PROCEEDINGS OF THE 25THAUTHORITY MEETING OF NATIONAL BIODIVERSITY AUTHORITY

Date: 18.09.2012

Venue: Committee Room-II, Ground Floor, NASC Complex, DSP Marg, PUSA, New Delhi.

Twenty-fifth meeting of the National Biodiversity Authority was held on 18th September, 2012 at Committee Room-II, NASC Complex, PUSA, New Delhi, under the chairmanship of Dr. Balakrishna Pisupati, Chairman, NBA to consider the agenda items circulated amongst the members earlier by email on 6th September, 2012 as well as by speed post. The list of members who attended the meeting is placed as Annexure-I.

At the outset, Shri C. Achalender Reddy, Secretary, NBA, welcomed the members and gave a brief outline of the day's agenda. Dr. Balakrishna Pisupati extending a warm welcome thanked both the official and non-official members and the Ministry of Environment and Forests for the guidance, support and confidence reposed on the Authority. He also welcomed Dr. Sujata Arora, Director, MoEF and mentioned about her longstanding association with both the implementation of the BD Act and the NBA.

The Chairman, NBA shared his views on the increasing responsibilities of the Authority especially in the light of its heightened visibility and emphasized that time bound decisions were the need of the hour. He also informed that as per the decision of the Authority in its earlier meeting, the agenda was categorized into 3 different components *viz.*, items for consideration and approval, items for ratification and items for information, to enable the Authority to effectively utilize its time to decide on the agenda items.

Thereafter, the agenda items were considered and discussed as under:-

25.1: Confirmation of Proceedings of the 24th Authority Meeting of NBA

The members were informed that the comments received from some of the members were incorporated appropriately in the proceedings and circulated twice. The Authority confirmed the proceedings of the 24th Authority meeting.

25.2: Action taken report

The Secretary, NBA presented the action taken report to the Authority. The members were informed that action has been taken on most of the items and that action on the remaining items is in progress. The observations and decisions of the Authority are as follows:-

- It was recommended that new proposals with financial implications should be brought to the notice of the MoEF prior to placing in the Authority. On further deliberation, it was decided that such proposals may be referred to the MoEF, simultaneously placing them before the Authority.
- The members suggested the Secretariat need not place items in their initial stages as decisions cannot be arrived at in the absence of complete details. It was suggested to place complete proposals as much as possible.
- 3. With regard to item 24.6 (*National Consultation on PBR*), it was decided that the action taken column should indicate the stage of development of PBR. It was suggested that one model/thematic PBR may be chosen from among those PBRs received and the same may be used as a model for the development of other PBRs. It was decided that the Authority should be kept informed of further developments.
- 4. Regarding item 24.8 (*Ratification of applications cleared by the NBA Secretariat*), the members urged that action taken report must be prepared after the comments of the members are incorporated in the

proceedings. Regarding ratification of applications cleared by the Secretariat, it was decided that it should be mentioned as *"information items"* only. The members sought for the change to be incorporated both in the proceedings and in the action taken report.

5. While considering the action taken on item 24.27.3 (*Biodiversity Congress*), it was agreed that MoEF will be consulted since the proposal has both financial and programmatic implications. Further, the decisions taken on the matter in the previous meeting (24th) of the Authority must be taken into consideration.

Action: Secretary

25.3: Request for extension of tenure of the UNDP Biodiversity Project

The members were informed of the request from the Project Manager, UNDP-MoEF-NBA for the extension of tenure of the India-UNDP project. The Authority decided that the request should be forwarded to the MoEF for financial clearance. Further, a proposal containing details of the works completed so far under the project and the works proposed to be carried out with their monetary requirement should be placed in the Authority for technical clearance. It was also decided that in future all proposals with monetary considerations should be brought to the notice of the MoEF and simultaneously placed in the Authority.

Action: Secretary

25.4: To consider the hosting of the "Access Agreements" in the website withholding confidential information

The members were apprised of the concern over uploading verbatim copies of all access & benefit sharing agreements signed between the applicant and NBA for transparency. In this regard, the legal opinion received from expert consultant on the issue was discussed. The members agreed that it was a concern that demanded immediate attention. Dr. Renu Swarup, elucidated the procedure followed in the DBT to protect the confidentiality of the applicant with respect to BIBP Project. Further, it was also informed that templates of the confidentiality agreement may be downloaded from the DBT website and similar procedure with minor modification to suit NBA's need may be adopted. On further deliberation, it was decided that the model agreement sent to the applicant may be accompanied with a note asking the applicant to specify the clauses to be marked as confidential.

Action: Secretary

25.5: Alleged misappropriation of Indian melon by M/s Monsanto

The members were informed of the recommendation of the Expert Committee on Agrobiodiversity which was in favour of taking legal action against the alleged violators of the BD Act. Further, the legal opinion obtained on the matter was also presented to the Authority. It was noted that in the case of European patent, the time for opposing it was over. However, the Authority agreed in favor of filing a pre-grant opposition to the patent application of M/s Monsanto before the US Patent office. It was also pointed out that going by the earlier experience of opposing such a case in US courts, it would be a very costly proposition and, hence, it should be done with prior clearance by MoEF along with commitment of required funds. The members also approved the serving of notice to M/s Monsanto, India for violation of the BD Act based on legal opinion obtained in this regard.

Action: Secretary

25.6: To consider the proceedings of the 19th meeting of EC on Access and Benefit Sharing held on 18-19 June 2012

The recommendations made in the 19th meeting of the Expert Committee on ABS were placed in the Authority for approval. Dr. R.S. Rana, the Chairman of EC on ABS and Member, NBA, summarized the recommendations of the pertaining to each application. The Authority made the following observations/decisions:-

- It was suggested that critical cases that required in-depth scrutiny may be referred to legal and technical experts, if felt necessary by the Chairman, EC prior to its placing in the EC. The views of the expert may be considered by the EC while making its final recommendation.
- 2. With regard to application no. 509, where the EC had recorded that one of the species falls under threatened category, it was decided that the application may be approved with the exception of that particular species and again placed for reconsideration by the EC for that particular species. Further, the Authority advised the EC to explore options of sustainable utilization of the threatened species to facilitate future research on that species.
- 3. The Authority directed that application no. 508 should be placed again in the EC to reconsider the quantity of bioresource requested.
- 4. The EC was advised to include the reference for the threat status of the species under sl. no. 14 of the checklist while considering applications.
- 5. It was decided that one or two members of the Authority may be invited to the EC meeting as special invitee.
- 6. The Authority suggested for the reconstitution of the EC and suggested the inclusion of a legal and IP expert to better equip the EC to deal with applications that required techno-legal scrutiny.
- 7. While deliberating on the time lag caused by non-responsive SBBs, the Authority reiterated its earlier decision with regard to item 14.8 which

states that "....It was decided that a month time (30 days) for SBB/BMC may be given to provide consent, and if not received it shall be presumed that SBBs/BMCs have no objection in accessing the bioresources."

- 8. The Authority advised the EC to consider the following implications in an application prior to making recommendations:
 - > Validity period of the proposed research.
 - > Volume of the bioresource to be collected.
 - Conservation status of the species.
- 9. EC was also advised to record the basis on which decisions are taken.
- 10. It was decided that if required, the EC meeting may be convened on alternate months.
- 11. The Secretariat was advised to place only applications having complete details before the EC to give its recommendations.

Action: Secretary

25.7: Establishment of National Biodiversity Grid and Innovation Council for Biodiversity

The members were informed that the matter was discussed in the previous meeting as item 24.27.7 and it was suggested that the NBA may prepare a concept paper and place it for discussion in the next meeting. Chairman, NBA briefed on the proposal and the members discussed and deliberated the issue. Further, Dr. Darshan Shankar elaborated the proposed model for its implementation. He briefed that a meeting to discuss the available opportunities and technical inputs of the grid was called for by Dr. R. Chidambaram, PSA to PM. The Authority suggested that linkage of INBIF with the Biodiversity Grid may be brought out more clearly. It also appreciated the interest of Dr. Sam Pitroda, Chairperson, National Innovation Council in establishing the National Biodiversity Grid, but recognized that the decision to establish a National Innovation Council for Biodiversity is that of the office of

Dr. Sam Pitroda, and NBA and MoEF may have only a limited role in the matter.

Action: Secretary

25.8. Acquisition of Land for construction of premises for NBA

The matter was placed before the Authority to accord approval for the acquisition of land in Chemmancherry village, Kancheepuram District for the construction of a premise for NBA, with a proposal to seek Rs. 28 crores of budget allocation for the land acquisition from MoEF. The proposal was considered by the Authority and the members recommended the proposal.

Action: Secretary

25.9: Support to Biodiversity related activities and Programmes, including training programmes, workshops and others

The proposal of the NBA Secretariat to formalize a fixed amount of Rs. 50 Lakhs to provide support to NGOs, Govt. agencies, research institutions and colleges for biodiversity related activities was considered by the Authority. The matter was discussed and deliberated in detail. It was pointed out that the sharp increase in the number of such proposals in the current financial year is attributed to the ensuing CoP-11.

Action: Secretary

25.10: Providing Opportunities for Interns

A detailed note on providing opportunities for interns at NBA was presented to the members. The members on detailed analysis opined that NBA may be given flexibility for accepting interns. Further, the members expressed concern over accepting students as interns owing to confidentiality issues but agreed on accepting postgraduates, Ph.D scholars and junior officers from services. Finally, the Authority decided that interns may be taken in as consultants to assist NBA as per the provisions of Rule 12(vi) of the BD Rules, 2004.

Action: Secretary

25.11: Engagement with Premier Law Universities and Institutions

The proposal of NBA to forge a formal partnership with law universities and institutions to work on interpretation, explanation and analysis of legal issues related to biodiversity through collaborative actions was placed in the Authority for consideration. The members scrutinized the proposal in-depth and decided to permit the proposal. The members also suggested that in addition to legal consultant for NBA, NBA could consider empanelment of several legal consultants for its work.

Action: Secretary

25.12: Annual Accounts of NBA for the year 2011 – 12

The annual accounts of NBA for the year 2011-2012 were placed before the authority and the same was ratified.

25.13: Reconstitution / Constitution of Exp. Committees/Sub Committees

The Authority was informed of the reconstitution of Task Force/Expert committee for preparation of guidelines on creating structures, running administration and maintaining of accounts and other related matters pertaining to Biodiversity Management Committees.

The members were also informed of the constitution of the following subcommittees under the EC on medicinal plants:

Traditional Knowledge and Practices

- Inter-sectoral strategies for conservation, sustainable use and trade issues related to medicinal plants and
- Health and Livelihoods.

The Authority appreciated the efforts of NBA.

25.14: Second meeting of the Expert Committee on Agrobiodiversity

The members were apprised of the proceedings of the second meeting of the Expert Committee on Agrobiodiversity which was held on 20th June 2012 at NBA, Chennai under the chairmanship of Dr. E.A. Siddiq. It was also informed that the expert committee and subcommittees discussed and deliberated on the Terms of Reference presented to them. The members took note of the information.

25.15: National Consultation on Setting National Biodiversity Targets

The members were informed of the two day national consultation on setting of National Biodiversity Targets organized by NBA under the GEF project on "strengthening the enabling environment for biodiversity conservation and management in India - the Direct Access GEF trust Fund" held on July 30-31, 2012 at National Academy of Agricultural Sciences Complex (ICAR), Pusa, New Delhi. Further, it was intimated that nearly 50 resource persons / experts on biodiversity from various Ministries, academic institutions and NGOs participated in the consultation and contributed for drafting the national biodiversity target. The members acknowledged the information presented to them.

25.16: Meeting on exhibition and display of publications at COP-11 at Hyderabad on 4th August 2012

The members were apprised of the meeting organized by National Biodiversity Authority at Hyderabad on 4th August 2012 to discuss issues regarding exhibition and display of publications at COP-11. Further they were informed that the participants also visited the hall in Hitex where the exhibitions are proposed to be held. The Authority noted the information.

25.17: Visit of Malaysian Delegates

The members were briefed on the visit of Malaysian delegates to NBA. The information was noted by the Authority. The members suggested for the rephrasing of the final sentence as *"The purpose of the meeting was to infuse the experiences of NBA into Malaysia's legal framework on biodiversity."*

Action: Secretary

25.18: Inter-Ministerial meeting on the draft background notes for Panel discussions of the High Level Segment (HLS) of CoP-11

The members were informed of NBA's participation in the interministerial meeting convened to discuss the draft background notes for Panel discussions of the High Level Segment (HLS) of the eleventh Conference of Parties (CoP-11) to the Convention on Biological Diversity (CBD) held on 07.08.2012 in the Ministry of Environment and Forests (MoEF), under the chairmanship of Shri M.F.Farooqui, Special Secretary, MoEF. The members took note of the information.

25.19: Transfer of Gujarat Reserve Forests lands of 1840 ha for the development of Mundra Port Trust & Special Economic Zone

The members were updated on the developments of the Special Civil Application No: 10104/2010 filed against Inspector General of Forests, MoEF, New Delhi, challenging the transfer of Gujarat Reserve Forest land of 1840 ha for the development of Mundra Port Trust & Special Economic Zone. The information was noted by the members.

25.20: Alleged misappropriation of local brinjal varieties by M /s. Mahyco and others.

The members were updated on the latest developments in the alleged misappropriation of local Brinjal varieties by M/s Mahyco. The matter was discussed at length and the Authority directed that the legal opinion of Additional Solicitor General may be circulated to all members.

The Chairman, explained about the varied interpretations done in respect of the notification of MoEF *S.O. 2708(E)* dt. 17^{th} November 2008, with regard to authorizing certain category of persons in the NBA to act as complainants.

The Secretary, NBA, with the permission of the chair apprised the members that Chairperson, NBA may be included as a co-complainant considering the technicality of the case since the Secretary is not a scientist as mentioned in the said notification. However, the members decided against the inclusion of the Chairperson as a co-complainant owing to his stature as the Chief Executive Officer of NBA. Further, the Chairman expressed that he being a technical person will depose in the court as a witness to clarify the technical aspects as and when required and members agreed to this suggestion.

On careful consideration and detailed discussion the members arrived at the following decisions:-

- 1. The Secretary NBA was authorised to be the complainant on behalf of the NBA as per Section 15 and 16 of the BD Act and Rule 9(3) of the BD Rules.
- 2. The Members authorised the Secretary to take all measures required to deal with any contingency. To this, the Secretary responded that he may have to be given required delegation (being complainant number 1) as done in case of Central Investigation Agencies while prosecuting offenders for cognizable and non-bailable offences. Once case is filed, the Secretary being the complainant representing NBA, may have to take on the spot decisions in opposing bail etc. and therefore the Secretary may have to decide on appropriate course of action and also in respect of facing the media etc. Since there are no established procedures and delegation of powers (operational manual like in Forest/Police/CBI), the Authority may delegate the required powers to the Secretary to deal with such matters as and when required.
- 3. The Authority also decided to direct the Member Secretary, Karnataka SBB to act as a co-complainant as the area falls under his jurisdiction.
- 4. Nevertheless, the members directed the Secretariat to send a communication to MoEF to seek a clarification on the interpretation of the gazette notification authorizing an officer of the NBA not below the rank of "Scientist-C" to file a complaint under Section 61(a) of the BD Act.
- The Members agreed that the Secretary, NBA as the complainant no.1 in this case, would be provided with all technical, legal and administrative support as required.

The Secretary opined that in respect of criminal cases, the complainant generally, shall not wait for orders, opinions of his senior officers and derive certain prerogatives to deal with an emerging scenario and to take the case to logical conclusion with the help of legal counsel, subject to general superintendence of Chairman.

Action: Secretary

25.21: Statutory Audit for the year 2011 - 12

The audit on the accounts of NBA (Certification of Annual Accounts) for the year 2011 – 12 conducted by O/o The Principal Director of Audit (Scientific Departments) from 1.6.2012 – 7.6.2012 placed before the Authority was noted by the members.

25.22: Expert Committee on Medicinal Plants

The recommendation of the meeting of sub-committee on health and livelihood Security and R&D initiatives under the EC on medicinal plants placed in the Authority was noted by the members. Further, the Authority suggested for the inclusion of representatives of AYUSH and MoEF in the Committee as both are mandated to conserve medicinal plants.

Action: Secretary

25.23: Publication and Website Updation

The members were apprised that the NBA website was periodically updated in order to facilitate better collation of biodiversity data and information and to enhance visibility of the work done by NBA. The members acknowledged the efforts of NBA.

25.24. Update on COP-11

The members welcomed the updates on CoP-11 activities presented to them. The Authority decided that consolidated list of participants should be discussed with Shri. Hem Pande, Joint Secretary, MoEF for concurrence.

Action: Secretary

25.25. Finalization of BMC Report and Guidelines

The draft of the BMC report and guidelines were placed in the Authority for information. The Authority decided that the final BMC report cleared by the BMC Task Force should be placed in the Authority prior to finalisation.

Action: Secretary

25.26.1: To consider the Item proposed by Dr. R.S. Rana, Member - Linking and integrating NBA's new initiatives with on-going activities

The item proposed by Dr. Rana was considered by the members. The Authority made the following observations:-

- 1. The projects (CEBPOL, UNEP-GEF etc.) must build on the work of NBA in order to avoid repetition of work.
- As CEBPOL, UNEP-GEF project and EC-ABS are working on the same subject of ABS, a representative of the EC on ABS may be involved in the project and all ABS related activities to give their inputs.
- 3. The Authority directed that the work plan of the projects should be placed in the Authority for inputs.
- 4. The Secretariat was directed to ensure that linkage is provided between project and NBA.

In response, the Secretariat assured that the project team would make a presentation in the following Expert Committee meeting.

Action: Secretary

25.26.2: Case of clandestine transfer of *Jatropha* germplasm from Indira Gandhi Agricultural University (IGAU), Raipur to D-1 Oils Plc. Ltd., UK

The developments of the complaint under section 200 of Cr.PC., 1973, for clandestine transfer of *Jatropha* germplasm from Indira Gandhi

Agricultural University (IGAU), Raipur to the multinational company D-1 Oils Plc. Ltd., UK was placed in the Authority for guidance. The members decided that a formal letter may be written to the SBB asking the Member Secretary to be a complainant. Further, it was decided that a communication may be sent to the 3 members of the expert group asking them to honour their commitment to the expert committee and to depose in the court when needed.

Action: Secretary

25.26.3: To consider designation of FRLHT as National Repository u/s 39 of BD Act

The proposal from FRLHT to designate it as a National repository was placed in the Authority for consideration. The Authority recommended the designation and decided that a formal communication may be sent to MoEF for notification. The Authority suggested for the convening of a meeting of repositories to study their infrastructure and discuss on the ways and means to strengthen their functioning, sometime after CoP-11. Further, the members also suggested that roles and responsibilities of repositories should be hosted in the official website of NBA to enlighten all concerned stakeholders.

Action: Secretary

25.26.4: Declaration of National Bureau of Agriculturally Important Insects as a National repository u/s 39 of BD Act

The members were informed of the request of the National Bureau of Agriculturally Important Insects (NBAII) to be designated as a National repository u/s 39 of BD Act which was considered in the 23rd Authority meeting (Item no. 23.6.2) held on 28.02.2012. Further, it was divulged that the MoEF has designated the NBAII as the repository under Section 39 the Act

for agriculturally important insects, mites and spiders. The members noted the information.

25.26.5: Major Head of Expenditure of NBA for the period May – August 2012

The expenditure detail of NBA (May-August, 2012) was placed before the members. On consideration, the same was ratified by the Authority.

25.26.6: CoP-11 Grants-in-aid received from MoEF for the year 2012 – 13

The expenditure details under major head for CoP-11 activities were placed before the Authority and the same was ratified.

25.26.7: Proposal to establish a North East office for National Biodiversity Authority

The Authority was apprised of the consensus arrived at in the meeting for the establishment of a Regional Office at Shillong to record and conserve the rich biodiversity of the North Eastern Region. The members discussed the matter and decided that a composite proposal for establishment of the NE Office, Delhi office and any other regional office may be forwarded to the MoEF for inclusion in the EFC.

Action: Secretary

25.26.8: Memorandum for EFC for the period 2012-13 to 2016-17

The members were informed that the revised proposal as per the new format of Expenditure Finance Committee (EFC) and Standing Finance Committee (SFC) was sent to MoEF for consideration. The members ratified the item.

25.26.9: Liaison Office at Hyderabad for CoP-11

The members were apprised of the establishment of a liaison office in Hyderabad in view of CoP-11 activities. It was also informed that an office area has been taken on lease from 13.06.12 to 30.11.2012 @ Rs.32,000/- pm with 12.36% service tax as rent. The Authority ratified the same.

25.26.10: To consider the proceedings of the 20th meeting of EC on ABS

The proceedings of the 20th Meeting of EC on ABS held on 13th September 2012 were placed in the Authority for consideration and approval. The members assured that they would communicate their comments on the proceedings in a week's time. As no comments were received within the stipulated time, the proceedings are deemed as approved.

Action: Secretary

The meeting ended with vote of thanks to and from the Chair.

Sd/-Secretary National Biodiversity Authority sd/-Chairman National Biodiversity Authority

Official Members Participated

- 1. Dr. Balakrishna Pisupati, Chairman, NBA
- Shri Hem Pande, IAS., Joint Secretary, Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110003
- Dr. Renu Swarup, Advisor, Department of Biotechnology, CGO Complex, Block No. 2 Lodhi Road, New Delhi 110 003
- Dr. J.S. Sandhu, Asst. Director General (seeds), C-102 NASC Complex, DPSM, New Delhi- 12 (represented Dr. Swapan Kumar Dutta)
- Dr. Sherine Sonia Cubelio, Scientist-C, Centre for Marine Living Resources and Ecology (CMLRE), Ministry of Earth Science, GoI, Kochi-37 (represented Dr. P. Madeswaran)

Non-Official Members Participated

- Dr. Darshan Shankar, Advisor, FRLHT, Chairman, Institute of Ayurveda and Integrative Medicine (IAIM) 74/2, Jarakabande Kaval, Post Attur, Via Yelahanka, Bangalore –560 064.
- Dr.R.S.Rana Chairman, Bio-Link, D-43, Indraprastha Apartments, Sector 14, Rohini, New Delhi-110 025.
- Dr. UppeandraDhar,
 SBI Apartments, Near Eicher School, Sector 46, Faridabad-121 002, Haryana.

Secretary, NBA

Shri C. Achalender Reddy, I.F.S.

Annex-I

Special Invitee:

Dr. Sujata Arora, Director, Ministry of Environment and Forests, New Delhi.

LEAVE OF ABSENCE GRANTED TO OFFICIAL MEMBERS

- Dr. Bala Prasad IFS Chief Executive Officer, National Medicinal Plants Board, Department of AYUSH, Chandralok Building, 36 Janpath, New Delhi- 100 001
- Dr. Swapan Kumar Datta, Deputy Director General (Crop Science)Division of Crop Science, ICAR, KrishiBhavan, New Delhi-114 (represented by Dr. J.S. Sandhu)
- Shri. Arun K Bansal, IFS Addl. Director General of Forests (FC), Ministry of Environment & Forests, GOI, ParyavaranBhavan, CGO Complex, Lodhi Road, New Delhi – 110 003.
- Dr. B. Harigopal, Adviser, Dept. of Science & Technology, Technology Bhavan, New Mehrauli Road, New Delhi.
- Shri. Utpal Kumar Singh IAS., Joint Secretary (Plant Protection), Dept. of Agri. and Cooperation, Krishi Bhavan, New Delhi.
- Shri P. Madeswaran, Director, Ministry of Earth Science, Block -12, CGO Complex, Lodhi Road, New Delhi – 110003. (represented by Dr. Sherine Sonia Cubelio)
- Shri A. K. Srivastava, Director, Ministry of Tribal Affairs, Shastri Bhavan, New Delhi

LEAVE OF ABSENCE GRANTED TO NON-OFFICIAL MEMBERS

- Dr. S. Subramaniyan
 VGP, Golden Sea View,
 Part-II, 2nd Main Road, 5th Cross Street, Palavakkam, Chennai-600 041.
- 2. Dr. K.M. Bujarbaruah, Vice-Chancellor, Assam Agriculture University, Jorhat-785013.