestic statutes (including rules and regulations which flow from these) which are directly biodiversity-related, and those which indirectly concern aspects of biodiversity at the Local, State and Central levels, including their analysis from a social development perspective recognizing gender differences in knowledge, rights and entitlements.
2. Analysis of the extent to which legislation has reflected policy.
3. Analysis of the existing international treaties/law wherein India is a signatory/participant, their impacts on domestic law and policy, and the major gaps in coverage;
4. The existence and working of customary laws related to biodiversity in some parts of the country, and how these interact with the formal law and institutions;
5. An analysis of the interpretation of the relevant aspects of law that emerge in the form of Court decisions. Reasons for the increasing role played by the judiciary and the long-term effects of this trend;
6. Assessment of the role of corporate institutions in enabling or hindering biodiversity conservation and sustainable use;

¹ This note was prepared by V. Shruti Devi, Member, TPCG, with inputs from other members of the TPCG.

7. Assessment of existing institutional mechanisms for international cooperation on biodiversity issues, gaps in these mechanisms, and steps to plug these gaps.

There should be a central focus on the implications of recent policies/laws/plans on decentralisation, e.g. 73rd amendment and Panchayat (Extension to Scheduled Areas) Act giving specific attention to the potential implications of the latter on women's equal rights and entitlements. For instance, is there a contradiction between the functioning of Gram Sabhas in tribal areas in accordance with their culture and traditions and women's equal political and property rights guaranteed by the Constitution? What is the relationship between customary law and formal laws and institutions in such cases?

It will be necessary to gather information of two kinds:

1. The stated law, policy, institutions, planning which will be gathered in the form of relevant documents including court judgements.
2. The actual situation of implementation of stated law, policy, institutions and planning.

Following the above, the Working Group should recommend measures needed to change, elaborate, or make more effective existing laws, policies, planning processes, and institutional structures, and/or create new ones, to make conservation, sustainable use and equitable benefit-sharing possible in a democratic and gender sensitive manner.