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# NATIONAL BIODIVERSITY AUTHORITY

## PROCEEDINGS OF THE 27TH AUTHORITY MEETING

**24 - 25 JANUARY 2014**

**Venue**

**Conference Hall,**
**National Biodiversity Authority,**
**5th Floor, TICEL Biopark,**
**CSIR Road, Taramani,Chennai – 600 113**
**Tel: 044 2254 2777/1074**

# Proceedings of the 27th Authority Meeting of National Biodiversity Authority

Date: 24 & 25th January 2014
Venue: Conference Hall, 5th Floor, NBA

Twenty Seventh Meeting of the National Biodiversity Authority (NBA)was held on 24th and 25th January 2014 at NBA, Chennai under the Chairmanship of Dr. Balakrishna Pisupati, Chairman, NBA to consider the agenda items circulated to the Members on 11thJanuary 2014 by email. The list of members who attended the meeting is placed as **Annex-I**.

2. At the outset, Shri C. Achalender Reddy, IFS Secretary, NBA, welcomed the members and gave a brief outline of the day's agenda. Dr. Balakrishna Pisupati, Chairman, NBA while extending warm welcome to all the members, informed that some of the agenda items proposed by few non-official members could not be incorporated in the present agenda due to voluminous items listed by the Secretariat for discussion.

3. In his opening remarks, Dr.R.S.Rana, Member recalled his close association with NBA since February, 2008 as Chairman of NBA's Expert Committee on ABS. He added that this is his second term as a non-official member of the Authority. He drew attention to the proceedings of the 13th Authority Meeting held in 2009, in which some priorities with timelines were agreed upon but they were replaced by other activities. Members were neither made to involve in these replaced activities nor informed their progress. Authority's meeting was not convened over a period of one year. It appears that financial powers on certain commitments and engaging of consultants have been assumed by the Chairman without delegation of appropriate powers by the Authority. As directed by the MoEF, a special Authority Meeting was called on 17th December 2013 but its proceedings were not placed before the Authority. Similarly, there are several litigations pending before the Hon'ble National Green Tribunal involving the Authority. Details of which were not brought to the notice of the members. Whenever members approached the Secretary, NBA for some information, they were informed that it would be provided on approval of the

Chairman; but nothing had happened there after. As such, it implies that the Secretary to the Authority was not free in providing information requested by the members. An Expert Committee with ten members was constituted by the Authority in October 2010 under his(Dr. R.S. Rana) Chairmanship to look into the problems faced by large number of applicants in signing of the ABS agreements and to revise the contents of the agreements suitably. Though, the committee submitted its final report in June 2011, it has not been placed before the Authority till now. Finally, he concluded by requesting the Chairman to pay proper attention to all these matters to facilitate smooth functioning.

4. Dr.S.Subramaniyan, Member, in his opening remarks expressed that his agenda sent to Chairman, NBA relating to guidelines and procedure adopted for engaging consultants, details of consultants left without completing the tasks assigned to them, details of tours undertaken by Chairman and follow up action taken by him, information about seminars/conferences conduct etc., were not included for discussions before the Authority. On hearing the remarks made by Dr.Subramaniyan, the Chairman in his reply informed that detailed replies for the queries raised by the member will be given separately.

5. The members expressed their concern for the undue delay in convening the Authority meeting by the NBA Secretariat. In his reply, the Chairman, NBA informed that in the absence of the nomination of non-official members, the NBA could not convene the Authority meetings. However, the notification of non official members has since been issued by the MoEF, regular meetings of the Authority will hence forth be conducted regularly as per the Act.

6. The MoEF representatives Dr.J.R.Bhatt, Advisor and Dr.Sujata Arora, Director pointed out that in the absence of non-official members, Authority Meeting could have been convened by ensuring proper quorum as provided in the BD Act, 2002. Further, they added that legal opinion should have been obtained to hold the meetings in the absence of non-official members.

7. The Chairman, in his reply assured to attend all the points raised by the members promptly and also to hold the Authority meetings regularly as provided under the BD Act.

8.. Members discussed an issue that the NBA secretariat is placing agenda items under three category viz., Items for consideration, for ratification and for information. It was decided that all the items will be considered as provisional and it will be open for discussion, review and adoption.

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

## 27.01: (A): Confirmation of Proceedings of the 26th Authority Meeting

The members were informed that the proceedings of the 26th Authority meeting were circulated to the members on 03.02.2013 by email and hard copy through speed post. Dr.Sujata Arora, Director, MoEF pointed out that some of the comments of the Ministry on the draft proceedings of 25th and 26th Authority have not been reflected in the final proceedings and requested to incorporate those points in the respective proceedings. Further, she expressed her concern that there is no response from the Secretary, NBA regarding non-incorporation of comments in the proceedings, despite reminders. Members directed the Secretary, NBA to prepare Proceedings as per discussion and decision taken in the meeting. It was also reiterated by the MoEF that new proposals which are having an element of policy directive and financial implications should be brought to the notice of the MoEF prior to placing in the Authority. The Chairman agreed to make necessary corrections in the previous proceedings and circulate to the members for confirmation.

Action: Secretary, NBA

## 27.01: (B) Confirmation of Proceedings of the Special Authority Meeting

Members pointed out that the Proceedings of the Special Authority Meeting have not been placed in the present meeting for confirmation. Accordingly, Members agreed to take up the proceedings of the Special Authority Meeting under 27.01 as sub-division 'B' and consider the proceedings. MoEF pointed out that their comments have not been incorporated and requested to incorporate the same. Dr.R.S.Rana has also mentioned that his comments have not been incorporated in the draft proceedings. The Chairman agreed to make necessary inclusions and to circulate the proceedings to the members for confirmation.

Action: Secretary, NBA

## 27.02: 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:-

1) With regard to item 26.2.8, Shri.Jitendra Sharma, Member informed that the inclusion of many members from National Medicinal Plants Board, MoHF&W in the reconstituted EC on Medicinal Plants without consulting this department has come to the notice of the Secretary (AYUSH) and it has been desired that representative from organizations of Department of AYUSH should be nominated to the Committees of NBA only after the approval of competent authority of the Department.

2) With regard to item 26.2.9 regarding establishment of North Eastern Regional Office of National Biodiversity, the representatives of MoEF reiterated their comments in the 25th Authority 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. They expressed their concern that since the MOEF has not received the

proposal from NBA, the same could not be included in the EFC. In response, the Chairman, NBA suggested to consider the proposal under the budget provided under the head strengthening of SBBs. MOEF informed that this proposal needs administrative approval in first place and subsequently for financial approval.

3) With regard to item No.26.3, the representative of MoEF informed that the MOEF comments have not been included in the proceedings. It was reiterated that this is also a policy matter that transcends another Ministry as well, and may therefore require inter-ministerial consultations. The NBA can't accede to such proposals, but only make suggestions / recommendations. NBA on its part could have sought clarifications from PPVFRA regarding details on support and funding for SBBs by them. The members agreed to the same and directed Secretariat to refer this matter to MOEF for further course of action.

4) With regard to item 26.18.3, on Zero draft of the National strategy for the management of medicinal plants – An Inter-Sectoral perspective, it was informed that this draft has been prepared by Dr.Darshan Shankar, FRLHT. It was also informed that the draft is under consideration by the AYUSH, as the Cabinet assigned the inter-sectoral medicinal plants policy related issues to them. Further, he pointed out that this matter may not come under the purview of NBA. In response, the Chairman, NBA informed that this issue will be referred to Dr.D.Shankar for clarification.

Action: Secretary, NBA

## 27.03: To consider and approve the draft access and benefit sharing guidelines

The Chairman, NBA informed the Members that the draft guidelines placed in the agenda was developed based on different level of consultations at different stages such as calling comments from public, Expert committee on ABS, State Biodiversity Boards and Members of the Authority. With this background, Chairman, NBA also informed that the ABS guidelines required to be finalized at the earliest in

view of certain litigations before the Hon'ble National Green Tribunal (NGT). Therefore, he requested the Members to provide their inputs for finalizing the draft for forwarding the same to MoEF for notification. The summary of discussion on this item is as follows:-

1. The draft guidelines don't have adequate information to users groups.
2. A suggestion was also made to form an expert group to study the guidelines and to improve the same in a time bound manner.
3. It was also suggested by a Member that the benefit sharing formula may be fixed on net profit or on the gross value of the bioresource used.
4. Dr.R.S.Rana responded that in the past eight years, EC never fixed benefit sharing on the net profit, but only on the ex-factory sale price of the product.
5. Members felt that the subject matter is a complex in nature and it has to be done in an evolutionary mode.
6. Members suggested secretariat to use the templates developed by the EC for further revision of the present draft.
7. There will be one set of guidelines for both Access and Benefit sharing.
8. To work out the formula for benefit sharing for this purpose, including the template and their sharing by the NBA with the SBBs and BMCs. The Members agreed that the SBBs & BMCs have their role in fair and equitable benefit sharing and it may be appropriately incorporated in the guidelines.
9. Guidelines should be user friendly i.e., the language should be simple for the use of different stakeholders.
10. The revisions would include the information on Forms, fees, penalties and procedure for appeal.

11. Guidelines should clarify the difference between access fee as per section 41(3) and the ABS components.

12. NBA team led by the Chairman, NBA will develop the revised version of the draft.

13. NBA will seek the assistance of Hon'ble non-official expert members of the Authority Dr.R.S.Rana and Prof. M.K.Ramesh in finalizing the above.

14. The revised draft guidelines will be shared with the SBBs and Members of the Authority before presenting it to the next meeting of the Authority, along with a matrix analyzing the comments/suggestions received from SBBs and Members.

15. It is also requested the members to provide the operational guidelines to define the role of SBBs in the Benefit Sharing mechanism and also in deciding about various elements in it.

In connection with NGT matter, the MoEF expressed their concern that the NBA through their advocate communicated false information to the Hon'ble NGT, Bhopal, that the draft ABS guidelines prepared by NBA had been sent to MoEF for approval, implying that these are pending with MoEF; whereas, it has been kept pending with NBA. In this connection, it was agreed by the Secretariat to rectify the factually incorrect information provided to the Hon'ble NGT, Bhopal. Thereafter, Members directed secretariat to send a draft to MOEF, seeking extension of time from NGT for submission of ABS guidelines, well in time before the next hearing i.e., on 21st February 2014. Further, it was agreed to circulate the latest order of NGT, Bhopal to Members.

Action: Secretary, NBA

**27.04: To consider and approve the recommendation of EC on ABS on 'NOC' for export of animal and animal origin materials**

The Secretary, NBA while explaining the background of the issue to the Members, he informed that the Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture sought for clarification, whether export of germplasm in the form of semen, embryos and live animals such as cattle, buffaloes, indigenous horses etc., for the purpose of breeding are exempt as per Section 2(f) of the BD Act. Further, based on the clarification provided by the NBAGR i.e., 'artificial insemination' is now well established reproductive technology and extensively used in cattle and buffalo breeding and can be considered as conventional system of breeding", and the EC on ABS recommended to use the clarification of NBAGR as guidelines. Accordingly, NBA sent communication to DGFT that the "artificial insemination" does not fall within the scope of BD Act 2002.

3. The Members discussed this issue at length and concluded that for export of germplasm for artificial insemination in a foreign country cannot be construed as conventional breeding as clarified by the NBAGR. This has to be seen from statutory angle and cannot rely on the opinion given by the NBAGR.

4. Further, Members expressed their concern about the stand taken by the Secretariat informing the DGFT that the artificial insemination, being conventional system of breeding, doesn't fall within the scope of BD Act, without discussing the issue in the Authority. Accordingly, they directed the Secretariat to revoke the earlier stand and intimate the same to the DGFT.

Action: Secretary, NBA

**27.05: Sending/Sharing of Biological Resources for Non-Commercial Research and Related Activities and for Provision of Access to Indian Biological Resources for emergency purposes- process**

There are certain cases where Indians for higher studies or research take biological resources to Universities or laboratories abroad for study and research. They are not covered under Section 3 qualification of a NRI *per se*. However, the

biological resource is being taken outside India and is being researched upon by the Indian, involving foreign nationals or entities. Keeping this in view, a draft application form for Indians, developed by the NBA Secretariat with the help of EC on ABS was placed before the Members for consideration. The Members after detailed discussion reviewed and approved the draft application form with certain modifications. Considering the urgency to finalize this format for according approvals to such applicants, the members directed Secretariat to make use this Form after duly notified by the MoEF.

Action: Secretary, NBA

## 27.06: Post-facto approval process

The 23rd EC on ABS which examined applications requiring post-facto approval, recommended that the Authority may evolve guidelines for handling such cases. The matter was taken up with MoEF which advised NBA to undertake technical and legal consultations and interpretation of the law and come out with a solution and submit a proposal to the Ministry. Accordingly, Dr.Sudhir Krishnaswami, Legal Consultant, NBA gave his legal opinion on dealing with issues of *post facto* approval.

2. The item was discussed in detail by the Members and directed secretariat to initiate legal proceedings against the applicants who violated the provisions of the BD Act, 2002. Further, members opined that there is an urgent need for amending the relevant provisions of the Act with respect to *post facto* approval and other issues as needed. It was also directed the Secretariat to compile all such proposals and submit the same to the MOEF which may justify to go for an amendment of the Act.

Action: Secretary, NBA

**27.08: To consider and approve the draft notifications on officers who are authorized to file complaints under Section 61 (a) of BD Act, 2002**

At present officers at the level of Scientist 'C' and above and Forest Range Officers and above are authorized to file complaints under Section 61(a) of BD Act, 2002 vide MoEF Notifications dated 17th November, 2008 and 7th January, 2009 respectively. In view of ever increasing offences under BD Act, 2002 and BD Rules, 2004 and considering the need to develop guidelines, formats and suitable procedures to deal with such cases, an Expert Committee constituted under the Chairmanship of Mr.R.K. Upadhyay, IFS recommended to move a proposal to MoEF for authorizing Police Officer not below the rank of Inspector of Police, Customs Officer (not below the rank of Inspector of Customs) to file complaints under BD Act, 2002 and BD Rules, 2004. The members after detailed discussion on this matter directed the Secretariat to circulate a background note on this matter to all the members to enable them to have further discussions in the next meeting.

**Action: Secretary, NBA**

**27.09: To consider the proposal for establishing National Biodiversity Garden and Traditional Knowledge Centre in Munnar, Kerala**

The members had a in depth discussion on the proposal of establishing National Biodiversity Garden and Traditional Knowledge Centre in Munnar, Kerala submitted by the Kerala State Biodiversity Board and the recommendations of the Chairman to provide Rupees Five crores during the current financial year. The members expressed that the Secretariat should have invited similar proposals from other State Biodiversity Boards also and such proposals should have also been placed before the committee under Secretariat for recommendation. Further to the query, Chairman informed that the Secretariat doesn't have any guidelines to fund such proposals and the same was discussed in the 9th Annual SBB meet held on 20-21 January 2014. The criteria for considering the proposals have been developed in consultation with the SBBs.

2. On being heard, Members directed the secretariat to prepare comprehensive guidelines for transparent consideration of proposals for financial assistance in the context of Core and non-Core works of NBA.

3. In view of the above, it was decided that the proposal submitted by the Kerala State Biodiversity Board needs detailed discussion and deliberations. Therefore, they directed secretariat to give a background note on the proposal and submit the item in the next meeting.

Action: Secretary, NBA

## 27.10: Draft Guidelines for Designated National Repositories for Biological Resources under Access and Benefit Sharing

After detailed deliberation on this guideline, the members highlighted the need to sign an MoU by the repositories to have checks and balance. Further, Members expressed their concern to ensure the safe custody of voucher deposited with them. Considering all such issues, the members expressed that the draft guidelines need fine tuning by providing mandate of each repositories, duration of expected storage, handling of live materials etc. For this purpose, it was decided to refer the guidelines to Dr.R.S.Rana and Dr.Biswajit Dhar and Prof.M.K. Ramesh., for comments. Further, it was decided that the revised guidelines are required to be placed in the Authority for approval. The revised version may also be circulated to Designated National Repositories and their comments may also be placed before the next meeting of the Authority.

2. With regard to the request of NGOs to designate them as national repositories u/s 39 of the Act was taken up during the discussion. It was informed that so far MoEF has declared only Government organizations/institutions as repositories. Therefore, members directed the secretariat to submit a detailed note on the proposal for considering the NGOs as repository in the next meeting.

Action: Secretary, NBA

**27.12: To consider and approve the draft guidelines on National Biodiversity Fund**

Members appreciated the efforts of Expert committee for preparing the draft guidelines on National Biodiversity Fund. The members directed secretariat to refer the guidelines to Dr.R.S.Rana, Dr.Biswajit Dhar and Prof.M.K.Ramesh for comments. The revised Guidelines may be placed in the next meeting of the Authority.

Action: Secretary, NBA

**27.13: Nomination of Secretary, NBA to hold additional responsibility as Vigilance Officer in NBA**

All the members of the Authority unanimously agreed to nominate the Secretary, NBA to act as Vigilance Officer in NBA.

Action: Secretary, NBA

**27.14: To consider and approve funding for National Taxonomy Congress**

The Authority approved the proposal of granting Rupees Five Lakhs to the National Taxonomy Congress.

Action Secretary, NBA

**27.15. To consider and approve the modified recruitment rules of existing posts and newly created posts in NBA**

The members considered this agenda item on the 2nd day of the meeting i.e. on 25th January, 2014 and requested to circulate the soft copy of the revised draft recruitment rules for their comments.

Action Secretary, NBA

## 27.16. To consider and approve the draft NBA Annual Report 2012-13

The members of the Authority, after detailed deliberation, commented on the functions of the NBA, State Biodiversity Boards and Biodiversity Management Committees and suggested to include more details on their role. With these comments, Members approved the draft Annual Report.

Action: Secretary, NBA

The following agenda items were deferred to next meeting due to paucity of time and for want of detailed discussion:-

27.07: Draft notification to establish Biodiversity Council in the UT of A&N and Lakshadweep islands.

27.11: Proposal on establishment of National Biodiversity Grid.

27.17: Annual accounts of NBA for the year 2012-13

27.18: Major of head of expenditure of NBA for the period April-Nov 2013

27.19: CoP-11 Grant-in-aid received from MoEF for the year 2013-14

27.20: Draft Notification / Order to Implement Nagoya Protocol

27.21: Support to Strengthening of SBBs, Formation of BMCs and Preparation of PBRs

27.22: Extension of deputation tenure of Secretary, NBA and recruitment of Secretary, NBA

27.23: Recruitments of Administrative Officer and Accounts Officer at NBA

27.24: Fourth Meeting of Expert Committee on Agro-Biodiversity held on 8th and 9th April 2013 at Hyderabad

27.25: Revised Notification on Normally Traded Commodities

27.26: Second Meeting of the Reconstituted Expert Committee on Medicinal Plants held on 26th & 27th November 2013

27.27: Recommendations / observations of the EC on Medicinal Plants on the issue of Impact of Patents on Indigenous Medicinal Plants and Products granted to Foreign Companies on Indian Companies.

27.28: Brainstorming Meeting on Draft National Working Plan Code- 2012 held on 23rd February, 2013 at IGNFA

27.29: Interaction Meeting between Consultative Group on CGIAR Centres and NBA held on 18th July, 2013 at New Delhi.

27.30: Interaction Meeting of NBA, BSI and ZSI held on 1st October 2013 to facilitate the preparation of PBRs

27.31: Draft format for notification of Threatened Species under Section 38 of BD Act.

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Annexure-I

Official Members who participated:

1) Shri A K Srivastava, IFS
Addl. Director General of Forests,
Ministry of Environment & Forests,
ParyavaranBhavan,
CGO Complex, Lodhi Road,
New Delhi – 110003.
(Represented by Shri. K.S. Reddy, IFS, APCCF (Central) Regional office, MoEF)

2) The Joint Secretary,
(Biodiversity)
Ministry of Environment & Forests,
ParyavaranBhavan,
CGO Complex,
Lodhi Road,
New Delhi – 110003
(Represented by Dr. J.R.Bhatt, Advisor & Dr.Sujata Arora, Director, MoEF)

3) Dr. RenuSwarup,
Advisor,
Department of Biotechnology
CGO Complex,
Block No. 2
Lodhi Road,
New Delhi-110003.
(Represented by Dr. Manoj Kumar Modi, Scientist-C)

4) Shri. Jitendra Sharma, IFS
Chief Executive Officer,
National Medicinal Plant Board,
Department of AYUSH,
Ministry of Health & Family Welfare,
3rd Floor, AYUSH Bhawan,
B Block, G.P.O. Complex, I.N.A.,
New Delhi-110023.

5) Dr. Swapan Kumar Datta,
Deputy Director General
(Crop Science)
Division of Crop Science, I
CAR
KrishiBhavan,
New Delhi -110001.
(Represented by Dr JS Chauhan, ADG (Seeds), ICAR )

Official Members who were not Present:

1) Shri.Utpal Kumar Singh, IAS
Joint Secretary (Plant Protection),
Dept. of Agriculture and Cooperation,
KrishiBhavan, Dr. Rajendra Prasad Road,
New Delhi – 110001.

2) Dr. P. Madeswaran,
Director,
Ministry of Earth Sciences,
Block -12, CGO Complex,
LodhiRaod, New Delhi –110003.

3) The Director,
Traditional Knowledge Digital Library(TKDL),
CSIR,
Sector-19, Central Government Enclave,
Kamla Nehru Nagar,
Ghaziabad- 201002.

4) Dr. B. Harigopal,
Advisor,
Department of Science & Technology,
Technology Bhavan,
New Mehrauli Road,
New Delhi – 110016.

5) Smt. Nivedita IOFS,
Director,
Ministry of Tribal Affairs,
ShastriBhavan, Dr. Rajendra Prasad Road,
New Delhi-110001.

Non-Official Members who participated:

1) Dr. S. Subramaniyan
54, VGP, Golden Sea View,
Part-II, 2nd Main Road,
5th Cross Street,
Palavakkam,
Chennai-600 041.

2) Prof. M.K.Ramesh,
Professor of Law,
National Law School,
Nagarbhavi,
Bangalore – 560 072.

3) Dr.R.S.Rana
Chairman, Bio-Link,
D-43, Indraprastha Apartments
Sector 14, Rohini,
New Delhi-110 025.

4) Dr.Biswajit Dhar,
Director General,
Research and Information System,
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Lodhi Road,
New Delhi – 110 003.