



NATIONAL BIODIVERSITY AUTHORITY

PROCEEDINGS OF THE 54th AUTHORITY MEETING

31st October 2019

Venue

**Indus Hall,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road, New Delhi-110003.**

Proceedings of the 54th Authority Meeting of the National Biodiversity Authority, held on 31st October 2019

The 54th Authority meeting of the National Biodiversity Authority (NBA) was held on 31st of October 2019 at the Indus Hall of Ministry of Environment, Forest and Climate Change, Paryavaran Bhawan, New Delhi under the Chairmanship of Dr. V.B. Mathur, Chairman, National Biodiversity Authority. The list of participants is placed at **Annexure-I**.

At the outset, Shri. J. Justin Mohan, Secretary NBA welcomed the Chairman, NBA, Members and Special Invitees for the meeting. Thereafter, the Chairman, NBA welcomed all the members which was followed by a round of introduction. The Authority members also welcomed the Chairperson and Secretary, NBA and appreciated the efforts taken by the previous Chairperson and Secretary. The members also welcomed Dr. Sujit Kumar Bajpayee, the newly appointed Joint Secretary in MoEF&CC who would be responsible for all matters related to Biodiversity conservation and NBA.

Thereafter, the agenda items were considered as under:

54.01: Confirmation of the Proceedings of the 53rd Authority meeting

The draft proceedings of the 53rd Authority meeting of the National Biodiversity Authority held on 22nd May 2019 at Chennai was circulated to the Members seeking their comments. The comments received had been duly incorporated in the proceedings, as appropriate.

Decision: The members confirmed the proceedings of the 53rd Authority Meeting.

Action: NIL

54.02: Action Taken Report of the 53rd Authority Meeting

The Secretary, NBA apprised members about the actions taken and actions that are in progress on the decisions taken in the 53rd Authority Meeting.

Decision: Members noted the action taken report.

Action: NIL

54.03: Proceedings of the 55th meeting of the Expert Committee on Access and Benefit Sharing held on 13th & 14th June 2019

An Expert Committee on Access and Benefit Sharing was reconstituted under the Chairmanship of Dr.R.V.Varma, Former Chairman, Kerala SBB and Shri K.S.Sugara, IFS (Retd.) as co-chair on 26th December 2018. The 55th meeting of the Expert Committee on Access and Benefit Sharing (EC on ABS) was held on 13th & 14th June 2019 at Chennai.

A total of 206 applications and three generic issues were placed before the EC for examination. One hundred and twenty (120) Form-III applications and eight (8) Form-I applications which were recommended by this EC on ABS were cleared i.e., draft agreement forwarded to the applicants for execution. The same was placed before the Authority for ratification. Further, the EC considered 67 applications under OM issued by the MoEF&CC and made its recommendations and these applications were also placed for approval. Further, EC observed that in certain OM cases, applicants have filed single application form for multiple activities and recommended a way forward.

Decision: (1) The Authority approved the recommendations of the 55th EC on ABS.
(2) The Authority ratified the action taken on the 128 applications.

Action: Secretary

54.04: Proceedings of the 56th meeting of the Expert Committee on Access and Benefit Sharing held on 8th & 9th August 2019

The 56th meeting of the EC on ABS was held on 8th & 9th August 2019 at NBA, Chennai. A total of 183 applications and two generic issues were placed before the EC for examination.

Seventy-five Form-III applications and eight (8) Form-I applications which were recommended by the EC were cleared i.e., draft agreement forwarded to the applicants for execution. The same was placed before the Authority for ratification. Further, the EC considered 78 applications under OM issued by the MOEFCC and made its recommendations and these applications, were also placed for approval.

Decision: (1) The Authority approved the recommendations of the 56th EC on ABS.
(2) The Authority ratified the action taken on the 183 applications.

Action: Secretary

54.05: Seeking funds by Institute of Wood Science and Technology (IWST) for maintaining Red Sanders voucher specimens in the repository

The Ministry of Environment, Forest and Climate Change, Govt. of India had designated certain Institutions/Organizations to act as “Designated Repository” under the Biological Diversity Act, 2002 to keep the voucher specimen in safe custody vide order dated 28th August, 2008. Indian Council of Forestry Research and Education (ICFRE) had been declared as one of the designated repositories under the BD Act, 2002 and was requested to issue suitable instructions to the IWST to accept the samples of Red Sanders wood submitted by the applicants as voucher specimens.

Accordingly, the IWST has received 280 Red Sanders voucher specimens of various diameters since June 2015 from different buyers for safe custody. IWST has mentioned vide letter dated 20th February 2019 that they do not have proper mechanism / infrastructure to keep and display these discs and have requested a sum of Rupees Five lakhs for building the required infrastructure for this purpose.

Decision: The Authority decided that the Secretariat may release Rs.5.00 Lakhs to IWST for proper maintenance of the Red Sander samples deposited.

Action: Secretary

54.06: To consider a report of the committee to examine a proposal of Bombay Natural History Society to designate them as a repository u/s 39 of BD Act, 2002

MoEF&CC vide letter dated 18th January 2019 had forwarded to NBA a proposal of the Director, Bombay Natural History Society (BNHS) addressed to the Secretary (EFCC) with a request to consider BNHS as a designated repository to keep safe custody of species of marine, fresh water and terrestrial fauna.

NBA requested Dr. Dinesh Mishra, Member, NBA and Dr. Sanjappa, Member, EC on ABS & Former Director of BSI to examine the proposal of BNHS. They recommended that BNHS cannot be considered as a national repository based on the guidelines as it was a Society and not a public funded institution. This was discussed in the 53rd Authority meeting and it was decided to form a sub-committee comprising of Dr. Darshan Shankar, Dr. Yogesh Shouche and Dr. Sanjay Kumar to visit BNHS for examining the facilities/ infrastructure/ specimens held by them for safe custody of the specimens in light of the criteria developed to designate as repositories u/s 39 of the BD Act. The sub-committee visited BNHS on 24th July 2019 for examining the facilities/ infrastructure/specimens and recommended that BNHS can be designated as a national repository u/s 39 of the BD Act.

The recommendations were deliberated by the Authority members on the criteria of technical competence and principled policy of not accepting funds from industries but only from public funds. Dr. Sujata Arora informed that ICFRE and ZSI have already been designated as a national repository for fauna u/s 39 of the BD Act, Dr. Darshan Shankar said that BNHS has good expertise scientifically and technically and have requested for this designation for scientific promotion. He also mentioned that as BNHS is owned and managed in public interest, it would be good to designate it as a national repository. Shri. A.K. Goyal mentioned that BNHS may be considered as a national repository but with conditions regarding its accepting international funds.

Decision: The Authority decided to designate BNHS as a national repository considering its reputation and technical expertise. However, this approval is for only applicable to the instant case.

Action: Secretary

54.07: To consider the proposal of the Andhra Pradesh Forest Department the tune of Rs 104 crores to release of Second installment from the accrued funds out of the benefit sharing component realized from the access of Red Sanders wood

The PCCF, AP Forest Department vide letter no.EFS02-17/2019/Vig-32, dated 25th July, 2019 had submitted a proposal under Red Sanders forest protection for the period of 2019-2020 to the tune of Rs104 crores as the second installment from the accrued funds out of the benefit sharing component realized from the access of Red Sanders wood.

In this regard, the members deliberated on who will be the benefit claimers and how the benefit sharing may be utilized based on the provisions of the BD Act, 2002. The members said that amount if released to the AP Forest Department should be through the AP State Biodiversity Board. Dr. Dinesh Misra opined that vehicles as proposed by the AP forest department in the proposal cannot be funded. Shri. T. Rabikumar mentioned that a committee was constituted under the chairmanship of Shri. B. Vijayan and a report was prepared on the comprehensive policy for conservation, sustainable use and fair and equitable sharing of benefits arising from utilization of Red Sanders under the Biological Diversity Act, 2002. He mentioned that the committee recommended that the benefit sharing amount can be directly given to the benefit claimer or can be given to the five forest divisions from where the Red sanders were accessed for research, conservation and sustainable uses. The committee also recommended that 75% of the proposed amount for conservation of Red Sanders should be given by NBA and the remaining 25% should be given by the State government. He also mentioned that NBA faced a similar issue regarding the release of benefit sharing amount accrued for the bovine cattle embryos. A similar committee was formed and the committee recommended that the benefit sharing amount received should be shared between Andhra Pradesh and Gujarat in the ratio of 60:40 respectively for the purpose of research,

conservation and sustainable use of the cattle breeds i.e. Ongole, Gir and Kankrej. Dr. Sujata Arora said that NBA may send the ABS guidelines, 2014 and the report prepared by the committee on Red Sanders to the AP Forest Department to revise the proposal for the utilization of the Benefit Sharing component realized from the access of Red Sanders wood. Shri. Rabikumar mentioned that the previous Chairperson Dr. Meenakumari had sent letters to the State Biodiversity Boards of Telangana, Karnataka, Gujarat, Maharashtra and Andhra Pradesh requesting them to send proposals to utilize the Benefit sharing component realized from the access of Red Sanders wood but no response had been received. Shri. A.K. Goyal said that basic guidelines may be formulated and sent to the respective State Biodiversity Boards where benefit sharing amount is received. Shri Rabikumar suggested that the responsibility for preparation of the basic guidelines may be given to the EC on ABS.

Decision: NBA would send the Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, 2014, and the report prepared by the committee on Red Sanders to the AP Forest Department to revise and resubmit the proposal accordingly for the utilization of the Benefit sharing component realized from the access of Red Sanders wood.

Action: Secretary

54.08: Evaluation of research proposals on Red Sanders (RS)

The National Biodiversity Authority in its 32nd meeting decided to constitute an Expert Committee to develop a comprehensive policy to ensure the conservation and sustainable utilization of the species and further work out modalities for the utilization of the benefit sharing amount realized out of the access of RS wood. Accordingly, NBA constituted an Expert Committee comprising 28 members under the Chairpersonship of Shri. B. Vijayan, IAS (Retd.) with Shri B. Somasekhara Reddy, IFS, (Retd.) as co-Chairperson.

The EC recommended that eighteen percent (18%) of the benefit sharing amount should be earmarked for research and development on Red Sanders with respect to specific thrust areas. Till date, NBA has received Rs.86,72,00,000 as benefit sharing amount.

NBA invited proposals on the identified thrust areas from different institutions including CSIR, ICFRE, ICAR and other Government Institutions. A total of 15 proposals were received by the Secretariat for consideration from CSIR, IFGTB, IWST and CSIR-NEERI. A total of six proposals were recommended with specific conditions by the Expert committee and were approved in the 52nd Authority meeting. The conditions were communicated to the proponents and NBA has received five revised proposals out of the six recommended. The members approved the revised budget of the proposals. The members also suggested that NBA may invite more number of proposals on research on Red Sanders from different Universities and other agencies.

Decision: 1. The members approved the 5 proposals with the revised budget.

2. NBA would invite fresh proposals from different Universities and other agencies for research on Red Sanders

Action: Secretary

54.09: To consider engaging National Institute of Rural Development and Panchayati Raj (NIRD&PR) for conducting Capacity building programmes for the PRIs/ BMCs/ SBBs representatives
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The National Institute of Rural Development and Panchayati Raj (NIRD&PR), is a premier national centre of excellence in Rural Development and Panchayati Raj which builds capacities of rural development functionaries, elected representatives of PRIs, bankers, NGOs and other stakeholders through inter-related activities of training, research and consultancy. Under the CEBPOL project, NBA had joined hands with NIRD for conducting a series of capacity building programmes for the master trainers /representatives of PRIs on biodiversity governance in general and formation of BMCs and documentation of PBRs in particular. Towards this, a Memorandum of Undertaking was executed between NBA, on behalf of CEBPOL, and NIRD on 24th July, 2018. The MOU stipulates that NIRD would conduct four (4) training programmes for the Master Trainer/Training of Trainers / representatives of PRIs (one national level programme and three zonal programme).

In the above training programmes, around 300 representatives of the various line departments on Panchayati raj institutions, representatives of SBBs, BMCs, Forest Departments, Rural Development, Agriculture, Horticulture, Fisheries, Animal

Husbandry, Agriculture Universities, State and Central Universities and Other NGOs from different states were trained on the provisions of the BD Act as well as BMC/PBR.

The Authority in the 53rd meeting vide agenda item.no,53.08 considered the issue and decided that the State Biodiversity Boards may be engaged to conduct training programs for the Master Trainer/ Training of Trainers / representatives of PRIs, instead of NIRD&PR and the financial requirements on this aspect may be borne by the NBA. Considering the another Order issued by the Hon'ble National Green Tribunal (NGT), New Delhi to constitute Biodiversity Management Committees (BMCs) and document People's Biodiversity Registers (PBRs) in all local bodies in the State by end of January, 2020, there is an urgency to extend capacity building programs to the BMCs/ PRIs and also technical /scientific support by NBA to the SBBs/ BMCs.

In this regard Shri. Rabikumar opined that a MOU may be signed between NBA and NIRD for conducting a series of capacity building programmes for the master trainers /representatives of PRIs on biodiversity governance and formation of BMCs and documentation of PBRs. Dr. Dinesh Misra and Shri. A.K. Goyal opined that both the NIRD and the State Institute of Rural Development (SIRD) may be involved in the capacity building programs. Dr. Darshan Shankar mentioned that the support by SIRD will strengthen the State Biodiversity Boards. Chairperson expressed that the SBBs and SIRDs should partner in conducting the programs and, at present, an MoU may be signed with NIRD. Dr. Darshan Shankar said that there should be an involvement of other agencies who have the expertise and infrastructure to conduct such programs.

- Decision:**
1. NIRD&PR may be engaged for a period of one year for conducting five capacity building programs.
 2. The SBBs and SIRDs may act as partners to conduct the capacity building programs along with the competent agencies.

Action: Secretary.

54.10: Fixing of upfront payment for research of bio-resource obtained from India for Form I Applicants

The National Biodiversity Authority has received an Office Memorandum (O.M.) MoEF&CC dated 10.09.2018, under Section 48 of the Biological Diversity Act for enhancing implementation of the Act stating that large numbers of entities are not fully aware of the provisions of the BD Act but are desirous of complying with the same. Further there is a need to provide an opportunity to all such entities that are required to obtain prior approval of the Authority for undertaking activities as specified under Section 3, 4 and 6 of the Act including cases that may relate to past, in line with the objectives of the Act and regulate them in a manner that enhances implementation of the Act.

Accordingly, the above O.Ms was considered in the 47th Authority meeting vide an Agenda item no. 47.10 and the Authority decided to constitute a committee to examine the Scientific Evidence of the ABS Applications and give its recommendations.

The applications which were recommended by the said scientific committee were placed before the 48th and 49th Authority meeting for disposal under Para 4 and 5 of the O.M No. C-12025/8/15-CS –III dated 10.09.2018 issued by MoEF&CC. The Authority endorsed the recommendation of the said committee and approved Form III applications with the benefit sharing percentage as 1%, 5% and 5% on the commercial utilization of the process/product/innovation; on the fee received in any form including the licensee/assignee; of the royalty received annually from the assignee/licensee respectively. Regarding Form- I applications where approval was sought for, already conducted research on biological resource obtained from India by entities, an upfront payment as per the approved guidelines may be levied. Besides, organize awareness programs with regard to compliance of the Biological Diversity Act and furnish an undertaking that provisions of BD Act shall be compiled in future.

The members deliberated and decided to levy the highest rate of benefit sharing component as per existing guidelines (*i.e* 0.5%) for approved under OM

dated 10/09/2018 and 18/03/2019 pertaining to the Form I applications considered under the OM referred to above.

Decision: The Authority decided to levy the highest rate of benefit sharing component as per existing guidelines (i.e 0.5%) for applications approved under OM dated 10/09/2018 and 18/03/2019 pertaining to violation cases for FORM I applicants and to collect the upfront payment as per the guidelines issued by the Authority for research applications.

Action: Secretary

54.11: Order passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in the matter of O. A. 347 of 2016 in the case of Chandrabhal Singh Vs. Union of India

The Principal Bench of Hon'ble National Green Tribunal (NGT), New Delhi issued notices to all the States and Union Territories to take necessary steps for enforcement of the Biological Diversity Act, 2002 and Biological Diversity Rules, 2004. The Hon'ble NGT observed that there were gaps in the implementation of the said Act and the Rules in view of the total number of local bodies existing in the country. In compliance with this Order, NBA in coordination with MoEFCC has conducted periodic meetings with the officials of the State Governments, Department of Panchayati Raj of the States and the State Biodiversity Boards. Additional Secretary, MoEFCC in his letter (vide no. C-12027/06/2016-CSIII dated 30.05.2019) to the Chief Secretaries of the States also requested for expeditious constitution of BMCs in achieving the objectives of the Biological Diversity Act, 2002. NBA has submitted compliance report on the actions taken so far and progress made towards formation of BMCs and preparation of PBRs in the States.

The NGT in its latest Order passed on 9th August, 2019 directed MoEFCC and NBA to ensure compliance with 100% constitution of BMCs and preparation of PBRs by 31st January 2020. The Secretary, NBA mentioned that a meeting has been convened for the SBBs every month to discuss the issues and problems faced by the SBBs. NBA has requested all the SBBs to provide their inputs/problems by 3rd November, 2019 which will be submitted to the Court.

The members deliberated that the SBBs and BMCs have to be proactive. Secretary mentioned that the states have requested a budget of 600 crores for the constitution of BMCs. The members opined that the formation of BMCs does not need any funding as it would be done by the Panchayat, whereas capacity building requires funding. Shri. A.K. Goyal mentioned that Bihar has initiated the formation of BMCs and Uttar Pradesh has formed 80,000 BMCs without spending any funds. Dr. Jeetendra Kumar Vaishya and Shri. T. Rabikumar mentioned that there is a scheme under NMPB where it can provide upto 15 lakhs to the BMCs, if proposals are submitted accordingly.

Dr. Sujata Arora mentioned that application for condonation of delay has to be submitted by 9th November, 2019 by NBA and MoEF&CC. Shri. T. Rabikumar mentioned that it is not the mandate of NBA to form the BMCs and prepare PBRs but it is the SBB's mandate. NBA's role is to provide guidance to the SBBs for the formation of BMCs. Hence, all the SBBs have to submit their Affidavit for the condonation of delay. Secretary, NBA mentioned that till date, no state has submitted the Affidavit.

Decision:

1. NBA will request the Chief Secretaries of all States to review the follow up actions required in the context of the Order of the NGT dated 9th August 2019.
2. NBA will also consult with the Counsel appointed by MOEF&CC in the context of implementation of the NGT Order dated 9th August 2019.

Action: Secretary

54.12: Revision of the quantum of financial support given per annum to SBBs towards various components viz. Outsourcing of contractual staff and strengthening of SBBs

NBA provides financial assistance to all the SBBs towards various components for strengthening the office of the Member Secretaries and undertaking mandatory works in implementing the Biological Diversity Act at the State level. This financial support is subject to the proposals received from the SBBs during each financial year based on their requirements.

Shri. T. Rabikumar mentioned that if there is a revision in the quantum of financial support state wise, then it has to be considered in the BE 2020-21 as it would be difficult with the existing budget of NBA. He also mentioned that all the states do not ask for funding. He opined that the SBBs can also request for funding from other sources such as NMPB, State Government and the Central Government can fund with respect to the state contribution. He also expressed that States can obtain funds from CAMPA for documentation of PBRs. Chairperson opined that the SBBs should send proposals for funding from both NBA and the State government. He suggested that Authority may 'in principle' approve the revision of the quantum of financial support based on the proposals received from the SBBs.

Decision: Authority granted approval to the revision of the quantum of financial support based on the proposals received from the SBBs and subject to the availability of funds.

Action: Secretary

54.13: Engaging a Legal consultant in SBBs

SBBs are the state level representatives playing a similar role like NBA in implementing the Biological Diversity Act, 2002. SBBs are also statutory, autonomous bodies vested with legal power to fulfil the mandate of the said Act. In this direction, the State Biodiversity Boards frequently deal with legal issues concerning the BD Act.

In this context, the SBBs may utilise a part of the financial support provided per annum by the NBA in engaging a contractual legal consultant for better and faster disposal of the legal issues at State level.

Decision: The Authority approved the engagement of a legal consultant in SBBs, when required.

Action: Secretary

54.14: Revised Guidelines for Operationalization of Biodiversity Management Committees

The revised guidelines for Operationalization of Biodiversity Management Committees (BMCs) were finalized by a Committee comprising Dr. R. V. Verma,

Shri Kunal Satyarthi and Shri Pradeep Sarmokadam after incorporating the public views.

In the context of the recent NGT Order in August, 2019, the members deliberated and decided that except the provision on quantum of funding by NBA to SBB for formation of BMC, the remaining provisions of the guidelines were approved.

Decision: 1. The revised guidelines for Operationalization of Biodiversity Management Committees was approved, except on provision on quantum of funding by NBA to SBB for formation of BMC on account of limitation of funds being received by NBA from MoEFCC.

Action: Secretary

54.15: Approval of Budget Estimate for the year 2019-20
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Budget Estimate for the year 2019-20 for National Biodiversity Authority has been prepared and submitted for sanction to the Ministry of Environment, Forest and Climate Change. The Ministry has accorded sanction to the tune of Rs.20.00 crores under Grants- in Aid for NBA for the financial year 2019-20. This includes Rs.5.0 crores under Grants-in-Aid - Salaries and Rs.15.00 crores under Grants-in-Aid - General. In addition to that, an amount of Rs.2.0 crores has been sanctioned under Special Component Plan for Scheduled Castes. Chairperson mentioned that NBA has requested funds under the Capital head for a new building of NBA.

The Annual Accounts of NBA for the financial year 2018-19 was approved by the Chairperson and the same was Audited by the O/o The Principal Director of Audit (Scientific Departments). The formal Certificate of Annual Accounts is awaited from C&AG. The same was placed for ratification by the Authority.

Decision: The members ratified the Annual Accounts for the financial year 2018-19; RE (2019-2020) & BE (2020-2021).

Action: Secretary

54.16: Issuance of No Objection Certificate for invention making use of human genetic material

Section 6 of the BD Act, 2002 requires that any person applying for any Intellectual Property Right for an invention based on any research or information on a biological resource obtained from India, shall obtain prior approval of NBA. However, as per Section 2(c) of BD Act, 'human genetic material' is excluded from the definition of 'biological resource'. Thus inventions which are based on research on human genetic material would not come within the ambit of Section 6. Accordingly, NBA has granted NOC in one case where IPR is sought on invention based on research on human mesenchymal stem cells.

Decision: The members ratified the grant of NOC where IPR is sought on invention based on research on human mesenchymal stem cells.

Action: Secretary

54.17: Consultative Meeting to discuss the plan of action for the India Biodiversity Awards 2020.

The India Biodiversity Awards 2020 (IBA 2020) were officially launched by the Hon'ble Vice President of India on May 22, 2019 during the celebration of the International Day for Biological Diversity, along with the release of the poster and brochure. Chairman, NBA, approved the constitution of an Award Jury which will be chaired by Dr. Erach Bharucha, Director, BVIEER, and Co-chaired by Dr. A. K. Gupta, Former PCCF & HoFF, Tripura, along with 8 members. The last date of the Application is 15th November 2019.

Decision: The members noted the Award jury constituted and the last date of receipt of applications.

Action: NIL

54.18: Ratification of decisions on Form-B applications

Chairperson, NBA has approved **17 Form-B** applications without referring to the SBB and the EC on ABS.

Decision: The members ratified the decisions on Form B applications.

Action: NIL

54.19: To consider the applications for access to Red Sanders wood approved by the Chairperson, NBA

In the 32nd Authority meeting (32.07), the Authority authorized the Chairman, NBA to accord approval to such applications without following the normal procedure and also directed the NBA Secretariat to place such approvals in the subsequent Authority meeting for ratification. Accordingly, nine applications approved by the Chairperson, NBA was placed before the Authority for ratification.

Decision: The members ratified the approval of the nine Red Sanders applications.

Action: NIL

54.20: Items for information

54.20.2: Details of Form-C applications received by the NBA

The Authority, in its 37th meeting held in March 2016 under agenda item 37.14.02, decided that the Indian researchers / scientists should provide prior intimation to the NBA in the prescribed format *viz.*, Form – C for deposition of microorganisms in other country's repository for claim of novel species for publication in journals. However, if any non-Indian person /entity intend to access the deposited Indian biological resource from the foreign repository, he/she should obtain the prior approval of NBA as per Section 3 of the BD Act, 2002. Since May, 2019, the Secretariat has received 35 Form-C applications.

Decision: The information submitted in this regard was noted.

Action: NIL

54.20.3: Constitution of Expert Committee to Examine BD Act, 2002, BD Rules, 2004, Development of Sector Specific SOPs on ABS, and Examination of the Comments of Stakeholders for Incorporation in the Draft Regulations on ABS, 2019, etc and developments thereof

NBA vide office order dated 24th May 2019 constituted an Expert Committee under the Chairmanship of Shri A K Goyal, IFS (Retd.) to examine Biological Diversity Rules, User Country Measures under Nagoya Protocol on ABS and development of sector specific SOPs. Three regional level consultations were organized in Chennai, New Delhi and Kolkata for ascertaining the views of the stakeholders particularly State Biodiversity Boards based on the decision of the Authority in its 53rd meeting (Agenda item 53.04) held on 22nd May 2019.

During the third meeting of the expert committee to examine the BD Rules, the representative of MoEF&CC recommended to entrust the task of modification in the BD Act and streamlining procedure to this committee as there are already mandated to review the guidelines on ABS and BD Rules. The EC to ascertain the views/suggestions of the SBBs on the required modifications in the Biological Diversity Rules, 2004 met eight times from 20th June -30th October 2019. The EC examined BD Rules, ABS Regulations, streamlining approval processes by NBA/SBBs, guidance documents and BD Act, 2002.

Shri A.K. Goyal presented the tasks completed on the amendment of ABS Regulations and are as follows:

- i. Bringing all users of biological resources and associated knowledge within loop (15-16 years not much headway) by providing incentives, reduction in benefit sharing amount, simplifying processes
- ii. Preamble, reference to section 18 (1) and section 21(4) has been deleted, and only **overriding provision** of section 64 empowering NBA has been retained
- iii. Powers of NBA and SBBs indicated separately in short title.
- iv. **'Associated knowledge'** explained in preamble and uniformly used in whole document
- v. 60 days duration proposed for **giving effect to Regulations** after their publication

- vi. **Procedure** for accessing biological resources and **mode of benefit sharing brought under same regulation**
- vii. **Upfront payment** for high conservation and economic value biological resources
- viii. Based on views of majority of SBBs and many others, **traders** concept brought back and Form 'A' re-introduced
- ix. **Exemption for small-scale** industries from paying benefit sharing amount
- x. **Period for disposal** of applications mentioned under respective regulations
- xi. **Period of disposal** by NBA/SBBs and for **signing of agreements shown separately**
- xii. **Incentives** for **payment of levy charges** to BMCs
- xiii. **Exemption** to usage of insects, pathogens and weeds and microbes as **testing tools**
- xiv. Conducting of academic research by non-Indians in India-**institutional committees proposed**
- xv. Collaborative research projects under section 5 of Act -**inclusion of private institutions/organizations**
- xvi. States can also have their **own list of high** conservation and economic value species depending on conservation status and tradability of biological resources
- xvii. **Obligations of users** to file annual reports added
- xviii. Provision for **filing appeals in NGT** against decisions of NBA/SBBs added
- xix. **Concessions** for patents having **environmental remedies** from ABS benefit sharing obligations under PPVFR Act and BD Act
- xx. **Transfer of research results** to outside India **for analysis** to own establishments-simplification recommended
- xxi. **Deposition** of microbial strains in repositories outside India for **claim of novel species**
- xxii. Revision of guidelines for **collaborative projects** (sec 5) and issue of guidelines for **publication of research** papers for seminars, workshops (sec 4)

- xxiii. **Illustrations provided** under some regulations for better clarity
- xxiv. **Intimation** for obtaining IPR in India on an invention based on biological resource obtained from outside India-**Check point**

Other recommendations of the committee are:

- i. Framing guidelines for **registration of traders**
- ii. Instituting **studies to gather information on trade** in biological resources and their purchase prices
- iii. Formulating **guidelines for levy** of collection charges and reporting format for **BMCs**

Major issues under consideration on the BD Act, 2002

- Preamble
- Section 2(p)-value added products
- Section 3(2)-non-Indian entities **research simplification proposed**
- Section 5 collaborative research projects approval by state
- Section 7-prior approval
- Section 22-establishment of biodiversity councils in the UTs
- Section 23-functions of SBBs determination of benefit sharing within the ambit of regulations notified by NBA
- Section 27(2)(b)-conservation and promotion of BRs and development of area from where such BRs accessed- OCCUR

Major issues under consideration on the BD Rules

- Rule 12-Advise SBBs on framing of ABS guidelines within the ambit of ABS Regulations
- Rule 12-(xvi) Recommend to whom, under section (1) of 6 or changes in royalty under sub (2) of 19
- Advise SBBs on sustainability of the BRs, preparing guidelines on quantum of BRs that can be harvested in a particular time period
- Rule 14(2)-Fee, cheque or draft or electronic transfer
- Rule 14 (3)- time period to be reduced
- Rule 14 (5 & 6)-Form of agreement or undertaking, online undertaking

- Rule 14 (6) (ii) accompanying information on use or purpose, contemporary sources, if any
- Rule 14 (6) (v) **fresh agreement or undertaking**
- Rule 14 (6) (xiii) **duration of the agreement** notice etc.
- Rule 14 (7) may provide **measures for conservation and protection of BRs** to which access is being provided
- **Rule 15 (2) copies of orders to be uploaded on website** for notice of SBB/BMC and also **emailed electronically**
- **Rule 16 (1)** Include **threatened species** also
- **Rule 16 (1) (vii)** for any other purpose which serves larger public interest e.g. **certain BRs required for government pharma manufacturing units**
- **Rule 17 (1)** Physical transfer of research results
- **Rule 17 (2)** Fee draft/cheque or **electronic transfer**
- **Rule 17 (3)** decision on 3 months or less 2 or one
- **Rule 17 (5) approval after taking an undertaking**, need not be an agreement
- **Rule 18 (1)** Remove 'desirous of'
- Rule 18(2)-fee, draft or electronic transfer
- Rule 18(3)-time period, three or two months
- Rule 18(5)-written agreement **or undertaking**, online submission and disposal
- Rule 19(1)-application in form IV
- Rule 19(2)-fee
- Rule 19(3)-time period, three or two months
- Rule 19(5)-written agreement or undertaking, online submission and disposal
- Rule 20 (3) formula for determination of ABS based on category of BR/sale price/ex-factory price of product or on case-to-case basis
- Rule 20 (8) **Replace 'district authorities' by SBBs/BMCs**
- Rule 20 (9) 5% divide equally between Authority/Board
- Rule 20 (9) 5% for Authority or Board
- Rule 22-Constitution of BMCs- **flexibility in name and number of members**
- Rule **22-Sitting fee** for BMC members
- Rule 22(2)-BMCs-18% reservations or more

- Rule 22 (3) What if **chairperson himself is designated as chair of BMCs**, who should chair meeting for constitution
- Rule 22(4)- **tenure of chairperson of BMC and members**
- Rule 23(1) and (2)- **appeals- clarity in the provisions???**
- Rule 23 (5) Quadruplicate or soft copy
- Rule 23 (6) Notice for appeal, electronically
- Rule 24-notice format, its communication
- **Provision for transfer of benefits from one SBB to another**
- **Integrated portal for receiving and disposing applications and intra-SBBs consultations** and consultations with BMCs
- **Incorporation of some new provisions** discussed under ABS Regulations like deposit of microorganisms outside India, NBA as check-point
- Inclusion of **digital sequence information** in Rules/ABS
- Review of Forms

Decision: 1. The Authority endorsed the reports of the Expert committee and advised NBA to process it through MoEF&CC, as appropriate.

2 Since the tenure of the EC is expiring on 30th November, 2019, the Authority decided to extend the tenure for another six months

Action: Secretary, NBA

54.20.4: National Biodiversity and Human Well-being Mission

The Prime Minister Science, Technology, Innovation Advisory Council (PM-STIAC), Government of India has decided to launch a National Biodiversity and Human Well-being Mission in April, 2020. The Office of the Principal Scientific Adviser(PSA), Government of India and the Ministry of Environment, Forest and Climate Change (MoEFCC) have designated the National Biodiversity Authority to organize stakeholder consultations to prepare the Detailed Project Report (DPR) and Expenditure Finance Committee (EFC) Memorandum for this mission.

Accordingly, the NBA had organized national consultations in October, 2019 with technical inputs from the Biodiversity Science Consortium (BSC), Bangalore, at Dehradun, Kolkata and New Delhi in which over 150 representatives of Scientific

Institutions, Ministries and Departments of Government of India, State Forest Departments, State Biodiversity Boards have participated. The DPR and EFC memorandum preparation is ongoing in a time-bound manner and is led by Dr. Kamal Bawa, ATREE.

Shri. Darshan Shankar mentioned that the central pillar is to create a Biodiversity information portal. He also mentioned that as a mandate of NBA is to develop a database, the National Biodiversity Mission would be a good opportunity for its governance and expansion. He also appreciated the role of NBA in this mission.

Decision: The information submitted in this regard was noted

Action: NIL

54.20.5: Consultation Meet on Digital Sequence Information:

MoEF&CC, NBA and UNDP have jointly convened consultation meet on Digital Sequence Information with Ministries / departments, organizations and experts under the Chairmanship of Shri Anil Kumar Jain, IAS, Special Secretary, Ministry of Environment, Forest and Climate Change, Government of India and Chairman, NBA to understand the landscape of work on DSI being undertaken in the country on 30th July, 2019 at MOEFCC, New Delhi.

The members in the meeting discussed that the benefit sharing on commercial utilization/IPR on DSI needs to be ensured; open access data may be encouraged subject to terms and conditions; scientific research needs to be fostered; and continuous interaction with stakeholders including providers, corporate groups, communities /BMCs on this subject is required.

A consultation meet will be organized with the providers of the biological /genetic resources as well as industrial stakeholders in order to ascertain their views on this subject.

Decision: The information submitted in this regard was noted

Action: Secretary

54.20.6: Draft guidelines on Biological data storage, access and sharing policy of India formulated by the DBT & comments thereof:

The MOEFFC informed NBA that DBT has uploaded draft guidelines on Biological data storage, access and sharing policy of India, for inviting public comments. It was also informed that since these guidelines may have implications for access and benefit sharing provisions of CBD and its Nagoya Protocol in the context of the use of digital sequence information, MoEF&CC requested NBA to examine these guidelines and provide comments on the same.

In this regard, NBA offered comments to DBT stating that data envisaged in these guidelines will be considered as digital sequence information on genetic resources on Genetic resources. Further, access to such data enables access to genetic information of an organism without physically accessing it. It was also stated that definitions provided for the genetic resources as well as biological resources in the CBD as well as the Nagoya Protocol recognize access to both tangible and intangible elements in the genetic material. Considering these in view, access to these data and its utilization would fall within the scope of CBD/Nagoya Protocol and ABS regulatory framework will be come into force while access such data's.

It was also apprised that open access and sharing of data related to biological resources including data generated by nucleic acid sequencing and microarrays, biomolecular structures, etc., is runs counter to the commitments of Government of India under Convention on Biological Diversity and Nagoya Protocol. It was informed that the relevant provisions of the BD Act covers the access/ utilization of data for the purposes including research or commercial utilization or bio-survey and bio-utilization or transfer of results of research or obtaining any IP Right and the users of the such data needs to obtain prior approval under the BD Act. Besides, NBA offered paragraph wise comments on the draft guidelines on Biological data storage, access and sharing policy of India to DBT

A Meeting of the Inter-Ministerial Committee was held on 16th September, 2019 for finalization of the said guidelines at New Delhi wherein the comments/suggestions made by the NBA were appropriately considered.

Decision: The information submitted in this regard was noted

Action: NIL

54.20.7: Meetings attended by the officials of the NBA

The members noted the meetings attended by the officials of the NBA.

Action: NIL

54.20.8: ASEAN-India Cooperation Project on “Capacity Building towards implementing the Nagoya Protocol on ABS, the City Biodiversity Index and the Strategic Plan for Biodiversity” implemented by ACB, Manila and NBA, Chennai - Record of Discussion of the Review Meeting held on 25 September, 2019 at Singapore

A Project Review Meeting was organized on the side lines of the ASEAN-India Workshop on Urban Biodiversity and Application of the City Biodiversity Index was held on 24-26 September, 2019 at Singapore.

Decision: The information submitted in this regard was noted.

Action: NIL

54.20.9: Non-Disclosure agreement between NBA and CSIR-TKDL

A discussion meeting was held on 29th June, 2019 at MoEF&CC, New Delhi between NBA and CSIR-TKDL unit to discuss possible cooperation particularly in the context of developing a common platform by linking TKDL with PBR's. The meeting discussed the nature and content of the related information available with CSIR in the form of TKDL and with NBA in the form of PBR. A consensus was reached that development of a common platform integrating the information in TKDL and PBR would be mutually beneficial and will be in the best interest of the nation. But at the same time, the regulatory requirements under the Biological Diversity Act have to be taken into consideration before opening up the platform. The modalities of the same were discussed by NBA and CSIR-TKDL unit and they signed a non-disclosure agreement on 16th September, 2019 to clearly understand the nature and content of information existing in PBR and TKDL and thus can mutually decide the further course of action.

Decision: The information submitted in this regard was noted.

Action: NIL

54.21: Any other item (s) with the permission of the Chair

54.21.1: Establishment of a Network of electronic People's Biodiversity Register (ePBR):

Section 41(1) of the Biological Diversity Act, 2002 mandates the development of People's Biodiversity Registers (PBRs) at local level by the Biodiversity Management Committee to document as well as safeguard bio-resources and associated knowledge. Despite this, the total number of PBRs made so far has been 6868.

The National Green Tribunal (NGT) in its recent judgement in August, 2019 has ordered that all PBRs would be made by February, 2020. It is a huge challenge and requires a range of innovative mechanisms including establishing a nation-wide system that will facilitate development of the electronic PBR (ePBR). There is an urgent need to review and change the way in which PBR data is currently being generated, collected, collated, stored, accessed and used. The roadmap for planning and implementing natural electronic PBR network would have 4 distinct components viz., Network Schematics, Work Programmes, Governance Structure and ICT Requirements.

Chairperson mentioned that the Prime Minister's Science Technology and Innovation Advisory Council (PM-STIAC) has recently endorsed the concept of a National Mission on Biodiversity and Human Well-Being (NMB&HW) presented by the Biodiversity Science Consortium (BSC). The Ministry of Environment, Forest and Climate Change (MoEFCC), Government of India and the Chairperson, National Biodiversity Authority (NBA) have been assigned the responsibility of preparing the DPR and EFC Memo with technical assistance from the BSC. The goal of this national mission is to strengthen biodiversity science in India to meet our pressing challenges in the environment and human well-being. There is a need to build strong linkages between NMB&HW and PBR processes.

Chairperson mentioned that e-PBR is an excellent concept which would immensely help in completing the preparation of PBRs as it has the potential to both

document, conserve and manage the biological diversity across the country for which a lot of efforts at various levels have already been made in the last 15 years spending considerable funds with inadequate progress. He also mentioned that we should not lose sight of the fact that preparation of PBR is the sole responsibility of the BMC which shall do so in consultation with the local people. Technical, financial and ICT related assistance can be provided by NBA/SBBs.

The PBR of each BMC can be put on the e-PBR network only with the consent of the BMC (with all checks related to hiding of lat-long, and Traditional knowledge etc.) as this would also contain information on their traditional knowledge which many locals do not want to make it public because of fear of losing their ownership.

The members appreciated the efforts been taken on e-PBR and approved the establishment of 'National electronic PBR Network'

Decision: The members considered and approved the establishment of 'National electronic PBR Network' with adequate safeguards.

Action: Secretary

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