

THE BIOCULTURAL COMMUNITY PROTOCOL OF THE MALDHARIS OF BANNI



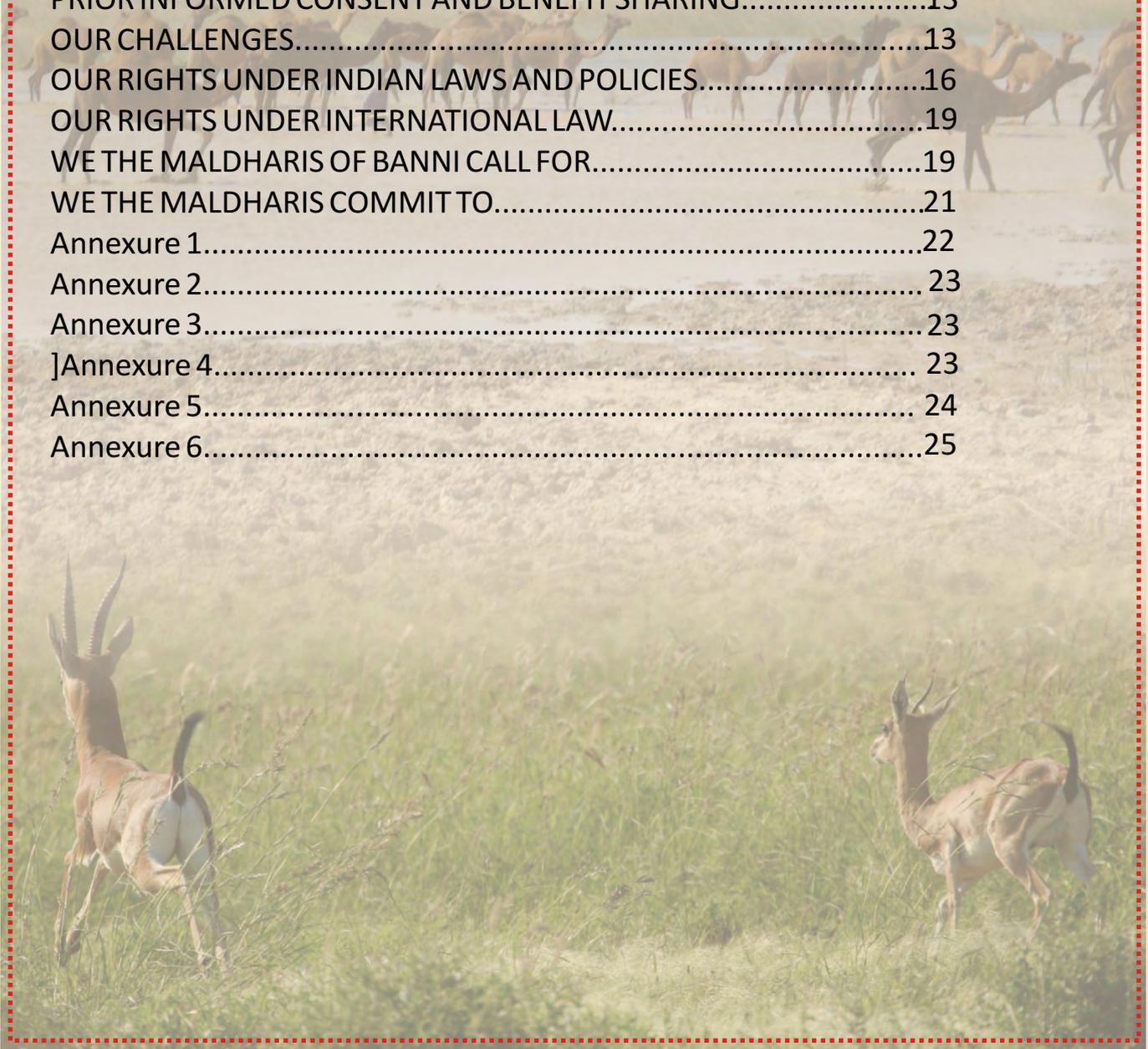
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BIOCULTURAL PROTOCOL OF THE MALDHARI OF BANNI

We are the Maldhari, pastoralists who live in the Banni grasslands of the Kachchh district in the State of Gujarat in India. We have been custodians of the biodiversity rich Banni grassland ecosystem and have protected and nurtured it for over 450 years. The Maldhari way of life has co-evolved with the Banni ecosystem, and our indigenous livestock- the Banni buffalo, Kankrej Cattle, Sinmdhi Horse which are uniquely adapted to the Banni and has evolved through a dynamic and complex inter-relationship between the Maldharis and the Banni. The Maldhari, the Banni Grassland and animal genetic resources of Banni are mutually inter-dependent and any adverse impact on one necessarily affects the wellbeing of the others.



This is the Maldhari bio-cultural community protocol.

We believe that nature has entrusted us with the responsibility to protect the Banni and the right to practice our traditional way of life in the Banni and through this bio-cultural community protocol we call on the government to respect and affirm this right.



In the Maldhari bio-cultural community protocol we clearly state who we are, where we live, our relationship to the Banni and our animals, our rights to the land, our breeds and associated traditional knowledge and our duties to protect this eco-system. This protocol has been developed through a number of meetings held amongst the Maldhari communities representing the different Maldhari hamlets in the Banni (refer to Annexure 1 for a list of protocol related meetings held in East, Central and West Banni) and has been approved by the 965 members of the Banni Pashu uccherak Maldhari Sangathan (Banni Breeders Association) who represent the different panchayats in Banni.



WHO WE ARE:

We the Maldharis are spread over 48 hamlets that are organized into 19 panchayats (refer to Annexure 2 for a list of the 19 panchayats). Our population is around 17,000 with 90% being Muslim and 10% being Hindu (refer to Annexure 3 for a list of the different castes of the Maldhari Muslim and Hindu communities-Maldhari hamlets are organized along caste lines). We speak Kachchhi in Sindhi dialect. Both the Muslim and Hindu communities keep livestock while the Hindu Meghwals, and Vadha Koli have a rich history of beautiful embroidery, leatherwork, woodcarving and the building of bhungas (the traditional circular mud houses of the Maldharis). Women of Pastoral communities also prepare exquisite embroidery. Both the Hindus and the Muslims have strong ties to each other and the Muslims in solidarity with the Hindus do not eat cow beef. Historically the Muslims provided milk and ghee to the Hindu Meghwals who in turn provided the Muslims with leather shoes, saddles, reins, satchels for carrying water and helped build their bhungas.

There are different stories of how we came to live in the Banni. The Banni was bequeathed as a commons by the erstwhile Maharao to our ancestors who were nomadic pastoralists originating from the Sindh region in Pakistan. It was given to our custody with the condition that we protect the grassland ecosystem and share it communally for grazing and not use it for agriculture or divide it up into private property. We have since used the Banni only as a pastureland and discouraged any farming or private land holding within it.

We have the title deed from the Maharao that bequeaths this land to us. Under the rulership of the Jadejas there was a system of Grasdhars each administering one of the 23 sub-ecoregions of Kachchh. We have tax receipts as evidence that we historically paid pancheri (grazing tax) to the Grasdhars in exchange for the right to graze our animals in the Banni. After Indian independence in 1947 Kachchh became a part of the Bombay presidency in 1953 and the Banni continued to be used as a grassland under the control of the Revenue Department without any allocation of private land holding.

Our elders have told us that in 1736, an army from Sindh led by Khaloda Mohammed Mir invaded Kachchh. Our ancestors were asked by the Maharaja Radheshua-ji of Kachchh to fight with his armies and defend the land from the invaders. Though we lost many lives and suffered much in the ensuing battle the Maharaja was, with our help, victorious. To reward our loyalty and valour the Maharaja gave the Maldharis title to the Banni. As we were pastoralists the Maharaja also decreed that the grasslands should not be used for agriculture.

-From an interview with one of the elders of the Meghwal Hindus

THE BANNI GRASSLAND



The Banni region, situated at 23°19'N to 23°52'N to 68°56'E to 70°32'E is a semi-arid grassland ecosystem spread over 2600 sq kilometres. It was considered the second largest grassland ecosystem in Asia and once home to over 40 different species of grass (refer to Annexure 4 for a list of 25 different species of grass that were identified by the Maldhari elders and outcomes of the participatory grassland mapping process). The Banni region was created from the sea as a result of tectonic activities and its fertility was the result of alluvial deposits from the rivers that flowed from the Bhuj mainland and ended in the Greater Rann of Kachchh. The climate of the Banni is arid with a high temperature in the summer months that go up to a maximum of 48°C -50°C during May June and a low winter temperature that goes down to 5°C 8°C during December January. The average annual rainfall, occurring through Southwest monsoon between the months of June to September, is a very low of 317mm with coefficient of variation of 65%. Recurrent droughts, 3 year drought of a 5 year cycle, is very common phenomenon in the Banni. However in last five years there has been little increase and regularity in rainfall in Banni region.

The Banni has a rich avian population of more than 200 species of resident and migratory birds. The Banni wildlife includes the blue bull, chinkara, the Indian hare, the jackal, the grey wolf, caracal, the hyena and the jungle cat. Reptiles include the spiny tailed lizard, the common monitor lizard, vipers, sand snakes and blind snakes.

Legend has it that a great sage Dhoramnath meditated, on his head, for 12 long years atop the mighty Dhinodar mountain of Kachchh. The gods blessed him with an ability to burn and lay waste whatever came in the line of his sight when he opened his eyes after his meditation. Before opening his eyes he asked his disciple to turn his head in the direction where he would cause the least harm to living beings. His disciple turned Dhoramnath's head north towards the shallow sea and Rann (salt desert). When the sage opened his eyes, he burned the shallow sea and the Rann away leaving behind fertile land on which the rich grasses began grow. Pastoralists from as far away as Baluch and Haleb in Afghanistan came in search of this grassland that they called Banni, derived from the Kachchhi word Bannai meaning 'that which was created' leading to the saying "rann se banni hui" (the Banni was created from the salt desert).



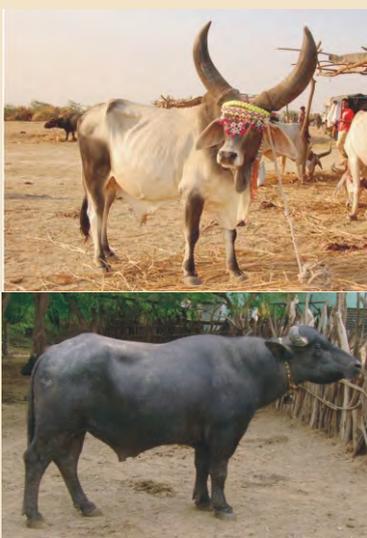
(one photo of flamingo and a page of photographs of birds from Charaidhandh suvanior)



THE MALDHARI WAY OF LIFE:

“The Banni grassland is our home. Even when there have been droughts for many years, leaving us no choice but to survive by eating bark from the trees and the seeds of the grasses, we have never left this area though we migrated temporarily to survive our animals. Though our people have suffered much misfortune here, we have never moved.”

Our way of life isn't subsistence oriented and our animals and animal products are produced for the agrarian market. We have bred the Banni buffalo that is uniquely adapted to the Banni grassland ecosystem and produces high yields of milk with very low external inputs. The Banni buffalo is disease resistant, can handle water stress conditions and has a strong constitution. We also breed the Kankrej cattle that we sell or loan as sturdy and resilient draught animals to farmers all over Kutch and Saurashtra. Every year some of us walk hundreds of kilometres delivering draught animals to farmers in different parts of Gujarat who pay us in instalments over a period of three years. We also breed the Kutchi goat, the Kutchi camel and that Pathanwadi, Dumba





We sell our animals to the livestock innkeepers and farmers and use the services of traditional experts called bhagiyas who are trusted by both the buyer and the seller. The method of bargaining involves the bhagiya being used as an intermediary where the seller covers his and the bhagiya's hand with a kerchief and then indicates using his covered fingers the selling price of the animal. The same process is repeated between the bhagiya and the potential buyer, where the buyer indicates the price he is willing to pay. The bhagiya indicates this to the seller under the kerchief, thus beginning the process of negotiation. The entire process is carried out in a manner that only the seller, the buyer and the bhagiya are aware of the price that is being negotiated. This is our traditional system of sale of livestock that ensures that the price of livestock is not entirely determined by the market but also in accordance with the value the seller and the buyer put on a particular animal.



We have a deep understanding of the Banni ecosystem and an extensive knowledge of the different grasses that grow here. We categorize grazing patches based on soil types, size, distance from water bodies and villages, periodicity and quality of drinking water for animals, grass, shrubs, tree cover and diversity and wind. Decisions on grazing to those areas and routes are based on the condition of the grazing area, grass cover and availability of water and care is taken to prevent overgrazing and to allow grasses to reach maturity. For instance, after good monsoon, animals of Bhitara villages go to Gaar, animals of Bhagadia go to Gugardui, similarly animals of Sarada go to Thala fo grazing. Because of the high spatial variability in rainfall, villages that receive rain do not restrict entry of pastoralists from other villages into their grazing areas since sharing of resources is our value. Food, shelter and water is provided to them thus affirming a long tradition of hospitality and mutual inter-dependence in an arid region with a harsh terrain that requires cooperation between the communities that live there.

There is a strong tradition of trust between the different Maldhari villages and when someone's animal get lost and ends up in a different herd, the pastoralist whose herd the animal joins, cares for the animal like it is his own and returns it to its owner even if the owner manages to find it many months later. Despite the fact that our herds graze unaccompanied at night and our animals fetch high prices in the open market, they rarely get stolen which is evidence of the cohesiveness and integrity of the Maldhari communities in the Banni. We have customary rules for grazing and management of the common grazing areas that are based on the interdependence between communities and a deep understanding of the ecosystem. It is through the observance of these rules, we have been able to protect the Banni and thrive in it for the last 450 years.



THE BANNI BUFFALO:

We the Maldharis have developed the unique Banni buffalo, which is specifically adapted to the Banni grasslands. The Banni buffalo has become the dominant livestock over the last couple of decades as a result of the widespread loss of our Kankrej cattle due to their inability to digest the toxic pods of the prosopis juliflora, - a highly invasive alien species initially propagated by the government as a part of an official policy of greening the Banni. The Banni buffalo is unaffected by the prosopis juliflora and the buffalo has unique qualities of adaptation like the ability to survive water stress conditions, to cover long distances during periods of drought and disease resistance.



The Banni buffalo has the typical quality of night grazing. The herd covers a grazing distance of 8-10 kilometres in monsoon and upto 15 kilometres in summer. Herds of Banni buffalo are led by the lead buffalo that they follow staying within earshot of the special sound of a bell around every lead buffalo's neck. A herd that usually comprises of 40-50 animals and sometimes extends to 90-100 animals departs for grazing in the evening after the second milking and returns at dawn every morning. Despite the multitude of herds, buffalos rarely get lost or mixed in different herds and invariably follow the lead buffalo back to their respective pens at dawn.

We maintain the original bloodline of the Banni buffalo through the dam and every buffalo within the same bloodline carries the same name. Banni buffalos form close bonds with their owners and usually respond when called by their name. For e.g. Chhalli is the name of a bloodline that stretches back a 108 years and this bloodline is renowned for its capacity to produce high milk yields.

We choose our breeding bulls very carefully and the criteria we base it on include it's dam's milk yield, strength, ability to withstand stressful conditions and disease resistance. We also prefer certain physiological features that include coiled horns, short but sturdy legs, convex forehead and white tail hairs. Each breeding bull is limited to three services per day and breeding bulls are exchanged between nearby villages every 3-4 years to avoid inbreeding.

THE BANNI BUFFALO:

It is only the Banni grasslands and the Maldharis who can create the Banni buffalo. If a buffalo is raised outside the Banni, but has not grazed the Banni grasses and has not been raised by the Maldharis according to our traditional practices, it cannot be called a Banni buffalo.

The Indian Council of Agricultural Research recently recognized the Banni buffalo as the 11th buffalo breed in India. Research has shown that the Banni buffalo is capable of astonishingly high milk yields with an average of 2857 litres of milk over the year with high fat content. The grasses of the Banni enables the Banni buffalo to calve at 3 years of age and achieve peak milk yields within an astonishing 38 days after calving (refer to Annexure 5 for the table of performance of the Banni buffalo)

The Maldharis hold their animals in high regard. Some of us take our shoes off before we enter the place where our animals lie. Historically the measure of a man was based on the different animals he kept. A Maldhari who had a good pedigree pure animals and expert in traditional knowledge was known as 'bhagiya' - he who is lucky with animals.



Our Kankrej Cattle:

Earlier we used to rise kankrej cattle, commonly called Vadhiyari. During early times, through barter system, we used to get grains from farmers by giving them cow milk and ghee. This cattle breed is also famous for its draught capacity, amongst the farmers of Kutch and Saurashtra, having *savai chal*, (meaning back leg reaches further than where front leg was landed) which gives opportunity to cover more distance in less time. Till today, we Maldharis of Banni, every year, sale 8-10 thousands Kankrej bullock in Kutch and Saurashtra.

This dual purpose animal adapted to the harsh climatic conditions of Kutch and has high milk yield capacity with good fat content. This cattle is strongly build and famous for its beautiful look with large half moon shaped horns. Average milk yield of pure Kankrej cattle is 6-8 lt a day while lactation yield is around 1800-2000lt. This animal has the capacity to move long distance, therefore, able to migrate to different parts of Gujarat during drought years.

In last few decades, due to man made and ecological hazards, the number of kankrej cattle in Banni has been reduced drastically from 50000 in late sixties to hardly 10000-12000 at present. Still some of the Maldharis of Banni conserved and survived this animal breed by fighting against all odds.



OUR TRADITIONAL KNOWLEDGE:

We have rich traditional knowledge that ranges from how we care for our animals to ethno-veterinary knowledge to methods of water harvesting and conservation and sustainable use of the Banni grasslands.

Through our traditional knowledge relating to our breeds we have, over centuries, been able to develop particular characteristics that enable the animals to survive and thrive in the difficult conditions of the Banni, whilst maintaining high yields. Our knowledge extends to what we feed our animals, for example: we give 4-5 kg of feed concentrate to the breeding bull per day and sometimes up to 8 kg of feed concentrate depending on the number of services it provides; we raise the bull in a way that allows them to start servicing at 2.53 years of age; we feed ghee, mustard oil and unrefined cane sugar (jaggery) to the calves to strengthen them and we feed the breeding bulls eggs and ghee for energy. The milk that our animals produce is entirely organic with no chemical additives.

Many times we treat our animals using our traditional medicine. Whilst there they are veterinary hospitals outside the Banni they are difficult to access and sometimes expensive. We therefore also rely on our traditional forms of medicine for our animals. For example our knowledge includes techniques for the safe delivery of calves, treatment of sick animals using the herbs and grasses of the Banni and providing our animals certain foods to heal them. We take pride in this knowledge and want to preserve it for our future generations.

"The skills and knowledge we have of our livestock was given to us by God and if we sell this knowledge then this goes against what which we have been given."





Besides our rich understanding of the different grasses in the Banni and the grazing patterns we have used to conserve and sustainably use the grassland for centuries, we also have our own unique water harvesting techniques that enable us to survive the harsh Kachchh summers. During the dry season we have a tradition of building temporary wells called virdas that become the source of water for both humans and animals.

The digging of a virda is a communal activity and is done by the men of the entire village. Usually the hamlet where the virda is dug hosts all the men with the food, water and tea to sustain them through the day. The virda is usually dug in the summer months after a jheel (a water catchment area or pond) has dried up but there is still water in the ground in the area of the jheel. The virda is a shallow well that is dug and lined with logs of wood and the Banni grasses. The wood prevents the well from collapsing and the grasses act as natural filters cleaning the sediment from the water that now flows into the virda from the sides.

OUR SYSTEM OF GOVERNANCE AND DECISION MAKING:

We live in hamlets, which are divided along caste lines. Hamlets usually consist of extended families and our elders make decisions within the hamlets. A few hamlets constitute a village and the panchayat is the governing body at the level of the village. There are 48 Maldhari hamlets in the Banni and they are organized under 19 panchayats. Every panchayat has 5-8 elected representatives from the village level who hold office for a fixed term. The Maldhari panchayats have united at a regional level as the Banni Panchayat Parishad (the Banni Panchayat Association) which is the regional body addressing the issue of continued usufruct rights of the Maldhari to the Banni and ensuring the communal status of the Banni grasslands. Decisions regarding the certification and marketing of milk, the Banni buffalo, the Kankrej cattle and other related issues are taken by the Banni Pashu Uccherak Maldhari Sangathan (Banni Breeders Association) which has 965 members and an executive of 21 members 19 of whom represent the different Maldhari panchayats and 2 from the Meghwal community.

PRIOR INFORMED CONSENT AND BENEFIT SHARING:

We collectively own our animal genetic resources and the associated traditional knowledge relating to breeding and ethno-veterinary practices. We have a distinct and recognizable culture that is linked with the Banni and our animals and we therefore ask to be involved all decisions that the government makes concerning the Banni or our livestock.

We request that our Banni Panchayat Parishad and the Banni Pashu Uccherak Maldhari Sangathan be consulted and their free and prior informed consent is taken whenever decisions are made by external parties that may affect our livelihoods or relate to the access and use of our breeds and associated traditional knowledge. We also ask the government to take into account our views regarding breeding policies for this region.

When researchers or commercial interests seek access to our animal genetic resources and /or associated traditional knowledge we wish to be consulted, provided with all relevant information and permitted time in which to make an informed decision. In the cases that we do grant access to our animal genetic resources or associated traditional knowledge, we have the right to negotiate a benefit sharing agreement based on mutually agreed terms.

OUR CHALLENGES:

The Maldhari way of life is currently facing significant challenges- we believe that any threat to the Maldharis is also a threat to the Banni grassland that we have conserved for centuries and to the unique breeds that we have developed. Our challenges include:

1)Threats to our settlement and usufruct rights in the Banni

We have for generations led a semi settled lifestyle and lived in hamlets in the Banni. We do not hold any land titles for our houses but we have been paying a house tax. Our hamlets have government infrastructure including panchayat office, schools, water tanks, pipelines and roads though we have no land titles. The recent division of the Banni into 19 panchayats was undertaken without the demarcation of the village boundaries. We feel insecure about our rights to continue to live in the Banni as we have done for centuries. When the Banni grasslands were declared a protected forest in 1955 our existing settlement rights should have been formally recognized and they were not. Currently there is a confusion regarding the status of the Banni, which continues to be under the administrative control of the Revenue Department like it was prior to 1955, even though it is classified as a protected forest under the formal jurisdiction of the Forest Department.

2)Threats to the Banni commons

We are concerned about the insecurity that stems from a lack of title deeds to our houses and the consequent inability to use these title deeds as guarantees for loans or bail. We feel that this insecurity will lead to some community members demanding that the Banni be divided into private land holdings that each land holder can use or sell as he deems fit. This would lead to the destruction of an ecologically sustainable way of life that we have practiced for centuries and will result in a breakdown of the mutual trust and sharing between the Maldhari communities. In

stressful times such as this, our elders have issued a call to the community members and the government, saying 'Banni ko Banni rahene do' meaning leave the Banni as it was, as a common land for pastoralists and their animals and recognize our customary rights to live and graze our animals in the Banni.

3) Threats from invasive alien species

We are anxious about the increasing spread of the invasive alien species *prosopis juliflora* that is rapidly taking over the grassland and destroying all the grasses. The *prosopis juliflora* was introduced by the Forest Department without consulting with the Maldhari as a part of their greening campaign. Instead of greening the Banni this exotic plant has destroyed the grasses by sucking up all the water, killed our Kankrej cattle, which graze on its toxic pods, and has taken over vast sections of the Banni radically unbalancing the grassland ecosystem. The indigenous variety



of the same species that we call 'desi babul' and other indigenous shrubs and plant species are being slowly lost due to the onslaught of the *prosopis juliflora*. Four years ago we were permitted by the Forest Department to cut down the *prosopis juliflora* and use it to make and sell charcoal as a part of a strategy to limit its spread. Last year the permission was denied and instead the Forest



Department is fencing off large sections of the Banni, most of the times without consulting Panchayats and its representatives, in an attempt to eliminate the *prosopis juliflora* and replant the traditional grasses. These fences have blocked our traditional grazing routes and we have lost some of our buffaloes, which have fallen into the deep pits that have been dug around the fences. At the same time we have created our own grazing patches where we have revived the rich Banni grasses by eliminating the *prosopis juliflora*. We would rather demand that the Forest Department rely on the traditional knowledge and experience of the Maldharis to

revive the Banni instead of fencing off portions of it to solve a problem that they have created.

4)Threats from the damming of rivers flowing into the Banni

Historically a number of rivers such as the Nara, Bhurud, Bhukhi, Nirona, Kaila, Khari, Kaswati, etc. flowed into the Banni from the Bhuj ridge reducing the salinity and watering the rich grasslands. But over the last few decades these rivers have been dammed resulting in water shortages in the Banni and affecting the grassland ecosystem due to increase of salinity of this region.

5)Threats from chemical industries bordering the Banni

We have found the water in some of the ponds towards the edge of the Banni toxic. Recently we lost two buffalos that drowned in the one of these ponds- something highly unlikely since buffalos are natural swimmers. Our conclusion based on the colour and smell of the water is that the buffalos drowned as a result of being poisoned by the effluents released into the water by the chemical industries located along the border of the Banni. We have noticed that these industries release their effluents into the water when the water levels rise after the rains. This toxic water flows into the Banni causing grave damage to its flora, fauna and our livestock and posing a health risk to the Maldharis. We are concerned about the permits being given to toxic chemical industries by the Government of Gujarat to set up their operations in the Rann of Kachchh that borders the Banni on the assumption that this area is uninhabited. The discharge of industrial effluents into the Banni has begun to pose a serious threat to all who live in it.

6)Threats resulting from the confiscation of our livestock

The police have stopped us on a number of occasions when we take our cattle to the market on the suspicion that we are taking the cattle to the slaughterhouse. The sale of cattle for beef is prohibited in Gujarat and we are falsely accused of selling cattle for slaughter because we are Muslim. The Muslim Maldharis of Banni have traditionally prohibited the slaughter of cattle and the consumption of beef in solidarity with their Hindu neighbours. In the Banni we have a rich tradition of communal harmony and syncretism. We are concerned about the underlying prejudice



that hampers us from carrying on our traditional practices of sale and loan of draught cattle to farmers of Kutch and Saurashtra with whom we have had a long-standing history of trade.

OUR RIGHTS UNDER INDIAN LAWS AND POLICIES:

A. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2008 (hereafter referred to as the Forest Rights Act and Rules)

The Maldharis have preexisting pasturage rights to the Banni that directly result from the bequeathing of this land to us by the erstwhile Maharao of Kachchh. Even if these pre-existing rights have not been recorded when the Banni grasslands were declared a protected forest in 1955 under the Indian Forest Act of 1927, the Forest Rights Act and Rules recognize the rights of pastoralists to forestland. The Forest Rights Act provides the Maldharis with the opportunity of getting previously unrecorded rights recognized through the process set out in the Forest Rights Rules.

The right of the Maldhari community as a whole to use the Banni and to safeguard it is recognized under the Forest Rights Act. The Act grants us the right to use the forest and bestows on us the duty to conserve and care for it. The Forest Rights Act applies not only to forest dwelling Scheduled Tribes but also other 'traditional forest dwellers' who are dependent on the forest to meet their basic needs. The Maldharis fall under the category of other 'traditional forest dwellers' and as per the Act we can establish that we have resided in and been dependent on the Banni for the last 75 years prior to 13-12-2005.

The Act introduces the concept of 'community forest resources' and 'community forest rights'. The Act in Section 2(a) defines 'community forest resources' to mean 'customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access'. Rule 31 (3) of the Forest Rights Rules provides that evidence of traditional access rights can be established by showing: community rights such as Nistar by whatever name called, traditional grazing grounds, sources of water for livestock use, water conservation structures, sacred trees, groves, ponds, burial grounds etc.

The Forest Rights Act under Chapter II provides 13 classes of forest rights for communities. Of these 13 classes of rights, the Maldharis claim the following:

See generally 'Legal Opinion on Pastoral Tenure Rights- In Banni region of Kutch, Gujarat', by Adv. Sanjay Upadhyay, available with Sahjeevan, Bhuj, Gujarat

1. Other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant), honey, Gum, Charcoal, and traditional seasonal resource access of nomadic or pastoralist communities;
2. Community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
3. Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
4. Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
5. Any other traditional right customarily enjoyed by forest dwelling, Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excludes the right of hunting or trapping or extracting a part of the body of any species of wild animal;

B. The Forest Conservation Act, 1980

In 1955 the Banni grassland was notified as a 'protected forest' under the Indian Forest Act of 1927. Any use of the Banni therefore for a non-forest purpose would require the permission of the Central Government under the Forest Conservation Act, 1980. Such an understanding was affirmed by the Supreme Court in the T.N. Godavarman case, which stated that a non-forest activity could be undertaken on any forestland only with the permission of the Central Government.

The Government of Gujarat therefore cannot lease any part of the Banni for industrial use by the chemical companies without the consent of the Central Government

C. The Biological Diversity Act of 2002 and the Biological Diversity Rules of 2004

The Biological Diversity Act of 2002, in its efforts to fulfil India's commitments under the Convention on Biological Diversity provides, for the conservation of biological diversity, sustainable use of its components and the fair and equitable sharing of benefits arising from the use of such biological diversity and associated traditional knowledge. The Biological Diversity Act sets up the National Biodiversity Authority (NBA) and the Biological Diversity Rules of 2004 lists the functions of the NBA as including regulating access to biological resources and associated traditional knowledge for commercial and research purposes. The NBA is also empowered to advise the Central Government on any matter relating to the conservation and sustainable use of biodiversity and associated traditional knowledge and the fair and equitable sharing of benefits arising from the utilization of biological resources and associated traditional knowledge. [The Biological Diversity Act among other things requires the Central Government under Section 36 to promote the conservation and sustainable use of biological diversity through in situ conservation and minimize the adverse effects on biological diversity of any project undertaken through environmental impact assessments that includes public participation.](#) The Central Government is tasked with ensuring respect and protection of associated traditional knowledge of local communities in accordance with the recommendations of the NBA including registration of traditional knowledge and other sui generis methods for its protection. [Under Section 38 the Central Government is also required to preserve and protect those species that are on the verge of extinction.](#)

In order to ensure the effective fulfilment of the role of the NBA at a local level, local bodies such as the Panchayats or Municipalities are required under Section 41 to set up Biodiversity Management Committees (BMCs) to promote conservation and sustainable use and documentation of biological diversity and associated traditional knowledge. The NBA and the State Biodiversity Boards would consult with the BMCs while taking any decision relating to the use of biological resources and associated TK within the territorial jurisdiction of the BMC. Under Rule 22 (6) of the Biological Diversity Rules of 2004 the main function of the BMC is to prepare a Peoples Biodiversity Register in consultation with the local people, which shall contain comprehensive information on availability and knowledge of local biological resources and their associated traditional knowledge. The Biological Diversity Act under Section 21 envisages that the NBA will base its approval regarding any application for access to biological resources or associated traditional knowledge on the whether a mutually agreed terms and fair and equitable benefit sharing has been negotiated with the local

community that provides such resource or associated traditional knowledge (benefit claimers according to Sec 2 (a) of the Biological Diversity Act). The local community or benefit claimers in question will be identified according to the Peoples Biodiversity Register under the territorial jurisdiction of the local BMC.

The Biological Diversity Act and Rules therefore provides certain rights to the Maldharis:

- ☐ The right to be consulted prior to any project that may affect our livelihoods, our animal breeds and associated traditional knowledge;
- ☐ The right to conservation and sustainable use of our animal breeds;
- ☐ The right to give prior informed consent and negotiate mutually agreed terms when any Maldhari animal genetic resources or associated traditional knowledge is accessed and share fairly and equitably in any benefits arising from the utilization of our animal genetic resources and associated traditional knowledge;
- ☐ The right to a Peoples Biodiversity Register that will document Maldhari biological diversity and associated traditional knowledge;
- ☐ The right to a BMC to advise the NBA on how the Maldhari genetic resources and associated traditional knowledge can be conserved and sustainably used; and
- ☐ The right to carry on the Maldhari traditional lifestyles, which involves continued access to our grazing lands in order to conserve the biological diversity of our breeds and associated traditional knowledge.

OUR RIGHTS UNDER INTERNATIONAL LAW:

We the Maldharis in our biocultural community protocol identify the following principles and rights based on international law, (that are further elaborated in Annexure 6), namely:

A. Principles

- ☐ We are creators of breeds and custodians of our animal genetic resources for food and agriculture;
- ☐ The Maldharis and the sustainable use of traditional breeds are highly dependent on the conservation of the Banni ecosystem; and
- ☐ Our traditional breeds represent collective property, products of traditional knowledge and our cultural expression.

B. Rights

We have the right to:

- Make breeding decisions and breed the breeds we maintain;
- Participate in policy formulation and implementation processes on animal genetic resources for food and agriculture;
- Receive appropriate training and capacity building and equal access to relevant services enabling and supporting us to raise livestock and to better process and market our products;
- Participate in the identification of research needs and research design with respect to our genetic resources, as is mandated by the principle of Prior Informed Consent; and
- Effectively access information on issues related to our local breeds and livestock diversity.

We call on the Conference of Parties to the UN Convention on Biological Diversity, specifically under Article 8(j) of the Convention, to recognize our contribution to the conservation and sustainable use of biological diversity in Gujarat's forest ecosystem. We also call on the UN Food and Agriculture Organization to acknowledge the importance of our animal genetic resources and to recognize livestock keepers' rights.

WE THE MALDHARIS OF BANNI CALL FOR:

- ☐ The recognition of our customary and legal rights as other 'traditional forest dwellers' to reside in and conserve and sustainably use the Banni grassland under the Recognition of Forest Rights Act and through the process set out in the Recognition of Forest Rights Rules;

- ▣ The safeguarding of traditions of common use of and collective responsibility for the Banni grasslands by us in accordance with our customary laws and values. Our Maldhari communities are united in saying 'Banni ko banni rahne do' (let the Banni commons remain a commons);
- ▣ The recognition of our customary grazing rights in the Banni and the protection of our traditional way of life that has played an integral role in conserving the Banni ecosystem;
- ▣ The Banni Panchayat Parishad and the Banni Pashu Uccherak Maldhari Sangathan to be consulted before any decision is taken by the government to grant private land holdings in the Banni or to fence areas of the Banni;
- ▣ Consultation prior to the undertaking of any conservation initiatives by the Forest Department and our right to inform such initiatives based on our rich customary practices of conservation and sustainable use of the Banni ecosystem;
- ▣ The ceasing and revocation of any permits given to industries in or on the edge of the Banni that could potentially harm the flora and the fauna of the Banni, our livestock and our health;▣ The provision of necessary infrastructure for the effective conservation and improvement of our unique livestock genetic resources in the region.

We also call on the National Biodiversity Authority to:

- Recognize our local breeds and associated traditional knowledge and to include it in the Peoples Biodiversity Register (under Rule 22(6) of the Biological Diversity Rules);
- Facilitate the setting up of Biodiversity Management Committees (BMC) under our panchayats and to support these Committees in ensuring the conservation and sustainable use of our breed diversity and traditional knowledge (as per section 41 of the National Biodiversity Act);
- Strengthen in situ conservation of our breeds and include them in the BMC being initiated by the government (under sections 36 and 41 of the National Biodiversity Act);
- Advise the Central Government and coordinate the activities of the State Biodiversity Board to protect our customary grazing rights so as to safeguard our traditional lifestyles that ensure the conservation and sustainable use of the our breed diversity, associated traditional knowledge and the Banni ecosystem (under section 36 of the National Biodiversity Act);
- Ensure that our prior informed consent is obtained through the Banni Panchayat Parishad and the Banni Pashu Uccherak Maldhari Sangathan before any decision are taken that affect our traditional way of life or access is granted to our breed diversity and associated traditional knowledge for research or commercial purposes, and further ensure that we receive a fair and equitable share of the benefits arising from the utilization of our breeds and traditional knowledge according to mutually agreed terms (under section 21 of the national biodiversity Act).

WE THE MALDHARIS COMMIT TO:

- ▣ Upholding our obligations under the Recognition of Forest Rights Act to conserve and safeguard the Banni grassland and its biodiversity as we have traditionally done for centuries;
- ▣ Conserving and developing the unique livestock breeds of the Banni.
- ▣ Not using the Banni for agriculture but to continue our customary use of it as common grassland for grazing of our livestock;
- ▣ Sustainably using the resources of the Banni grasslands thereby conserving it for future generations and the wild animals that live in it;
- ▣ Protecting the wild animals and the indigenous flora of the Banni;
- ▣ Protecting the grassland against fires by regulating the grass growth by grazing and by fighting forest fires when they begin.

OUR CONTACT:

Banni Pashu Uccherak Maldhari Sangathan

At & Post : Hodka (Banni)

Taluka: Bhuj

Dist: Kutch, Gujarat

Annexure 1:

Biocultural Community Protocol orientation and preparation meeting on the 4th June 2010:

10 representatives of the Executive Committee of the Banni Pashu Uccherak Maldhari Sangathan (Banni Breeders Association) were present.

Biocultural Community Protocol meetings were held in June 2010 on the basis of clusters. The clusters were divided on a regional basis i.e. East Banni, Central Banni and West Banni. Meetings included elders from the different villages and the panchayat representatives:

I) East Banni Meeting (Bhirandiyara village): Names of villages and panchayats representatives present

- 1) Bhirandiyara
- 2) Sargu
- 3) Dadhdhhar
- 4) Reldi
- 5) Vaghura
- 6) Madan
- 7) Gorewali

II) East Banni Meeting (Sargu village): Names of villages and panchayats representatives present

- 1) Nava Sargu
- 2) Juna Sargu
- 3) Levara
- 4) Nani Dadhdhhar

III) West Banni Meeting (Nana Sarada village): Names of villages and panchayats representatives present

- 1) Mota Sarada
- 2) Nana Sarada
- 3) Sherva

IV) West Banni Meeting (Bhagadia village): Names of villages and panchayats representatives present

- 1) Bhagadia
- 2) Chhchhla
- 3) Sarada

V) Central Banni Meeting (Hodaka village): Names of villages and panchayats representatives present

- 1) Hodaka

Annexure 2:

List of the 19 Maldhari Panchayats in the Banni:

PANCHAYATS:

- | | | |
|-----------------------|-----------------|--------------|
| 1) Hodka | 2) Dumado | 3) Luna |
| 4) Sadai | 5) Sarada | 6) Saragu |
| 7) Beradu | 8) Mithadi | 9) Misriyada |
| 10) Bhitara | 11) Bhirandiara | 12) Bhojardo |
| 13) Chhchhla-Bhagadia | 14) Dadhdhhar | 15) Udai |
| 16) Gorewali | 17) Dhordo | 18) Sherva |
| 19) Raiyada | | |

Annexure 3:

List of the different castes of the Maldhari Muslim and Hindu communities:

MUSLIM

- | | | | |
|--------------|---------------|------------|------------|
| 1) Halepotra | 2) Raysipotra | 3) Mutua | 4) Jat |
| 5) Hingorja | 6) Node | 7) Sumra | 8) Juneja |
| 9) Jiyenja | 10) Theba | 11) Saiyad | 12) Korad |
| 13) Khaskeli | 14) Bambha | 15) Pathan | 16) Sameja |
| 17) Baloch | 18) Munjavar | | |

HINDU

- | | |
|------------|---------------|
| 1) Meghwal | 2) Vadha Koli |
|------------|---------------|

Annexure 4:

List of 19 different species of Banni grasses identified by the Maldhari elders:

- 1) Jinjua
- 2) Khewa
- 3) Molh
- 4) Bekkan
- 5) Sau
- 6) Grabbad
- 7) Madharu
- 8) Chidiya
- 9) Drab
- 10) Kal
- 11) Dilo
- 12) Moona
- 13) Lambh
- 14) Damad

- 15) Damne
- 16) Khariya
- 17) Siyarpuch
- 18) Ghandia
- 19) Chichani
- 20) Gandhir
- 21) Lachno
- 22) Deer
- 23) Kakda
- 24) Sonwal
- 25) Khirval



Annexure 5:

Table of performance of the Banni buffalo- Study conducted by the SD University

Sr.No	Traits	No. of observations per animal	Mean \pm S.E.
1	Lactation Milk yield (lit.)	84	2857.21 \pm 89.76
2	Lactation Length(days)	84	300.96 \pm 4.43
3	Peak Yield (lit.)	92	14.74 \pm 0.33
4	Days to attain peak yield	92	38.04 \pm 2.92
5	Age at first calving (months)	294	40.28 \pm 0.235
6	Service period (days)	355	72.68 \pm 1.39
7	Calving interval (months)	262	12.24 \pm 0.08
8	Fat percent	545	6.65 \pm 0.11
9	Average daily milk yield (lit.)	860	9.47 \pm 0.09

Annexure 6:

OUR RIGHTS UNDER INTERNATIONAL LAW

We the Maldhari in this Maldhari Biocultural Community Protocol identify the following principles and rights based on international law:

Principle 1:

The Maldhari are creators of breeds and custodians of their animal genetic resources for food and agriculture.

Over the course of history, the Maldhari have managed and bred livestock, selected and used them, thus shaping them so they are well-adapted to our environment and its extremes. Keeping these breeds is a vital part of our culture and livelihoods. Yet these breeds and our livelihoods are under risk through loss of access to our traditional grazing lands. This has endangered our food security and our way of life. As recognized in the Global Plan of Action for Animal Genetic Resources and the Interlaken Declaration on Animal Genetic Resources, livestock keeping communities are thus the creators and custodians of the breeds that they maintain. We have therefore earned certain custodianship rights over these breeds, including the right to decide how others use the genetic resources embodied in our breeds.

Principle 1 is supported by:

Point 9 of the Interlaken Declaration on Animal Genetic Resources recognizes that the “genetic resources of animal species most critical to food security, sustainable livelihoods and human well-being are the result of both natural selection, and directed selection by smallholders, farmers, pastoralists and breeders, throughout the world, over generations”.

Point 12 of the Interlaken Declaration on Animal Genetic Resources recognizes “the enormous contribution that the local and indigenous communities and farmers, pastoralists and animal breeders of all regions of the world have made, and will continue to make for the sustainable use, development and conservation of animal genetic resources for food and agriculture”.

Part I Point 10 of the Global Plan of Action for Animal Genetic Resources: “all animal genetic resources for food and agriculture are the result of human intervention: they have been consciously selected and improved by pastoralists and farmers since the origins of agriculture, and have co-evolved with economies, cultures, knowledge systems and societies. Unlike most wild biodiversity, domestic animal resources require continuous active human management, sensitive to their unique nature”.

Principle 2:

The Maldhari and the sustainable use of traditional breeds are dependent on the conservation of our ecosystem.

Our traditional breeds are developed through the interaction between our livestock, the Maldhari pastoralists and our natural environment. This natural environment is conserved, inter alia, through traditional practices of the Maldhari, and traditional breeds lose their specific characteristics once removed from this ecosystem. The Maldhari therefore have a right to access our natural environment, so as to ensure the sustainable use and conservation of our breeds and the environment.

Principle 2 is supported by:

Article 8 of the Convention on Biological Diversity: “genetic resources should be conserved in the surroundings in which they have developed their distinct properties”.

Article 10 (d) of the Convention on Biological Diversity demands that “local populations are supported to develop and implement remedial action in degraded areas where biological diversity has been reduce”.

Chapter 15 (5) (g) of Agenda 21: requires States to “Take action where necessary for the conservation of biological diversity through the in situ conservation of ecosystems and natural habitats,...and the maintenance and recovery of viable populations of species in their natural surroundings.

Principle 22 of the Rio Declaration: “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development”.

Principle 3:

Our traditional breeds represent collective property, products of indigenous knowledge and cultural expression of the Maldhari.

While the Maldhari have collective custodianship rights over our breeds and the genetic traits of these breeds, it is crucial that these rights are supported and promoted by the government. Our government must therefore respect, preserve and maintain the knowledge, innovations and practices of the Maldhari embodying lifestyles relevant for sustainable use and conservation of livestock diversity.

Principle 3 is supported by:

Article 8 (j) of the Convention on Biological Diversity: “Contracting parties shall...subject to national legislation, respect, preserve and maintain knowledge innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity...”

Article 10 (c) of the Convention on Biological Diversity: “customary use of biological resources is protected and encouraged in accordance with traditional cultural practices that are compatible with conservation and sustainable use requirements”..

Chapter 15 (4) (g) of Agenda 21 calls on governments at the appropriate level “to recognize and foster the traditional methods and knowledge of indigenous people and their communities ...relevant to the conservation of biological diversity and the sustainable use of biological resources”.

Chapter 15 (5) (e) of Agenda 21: Governments should “subject to national legislation, take action to respect, record, protect and promote the wider application of the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles for the conservation of biological diversity and the sustainable use of biological resources ...”

Based on these principles articulated and implicit in existing legal instruments and international agreements, the Maldhari who belong to a traditional pastoral community and adhere to ecological principles of animal production affirm the following rights:

1. The Maldhari shall have the right to make breeding decisions and breed the breeds they maintain.

This right is supported by:

Article 10 (c) of the Convention on Biological Diversity: obliges Parties to “protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation and sustainable use requirements”.

2. The Maldhari shall have the right to participate in policy formulation and implementation processes on animal genetic resources for food and agriculture.

This right is supported by:

Article 8 (j) of the Convention on Biological Diversity: obliges Parties to “promote the wider application of the knowledge, innovations and practices of indigenous and local communities with their approval and involvement”.

Article 14(1) (a) of the Convention on Biological Diversity: obliges Parties to “introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and where appropriate allow for public participation in such procedures”.

Article 3 (a) of the United Nations Convention on Desertification: compels Parties to “ensure that decisions on the design and implementation of programmes to combat desertification and/or mitigate the effects of drought are taken with the participation of populations and local communities and that an enabling environment is created at higher levels to facilitate action at national and local levels”.

Article 10(2) (f) of the United Nations Convention on Desertification: obliges the “effective participation at the local, national and regional levels of non- governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes”.

3. The Maldhari shall have the right to appropriate training and capacity building and equal access to relevant services enabling and supporting us to raise livestock and to better process and market our products.

This right is supported by:

Article 12 (a) of the Convention on Biological Diversity obliges Parties to 'establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components'

Article 11 of the Convention on Biological Diversity obliges Parties to ' adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity'

Article 19 (1) (e) of the United Nations Convention on Desertification obliges parties to promote capacity building “by adapting, where necessary, relevant environmentally sound technology and traditional methods of agriculture and pastoralism to modern socio-economic conditions”.

Strategic Priority 6 of the Global Plan of Action for Animal Genetic Resources requests governments to “Support indigenous and local livestock systems of importance to animal genetic resources, including through the removal of factors contributing to genetic erosion. Support may include the provision of veterinary and extension services, delivery of microcredit for women in rural areas, appropriate access to natural resources and to the market, resolving land tenure issues, the recognition of cultural practices and values, and adding value to their specialist products.”

4. The Maldhari shall have the right to participate in the identification of research needs and research design with respect to our genetic resources, as is mandated by the principle of Prior Informed Consent.

This right is supported by:

Article 8 (j) of the Convention on Biological Diversity (see above) and Article 10 (d) which says Parties shall “support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced”.

Chapter 15(4) (g) of Agenda 21 require states to “Recognize and foster the traditional methods and the knowledge of indigenous people and their communities ...and ensure the opportunity for the participation of those groups in the economic and commercial benefits derived from the use of such traditional methods and knowledge”.

5. The Maldhari shall have the right to effectively access information on issues related to our local breeds and livestock diversity.

This right is supported by:

Article 13 (a) of the Convention on Biological Diversity: obliges Parties to “Promote and encourage understanding of the importance of and the measures required for the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes”.

