Access and benefit sharing regulations impinge on the rights of local communities [Commentary]

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- *India is obligated to ensure free, prior and informed consent of indigenous people and local communities in the access and benefit-sharing under the Convention on Biological Diversity.*
- *The recent amendments to the rules and regulations of the Biological Diversity Act 2002 vitiate the rights of local communities.*
- *The Access and Benefit Sharing Regulations 2025 reduce the role of communities in the ABS process to a paperweight, write the authors of this commentary.*
- *The views in this commentary are that of the authors.*

also referred to as the ABS Regulations 2025. These Regulations mark the third component in India's systemic overhaul of its biodiversity conservation framework. Preceding this were amendments to the Biological Diversity Act (BD Act) in 2023 and the Biological Diversity Rules (BD Rules) in 2024.

Together, these three legal instruments are intended to fulfil India's obligations under Article 8(j) of the Convention on Biological Diversity (CBD) and the Nagoya Protocol to the CBD, both of which mandate the active participation of Indigenous Peoples and Local Communities (IPs & LCs) in the Access and Benefit Sharing (ABS) process.

The ABS Regulations aim to further clarify and streamline the mechanism for sharing benefits arising from the use of biological resources and associated traditional knowledge. However, as the Government of India acknowledged in its submissions to the Joint Parliamentary Committee on the Biological Diversity (Amendment) Bill, 2021, the recent changes to the biodiversity framework are also driven by the goal of promoting and incentivising the AYUSH medicine industry. Consequently, these amendments appear to bolster AYUSH interests while further diluting the already fragile protections afforded to local communities under the BD Act and BD Rules.

Effect of changes

The recent changes to the BD Act and BD Rules have significantly impacted the rights of IPs & LCs, particularly by diluting the requirement for obtaining their prior consent to access their biological resources and traditional knowledge. These amendments also undermine their right to participate meaningfully in negotiating Access and Benefit Sharing arrangements and agreements.

A community farm in Choklangan village, Nagaland. The recent changes to the BD Act and BD Rules have significantly impacted the rights of Indigenous peoples and local communities. Users can now circumvent benefit-sharing mandates by undertaking private arrangements with communities to access biological resources from such farms, say authors of this commentary. Image by Neema Pathak Broome.

There have been two overarching changes related to the Indian ABS framework. First, the proviso to Section 7 introduces a blanket exemption for Indian persons or entities utilising codified traditional knowledge, cultivated medicinal plants, or practising AYUSH medicine. These individuals and entities are no longer required to seek prior approval before accessing biological resources and associated traditional knowledge for commercial purposes. As a result, they are now permitted to access these resources and derive commercial benefits without obtaining the consent of the concerned communities or sharing any benefits with them.

Secondly, the consent of local communities — or their designated representatives in the form of Biodiversity Management Committees (BMCs), institutions created under the BD Act at the panchayat level — is no longer a prerequisite for formulating ABS agreements with commercial users. Instead, the amended BD Act permits either a mere "consultation" with the communities or allows the National Biodiversity Authority (NBA) to "represent" them in ABS negotiations without their consent, consultation, or even knowledge.

These amendments are, therefore, in direct violation of internationally binding standards — specifically the principles of "Free, Prior and Informed Consent" and "Mutually Agreed Terms" between the users and providers of biological resources and traditional knowledge — as outlined in the Nagoya Protocol, the Kunming-Montreal Global Biodiversity Framework (KMGBF), and Article 8(j) of the Convention on Biological Diversity (CBD).

Regulations or derogation of rights?

Against this backdrop, it was evident from the outset that the ABS Regulations would continue the same trend. On December 13, 2024, National Biodiversity Authority (NBA) a notification but without sharing any draft of the proposed Regulations, the notification merely invited written inputs to be sent to the NBA Secretary via email by December 17 — leaving only two working days, as December 14 and 15 fell on a weekend. It remains unclear what kind of inputs were received, but no draft Regulations were subsequently circulated for public comment. Although a committee was constituted, within just a few months, on April 29, 2025, the NBA abruptly notified the ABS Regulations. This process falls far short of any meaningful public consultation and entirely sidesteps the requirement of obtaining consent from the IPs & LCs.

The Regulations address several procedural aspects of the ABS framework, including the much-anticipated inclusion of the "Digital Sequence Information" (DSI) within the scope of India's biodiversity governance. However, this article

focuses specifically on the extent to which the recent amendments to the BD Act are reflected in the ABS Regulations, and their implications for local communities and indigenous peoples.

Continuous logging has led to red sanders being one of the most endangered tree species in India. The new ABS regime may further impede its conservation by weakening the role communities play in its conservation, say the authors of this commentary. Image by Maša Sinreih in Valentina Vivod via Wikimedia Commons (CC BY-SA 3.0).

Regulations 4.3 and 5.7 exempt both foreign and Indian entities with an annual turnover below ₹5 crores (₹50 million) from paying benefit-sharing amounts for accessing biological resources for commercial utilisation. These entities are only required to submit an annual report detailing the biological resources they have accessed.

While this exemption is ostensibly aimed at incentivising smaller businesses — particularly within the AYUSH medicine sector — it effectively deprives local communities of their rightful share in the benefits derived from the commercial use of their knowledge and resources. This not only undermines the principle of equitable benefit sharing but also violates the rights of Indigenous Peoples and Local Communities under international instruments such as the CBD and its associated protocols. Moreover, it stands in conflict with domestic legislation like the Forest Rights Act, 2006, which under Section 3(1)(k) explicitly recognises the "right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity" over resources traditionally conserved and cultivated by these communities.

The exempted categories introduced in the amended BD Act regarding benefit-sharing obligations for Indian entities have already generated widespread concern. Legal advocates and experts working on ABS mechanisms in India have criticised these exemptions for undermining community rights. Rather than addressing these concerns, the 2025 Regulations take this dilution a step further. Regulation 5.7 goes beyond the scope of the amended BD Act by granting the Ministry of Environment, Forest and Climate Change (MoEFCC) the power to issue notifications exempting Indian entities from benefit-sharing obligations not only for products containing "cultivated" medicinal plants but also those derived from "non-cultivated" or wild medicinal plants.

This move seems to work in the interests of the AYUSH industry, while sidelining the rights of local communities — particularly those who depend on wild-harvested medicinal plants and who hold traditional knowledge about their use. The concerned communities are the rightful custodians of these resources and knowledge systems and they should hold the authority to grant or deny access.

While the National Biodiversity Authority (NBA) is empowered under Section 18(1) of the Biological Diversity Act (BDA) to formulate regulations governing Access and Benefit Sharing, such regulations must remain within the boundaries set by the parent legislation. As a settled legal principle, any authority exercising delegated rule-making powers cannot exceed the scope of the statute from which it derives its mandate.

This principle was recently reaffirmed by the Supreme Court in *Naresh Chandra Agrawal v. The Institute of Chartered Accountants of India & Ors* [2024] 2 S.C.R. 194, which held that the general power of statutory bodies to frame rules or regulations cannot be used to create new rights or obligations that go beyond those explicitly laid down in the enabling legislation — in this case, the BDA.

Section 7 of the amended BDA exempts Indian entities from seeking prior approval only for "cultivated" medicinal plants. It does not extend this exemption to "non-cultivated" medicinal plants. Nor does the Act establish any turnover-based threshold — such as the ₹5 crore limit introduced in the 2025 Regulations — for determining benefit-sharing obligations. By introducing these exemptions, the NBA has clearly acted beyond the scope of its delegated authority, rendering these provisions ultra vires the BDA and legally unsustainable.

Bacopa monnieri, a medicinal plant that is widely cultivated and used in Ayurveda. The 2025 ABS Regulations allows for the exemption of Indian entities from benefit-sharing obligations for products containing both cultivated medicinal plants and or wild medicinal plants. Image by Ks.mini via Wikimedia Commons (CC BY-SA 3.0).

Ambiguity grants institutional oversight

The Biological Diversity (Amendment) Act, 2023 introduced ambiguity regarding the role of State Biodiversity Boards/Councils (SBBs) in granting approvals for ABS to Indian entities. While Section 7 required only "prior intimation" to the concerned SBB, Sections 23(b) and 24(1) gave the SBBs the powers to regulate activities under Section 7 by granting or denying approvals. The 2025 Regulations address this ambiguity. Regulation 5 clarifies that both prior intimation and approval from the SBB are required. Users must now submit Form B (annexed to the Regulations) within the stipulated time frame, and the concerned SBB is required to either approve or reject the application within 15 days of receipt.

Strangely, however, Regulation 5 (4) goes on to state that if the SBB fails to respond to the request of a user within these 15 days, the application will be considered approved for one whole year. This effectively gives users a free pass for institutional oversight. While accountability towards the users is ensured, there is no mechanism to ensure accountability towards IPs and LCs and their rights to approve or reject access to their resources or traditional knowledge.

It is also a requirement of Regulation 5 that as part of the prior intimation, the user must submit completed "Mutually Agreed Terms" (MAT) appended as Form C in the Regulations. There is no space for the concerned communities or even the BMCs in either defining the MAT, consenting to or rejecting such terms, or granting approval for access and benefit sharing mechanisms. This MAT, which does not involve the community and is not tailored to their needs, is unlikely to ensure that access is granted fairly and that benefits are shared equitably.

Regulation 11 further provides that the benefit sharing mechanism is to be mutually agreed between the user and the NBA/ SBB. The BMCs are only to be "consulted" by the NBA either directly or through SBB or other state bodies under the Act. As per India's obligations under the Nagoya Protocol and KMGBF, "consent" which is expected to be free, prior and informed and not a mere consultation is the threshold mandated with respect to the involvement of local communities in the ABS process.

Some positive elements do emerge from the Regulations—such as a 25% increase in the benefit-sharing amount for inventions involving traditional knowledge, a requirement for proportional benefit-sharing when resources are sourced from multiple communities, and the detailing of non-monetary benefit-sharing options through Form F, which can be equally critical in empowering communities.

Yet, by and large, the regulations are a missed opportunity in terms of bringing the Indian ABS framework in line with safeguards and standards under the CBD and allied instruments to which India is a Party. To implement the CBD, the Nagoya Protocol, and the Kunming-Montreal Global Biodiversity Framework in both letter and spirit, India must re-centre its ABS framework around the rights, participation, and consent of local communities — both in reforming current laws and in ensuring their effective, just implementation.

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Banner image: The marshes of Tso Kar in the Changthang Plateau of Ladakh. The implementation of access and benefit sharing in remote regions is already compromised by the topography and scarcity of resources, and further at risk by the ABS regime, say the authors of this commentary. Image by Esha Joshi.

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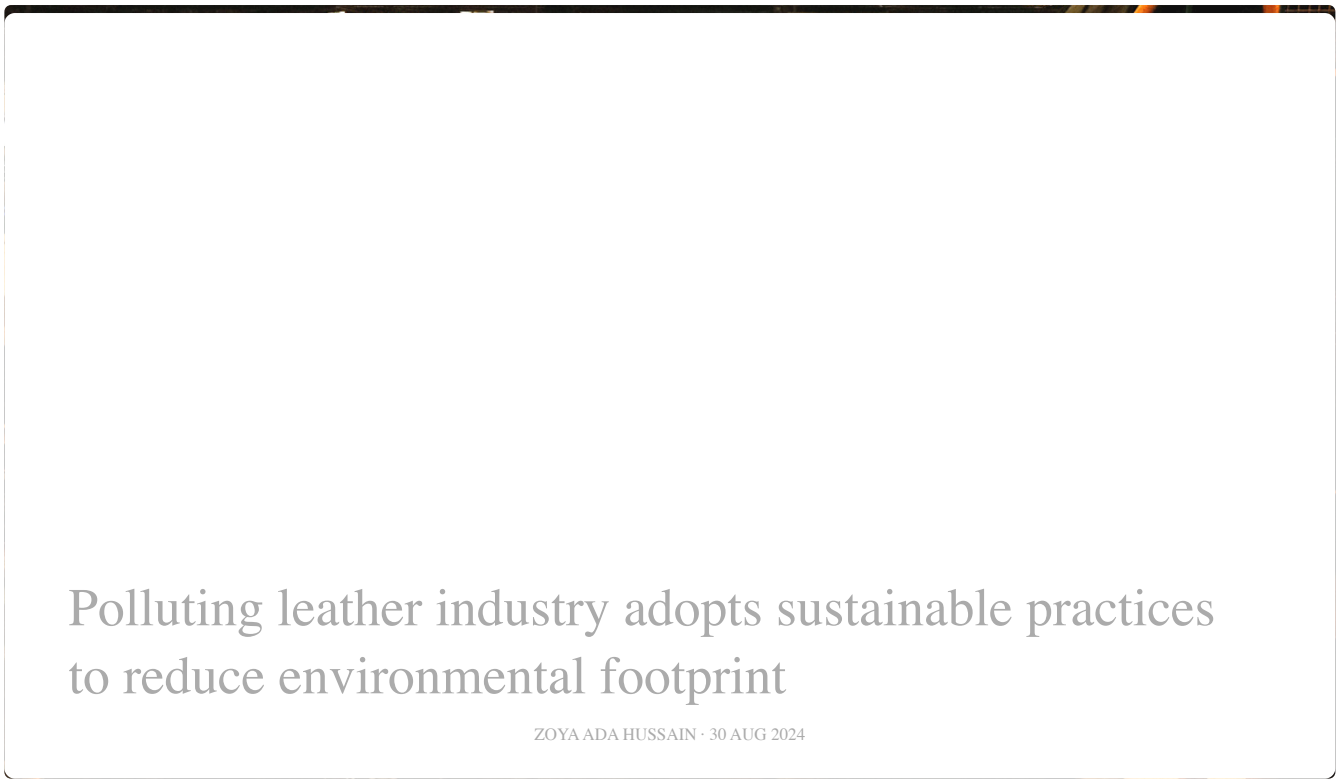

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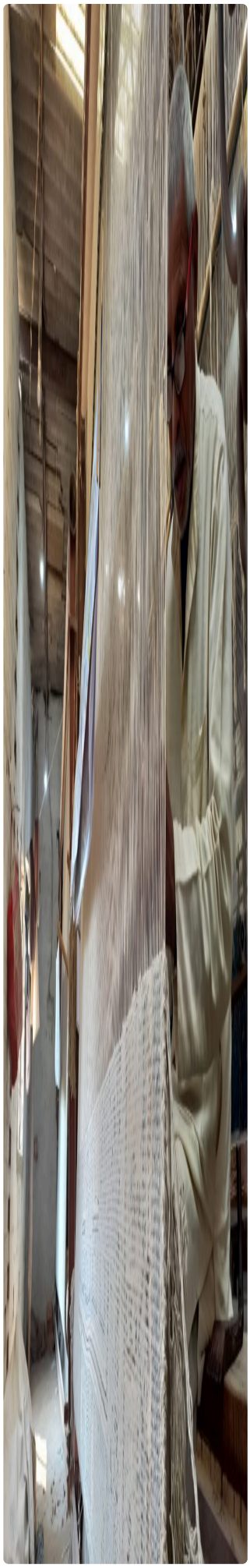

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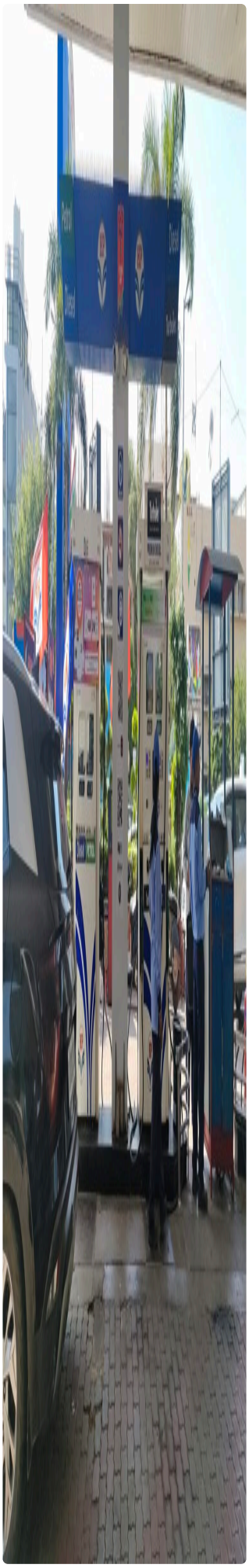

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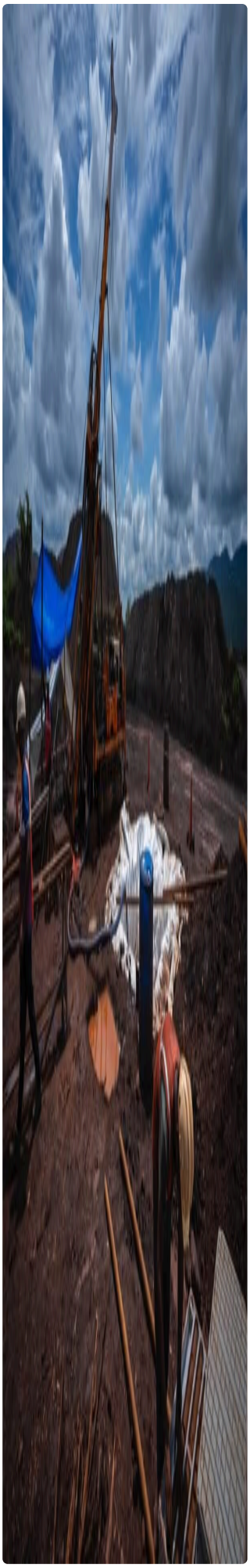

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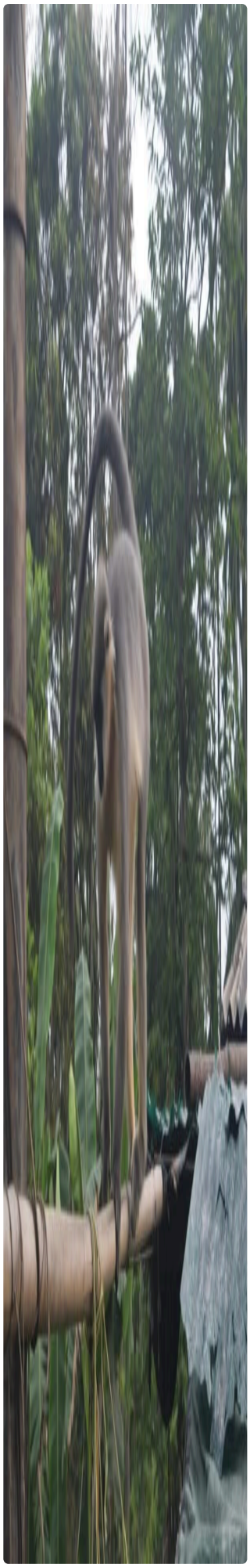

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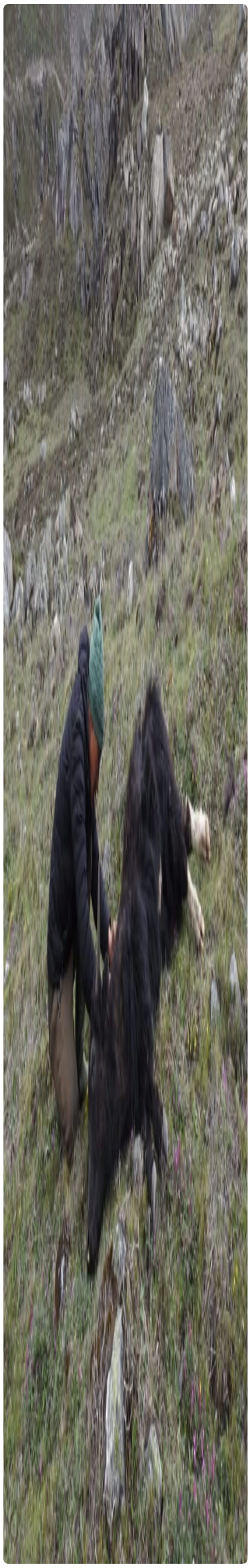

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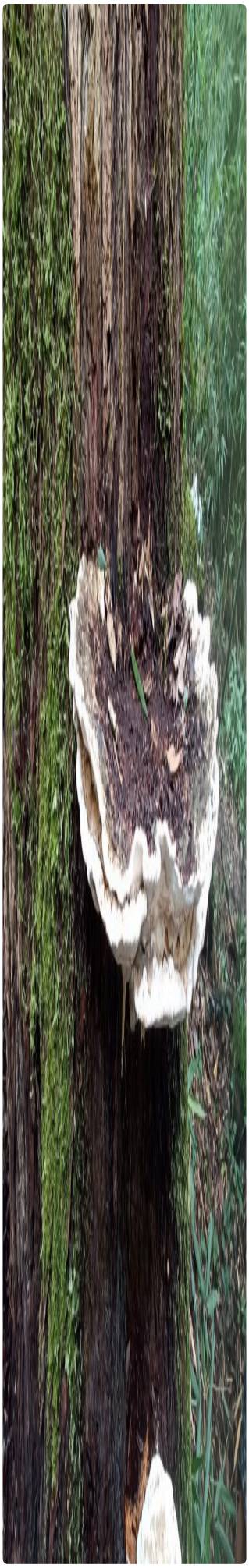

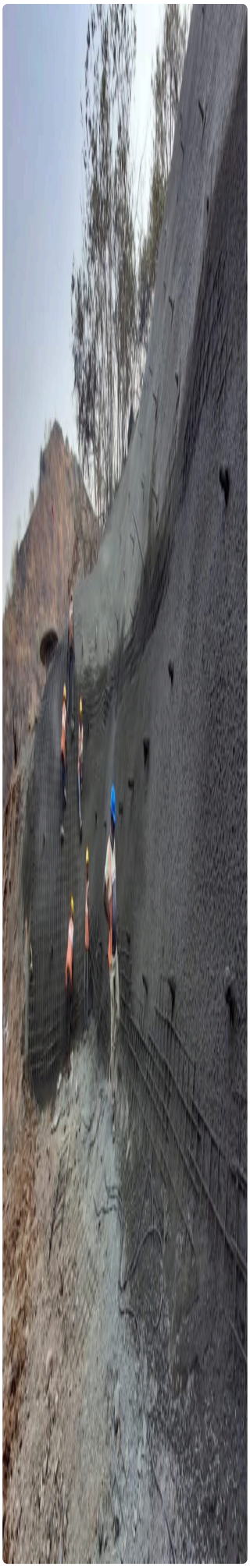

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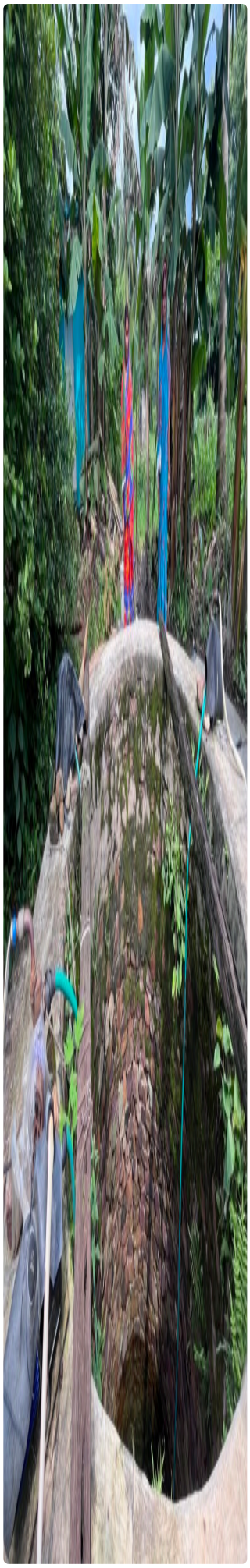

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