

CAMPAIGN FOR COMMUNITY CONTROL OVER BIODIVERSITY

DOCUMENTING DIVERSITY, DOCUMENTING DIVERSELY

A National Workshop on Community Control over Knowledge

8th – 9th Aug. 2007

Venue: DDS – KVK, Pastapur, Andhra Pradesh

Co-organised by Deccan Development Society, Kalpavriksh and GRAIN

BACKGROUND:

The documentation of biodiversity and traditional knowledge associated with it, has been an area of much debate and discussion. On the one hand it has been felt that it is critical to record as much is currently known so that it is not lost forever. This is especially so in the light of the threat of habitat destruction, commercial exploitation and erosion of knowledge and even cultures. On the other hand, there are genuine concerns of the misuse of the documentation, for it controls those whose lives are intricately linked with biodiversity and who are the holders of the knowledge.

For generations, documentation of biodiversity and traditional knowledge has been carried out in a varied manner, orally, through songs, rituals, scriptures and also written texts. Communities have used diverse methods to both conserve and transmit this existing knowledge. At the same time scientists and academicians have genuinely tried to understand both agro and wild diversity through formal research methods.

However, today the threat to the misuse of the existing knowledge is also a reality. Both biodiversity as a “resource” and traditional knowledge are in the domain of trade. There is growing pressure of the need to access both. Benefit sharing as a concept has been promoted but it is important to understand the pros and cons of the same. At the same time, biopiracy and Intellectual Property Rights (IPRs) are issues that are closely associated with the access to the documented information.

Various official processes of documentation are ongoing in the country today. Foremost amongst these are the Traditional Knowledge Digital Library (TKDL) and the PeBINFO (Peoples’ Biodiversity Register Information System) under the Biological Diversity Act. It was considered important to understand both these and other related processes in the light of the community control over biodiversity and related community knowledge.

With the above background in mind Deccan Development Society (DDS) and Kalpavriksh in collaboration with GRAIN organized a workshop on 8th and 9th August, 2007 at Pastapur, Medak District, Andhra Pradesh This workshop was organized as part of the Campaign for Community Control over Biodiversity (for further details see: www.kalpavriksh.org; and www.ddsindia.com)

THE CAMPAIGN

The Campaign for Community Control over Biological Diversity came into existence when various peoples' movements, NGOs and individuals came together to protest against the notification of the Rules to the Biodiversity Act (of 2002) in December 2004. From then on, the Campaign has initiated a number of debates, workshops and protests on the issue of community control over biodiversity not only with respect to the Biological Diversity Act of 2002 but related legislation like the Seed Bill of 2004 and the Protection of Plant Varieties and Farmers Rights (PPV&FR) Act of 2001.

The workshop on documentation was planned during the Kolkotta meeting of the Campaign (Workshop on Biodiversity Regulation: Control & Conservation), which was held in September 2006. As mentioned earlier, documentation of resources and knowledge, through Peoples' Biodiversity Registers, is being pursued as a very important part of the implementation of the Biodiversity Act. The issues of control over these documents, and hence over the resources and knowledge, as of the present, stands on controversial ground. The workshop was based on the premise that documentation, though necessary as a tool for conservation and empowerment of communities, cannot be promoted if not accompanied by adequate measures of protection and if it does not respect prevalent diverse traditions of documentation in different parts of the country; traditions intricately woven with the cultures of many communities, which if superimposed by a uniform foreign method, can lead to an erosion of the community's knowledge, traditions and hence its resources too.

The meeting was attended by representatives of civil society organizations, peoples' movements and government officials, part of the implementation process of the Biological Diversity Act.

NARRATIVE REPORT

The workshop began with a song by women farmers from Medak district. The song which spoke about their struggle of losing control over seeds because of rising subsidies and then regaining it, set the right tone for the workshop.

WELCOME ADDRESS: *P. V. Satheesh, Deccan Development Society (DDS)*

P.V. Satheesh initiated the workshop by saying that the issue of documenting diversity (knowledge and resources) is contentious. He said that it freezes knowledge in space and time. The other contentious issue is that of control, he elaborated, and stressed that the control of resources and knowledge, should be with the communities. Therefore there is a need to understand the current government process and the problems associated with it in the above context. He also mentioned that the above issues are crucial to DDS and that the workshop is an important milestone in the journey of their efforts till now.

INTRODUCTION of all participants

Documenting Diversely: Models and Experiences with CBRs / PBRs

Ashish Kothari of Kalpavriksh who facilitated the session, said that documentation of traditional knowledge and resources has been undertaken with reasons, including

- For greater understanding of biodiversity.
- To revive the pride in Traditional Knowledge (TK) and to exchange the knowledge within communities.

Documentation, it is believed, would also form a good base for livelihoods for people. Also it would help in the participation of people and NGOs in Governmentt of India (GoI) process. It will help against biopiracy and to cross fertilize modern with traditional knowledge.

But, he said that there are some concerns with the adopted government and non-government processes :

- The more the documentation, the more the chances of misuse by Multi National Corporations (MNC) etc. for commercial purposes.
- Will the documentation actually benefit people, especially the most poor and the least privileged?
- Oral traditions are invaluable in themselves, built about through generations. It is an 'alive' form of knowledge. Are we displacing this tradition through documentation?

Lastly, the main questions that arise with respect to the present official process adopted under the Biological Diversity Act, through a PBR methodology developed by the Expert Committee on Database on Biodiversity and Traditional Knowledge of the National Biodiversity Authority (NBA) are:

- Who should be documenting, if 'we' are documenting. Scientists? Communities? Who within the communities?
- Why should there be documenting? This question is relevant especially for the communities, what would their reason be for undertaking documentation?
- How would it be documented? Information in database? Or through poetry, seed banks etc?
- Who makes the decisions regarding the above?

He said that in the Recommendations of the National Workshop on Peoples' Biodiversity Registers¹ held in June 2006 (which Ashish Kothari participated in), the following concerns had surfaced:

1. Peoples' Biodiversity Registers (PBRs) should be by the people, by the people, for the people
2. PBRs should not be in a homogenous format, but adaptive to local scenario
3. Issues of Community control of knowledge
4. Issue of prior informed consent before documentation takes place.
5. The difference between confidential and public community knowledge
6. Communities who would not want to part of the State sponsored process should not be exempted from benefits that might accrue from being part of it.

Some of the key recommendations of this workshop need to be followed up on before taking off on the PBR process anywhere in the country:

1. Developing, within the next 6 months to 1 year, ways and means of effectively providing control of the PBRs to the relevant communities, including through appropriate legal means (such as Rules under the Biological Diversity Act), administrative mechanisms, and local empowerment; this should include all PBR exercises/documents/collections, including those that communities desire not to incorporate into the national database...
2. Developing guidelines for the process by which PBRs are to be initiated; such guidelines should stress that PBRs should be tried out at a few sites to start with especially where the women and men of communities are well-organized to carry them out, and lessons from these learnt before spreading to other sites; the appropriate unit of settlement at which PBRs should be formulated, and the flexibility of adapting to local conditions...
3. Preparing, within the next 6 months, guidelines for the formation of BMCs (in view of the fact that PBRs are essentially to be prepared by BMCs, which therefore presupposes the existence of strong and effective BMCs)...

NBA process on Documentation of Resources and Knowledge: A.K. Ghosh, President, ENDEV, Kolkotta

A.K. Ghosh (also a member of the National Biodiversity Authority, though he was not attending the meeting in his official capacity), said that the State Biodiversity Boards (SBBs) do not provide information on the Biodiversity Management Committees (BMCs), including data on the number of BMCs formed, PBRs undertaken and so on, to the NBA. Unless the BMCs are formed, the question of Peoples' Biodiversity Registers (PBRs) under the Biodiversity Act does not exist. He added that he is aware of 60 – 65 PBRs which have been formed with no defined format. The manual proposed by Madhav Gadgil (Chairman, Expert Committee on Database on Biodiversity & Traditional Knowledge under the National Biodiversity Authority) for PBRs is quite technical. The proposed format should be simpler and more adaptable. Using the above format would pose some problems as ours is not a digitized country, he added.

¹ Recommendations of the National Workshop on PBRs
[http://www.nbaindia.org/pbr/pbr_recommen\(22_23_jun_06\).htm](http://www.nbaindia.org/pbr/pbr_recommen(22_23_jun_06).htm)

Ghosh said that in West Bengal, documentation is being done mostly by the local community with the help of the scientific community. With the agreement of the local community, the data collected is validated by the latter, where help is also taken from local students. Today traditional knowledge is only with the elders he added, the younger generation is not interested.

Ghosh also highlighted that the issue of documentation of confidential information is still to be resolved.

A number of questions and clarifications were posed to A. K. Ghosh therein after by the participants which he responded to:

Q: There are many committees for documentation at the local level including Forest Biodiversity Register (FBR), Community Biodiversity Register (CBR) and Peoples' Biodiversity Register (PBR). Grass root organizations and NGOs should take up documentation but the format for PBRs should be uniform. When the documentation is completed, the register should be submitted to the respective SBB.

A: There exists only the Peoples Biodiversity Register (PBR) – by law since the implementation of the BD Act. According to the Act, a copy of the PBR has to be sent to the SBB and it is being done so.

Q: With respect to tools and technologies, has the data that is being collected through the PBRs being fed into the PeBINFO² (Peoples' Biodiversity Register Information System)?

A: No, the data collected is not being fed into the PeBINFO.

Q: Is the process of simplification of the PBR format on?

A: The process of simplification has started.

Q: Is there any linkage between the PBR committee and the other efforts on ABS (Access and Benefit sharing)³?

A: The recommendations of the Expert Committee on ABS are yet to come to the NBA. There is an IIM, Kolkatta PhD thesis on talks on different models of ABS. A complete ABS regime by 2010 does not seem likely.

V.S. Vijayan, Chairman, State Biodiversity Board, Kerala, raised some concerns regarding the possibility of effective protection of Traditional Knowledge (TK) within the Biological Diversity (BD) Act.

“If it is digitized, how will it be protected? I don't want TK to be served as a platter to the MNCs” V.S. Vijayan

He also added that if other SBBs agree, amendments within the BD Act can be made. Suggestions for this can be discussed, he proposed.

² See [http://www.nbaindia.org/pbr/pbr_recommen\(22_23_jun_06\).htm](http://www.nbaindia.org/pbr/pbr_recommen(22_23_jun_06).htm)

³ For the international mandate on ABS, see <http://www.iucn.org/themes/law/abs01.html>

People's Biodiversity Registers (PBRs) UNDER THE BIODIVERSITY ACT & Indian Biodiversity Information System (IBIS): Mohan Hirabai Hiralal (for Madhav Gadgil, Chairman, Expert Committee on Database on Biodiversity and Traditional Knowledge, NBA.)

Mohan Hirabai Hiralal shared that his experience of being part of the Maharashtra State Level Study Group on Peoples Biodiversity Register (PBR) which held its first meeting on 3, 4 and 5 August 2007 in Raigad. He added that the PBR is an evolving process. Indian Institute of Science has led the process in many parts of the country, all of which have not followed the guidelines of the PBR committee. Till the PBRs are made with full participation of the communities, it cannot be legally called "Peoples" Biodiversity Registers. The methodology does not aim at creating a homogenous system of documentation, but will allow for local adaptation. Regarding the technical aspect of the format, he said that the local communities will also have to learn new skills to be able to adopt the format.

The only issue is of "keeping" the collected information, he said. By this it implies as to once the PBRs are prepared, where will the information be stored/kept and who will have control over it. Thus formats are essential because it is not only about the *collection* of TK, but about its use and management. There are efforts being made to link the PBR methodology with the National Rural Employment Guarantee Act⁴. The financial resources within the NREGA can be used for the PBR exercises which will lead to livelihood generation in the villages, he explained.

He also clarified on the issue of the possibilities of misuse of TK, if stored/linked to a national database. The NBA's Expert Committee on Database on Biodiversity and Traditional Knowledge admits that there is no foolproof system at present but processes to ensure protection are underway. However information that is meant to be confidential will not be documented. There will be efforts to recognize the person providing the information, he said. To set up a nation wide documentation system on TK and bioresources is a process, which will be updated regularly, he emphasized.

"We will have to communicate to the people there is nothing to be intimidated about regarding the bulk of the format. There is space in the Act which needs to be used." Mohan Hirabai Hiralal

Questions to Mohan H. Hiralal and their answers were as follows:

Q: Will the data from the PBRs be fed into the IBIS⁵ ?

A: Existing database will be connected, but the BMCs will decide which knowledge is confidential and which for the public domain.

⁴ NREGA details <http://nrega.nic.in/>

⁵ For details on what are the proposals of the Expert Committee on Database on Biodiversity and TK, NBA, see http://www.nbaindia.org/docs/ec_secondmeeting.pdf

(Addition by A. K. Ghosh: IBIS gives information on resources of India but does not provide specific geographical location. IBIS should be supported by the Planning Commission. Information from the PBRs has not been fed into the IBIS till now.)

Q: In a country like India, how do we implement such a process of documentation? How do we achieve conservation, protection from ‘bioprospecting’ when there are existing threats from:

- Multinational Companies (MNCs)
- Govt. processes which are very different from those followed by organizations like DDS?

Addition by Ashish Kothari, Kalpavriksh: He said that we are aware of the *politics of knowledge*. Although we are saying that the knowledge susceptible to misuse may not be integrated with the national database, how will one know which knowledge falls within that category? For example, the *kanis* are now regretting having given IPR rights, he said⁶. In a country like India where they say every plant has medicinal value, we say we want to document oral knowledge for the younger generation. But even if the younger generation is not interested, the issue of commercial use/benefit still exists. The present process will increase existing inequality. In addition, validation of peoples’ knowledge by the scientists will further perpetuate inequality. No one speaks of doing the reverse, he exclaimed!

Kothari further cited the example of Joint Forest Management (JFM) which became a mechanical program of the Government and its staff to implement. If communities are well mobilized, only then is it well implemented, he said. But in other instances, existing processes get undermined by new process/schemes with funds. The same will happen to the documentation process he said.

Shalini Bhutani, GRAIN, added that apparently two different and contradictory objectives are sought to be addressed through the documentation process:

- Making bio resources & related knowledge “access”able through research agreements and commercial utilisation.
- ‘protection’ of the same resources and knowledge against misuse and biopiracy

She said that we would need to revisit the process and ask the communities if they want documentation to be done. The current official processes are not being done at their behest.

Answers from Mohan H. Hiralal:

Regarding the process and if it will achieve what we desire in a country like India, it will be decided at the Gram Panchayat level, he said. With respect to validation by scientists, he affirmed that validation is done only of scientific names, not of knowledge. Validation of information and knowledge will be done by local community experts, he clarified. The present process, he explained, is against the *politics of knowledge*.

⁶ Article Selling Biodiversity: Benefit Sharing is a dead concept by Devinder Sharma
<http://www.mindfully.org/WTO/2004/Selling-Biodiversity-Sharma3may04.htm>

**Perspectives on Documentation by Andhra Pradesh State Biodiversity Board:
*H. Ralladoddi, Chairperson, Andhra Pradesh State Biodiversity Board.***

H. Ralladoddi shared his experience in the seed industry. He said that there are around a thousand seed industries in Hyderabad alone. Majority of them collect germplasm from ICRISAT (International Crop Research Institute for Semi Arid Tropics), Cotton Research, Oil Seeds Directorate. These companies, he informed, knowingly or unknowingly, have shared the germplasm with the MNCs. Now, Monsanto will not share the benefits with the farmers from whose fields the seeds were originally sourced from. These companies do not acknowledge the rights of the farmers.

“The germplasm for BT Cotton has been provided from the soils of Nandial. Now BT2 is being provided at Rs. 850 per packet!” H.Ralladodi

Documenting diversity, he added, is an important aspect of protection but even the government officials are unaware of the meaning of biodiversity he said. He also stressed on the need for a stable support price on biodiversity for the welfare of communities.

Ralladoddi also said that there is a great confusion with respect to agro biodiversity especially regarding seeds. He informed the house that two meetings of the Andhra Pradesh SBB have been held on documentation. Committees have been formed on agro biodiversity, Genetic Engineering (GE) etc. He said that the Rules have been framed but are yet to be notified. A.P. SBB has made it mandatory for all seed companies to be registered within the Biodiversity Board.

Reverting to biodiversity registers, A.K. Ghosh said that the CBRs of DDS are not available in the public domain. If the numbers from DDS are taken into account, the number of PBRs available after 2000 will be increased he added. He said that in West Bengal, documentation in two agro climatic zones is done with the help of local CBO, students and teachers. In this way, transfer of knowledge regarding soil testing, herbariums etc. get transferred to the communities he informed. The end product, he said, is a Community Resource Centre.

On the issue of validating local knowledge, Ashish Kothari commented that there is a necessity to change terminology. If scientists and people belonging to the academia are needed only to validate scientific names of local resources, then it should not be called ‘validation of knowledge’ but merely ‘translation’ he said.

Biodiversity Documentation at District Level, PBR preparation and five model BMCs in Kerala: *V.S. Vijayan, Chairperson, Kerala SBB*

V. S. Vijayan said that the Kerala SBB has produced the State Biodiversity Action Plan (BSAP⁷). It has been suggested in the BSAP that ‘peoples’ wealth’ should be documented. He said that although he believed that documentation is an effort to establish ownership, there is still a confusion regarding protection of the knowledge

⁷ Kerala BSAP <http://www.cbd.int/doc/posters/wgri-02/post-kerala-bsap-en.pdf>

documented. He said that clarifications needs to be made and the process, which is not yet fool proof, should be undertaken slowly. Amendments within the Act must be pushed for, he reiterated.

He highlighted major concerns:

- Formulating PBRs may not be in the interest of the communities. Plans that are of economic interest to the community must be identified.
- Wetlands should be mapped. Economic activities in these should be identified.
- A 'Water Revolution' must be pushed for: Biodiversity Conservation making water as a base.
- Biodiversity rich areas should be identified outside Protected Areas.
- There should be a State Organic Farming Policy. (Of making the state 'Chemical Free' in five years.)
- Native animal / crop diversity should be revived.
- There should be legally binding Biodiversity Code of Conduct for all development projects with specially allocated funds for conservation.

Lastly, V. S. Vijayan stressed on the fact that misuse of documented knowledge must be prevented at all costs.

Ashok Kumar, co-opted member, A.P. SBB said that that turnover of the Seed Industry in India is about Rs. 12,00 crores. Although the original parent variety is well known, hybrids of most crops are being sold through the seed companies. He expressed concern that protection through the implementation of the BD Act is a future activity but that action must be taken as of the present.

R. Sridhar, Thanal, Kerala, said that with the respect to the Organic Farming Policy in Kerala, any unsustainable model can infringe on Biodiversity conservation. He commented that the State BSAP needs to be designed in detail. He reiterated the importance of declaring the state GM (Genetically Modified) Free. He also added that the Draft IPR Policy of Kerala is being processed under the Law Ministry and it needs to be deliberated upon.

V. S. Vijayan added that declaring the Kerala state 'GM Free' was decided upon by the State Govt. He added that if there are any changes being advocated on in the NBA proposed model for existing BMCs, these changes would also have to be approved of by the SBBs. He also commented on the fact that there is no role of the SBB with respect to regulating international access in the BD Act⁸.

Ashish Kothari advised that a definite process for 'consultation' of the SBBs and BMCs with the NBA needs to be advocated for. He said that although the law does not provide any definitive role to the SBB with respect to regulating 'international access' (the

⁸ According to Section 3 of the Biological Diversity Act 2002, foreign individuals and bodies require acquiring approval from **only** the NBA for access to biological resource or related knowledge. SBBs "regulate granting of approvals or otherwise requests for commercial utilization or bio survey and bio utilization of any biological resource **by Indians**". (Section 23.b)

process by which foreign institutions, individuals, organizations etc. obtain biological resource or related knowledge for research or for commercial utilization or for bio survey and bio utilization), the SBB can seek information on the approval given and on the body involved from the NBA. Similarly, it can also seek information on the SBB funds, he said.

**PRESENTATION on Global Issues around Indigenous Traditional Knowledge:
Shalini Bhutani, GRAIN**

Shalini Bhutani stated that never before have trade and conservation been at logger heads with each other like this before. She explained how in international debates, on the one hand, is the issue of justice and benefit sharing to the communities and on the other is bioprospecting; wherein there is the issue of control with respect to community use, access for research etc.

In her presentation, she outlined International institutions dealing with IPRs. She discussed the beginnings of the 'patent regime', of how the technical arm of the WTO, the World Intellectual Property Organisation (WIPO)'s (<http://www.wipo.org/>) agenda is to establish a global patent regime, with a harmonized patent system. WIPO, she said, wants IPR on cultural and ecological systems. But the ethical questions on privatizing common knowledge remain. The International Union on Protection of New Varieties of Plants (UPOV)⁹ <http://www.upov.int/> on the other hand wants IPR on seeds.

The **International Union for the Protection of New Varieties of Plants** or **UPOV** (French: *Union internationale pour la protection des obtentions végétales*) is an intergovernmental organization with headquarters in Geneva, Switzerland. The current Secretary-General of UPOV is Kamil Idris. UPOV was established by the International Convention for the Protection of New Varieties of Plants. The Convention was adopted in Paris in 1961 and revised in 1972, 1978 and 1991. The objective of the Convention is the protection of new varieties of plants by an intellectual property right. By codifying intellectual property for plant breeders, UPOV aims to encourage the development of new varieties of plants for the benefit of society. For plant breeders' rights to be granted, the new variety must meet four criteria under the rules established by UPOV.

The new plant must be novel, which means that it must not have been previously marketed in the country where rights are applied for.

The new plant must be distinct from other available varieties.

The plants must display homogeneity.

The trait or traits unique to the new variety must be stable so that the plant remains true to type after repeated cycles of propagation.

Protection can be obtained for a new plant variety how ever it has been obtained, e.g. through conventional breeding techniques or genetic engineering

Source: http://en.wikipedia.org/wiki/International_Union_for_the_Protection_of_New_Varieties_of_Plants

⁹ On UPOV <http://www.blonnet.com/2002/10/02/stories/2002100200230900.htm>

None of the above, she stressed, are conservation bodies. They are trade institutions and conservation is not one of their mandates, she warned.¹⁰

She said that the Convention on Biological Diversity which gives preference to *in situ* conservation does talk of identifying and monitoring resources, , but does not say that, documentation is mandatory. The Preamble¹¹ states that states have sovereign rights over bioresources and knowledge. But the question is does the documentation process *strengthen* these rights and makes possible community sovereignty? Documentation, she said, should be:

- To *shield*, prevent against biopiracy.
- To “regulate” biotrade.
- To alert against bioprospecting

ACCESS AND BENEFIT SHARING (ABS)

Shalini Bhutani said that the industry wants patents for benefits, but the reality of *benefit sharing* is harsh. She gave the example of the Costa Rican experience where irrespective of very good biodiversity related laws and the celebrated ABS agreement, benefits did not trickle down to the communities. One of the lessons learnt is that mere legal measures are inadequate if the overall policy and environ is hostile to the maintenance of people’s knowledge.

Documentation, she affirmed, does not automatically mean either protection or benefit sharing are guaranteed. Reuse of resources and TK should not be restrained. Documentation of knowledge may make it more vulnerable to misuse by “outsiders”. This has mean a grave implications for the communities. In addition, communities may not want resource / TK in the public domain!

Documentation, she therefore concluded, should not lead to disenfranchisement of local communities vis-à-vis their knowledge and resources.

Q&A

A. K. Ghosh said that in the last sixty years, NGOs have not been able to do anything for conservation. The BD Act has at least been able to protect knowledge and resources. He asked if there was any alternative to documentation then?

K. S. Vanaprasad, Principal Scientist, National Bureau of Plant Genetic Resources, who was participating in the workshop on his individual capacity, commented that TK is property. He spoke of the PVP&FR Act where he said that registration of extant varieties¹² will be closed in three years. If all varieties do not get registered, how else will one protect them from anyone else claiming ownership over them he asked. He also questioned approvals being given to non Indians for access under Collaborative Research projects.

¹⁰ See ‘Beyond UPOV’ <http://www.grain.org/briefings/?id=127>

¹¹ Preamble to CBD <http://www.cbd.int/convention/articles.shtml?a=cbd-00>

¹² On the PPV&FR Authority’s efforts at registering farmers’ varieties:
<http://www.plantauthority.in/announcement.htm>

Karsten Wolf, Thanal, commented on A. K.. Ghosh's statement and said that although there was no protection before the BD Act, the number of patent applications have increase tenfold after India ratified the CBD.

Ashish Kothari added that the Govt. is not serious about the conservation provisions in the Act. Like for example, he said, that although the Act says that communities will conserve, it does not specify how.

Shalini Bhutani reiterated the point of protection in an ABS regime. She asked again if documentation will be able to fulfill this objective. The CBD and the FAO are both "tainted" by patents she said and ironically, the ITPGR makes farmers' rights subject to and be protected by national legislation. If national laws themselves are not pro-farmers then there is little chance of their rights be safeguarded. She mentioned the provision of the 'Genome Saviour Awards' ¹³ by the PVP Authority established under the PPV&FR Act, which she maintained, is primarily an IPR Act.

On Ashish Kothari's question of whether varieties should then be registered with the PVP Authority, she said it depended upon the objective. "*Is registration to reiterate the country of origin, to contend with the global regime?*" she asked. Under the PVP there is at one level registration of farmers' varieties and on the other level registration of plant varieties by private breeders or even public sector institutes.

Q: If Basmati were registered, would it help?

A: No. The US Govt. has a problematic policy on IPR and patents. It is not even a Party to the CBD¹⁴. Registration means fighting a single battle. If another country in general does not respect your knowledge or give due deference to your domestic law and policy then the fight becomes case-to-case. Basmati, is regarded as a generic term to mean 'long-grain aromatic rice' in the US. Scientists and more so the Govt. need to address the problem at source. That's the kind of political will needed to counter IPRs. The African Govt.s, for example, had demanded a freeze on WTO's TRIPs implementation to halt patenting. Before 2000, India said 'no patenting to life forms'. Now to reconcile TRIPs with the CBD, the patenting criteria have been qualified to include:

- Country of origin
- Benefit sharing
- Prior informed consent (ironically the BD Act speaks only of 'consult'ation with communities and NOT their consent.)

Before the next round of presentations began, Ashish Kothari clarified to the participants that the Workshop was based on the premise that although documentation of resources and knowledge is necessary, the process and objectives of the same needed to be deliberated in detail.

¹³ Alert for farmers on registering varieties with the PVP Authority
<http://www.kalpavriksh.org/campaigns/ccbdfalert>

¹⁴ Biopiracy and TK <http://www.hinduonnet.com/folio/fo0105/01050380.htm>

Deccan Development Society's Community Biodiversity Registers (CBRs):

P V Satheesh

P. V. Satheesh, in his presentation, gave a brief history of DDS. He explained how the issues of control and autonomy gradually gained primacy in the organizational mandate. Autonomy is understood to be over seeds, media, market and food. He affirmed that knowledge is NOT property as is generally put, but for sharing, like we have for centuries believed within our culture and tradition.

Diversity, he explained, is an issue related to people and gender. It has reinstated the confidence to the people. People celebrate seed autonomy: every woman has 10-15 seed varieties in her home. The Mobile Biodiversity Festival held each year is a time for celebration of non material benefit. He said that because of the seeds, the common members have become leaders irrespective of the low economy.

CBRs or Community Biodiversity Registers are different from Peoples' Biodiversity Registers or PBRs proposed by the NBA, he said. The CBRs are a way of expression for the communities. Women, he affirmed, are central in the community matrix. The knowledge shared is non hierarchical in which the Participatory Rural Appraisal (PRA) is used as a tool which the educated and the illiterate can make use of. Unlike the PBRs, there is no uniform format. The community develops and expresses through the following:

- Common dialogue
- Common endorsement
- Common sharing

Women and the marginalized are central to the process. Community mobilization takes place around the biodiversity issues.

He compared this process to that proposed by the PBR manual (of the NBA) and said that the latter makes the export regime central to the process; farmers and communities subsequently take a back seat.

He then outlined his concerns with respect to the process of documentation proposed by the NBA:

- How will the **privacy of the communities** be ensured?
- How will **individual knowledge** be distinguished from **community knowledge**?
- Will **each member of the community be acknowledged**? How?
- Does **benefit sharing** exist? How?
- How will **community consent** be acquired?

DDS film on CBRs

The film described the process of creating the CBR using PRA tools. It highlighted elements of participation, empowerment and creation of ownership, ending with a pledge to preserve and conserve the community's resources and knowledge. The final CBR, affirmed P.V Satheesh, is owned by the Panchayat.

Q&A

Q: Is the documentation limited to farmers' varieties?

A: Documentation is done first of agro biodiversity, then of medicinal plants and then of livestock.

Q: Is the process the same for all eco regions?

A: There are differences between regions.

Q: Once the CBRs are ready, how are they converted into conservation plans?

A: The process of formulating a CBR is not a lateral process; the community keeps reverting back to the CBR formulated.

Q: How do you see the process as a conservation process against the present day threats?

A: It is only now that we know that knowledge in the public domain is susceptible to misuse. Earlier, we thought it was safe in the public domain.

Q: If the Panchayat keeps the CBR, what is the dialogue between the Panchayat leaders (male) and the community women?

A: Women here are powerful. They can talk to the Gram Panchayat (GP) and confront them in case of misuse.

Documentation by *Beej Bacchao Andolan*, in Jardhar, Uttarakhand: *Vijay Jardhari*

Vijay Jardhari commented saying that in our country, every evil comes out of good intentions. He gave the example of the Green Revolution, which was born out of noble intentions but has now resulted in greater inequity. In the same context, he questioned the objective of PBRs and if it was a result of farmers' demands.

The *Beej Bacchao Andolan* (Save the Seeds Movement) was born during the aftermath of the Green Revolution at a time of low productivity and depleting seed varieties. He explained how their community had found hope in the areas where "development" had not reached. At present, the *Andolan* has conserved different varieties of crops suitable for different regions. Jardhari explained the *Barahanaja* system of farming where farmers grow twelve types of crops in a single plot of land. He gave examples of how the farmers are well versed on medicinal properties of crops, like horse grain for gall bladder stones, finger millet for bone strength etc. He said this knowledge is adaptive to local conditions. Till now 3,000 varieties of seeds have been documented. The Seed Banks are managed by women. 5 – 600 varieties have been conserved and also distributed.

Wild diversity conservation: Vijay Jardhari shared the *Andolan's* experience at conserving the Jardhar jungle which according to a survey conducted by the G.B. Pant Institute, is now known to have more diversity than the Nanda Devi Biosphere Reserve.

Ashish Kothari added saying that the process of documentation had started more than ten years ago. He said that both wild and domesticated diversity were documented (also through maps) in consultation with all members of the community. This document is still being used for various purposes.

In the end, Ashish Kothari pointed out how Vijay Jardhari's presentation - which dwelled primarily on the community's efforts at conservation of varieties - highlighted the fact that for all communities, the process of *documentation* of knowledge and resources is not separate from their conservation efforts in their daily lives.

P.V. Satheesh added saying that this very integration of biodiversity into the lives of the people is the *means* of protecting it too.

Biodiversity Registers in Mendha Lekha, Maharashtra: *Mohan Hirabhai Hiralal*

Mohan H. Hiralal, representing Vrukshamitra, an NGO that works in Mendha Lekha of Gadchiroli District of Maharashtra emphasized the power within the communities themselves to frame their own laws and policies. He shared a slogan popular in Mendha Lekha village:

Dilli Bambai mein hamari sarkar

Hamari gaon mein ham HI sarkar

(The slogan highlights the demand for the right for self governance in a democratic set up.)

Mohan H. Hiralal said that all decisions within Mendha Lekha are taken by the Gram Sabha where the community is represented by one woman and one man from every household. The PBR constitution is admittedly not of the people. But the provisions of the BD Act can be used to fill in the gaps. He said that the community in Mendha Lekha discussed the fact that there were already too many committees within the village and thus, the formation of a BMC needed consultation.

The BMC in Mendha Lekha, therefore, consists of 100 -200 voters, one third of which are women and the representation of Scheduled Castes and Tribes is proportional to their population. Three representatives from the BMC and two more elected persons are made part of the Gram Panchayat. He said that all decisions are taken on the basis of a consensus. The BMC is an apolitical body he stressed. The main function of the BMC is management of biodiversity. PRA, he added, is a good tool for information collection which needs to be used for documentation. He said that the youth in Mendha Lekha are interested in the process of documentation as it involves their futures.

UPCOMING ISSUES:

Mohan H. Hiralal said that because of the inherent faults within planning, biodiversity, unemployment and poverty exist together. Better management will have to be done by "us" and the community he said.

The criteria for support from the NGOs to the community should be:

- A resolution passed by the Gram Panchayat
- Presence of the opposition and the ruling party in meeting to formulate the BMC.

He said that only if the above criteria are fulfilled, can the process of formation of the BMC be carried out.

NGREGA and BMC

He explained how funds are lying stagnant within the Employment Guarantee Programme. These funds, he added, can be used for carrying out the plans of the BMC. Five Gram Panchayats within Gadchiroli have passed a resolution accepting the proposal to do so, he said.

Q&A

Q: How is the linkage between NREGA and PBRs being executed?

A: NREGA in Maharashtra is not limited to 100 days as the rest of the country. The scope within NREGA can be expanded to integrate conservation. Unlike earlier programmes like Joint Forest Management (JFM), the implementation of the BD Act has legal support. The principles of sustainable use and benefit sharing should be integrated within the Employment Guarantee Scheme. Simultaneously, issues of poverty and unemployment can also be addressed.

Q: *Van Suraksha Samitis* (Forest Protection Committees) functional within Himachal Pradesh provide access to people for all products etc. In this context, how will the BMCs function? Will they be over and above these *Samitis*?

A: We need to be careful of contradictions caused by too many existing local bodies like on JFM, watershed and now the BMC.

(Ashish Kothari added saying that the Rules formulated by the State Biodiversity Boards can also be used to prevent creation of too many local bodies. He cited the examples of MP and Sikkim which have provided for existing local bodies to function as BMCs. P.V. Sathesh said that in Andhra Pradesh, the idea of letting existing Eco Development Committees (EDC), Forest Conservation Committees (FCC) or Self Help Group (SHGs) to function as BMCs.)¹⁵

LISTING OF ISSUES:

At the end of the day, guiding questions from the day's proceedings, put together by the co-organizers, were shared and discussed upon:

- WHO FELT THE NEED FOR OFFICIAL PBR PROCESS: COMMUNITIES, SCIENTISTS OR THE GOVERNMENT?
- HOW DOES ONE VIEW THE EXISTING PROCESSES OF COMMUNITY BASED DOCUMENTATION PROCESSES VIS A VIS THE OFFICIAL PBR PROCESS PRESCRIBED IN THE ACT?

¹⁵ For Kalpavriksh's recommendations on the draft Kerala Rules based on comparison with Sikkim and MP biodiversity rules, see <http://groups.yahoo.com/group/BioDWatch/message/49>

- HOW SHOULD THE PBRs BE PREPARED?
- WHO RECORDS, WHO VALIDATES AND WHO CONTROLS THE PROCESS OF DOCUMENTATION?
- CAN PBRs BE USED TO BREAK INEQUITIES OF KNOWLEDGE?
- CAN PBRs BE A TOOL TO 'PROTECT' BIOLOGICAL RESOURCES AND KNOWLEDGE?
- DO BMCs/COMMUNITIES HAVE CONTROL OVER INFORMATION DOCUMENTED THROUGH THE PBR PROCESS?
- HOW CAN IT BE ENSURED THAT "SENSITIVE" INFORMATION IS NOT RECORDED?
- SHOULD THERE BE A UNIFORM FORMAT PRESCRIBED BY NBA OR SBB?
- HOW DOES ONE MAINTAIN, AND WHERE NECESSARY, REVIVE, THE IMPORTANCE OF ORAL VIS A VIS DOCUMENTED KNOWLEDGE?
- WHERE SHOULD THE PBRs BE KEPT AFTER FINALISATION?
- SHOULD THERE BE A CLEAR SYSTEM PRESCRIBED FOR THE USE OF THE INFORMATION IN THE PBRs PREPARED UNDER THE OFFICIAL PROCESS?
- WHO MAKES DECISIONS ON THE MERGING OF DOCUMENTED INFORMATION WITH OTHER GOVT. DATABASE LIKE IBIS OR TKDL? WHAT IS THE PROCESS OF THIS MERGER?
- IS THERE A NEED TO DETERMINE LOCAL BENEFITS OF THE DOCUMENTED INFORMATION TO GENERATE AN INTEREST IN BMCs FOR PREPARING PBRs ?
- WHAT IS THE LINKAGE BETWEEN IPRs, ACCESS AND BENEFIT SHARING CONCERNS WITH DOCUMENTATION OF KNOWLEDGE AND BIOLOGICAL RESOURCES?
- IS THE PROCESS OF SETTING UP BMCs AND THEIR COMPOSITION ENOUGH TO ENSURE PREVENTION OF KNOWLEDGE PIRACY?

OR

- ARE AMENDMENTS TO THE ACT/RULES REQUIRED BEFORE GETTING INTO SETTING UP OF BMCs AND STARTING THE PBR PROCESS?

There were a series of reactions from the participants:

Bishnu Prasad from THREAD questioned what alternatives were there for the present process and if the 'commodification' of resources can actually be stopped. He added that biological diversity is vast and cannot be documented.

Raghunandan Velankar, RANWA, Maharashtra said the only option available is NOT to document. He said that according to his experience the hierarchy always put the Scientist above the Government and the Community at the end.

In response to Bishnu Prasad, Mohan H. Hiralal said that what is relevant to the lives of the communities should be documented. Bishnu Prasad objected saying that it may be impossible to know how which resource is *relevant* and what is not to the lives of the

communities. He cited the example of the glow worm, which he said is being seen as potential raw material for bio illumination. Thus, he said that any plant or animal which has limited utility now can have higher utility later.

Madhu Sarin, Chandigarh, said that the Government cannot forcibly make communities document, they do not have the capacity to do so. She explained that the communities are sometimes unaware of what traditional knowledge they are using. MNCs usually have what communities may think they have lost; by keeping a tab on what the MNCs are using, economic and bio exploitation can be prevented.

She asked if there is any method of protection apart for *prior art* like location.

Prior art (also known as or **state of the art**, which also has other meanings) in most systems of **patent** law^[1] constitutes all **information** that has been made available to the public in any form before a given date that might be relevant to a patent's claims of originality. If an **invention** has been described in prior art, a patent on that invention is not valid.

...In most patent systems, in order to anticipate a claim, prior art is expected to provide a description sufficient to inform the average worker in the field (or the *person skilled in the art*) of some subject matter falling within the scope of the claim. Prior art must be available in some way to the public, and many countries require the information to be recorded in a fixed form somehow. Again, in most patent systems, prior art does not include unpublished work or mere conversations (though according to the [European Patent Convention](#), oral disclosures also form prior art — see [Article 54\(2\) EPC](#)). It is disputed whether [traditional knowledge](#) (e.g. of [medical](#) properties of a certain plant) constitutes prior art.

Patents disclose to society how an invention is practiced, in return for the right (during a limited term) to exclude others from manufacturing, selling, offering for sale or using the patented invention without the patentee's permission. Patent offices deal with prior art searches in the context of the patent granting procedure. To assess the validity of a patent application, patent offices explore the prior art that was disclosed before the invention occurred (in the [United States](#)) or before the filing date (in the rest of the world).

Source: http://en.wikipedia.org/wiki/Prior_art

Karsten Wolf said that the objectives of documentation itself were contradictory: to preserve resources and prevent biopiracy.

“It cannot be done together! Some additional measures need to be taken against biopiracy!”
Karsten Wolf

V. S. Vijayan said that documentation is necessary for conservation.

“The means to prevent misuse need to be chalked out.” V.S. Vijayan

Ashish Kothari reiterated that the objections being raised were not with documentation itself but the process being adopted by the Government.

Shalini Bhutani commented that **national sovereignty** has to be based on **community sovereignty**. Communities need to be the deciding point and determine what they want to do with the resources. They should be empowered and facilitated to make the choice.

She however explained that the problem also lies with the IPR system.

“If at the international level, the ‘pirate’ does not respect your documentation process, efforts at documentation are futile.” Shalini Bhutani

She explained that Code 35 of the US Patent Law¹⁶ makes oral knowledge from another country inadmissible in a challenge to a patent application. This explains the Government's hurry for documentation, she clarified. But the SOURCE of the problem, she emphasized, has to be tackled.

She painted a scenario ten years from now:

A time of immense genetic contamination and (erosion of species due to) climate change; all germplasm lying with IRRI and ICRISAT with no traditional variety with the communities...It is only by preserving customary practices that species can be preserved. If documentation encourages them, then documentation should be encouraged. But if not, then documentation should be discouraged she concluded. In any case that decision should be of the community and need-based not forced by the government!

R. Sridhar, citing the example of Genome Entrepreneurs' Organization in Chennai said that all Governmental processes are directed by corporations like Syngenta and Monsanto. He said that the draft IPR policy of the Kerala Govt.¹⁷ mentions 'creative commons'. If all documentation leads to IPRs, then we should design a regime that is OURs, he said.

Ashish Kothari said that we need alternatives and parallels to the existing system of knowledge protection and documentation.

"Challenging the present IPR regime is a given in this process" Ashish Kothari

P.V.Satheesh said that CBRs cannot be an answer to the IPR regime.

"CBR needs a fresh approach. In situ conservation can be a consequence of CBRs" P.V. Satheesh.

Ashish Kothari questioned if the NBA then should be promoting one methodology or diverse methodologies.

The discussions tended towards the fact that the problem is much greater than documentation and the issues surrounding it. Most participants advocated that there should be a paradigm shift to counter the IPR regime. P.V. Satheesh suggested that the reviving dry land agriculture will help solve the problem substantially. It will, he said, solve the agrarian crisis, will prevent the river linking project and will restore confidence in people. Documentation should be linked to this revival he said. When questioned by Ashish Kothari if DDS had the potential to do the above, he replied in the affirmative.

Vijay Jardhari said that the Govt. was taking away everything from the communities. He said that bodies like the NBPGR were made to collect seeds from the communities. He lamented that what the communities owned is now owned either by the Govt. or the industries.

¹⁶ Code 35 of the US Patent Law

http://www.law.cornell.edu/uscode/html/uscode35/usc_sec_35_00000104---000-.html

¹⁷ Kerala draft IPR Policy http://www.kerala.gov.in/annualprofile/iprp_draft.pdf

“With the present process of documentation, I fear that all that we will be left with in the future are documents, whereas the resources and knowledge will be with the companies!” Vijay Jardhari

But, he said if the present process is empowering the communities and ensuring resources and TK to be with the communities, it was better. He agreed along with Umendra Dutt to the need to address the Parliament, the State Assemblies and the Gram Panchayats.

R. Sridhar gave an interesting example of a form of rope dance being passed from generation to generation in Kerala. He said if such preservation of TK is the objective, documentation will never serve this purpose. But sadly enough, this is not the objective, he concluded.

Ashish Kothari added saying that the objectives of the Biodiversity Act are knowledge conservation, propagation and sustenance. Therefore, he said that the problem is with the Rules which define the only function of the BMCs as documentation and not the above.

P.V. Satheesh outlined critical differences between the DDS process of documentation and the process prescribed by the NBA:

1. **Designing** – the CBRs of DDS are designed by the communities. The PBR process proposed by the NBA would be based on a prescribed format.
2. **Energy** – the DDS process involves the entire community leading to a vibrant debate. In contrast, the Government process is led by people (mainly scientists) who are aliens to the community. With respect to the involvement of the teachers and the students, P.V. Satheesh maintained that they too have been alienated by a different school of thought and cannot be said to represent the community.
3. **Involvement of the marginalized / women**, exploiting their ability to spot their potential and making them the fountainheads of that knowledge is central to the process of CBR formulation in DDS. The same cannot be said for the process to be adopted by the Govt.

Krishna Srinivasan, ECONET, Pune, highlighted that the official process of documentation will not demystify the IPR regime. Ashish Kothari explained that if PeBINFO is the starting point of the documentation process, as was mentioned in the recommendations of the Workshop on PBRs held by the NBA in June 2006, the norm will be set as that. Therefore, he stressed, the NBA must encourage, acknowledge, learn from and share existing forms of documentation.

Raghunandan Velankar explained that the PBR manual of the NBA is the result of a long drawn out process. He gave the example of formulating the PBR in Kalimpong, Darjeeling District, West Bengal and said that the PBR needs to be seen as not limited to documentation. If all the provisions of the conservation Acts are put together in the process, the PBR, he said, can be a tool for natural resource management.

Kapil Sahasrabuddhe, CEE, Pune, said that the NBA has neither the methodology nor the human resource to implement the PBR process. To this, Ashish Kothari clarified that in the 11th Plan process, the proposal to fund the PBRs has been tabled and a number of

organizations are getting ready to apply for these funds. The guidelines would have to be ready until then he emphasized. The PBR manual would have to be studied, he reminded.

PLAN FOR THE FIELD VISITS:

P.V.Satheesh outlined the plan for field visits for the participants which included the following aspects:

- Knowledge base on seeds
- Seed Banks
- Crop diversity in farms and knowledge related to it.
- Seed 'shrine'
- Green School for ecological / agrarian / artesian skills.

DAY 2:

SHARING BY THE LOCAL WOMEN, Deccan Development Society

Sammamma said that the CBRs have helped the community to retain knowledge and generated greater awareness regarding agriculture. She said that the process involves everyone through 'drumbeat'. All decisions on which crop is sown at what time in what kind of soil is taken with everyone's consultation, she said.

"We know more about the crops and the soil now. Through the CBRs, we reminded ourselves of our practices." Sammamma

Anusamma, Deccan Development Society, said that the community used the PRA tools for all crops and plants (including medicinal plants). People of all generations participate in the formulation of a CBR. The final document is deposited at the:

- Panchayat
- Mandal and the
- Office of the DC

A decision was taken to free agriculture of external inputs. Decisions like these are recorded in the CBR. She added that interaction with people including the ones attending the workshop increases their knowledge.

The local participants explained the inter relation between growing unemployment among the artisans and the changing trend of agriculture. They said that local tools and implements have been replaced by the tractor which works only on Govt. seeds.

"With the new seeds, our implements are also going from us. All blacksmiths and other artisans have had to migrate to the city because of this." C.N. Suresh Kumar

They explained how the soil in Medak district is hard and shallow. Traditional crops and implements are suited for this soil, they explained. Even traditional varieties of trees

could be used to make the traditional implements. But now, even those trees have been cut down and the wisdom of tools and implements is fast eroding.

All the above issues and the knowledge are discussed during the process of formulation of a CBR the participants explained. For example, crops are selected not only for their grains but on the basis on their utility of stalks (used for fodder), roots etc. For example, pigeon pea is grown also because it is useful for nitrogen fixation. All the above knowledge is reinforced during the PRA exercise.

Chandamma said that the PRA exercise helps their children know of crops that are not popularly grown like some forms of millet etc. The knowledge of the elders regarding microbes, soils, crops and rare medicinal plants gets transferred to people of younger generations.

Q&A

Q: Did you know of the threats of piracy when you started the process of PRA.

A: Our primary concern was to revive knowledge. At that point of time, piracy was not a threat.

Q: Why is the PRA needed for transferring knowledge to the younger generation?

A: In a five day meeting in Bangladesh, the threats to biopiracy were discussed. After gaining that knowledge, we initiated the process of CBRs. Also, in the last ten years, the process of sharing knowledge has changed with the advent of TV and other means of entertainment. Earlier, we learnt so much from our parents. Our children go to school and hardly spend time with us. We no longer sit to discuss and speak on agriculture. The PRA is a new method by which we can reach out to the younger generation.

“In other countries, people have forgotten how food is produced. In India, this should not happen. People who give money and people who give food should co-exist.” Samamma

Q: For how long is the PRA exercise undertaken?

A: The period in which agricultural work is less is usually taken for conducting the exercise. With the high credibility of the Sangams, it is not difficult to gather people who sit for hours doing the exercise.

THE BIODIVERSITY LEGISLATION: Key Provisions Related to Resource and Knowledge Documentation – Kanchi Kohli

The presentation dealt with the following aspects:

- Main objectives of the Biological Diversity Act 2002
- Institutional structure prescribed by the Act
- Duties of the Central and State Governments

- Expert Committee on Database on Biodiversity and TK, NBA and its focus including the IBIS and formulation of methodology manual for PBRs.
- Notification of threatened species by the Central Government in consultation with the State Governments and the Expert Committee on Rare, Threatened, Endangered and Endemic Species.
- NBA's Expert Committee on agro biodiversity and its functions.
- Notification of Repositories by the Central Government and the NBA's Expert Committee on Repositories.
- Provisions within the Central Biological Diversity Rules with respect to BMCs and PBRs.
- Provisions within the State Rules of Madhya Pradesh, Karnataka and Sikkim with respect to PBRs.

Comments from the participants were as follows:

H. Ralladoddi commented saying there seem to be no guidelines for *protecting* agro biodiversity. He gave an example of scientists who gave samples for hybrid of maize to be developed. He said that four inbred lines were sold for Rs. 25 lakhs each. This incident, he said took place after the formation of the AP SBB. These hybrids are now owned by the country to which the inbred lines were sold. Horticultural germplasm is taken from forests and exported. He also gave examples of lack of monitoring at the airports and ports.

He spoke of how the AP SBB proposes to make mandatory registration of all seed companies.

When questioned as to how the companies would react to mandatory registration, he said that it would be made mandatory in the Rules. Ashish Kothari commented saying that the AP SBB can set an example for the nation regarding **restriction** and **repatriation** from companies / research institutions to communities and other SBBs.

Specifically on documentation, Ashish Kothari said that clear guidelines would have to be pushed for the following:

- Legal protection for the documents.
- People undertaking the documentation.

He also said that the selective implementation of the Biodiversity Act would have to be highlighted.

H. Ralladoddi pointed out that the process of regulation of trade in bioresources took too long a time with the Act coming into force almost a decade after India ratified the CBD. He said that the protection of TK, however, should take place as soon as possible. He gave an example of a person from Anantpur Dist. who shared TK on cancer cure to an American. He later received Rs. 10 crores as part payment of royalty. Ralladoddi said that this is the first case with the AP SBB on piracy.

Mohan H. Hiralal emphasized the importance of strengthening local governance. He said that even if all control is handed over to the community, the community should be strengthened to be able to handle the responsibility. He cited the example of ownership of Non-Timber Forest Produce (NTFP) given to the Gram Panchayats in Maharashtra, which was again taken away because of inefficient handling.

Madhu Sarin suggested that the space within the Rules of the Forest Rights Act 2006 could be used to strengthen community rights on TK and biodiversity.

Mayfreen Rynthiang, Farmers' Association, Rajithaing, Meghalaya, highlighted the fact that participation of the communities will have to be ensured by diversifying languages used. Ashish Kothari commented saying that participants attending workshops should be able to take back the learning to their respective communities. He added that at such workshops, participants should be able to act as the voices of the communities that should then reach to the policy makers.

Responding to Madhu Sarin's suggestion, he said that the possibility of using the Forest Rights Act would have to be explored though we need to be careful of the terminology, especially because with respect to IPRs. He mentioned Kalpavriksh's recommendations to the Rules¹⁸ which mention that IPR should refer to community IPR, based on customary knowledge and responsibility and that the Govt. should bear the onus to protect TK and resources.

Mohan H. Hiralal said that the Indian Forest Rights Act mentions 'forest communities' and old legislation like this should also be used. He reiterated that local governments should be encouraged to develop their own policy.

**Maharashtra Group Sharing on their workshop on State level PBR study group –
*Dr. Raghunandan Velankar***

Raghunandan Velankar shared that the Study Group formed in Maharashtra is a 'thinking group' on the BD Act and similar legislation comprising of about sixty people from different fields and geographical areas. The process adopted by the Group is based on peer learning, information and experience sharing. It is only a study group and does not stress on decision making or action based on the study. The objective of the 'thinking group' is to study the Biological Diversity Act and related legislation in detail. The Study Group has specifically focused on PBRs, its objectives, the process and issues involved. The group is also studying the possibilities of linking PBRs with NREGA and it being a tool for local level Natural Resource Management (NRM). The Group is now finalizing the translation of the revised PBR manual in Marathi.

¹⁸ Kalpavriksh's recommendations on the Rules
<http://www.kalpavriksh.org/kalpavriksh/f1/f1.1/bdbdcamp/Biological%20Diversity%20Rules%202004,%20letter%20of%20concern,%20final%20draft%20%28revised%29,%2011.6.2004.doc>

Q&A

Q: How is the Study group linked with the SBB?

A: The Maharashtra SBB has not been formed. There are efforts to link with the Forest Department who will be setting up the SBB.

Q: Did your presentation in the Maharashtra meeting raise any concerns especially with respect to linking the PBRs to a national database etc.?

A: Our major concerns are regarding **IPRs** and **confidentiality**, for which, as of now there are no answers; it is just a process. As of now, we perceive PBRs as a tool for NRM.

(Kapil Sahasrabuddhe added that saying that their perception of PBR is that of a planning process at the village level. The issues of IPR etc. will be dealt with in due course of time.)

Raghunandan Velankar said that the draft Rules of the Maharashtra SBB are being discussed by the Study Group. The Govt. would be included in the Group if interested he added. He also said that because there is no compulsion within the Group on decision making, there is more scope for sharing and learning.

Q: How is the PBR linked to NREGA?

A: Employment generation cannot take place without Natural Resource Management. The funds within NREGA will be used for employment generation for NRM.

EXPERIENCE SHARING BY PARTICIPANTS AND CONSOLIDATION OF ISSUES, CONCERNS AND PRIORITIES FROM THE TWO DAYS

Facilitation: R. Sridhar

Participants from various states were asked to share their experience and knowledge of the process of the implementation of the Biodiversity Act in their individual areas.

Punjab (Shared by Umendra Dutt, Kheti Virasat Mission)

A lot of activities with respect to Genetic engineering (related field tests) are being undertaken. Implementation of the BD Act is full fledged. But in all the above processes, farmers are not consulted.

Meghalaya (Shared by Mayfreen Rynthiang, Farmers' Association Raijthaing)

The SBB of Meghalaya is under the aegis of the State Council for Science and Technology. There is very little consultation and sharing of information.

Kalimpong, Darjeeling District, West Bengal (Shared by Dorjee Pem Bhutia, Center for Mountain Dynamics and Mashqura Fareedi, Kalpavriksh)

People are unaware of the BD Act, there is no information. Government programmes and schemes take a long time to get implemented due to the dual system of Govt. (State and the Darjeeling Gorkha Hill Council). There are processes of documentation being undertaken within the district by NGOs with foreign funding as part of implementation of conservation projects.

Orissa (Shared by Bishnu Prasad, THREAD and Prasant Mohanty, Vasundhara)

Thirty percent of the population is tribal. The Orissa Nari Samaj (ONS) has undertaken group cultivation of annuals, biannuals and perianuals. The ONS, which is a confederation of 53 block level tribal women's organizations also sent Resolutions to the PM demanding greater community control in the implementation of the BD Act. Traditional agriculture is being revived through Community Based Organizations (CBOs) for improving food security.

Tamil Nadu (Shared by Suresh K. Khannan, KUDUMBAM)

A number of Resolutions were sent to the PM demanding greater control of communities within the BD Act. The BD Act has been translated into Tamil and distributed. There has been an unfortunate shift from millet as the staple food to millet. Value addition to millet, therefore should be encouraged.

Uttarakhand (Shared by Vijay Jardhari, Beej Bacchao Andolan)

Documentation should be encouraged at the local levels, though the use of English should be avoided as it gives limited focus and use.

WAY FORWARD: <i>Facilitated by Ashish Kothari</i>
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There was unanimous decision that a letter highlighting concerns with the documentation process being adopted under the Biological Diversity Act 2002 be prepared and sent to the NBA. The main concerns to be highlighted were discussed at length:

Ideas discussed:

P. V. Satheesh:

NREGA should be separate from PBRs as livelihoods should not be associated with biodiversity. Biodiversity has a separate cultural value. Monetization of the concept will create further problems. We must step up efforts at demonetization of these concepts.

Mohan H. Hiralal

The effort of the Maharashtra Study Group is a knowledge process that will assist in quality decision-making. As of NREGA being linked to PBRs, it is process undertaken taking into consideration local needs.

BMCs should be strengthened. The fact that the BMC has a right to consider every decision being taken and adapt every decision made to the local condition needs to be acknowledged at the level of policy formulation. Space for customary institutions and processes must be advocated for. Also, the space within the Act with progressive provisions must be used effectively.

Kultar Singh, Kheti Virasat Mission

All PBRs should be translated in local languages and decisions taken with respect to it should be displayed in public places.

Ashish Kothari

The BD Act has been officially translated in Punjabi and Telegu (in process). One copy of this should be sent to the Gram Panchayats. Vasundhara, an NGO in Orissa has translated the Act in Orissa and sent the draft to the SBB.

ShaliniBhutani

Major concerns:

- To comply or not to comply with the prescribed process of documentation of the NBA.
- To strengthen existing systems of *in situ* conservation and community processes of transmission and generation of knowledge
- To question broader systems of appropriation like IPRs and the overall privatisation of not only knowledge but biological resources themselves.

TK cannot be protected without respecting existing customary practices and institutions. The knowledge dying with the tribe is better than the knowledge being fed into a database for money for someone else. Therefore the question is: do we need BMCs, especially when the BMCs do not have much control and role like in the formulation of guidelines that is being done solely through the NBA and the SBB?

Kanchi Kohli

The hierarchy within the BD Act is explicit. There are no approvals being taken from the BMCs. Their involvement is at the discretion of the NBA and SBBs.

(Mohan H. Hiralal commented on this saying that although there is an obvious hierarchy, no decision can be forced on the BMCs.)

R. Sridhar

The Kerala draft IPR policy has been formulated outside the BD Act. The Law Dept. has worked on it. Addressing the IPR issue is imperative without which we cannot move a step forward. There should be a very clear effort towards an alternative paradigm with strong safeguards. At present we have progressive SBBs who can push for amendments. SBBs like these and the NBA should be engaged with.

With respect to hierarchy within the Act, the involvement of the communities should be ensured in the BD Act itself.

The main recommendations from the workshop to be sent to the NBA in the form of a letter were discussed. (**Annexure**) It was decided that the letter be circulated to all the participants and suggestions incorporated before being sent to the NBA from the Campaign Desk.

ACTIONS PROPOSED:

- Facilitate all alternate approaches at protection and documentation.
- The draft recommendations from the Workshop to be circulated to all participants and to the SBBs and BMCs of all the ten participant states.
- Smaller regional papers to be prepared and shared.

- Raghunandan Velankar and Krishna Srinivasan to prepare a 2 – 3 page document on documentation consisting of the following:
 - What is the present process being adopted?
 - What are the current provisions?
 - Key concerns.

Two documents – one on the official process and the other on community processes – would be prepared.

The house welcomed **Raman Murthy, Member Secretary, A.P. SBB**, who briefed the house on the activities of the A.P. SBB. He said that two meetings have been held till now. Two Biodiversity parks are to be constructed and that the Centre for Peoples’ Forests has taken initiatives for formulating PBRs. He said that other NGOs would have to come forward in the process of implementation of the Act. He also added that a separate committee has been formed to popularize IPRs among the rural masses. He informed that more BMCs are to be formed. He ended by saying that royalty is being sought for the Bt cotton varieties that have been derived from the varieties available within A.P.

Ashish Kothari shared with them the concerns on IPRs and PBRs that were discussed during the workshop.

Thanksgiving: Ms Jayshree C. , Deccan Development Society
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Annexures:

Draft letter to NBA
Final letter sent to the NBA
KV guidelines on Biodiversity Heritage Sites
All Power Point Presentations
List of Participants

RELATED LINKS

NBA manual on PBRs: <http://www.nbaindia.org/pbr/pbr.htm>

On Biodiversity Rights legislation (overview from GRAIN)
<http://www.grain.org/brl/?page=2>

Article ‘Traditional Knowledge in Peril’ <http://news.bbc.co.uk/1/hi/sci/tech/3496629.stm>

Efforts at integrating TK and Customary Law concerns into ABS policy at the United Nations University http://www.ias.unu.edu/sub_page.aspx?catID=67&ddIID=69

Other documents release under the Campaign for Community Control over Biodiversity
<http://www.kalpavriksh.org/kalpavriksh/f1/f1.1/bdbdcamp/index.html>