

Questionnaire

1. Please provide, in detail, examples of biodiversity-related legislation, policies and programmes that incorporate human rights obligations.

Answer:

India harbours a rich diversity of life at ecosystem, species and varietal levels and is a vast repository of traditional knowledge associated with biological resources. India is a signatory to the Convention on Biological Diversity (CBD). In response to its obligations to the CBD and in order to provide a national framework to deal with conservation, sustainable use and fair and equitable sharing of benefit from such use, government of India enacted the Biological Diversity Act 2002 and notified relevant Rules in 2004. Realizing the need to ensure action at national, regional and local levels, the Act calls for implementation through the establishment of National Biodiversity Authority (NBA), The State Biodiversity Boards (SBBs) and Biodiversity Management Committees (BMCs). Each of these entities is a statutory and autonomous body with specific mandates and powers to facilitate effective implementation of provisions of the Act and the Rules.

NBA's mandate is to advise the Government of India on matters relating to conservation of biodiversity, sustainable use of its components and equitable sharing of benefit arising out of utilization of biological resources; regulate activities and issue guidelines for access to bioresources and fair and equitable benefit sharing in accordance with the Sections 3, 4 and 6 of the Biological Diversity Act and take necessary measures to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource derived from India illegally. At the State level, State Biodiversity Boards (SBBs) are established by the State Governments with the authority to deal with matters relating to access to bioresources by Indians for commercial purposes and restrict any activity which violates the objectives of conservation, sustainable use and fair and equitable.

The BMCs are set up by institutions of local self-government in their respective areas for conservation, sustainable use, and documentation of biodiversity and chronicling of knowledge relating to biodiversity.

The NBA provides technical guidance and financial assistance to the SBBs and the BMCs and thereby plays a lead role in enhancing the effective implementation of the provisions of the BD Act.

2. Please provide specific examples of good practices in the implementation of human rights obligations in biodiversity-related matters. For instance, such examples may include practices related to: guaranteeing procedural rights (e.g., rights to information, participation and remedy); monitoring human rights affected by biodiversity-related legislation, programmes and projects (e.g., rights to life, food, housing, health, water and sanitation, cultural rights, etc.); protecting the human rights of individuals and groups from adverse impacts related to biodiversity; promoting the enjoyment of human rights (e.g., rights to life, food, housing, health, water and sanitation, cultural rights, etc.); guiding business activities in accordance with the UN Guiding Principles on Business and Human Rights; and seeking remedies for victims.

Answer

Good practices:

Widely regarded as the backbone of the Indian economy, the Micro, Small and Medium Enterprises (MSME) sector is highly diverse and heterogeneous in its structure. A major part of the Indian MSME sector is 'local' in its operations and outlook. Yet it impacts the environment and society in its own way. One of the critical aspects of responsible business practices, regulated by National Voluntary Guidelines (NVG), is that businesses should not only be responsible but also be seen as being socially, economically and environmentally responsible. The primary objective of these guidelines is to encourage adoption of sustainability reporting and mainstream disclosure on environmental, social and governance metrics. NVG provide businesses a framework which

enables them to move towards responsible decision making and urges them to adopt the “triple bottom-line” approach. The NVG consist of 9 core principles, namely:

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability; **Principle 2:** Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle; **Principle 3:** Businesses should promote the well-being of all employees; **Principle 4:** Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized; **Principle 5:** Businesses should respect and promote human rights; **Principle 6:** Business should respect, protect, and make efforts to restore the environment; **Principle 7:** Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner; **Principle 8:** Businesses should support inclusive growth and equitable development; **Principle 9:** Businesses should engage with and provide value to their customers and consumers in a responsible manner. While the guidelines, encompassing nine Principles and related Core Elements, identify the areas where responsible practices need to be adopted, the Reporting Framework provides a standard disclosure template that is used by businesses to report on their performance in these areas. The objective of incorporating this framework in the Guidelines is to help businesses reach out to their stakeholders with necessary information and data demonstrating the adoption of the Guidelines (National Voluntary Guidelines-2011-2012 of the Ministry of Corporate Affairs (MoCA))

For more information:

http://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf.

- Corporate social responsibility (CSR) is way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth. In this context, the Government of India has enacted the Companies Act 2013 which makes CSR spend mandatory for every company with a net worth of Rs. 500 crore or more or turnover of Rs. 1000 crore or more or a net profit of Rs 5 crore or more

during any financial year. Two percent of the average net profits made by the company during every block of 3 years are to be used for CSR activities. Ensuring environmental sustainability has been identified as one of the nine activities to be covered under CSR activities.

3. Please specify, where relevant, challenges your Government has experienced in the integration and protection of human rights in biodiversity-related matters.

Answer:

- Failure to conserve natural resources and biodiversity can undermine human rights, e.g. by destroying resources and ecosystem services on which many people, especially indigenous and local communities, depend;
- Economic and other public activities, programmes and policies can either undermine or support the goals of environmental protection, human rights and sustainable development. Failure to provide information or consult affected persons, as well as activities that displace local communities, can negatively impact both human rights and environmental protection. Conversely, environmental protection supports human rights through securing sustainable availability of critical natural resources and ecosystem services.

4. How are the rights of those who may be particularly vulnerable to the loss of biodiversity, including but not limited to indigenous peoples, provided with heightened protection?

Answer:

Jurisprudence of the Supreme Court of India Relating to Environmental Protection:

Article 21 of the Indian Constitution of 1949 provides for the fundamental rights to protection of life and personal liberty, stating that “[n]o person shall be deprived of his life or personal liberty except according to procedure established by law.” The Indian

Supreme Court in a series of decisions has connected Article 21 with a right to a healthy environment.

THE NATIONAL GREEN TRIBUNAL

India has created a "Green Tribunal" to address environmental harms. The National Green Tribunal, which has been operating since July 2011, was established for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. The Tribunal may provide relief and compensation to victims of pollution and other environmental damage, for restitution of property damaged, and for restitution of the environment. The objective of the Tribunal is to provide speedy environmental justice and help reduce the burden of litigation in the higher courts, through its dedicated jurisdiction in environmental matters.

According to World Wildlife Fund India (WWF India), the Tribunal from its inception until March 2014 has adjudicated 393 cases, and WWF India has observed that the Tribunal has "delivered a number of significant judgments on range of issues from across the country. This Tribunal is therefore an important step in the access to justice on matters concerning the environment and its mandate is much wider than earlier environmental Courts and Authorities and other such Courts."

See the Tribunal's website: <http://envfor.nic.in/rules-regulations/national-green-tribunal-ngt>; also WWF India's website: http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal

NATIONAL HUMAN RIGHTS COMMISSION – INDIA

The National Human Rights Commission of India (NHRC), established under the Protection of Human Rights Act, 1993, is entrusted with the responsibility of addressing not only the violations relating to civil and political rights but also those pertaining to social, economic and cultural rights. Being a quasi-judicial body, the NHRC is not bound by rigorous court procedures and is placed in a position whereby it can provide quick relief/compensation to victims of human rights violations. The Commission is addressing public complaints concerning environment-related human rights violations.

In 2008 NHRC-India organized a National Conference on “**Relief and Rehabilitation of Displaced Persons**” and made several recommendations for amendment to the proposed Land Acquisition (Amendment) Bill, 2007 and the Rehabilitation and Resettlement Bill, 2007. Some important recommendations were mentioned below:

- Pre-displacement, displacement, relief and rehabilitation should be viewed from a rights based perspective rather than as an administrative/governance issue that focuses on needs of beneficiaries. For instance, the lexicon of welfare/charity ("gratuitous relief" "beneficiary") should be jettisoned for language that respects human rights of the displaced or to-be-displaced people. In all instances of displacement, there should be minimum non-negotiable human rights standards that should be adhered to for all and especially for vulnerable and marginalized groups such as women, children, elderly and disabled.
- All displaced persons have the right to an adequate standard of living. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide displaced persons with and ensure access to:
 - a. Essential food and potable water;
 - b. Basic shelter and housing;
 - c. Appropriate clothing; and
 - d. Essential medical services and sanitation.
- There shall be no arbitrary displacement of individuals from their home or place of habitual residence by state authorities. In particular, public interest should justify any large-scale development project. In all cases of large-scale development projects, authorities should hold public consultation with people likely to be displaced.
- All affected and displaced persons have the right to security for their physical well being and their property. Security agencies functioning under the administrative control of the States/Central Government must be

geared towards preventing looting and other anti-social activities, and instilling a sense of security amongst the affected and displaced persons.

For more information: www.nhrc.nic.in

5. How do you ensure that the rights of environmentalists working on biodiversity issues (environmental human rights defenders) are protected? What efforts has your Government made to create a safe and enabling environment for them to freely exercise their rights without fear?

Answer:

The Environmental Human Rights Defenders have to tread a risky path while fighting for the cause of the people whose rights are violated during the execution of the large scale projects. They invite the wrath of not only the State authorities but also the top notch companies whose business interests are at stake because of the genuine and right feel intervention of the Environmental Human Rights Defenders (HRDs). The National Human Rights Commission has taken a lot of steps to ameliorate the problems being faced by the HRDs. One of the most important steps in this regard is the appointment of the Focal Point of Human Rights Defenders. The Focal Point is accessible to human rights defenders round the clock through (i) Mobile No. 9810298900, (ii) Fax No. 23384012, and (iii) E-mail: hrdnhrc@nic.in. The Focal Point ensures that the complaints of HRDs are placed before the Commission on priority, directions of the Commission in every case of alleged harassment of human rights defenders are complied with on priority and also conveyed to the concerned human right defender. The update of the complaints of alleged harassment of human rights defenders and action taken is also posted on the website of the Commission. The Commission believes that the HRDs should act in a peaceful manner and in consonance with the extant laws. In case they feel intimidated or violation of their human rights, they should approach the forums like NHRC, Courts etc.