



Ministry of Environment, Forests and
Climate Change



National Biodiversity Authority

Proceedings of the 60th Authority Meeting [Virtual]

Held on
28-08-2020

The 60th Authority meeting of the National Biodiversity Authority (NBA) was held on 28th August, 2020 in “virtual mode” under the Chairmanship of Dr. V.B. Mathur, Chairman, National Biodiversity Authority. The list of participants is placed as **Annexure-I.**

2. Dr. V.B. Mathur, Chairperson, NBA welcomed the Members and informed that the Ministry of Environment, Forest and Climate Change has constituted a Working Group headed by the Additional Secretary, MoEFCC Smt. B V Umadevi, IFS to examine the amendments proposed by the NBA on the BD Act, BD Rules and ABS Regulations. He also informed that comments were received from members on the amendments proposed to the BD Act which were referred to the Expert Committee for consideration. The Chairperson, NBA invited Shri. A.K.Goyal, Chairman of the Expert Committee and Shri. T.Rabikumar, Expert Member to present the views of the Committee on the comments received from Authority Members.

3. Chairperson, NBA informed that the first meeting of the Working Group was held on 25th August, 2020, in which the ABS Guidelines, 2020 were considered and certain suggestions were received from the members. He also invited the views of the members about the modalities that would be adopted for finalizing the amendments to Biological Diversity Act, 2002, Biological Diversity Rules, 2004 and ABS Guidelines, 2014. Dr. Sujit Bajpayee, Joint Secretary, MoEFCC suggested that after the Working Group comes to a consensus on the proposed amendments, it can be directly sent to the MoEF&CC for taking further necessary action.

4. Dr. M.M.Kutty informed that the recommendations of the Expert Committee were advisory in nature and the same needs to be deliberated and modified, if required, and approved by the Authority. Subsequently, the amendments proposed to the BD Act, 2002 & BD Rules, 2004 may be communicated to the MoEFCC for taking further action.

5. Dr. Jaya, MoTA agreed to the views of Dr. Kutty and stated that once the proposed amendments are sent from NBA to Ministry, then a decision to accept or make changes vests with the Ministry. She also requested for more time for MOTA to submit their comments on the BD Act, which was agreed by the Chairperson, NBA.

6. Dr. Sujit Bajapyyee informed that since the ABS Guidelines, 2014 were notified by NBA, the same procedure may be followed. He, however, also stated that as the Working Group is deliberating on the amendments to the ABS Guidelines 2020, the notification can be done by MoEF&CC.

Shri. Justin Mohan, Secretary, NBA presented the agenda items of the meeting.

60.01 Confirmation of the Proceedings of the 58th Authority meeting

The draft Proceedings of the 58th Authority meeting of the National Biodiversity Authority [virtual mode] held on 17th July, 2020 was circulated to the members for seeking their comments vide email dated 30th July, 2020. Dr. Unnat Pandit, Dr.J.L.N.Sastry, NMPB and Dr Alka Rao, IMTECH offered their comments. It was stated that comments offered by Dr. Unnat Pandit have been appropriately incorporated in the proceedings.

2. Members felt that observations made by Dr. Sastry and Dr. Alka Rao may be taken to the Working Group constituted by the MoEFCC for examining the proposed amendments to the BD Act and Rules. Dr. Jaya, MoTA requested NBA to send the finalised amendments of BD Rules to all the members to check whether the comments of the members were incorporated in the text. Thereafter, Authority confirmed the Proceedings of the 58th Authority meeting.

Decision:

1. The Authority confirmed the Proceedings of the 58th Authority meeting.
2. Final text of the amended BD Rules 2004 to be circulated to the Members to confirm whether their comments are incorporated, appropriately.

Action: Secretary, NBA.

60.02 To Consider the Proposed Draft Amendments to the Biological Diversity Act, 2002

Pursuant to the decision of the Authority, Expert Committee under the chairmanship of Shri. A. K. Goyal, IFS (*Retd.*) proposed amendments to the Biological Diversity Act 2002 and the matrix of the proposed amendments were circulated to the

members of the Authority seeking their comments on the draft, as per the decision of the 56th Authority meeting held on 23rd and 30th June, 2020.

2. Subsequently, NBA received comments on the draft amendments from the (1) Department of Biotechnology; (2) Department of Agriculture, Cooperation & Farmers Welfare; (3) Indian Council of Agricultural Research; (4) National Medicinal Plant Board; (5) Protection of Plant Varieties and Farmers' Rights Authority; (6) Dr Unnat Pandit and (7) Dr Alka Rao, IMTECH. These comments have been referred to the Expert Committee for their examination. The Expert Committee met on 25th and 26th August 2020 to examine the comments offered by the Members and provided their recommendations before the Authority.

3. Shri A.K.Goyal., Chair of the EC made a detailed presentation on the proposed amendments in the light of the comments offered by the Members, which are summarized below.

a) **Preamble:** Dr. Unnat Pandit offered comments on the recommendation of the EC for inclusion of the Nagoya Protocol on ABS in the preamble. EC justified the inclusion of Nagoya Protocol on ABS stating that BD Act came into force in 2003 which is over 11 years before the Nagoya Protocol (NP) came into force. India, being a party to the NP, is obligated to take measures to implement the same. Besides, NP seeks Parties to implement the Protocol subject to their domestic access and benefit-sharing legislation or regulatory requirements. Further, India has already reported to the CBD Secretariat that NP is also being implemented through provisions of the BD Act, 2002 and BD Rules, 2004. Considering these in view, Nagoya Protocol has been referred in the Act for giving effect to the international commitments made by India to the CBD. After deliberations, Members agreed to the modifications suggested by EC.

b) Dr. Unnat Pandit had also sought for clarity for the term Biological Resources (BR) Vs. Genetic Resources (GR) used in the Nagoya Protocol (NP). EC made its recommendations that the term "biological resources" is wider in scope than "genetic resources". Besides, Parties to the Convention and Nagoya Protocol govern their BR/GR as per their own domestic legislations within the overall

scope of CBD and Protocol. This does not in any way infringe upon the provisions of NP. Members agreed to the modifications proposed by EC.

- c) **Short title, extent and commencement:** With regard to the deletion of the *proviso* clause, EC recommended that when a new legislation is enacted, a provision will be provided to ensure that the corresponding Rules are in place before a particular provision of the Act comes into effect. Hence, different dates are appointed for different provisions of the Act. In the case of amendments to an Act, this may not be the case and hence not included. This is also a subject matter of Ministry of Law and Justice and they would be in a better position to decide its inclusion or deletion. The EC considered it fit, to delete and hence recommended accordingly. The Authority agreed to the proposed amendments by EC.
- d) **Definition of access:** With regard to the comments of the ICAR and Dr. Unnat Pandit, EC recommended that the Act regulates “access” to biological resources. The term “access” plays a vital role in the implementation of the Act. Hence, it was considered necessary to define the term “access” for providing better clarity to the stakeholders. Secondly, the term “occurring in” has already been envisaged in the section 3, 4 and 19 which are regulatory provisions of the Act. If the word “occurring in” is deleted, the regulatory scope of the Act becomes very limited and thereby defeats the objectives of the Act. The Authority agreed to include the definition for ‘access’ in the proposed amendments by EC.
- e) **“Benefit claimers”**- In respect of comments of Dr. Unnat Pandit, EC gave a justification stating that “Creators may be ancestors and the holders may be their descendants to whom the knowledge has been passed over through generations”. After having deliberation, members agreed to the proposed amendments by EC.
- f) **Definition of Biological resources** - With regard to the comment of Dr. Alka Rao&DBT viz “Information in any form” needs to be deleted, EC recommended that DSI is an “intangible element” and having genetic information which has

potential value existing in the biological resources. Further, it was also stated that “information in any form” has been stated expressly to include associated or traditional or contemporary knowledge in any form including digital sequence information. Additionally, the word ‘information’ already existing in the provisions of the BD Act under sections 2(a), 5(1) and 6 (1). Members agreed to the proposal of EC.

- g) **Definition of Biological resources-** With regard to the suggestion of the DBT viz “*Waste material*” from any biological resource should not be included”, EC recommended that Act covers all biological resources and their by-products. A waste of a biological resource may form raw material for production of another product. The resources termed as ‘waste’ may still have their actual use or potential use for humanity. Utilisation of residues of agricultural crops and municipal wastes for finding solutions to various environment issues are encouraged in the proposed ABS Regulations by having minimal benefit sharing component. Members agreed to the response put forth by the EC.
- h) **Bio survey and bio utilization-** Dr. Unnat Pandit requested an explanation for the deletion of the term “Bio-utilization. The EC recommended that Bio-survey has been delinked from bio-utilization as the latter is closely linked to research activities in a laboratory whereas bio-survey is limited to field studies. The authority agreed to the changes proposed by the EC.
- i) **Commercial utilization-** With regard to the comments on the Definition of Commercial utilization, EC recommended that the term ‘commercial utilization’ has been simplified as it was found to be too complicated due to the examples used after ‘such as’ that often led to confusion. Also, the terms “conventional breeding or traditional practices” have been deleted as companies, have been claiming to use conventional breeding methods and thereby trying to unfairly side-stepping the ABS obligations. The term has been removed, without affecting the interests of farmers and local communities. Members agreed to the modifications proposed by EC.

- j) While discussing the definition of Farmer's variety, Dr. Gunasekaran, DAC&FW mentioned that the definitions for Farmer's varieties, folk varieties are already given in the PPVFRA and hence this definition may cause confusion to stakeholders. EC stated that the definitions of 'folk variety' and 'landrace' provided under "Explanation" under section 41 have been brought under section 2 "Definitions" as both the NBA and SBBs have responsibilities for taking measures for their conservation and sustainable use. Secretary, NBA explained that in case of any dispute on the definitions, the PPVFR Act will prevail over the BD Act which is also explicitly given under section 59 of the BD Act. Members agreed to the changes proposed by EC.
- k) **Definition of Research:** With regard to the comment of the DAC&FW *to exempt testing using biological resources from the purview of Act*, EC recommended that the proposed amendments to the ABS regulations already provided exemption for accessing biological resources used as a testing material / tool for research or for statutory testing, from taking approval of NBA/SBB. Members agreed to the changes proposed by EC.
- l) **Value Added Products:** The definition of the term "value added products" has been deleted as this has been creating confusion and it would be better to delete the same as in this modern era of latest technological advancements there may not be any product which may contain portions or extracts of plants and animals which cannot be recognized or physically separated. This term has been removed from the relevant provision, section 2(c), as well. After having deliberation, Authority agreed to the deletion proposed by EC.
- m) **Section 3:** With regard to the comments of the Members on the section 3 of the BD Act *viz., accessing biological resources for commercial utilisation alone would need prior approval*; EC recommended that major modification has been proposed in the section requiring only registration for research for section 3(2) entities instead of obtaining prior approval from NBA. This has been proposed to boost research activities and to ensure ease of doing business. Some of the members proposed to consider only the companies having more than 51% foreign share capital to take approval of NBA for undertaking commercial

activities. This would be in line of the Companies Act. The EC informed the members that India has sovereign rights over its biological resources and therefore has the right to regulate the same as part of the commitment given by 196 Parties including India in the CBD and the Nagoya Protocol. The BD Act regulates different entities including individuals, traders, researchers, institutions, partnership firms, etc., apart from companies. The objectives for enacting the Companies Act and those of the BD Act are different and hence categorization of entities on the lines of the Companies Act is not feasible and will not serve the purpose. Irrespective of whether an entity falls under section 3(2) or not, the ABS obligations remain the same and it is in the interest of the section 3(2) entities to have their approvals accorded by the NBA through a single window clearance for ease of doing business. Shri. A.K. Goyal also explained that the proposed ABS Regulations, 2020 provides that in the event of the applicant obtaining biological resource(s) from more than one SBB, the applicant shall apply either directly to each SBB concerned or apply to the SBB where the manufacturing unit is located. Members deliberated the recommendations of the EC and agreed to the same.

- n) **Section 4 (Transfer of results of research):** With regard to the comments of DBT, EC recommended that regulating the transfer of results of research are not restrictions, they are only facilitating the transfer of research results. The third and important objective of the Act is to safeguard the interests of the local communities including the tribal communities who have been conserving the biological resources and associated knowledge about their usage. The nominal benefit sharing amount so collected, out of the profits earned through commercialisation is meant only for the socio-economic development of the areas from where biological resources and its associated knowledge have been accessed, compensating the individual benefit claimers if so identified and for conservation of the resources. Shri. A.K. Goyal also referred to the letter written by the Hon'ble MEFCC, Shri Prakash Javadekar, to Shri Shripad Naik, Hon'ble Minister for AYUSH on why AYUSH industry cannot be exempted from the purview of the BD Act. After deliberating the modifications, members agreed to the changes proposed by EC.

- o) With regard to the comments given by Dr. Alka Rao to replace “associated traditional and contemporary knowledge” instead of “Associated knowledge”, EC recommended that “Associated knowledge” is a generic term which includes traditional knowledge, contemporary knowledge and any other information in any form relating to biological resources. This is also to bring uniformity in the text of various sections as this is referred by names like knowledge associated thereto, knowledge relating thereto, information relating thereto and information on a biological resource. Members agreed to the modifications proposed by the EC.
- p) **Section 5 (collaborative research projects)**: The ICAR proposed for inclusion of an exception for reciprocal exchange of germplasm not covered under Annex I crops of the ITPGRFA, under section 5 of the Act. EC recommended that as per section 3, one has to register with NBA and access the biological resources for research & bio survey. As per the proposed modifications, any person including foreigner can just register with NBA and access the biological resources for conducting research/bio-survey. The proposed modification is a simpler way to compare seeking approval of the Ministry/ Department for the collaborative research projects. Hence, this modification would facilitate the research including reciprocal exchange of germplasm. However, concerns of ICAR may be further addressed while issuing of revised guidelines for international collaborative research projects under section 5(3). Members agreed to the EC’s proposal.
- q) **Section 6(1)** -Based on the suggestion given by Dr. Unnat Pandit, the EC has made a modification in the title of the Section 6(1) i.e. “*Approval of National Biodiversity Authority for obtaining intellectual property rights*”. Shri. A.K. Goyal stated that an application filed for intellectual property rights on an invention, based on the research on the biological resources or information thereof, will alone need the approval of NBA. In section 6(1), the EC offered its justifications for the comments given by Dr. Alka Rao stating that the provisions of the Act foresee the benefit sharing component in terms of monetary or non-monetary or both. In case where any community knowledge is involved in the patent, non-monetary benefit sharing components will be fixed viz; the joint ownership of

patent. It cannot be achieved in the event of have only registration. Shri. A.K. Goyal mentioned that the BD Act is only for obtaining no objection certificate for applying patents. Members agreed to the EC's proposal.

- r) With regard to the comments of the DBT on section 6(2), Shri. A.K. Goyal stated that for obtaining any patent outside India on research undertaken on any biological resource occurring in or obtained from India, the applicant, who is an Indian resident, has to get approval on Form-25, or he has to file an application for patent in India and wait for six weeks before filing an application for patent outside India as per section 39 of the Patent Act. Ideally, the applicant has to apply for prior approval to NBA before obtaining patent. However, if they fail to obtain prior approval, this provision enables the applicants to take advantage of section 56A. This is the enabling provision to the defaulters. Members agreed to the changes proposed.
- s) **Section 6(3)** – With regard to the comments of the DAC&FW, it was recommended that a general reference of Section 18 (h) in PPVFR Act has been made in the text of this section about their duties. It also stated that this provision is not applicable for filing an application with the PPVFRA for protection of rights over plant varieties by any person. However, if any section 3(2) entity is developing varieties by using the biological resources occurring in India which is registered with PPVFRA, such entity is required to seek prior approval of NBA under section 3 of the Act. Authority agreed to the modifications proposed by EC.
- t) Based on the comment given by Dr. Alka Rao on Section 19(2), the EC justified the amendment by stating that the provisions of the Act foresee the benefit sharing component in terms of monetary or non-monetary or both. In case where any community knowledge is involved in the patent, non-monetary benefit sharing components will be fixed like joint ownership of patent. This kind of non-monetary benefits should be agreed before grant of patent and this cannot be ensured for registrations. Authority agreed to the modifications proposed by EC.

- u) Shri. A.K. Goyal stated that the amendment made in Section 20 provides for only regulating transfer of results of research on biological resources to section 3(2) person for monetary consideration or otherwise. The activity to transfer the biological resource has been proposed for deletion in view of proposed registration for research under section 3(1A). Members discussed the issue and agreed to the recommendations of the EC. Besides, the EC agreed to the comments given by Dr. Alka Rao and made appropriate modifications in the Section 20(4) and Section 24 that NBA/SBB shall place in public domain the details of every approval granted or rejected. Authority agreed to the modifications proposed by EC.

- v) AYUSH industry to be considered as benefit claimers was proposed by the NMPB. In this connection, Shri A.K.Goyal explained that EC is of the view that the benefit claimers can be individuals or local communities having the associated knowledge and conserving the biological resources, AYUSH industry is utilising the biological resources for commercial gains and hence AYUSH industry cannot be a benefit claimer as suggested by NMPB. Members agreed to the recommendations of the EC.

- w) Dr. T.R. Sharma, DDG, ICAR suggested that domestic livestock and poultry to be included in the threatened species along with the crops in Section 38. With regard to suggestion of Dr. Alka Rao, EC recommended that repositories are meant for safe custody of the voucher specimen and they cannot be delegated with regulatory powers of NBA. Members agreed to the recommendations of the EC.

- x) **Section 40:** With regard to the suggestions of DBT and NMPB, Shri. A K. Goyal mentioned that the issue of including another 200 items of AYUSH may be considered by the expert committee constituted on the subject concerned while augmenting the list of NTACs. Dr. T.R. Sharma, DDG, ICAR commented that milk, oil and honey should be included under the NTC list and they are exempted from the purview of the BD Act. Secretary, NBA requested members to submit a proposal for consideration to be included under NTAC. Dr. T.R.

Sharma, DDG, ICAR also suggested that live ornamental fishes that are grown in the wild have to be regulated as they are being traded extensively.

- y) **Section 41(3)** - Dr. Alka Rao commented that the NBA may authorize designated repositories to collect fees on behalf of NBA from any person for accessing any biological resource for commercial purposes. It was informed that power of collection fee has been vested only in BMCs representing the local communities and cannot be delegated to anyone else. The collection being made is not on behalf of NBA or SBB, this is their exclusive power. Authority agreed to the recommendations of the EC
- z) EC made its recommendations on the comments of the NMPB to scrap Sections 55, 56, 59 deal with offences and punishment. The compulsions of the law cannot be effective without strict enforcement of penal provisions and mentioned that Section 58 is only to serve as deterrent. EC responded to the comment given by NMPB on Section 59 that the subject matter of biodiversity predominantly relates to forests or wildlife. Thus, it may be more appropriate to have forests or wild life law alone. If it is expanded to all other laws in the country, it would cause hindrance to attain the objectives of the Act. EC does not agree to the proposal. After deliberating the issue, Authority agreed to the recommendations of the EC.
4. Chairperson, NBA invited comments from members on the recommendations presented by the Chair of the EC. Dr.R.Jaya, Joint Secretary, MoTA stated that traditional knowledge should be specified in the proposed amendments to the BD Act as decided in the proposed amendments to the BD Rules. She also mentioned that she requires more clarity on the functioning of NBA and SBB. She informed that the term associated traditional and contemporary knowledge is too wide. She sought for more time to submit comments of MOTA, in writing, on the proposed amendments to the BD Act.
5. Chairperson, NBA informed that upon receipt of comments from the MoTA, it will be referred to the Expert Committee for consideration and its recommendations. The comments of MOTA along with recommendation of the EC will be brought to the Authority for deliberations and consideration.

6. Dr. Kutty mentioned that proposed section 18(1) & section 64 are contradicting each other regarding the consultation with the Central Government in case of Section 18(1) and “previous approval of the Central Government” in the case of Section 64. He suggested that section 18(1) status quo may be maintained. Shri A.K. Goyal stated that NBA can have regulations in consultation with the Central Government as per section 21(4) which has been deleted and the same has been incorporated in Section 18(1). After deliberations, members agreed to the modifications subject to replacing the phrase “**with approval**” instead of “in consultation” in section 18(1).

7. Chairperson, NBA informed that tenure of the Expert Committee under the Chairmanship of Shri. A. K. Goyal, IFS (Retd.) to examine BD Act 2002 & BD Rules, 2004; develop user Country Measures under Nagoya Protocol on ABS and development of sector specific SOPs is expiring on 30th August, 2020. He informed that as there are some pending issues, tenure of the EC may be extended till 31st December 2020.

8. The Chairperson, NBA also stated that the comments that would be given by MoTA on the proposed amendments to the BD Act will only be considered and deliberated in the next Authority meeting.

Decision:

1. Members approved the draft amendments to the BD Act, 2002, *in principle* and the finalized matrix on proposed amendments to the BD Act is appended as **Annexure-II**.
2. Authority decided that comments offered by MoTA on the draft amendments to the Biological Diversity Act, 2002 will be referred to the Expert Committee constituted for this purpose for examination and to make recommendations thereof.
3. Members also decided that recommendations of the Expert Committee on the comments of MoTA may alone be discussed in the next meeting of the Authority and the proposed amendments to the BD Act would be finalized.

Action: Secretary, NBA

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

Annexure -1

List of Participants

S.no	Official Members
1	Dr V.B. Mathur , Chairman, NBA
2	Dr. Sujit Kumar Bajpayee , Joint Secretary, Ministry of Environment, Forest and Climate Change, New Delhi
3	Dr.J.L.N. Shastry Chief Executive Officer, National Medicinal Plant Board, New Delhi
4	Mrs R. Jaya, IAS , Joint Secretary, Ministry of tribal Affairs, New Delhi
5	Dr. Manoj Kumar Modi , Scientist 'E', Department of Biotechnology, New Delhi <i>(Represented Dr.Aslam, Advisor, DBT)</i>
6	Dr. Tilak Raj Sharma , Deputy Director General (Crop Science), Division of Crop Science, New Delhi 110 001.
7	Shri Ashwani Kumar, IAS. , Joint Secretary (Seeds), Department of Agriculture and Cooperation, New Delhi
8	Dr. Atmanand , Director, National Institute of Ocean Technology Ministry of Earth Sciences
9	Dr. Gunasekaran , Assistant Commissioner (Seeds), Ministry of Agriculture & Farmers Welfare, Department of Agriculture, Cooperation & Farmers Welfare Shastri Bhawan, New Delhi-110003 <i>(Representing the Joint Secretary (Seeds), DAC&FW)</i>
	Non-official Members
10	Dr. M.M. Kutty, IAS (Retd.) , 14/6, Officers Flat, Tilak Marg, New Delhi.
11	Shri M.S. Chaitra , Director and Fellow, Aarohi Research Bangalore-560076, Karnataka
	Secretary to the Authority
12	Shri. J. Justin Mohan, IFS , Secretary, National Biodiversity Authority, Chennai –600 113
	Special Invitees
13	Shri A.K.Goyal IFS (Retd) , Former Special Secretary, Ministry of Panchayati Raj, New Delhi. <i>(Chair of the Expert committee to examine BD Act, 2002, BD Rules, 2004, etc.)</i>
14	Shri T. Rabikumar IFS , Principal Chief Conservator of Forests, Office of the Pr. Chief Conservator of Forests, Forest Complex, Sheikh Bagh, Near Lal Chowk, Srinagar, Jammu & Kashmir. <i>(Member of the Expert committee to examine BD Act, 2002, BD Rules, 2004, etc.)</i>