

SESSION 7

POLICY AND LEGAL TRENDS IN BIODIVERSITY CONSERVATION

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1. Importance of Biological Diversity

1.1 Introduction

The term Biological diversity or biodiversity implies the variety of life on earth and the natural patterns it forms. It comprises not only all life forms but also includes the variety of ecosystems such as those that occur in deserts, forests, wetlands, mountains, lakes, rivers, and agricultural landscapes as well as the natural components like the air, water, and soil. Biodiversity is the combination of life forms and their interactions with each other as well as with the rest of the environment.

The biodiversity we see today is the fruit of billions of years of evolution, shaped by natural processes. Since times immemorial, human beings have used biological resources in order to sustain their lives. However, with the progression in human life, human beings started to exploit and abuse the gifts of nature. This over-utilization of the resources of nature by humans has increasingly led to unnatural alterations of the biodiversity.

Preservation of biodiversity is in our self-interest since biological resources are the pillars which support our civilization. Nature provides us with vital goods and services that are crucial for our subsistence. There is an urgent need to protect our biological resources given that if these resources once exhausted, are irreplaceable. If these biological resources perish, it will not take much time for the human race to perish and become extinct forever.

Although several attempts have been made in the direction of protection of the Biological Diversity, the most significant of all attempts is the Convention on Biological diversity (CBD) also informally known as Biodiversity Convention.

2. The Convention on Biological Diversity

2.1. Background

The United Nations Conference on the Human Environment held in Stockholm in 1972 led to the adoption of various instruments such as the Stockholm Declaration on Human Environment, the Action Plan including 109 resolutions and Resolutions. The Conference also led to the establishment of the United Nations Environment Programme (UNEP). Governments signed a number of regional and international agreements to tackle specific issues, such as protecting wetlands and regulating the international trade in endangered species. These agreements, along with controls on toxic chemicals and pollution, have helped to slow the tide of destruction but have not reversed it.

The World Commission on Environment and Development also known as the Brundtland Commission, in 1987, concluded that economic development must become less ecologically destructive. In its landmark report, 'Our Common Future', it said that: "Humanity has the ability to make development sustainable-to ensure that it meets needs of the present without compromising the ability of future generations to meet their own needs". It also called for "a new era of environmentally sound economic development".

2.2. Origin of CBD

The Convention on Biological Diversity (CBD) was adopted in The United Nations Conference on Environment and Development or the Earth Summit in 1992 held at Rio de Janeiro. At the Earth Summit the world leaders agreed on a comprehensive strategy for "sustainable development", which involves meeting our needs while ensuring that we leave a healthy and viable world for future generations.

The CBD was adopted with the primary objective of securing sustainable development. It was conceived as a practical tool for implementing the principles of Agenda 21. The Convention is a legally binding multilateral treaty having three main goals, namely:

1. conservation of biological diversity;
2. sustainable use of its components; and
3. fair and equitable sharing of benefits arising from genetic resources.

The Convention was opened for signature at the Earth Summit on June 5, 1992. The Convention initially had 157 signatories. It was entered into force on December 29, 1993.

The convention recognized for the first time in international law that the conservation of biological diversity is "a common concern of humankind" and is an integral part of the development process. The agreement covers all ecosystems, species, and genetic resources. It links traditional conservation efforts to the economic goal of using biological resources sustainably. It sets principles for the fair and equitable sharing of the benefits arising from the use of genetic resources, notably those destined for commercial use. It also covers the rapidly expanding field of biotechnology through its Cartagena Protocol on Biosafety, addressing technology development and transfer, benefit-sharing and biosafety issues. Some of the many issues dealt with under the Convention include:

- Measures and incentives for the conservation and sustainable use of biological diversity.
- Regulated access to genetic resources.
- Access to and transfer of technology, including biotechnology.
- Technical and scientific cooperation.
- Impact assessment.
- Education and public awareness.
- Provision of financial resources.

2.3. Key Issues under CBD

The treaty takes a comprehensive approach to conservation of biological diversity of the planet and the sustainable use of the biological resources. It also encompasses related socio-economic issues, such as sharing of benefits from the use of genetic resources and access to technology, including biotechnology. It secures right to control access to biological resources for the countries in which those resources are located. One objective of the CBD is to enable lesser-developed countries to better benefit from their resources and traditional knowledge. Some of the many issues dealt with under the convention include:

- Measures and incentives for the conservation and sustainable use of biological diversity.
- Regulated access to genetic resources and traditional knowledge, including **Prior Informed Consent** of the party providing resources to be obtained by the bioprospectors.
- Sharing, in a fair and equitable way, the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources (governments and/or local communities that provided the traditional knowledge or biodiversity resources utilized).

- Access to and transfer of technology, including biotechnology, to the governments and/or local communities that provided traditional knowledge and/or biodiversity resources.
- Technical and scientific cooperation.
- Impact assessment.
- Education and public awareness.
- Provision of financial resources.
- National reporting on efforts to implement treaty commitments.

2.4. Institutional Structure of CBD

The institutional structure of the CBD consists of a number of bodies including the Secretariat (situated at Montreal), the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) and the Conference of Parties (COP).

- **The Secretariat** – The Secretariat of CBD is located in Montreal, Canada. It operates under the United Nations Environment Programme. The CBD functions on a daily basis through the Secretariat. It is responsible for organizing meetings, draft documents, assists member Governments in the implementation of programmes, coordinate with other international organizations and collect and disseminate information.
- **The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA)** – The SBSTTA is a body established under Article 25 of the CBD, with the view to provide expert advice to Conference of Parties and other bodies to the Convention. It is a multidisciplinary expert body which has the mandate to provide scientific and technical assessments of the status of biological diversity and of the effects of different measures taken in accordance with the Convention. It is required to identify innovative and efficient technologies relating to the conservation and sustainable use of biological diversity. The SBSTTA also provides advice on the ways and means of promoting development as well as transferring such technologies.

The SBSTTA has met twelve times till date and has provided 129 recommendations to the Conference of Parties. The meetings of SBSTTA are as follows-

1st Meeting of SBSTTA – held in Paris, France from September 4 to 8, 1995

- 2nd Meeting of SBSTTA** – held in Montreal, Canada from September 2 to 6, 1996
- 3rd Meeting of SBSTTA** – held in Montreal, Canada from September 1 to 5, 1997
- 4th Meeting of SBSTTA** – held in Montreal, Canada from June 21 to 25, 1999
- 5th Meeting of SBSTTA** – held in Montreal, Canada from January 31 to February 4, 2000
- 6th Meeting of SBSTTA** – held in Montreal, Canada from March 12 to 16, 2001
- 7th Meeting of SBSTTA** – held in Montreal, Canada from November 12 to 16, 2001
- 8th Meeting of SBSTTA** – held in Montreal, Canada from March 10 to 14, 2003
- 9th Meeting of SBSTTA** – held in Montreal, Canada from November 10 to 14, 2003
- 10th Meeting of SBSTTA** – held in Bangkok, Thailand from February 7 to 11, 2005
- 11th Meeting of SBSTTA** – held in Montreal, Canada from November 28 to December 2, 2005
- 12th Meeting of SBSTTA** – held in Paris, France from July 2 to 6, 2007
- 13th Meeting of SBSTTA** – held in Rome, Italy from February 18 to 22, 2008
- **The Conference of Parties (COP)** – The COP is the governing body which brings together all States and Regional Organizations that have ratified the Convention. It is mandated to review the implementation of the Convention. More specifically, it reviews progress under the Convention, identifies new priorities to be pursued, sets work plans for members, amends the Convention, creates expert advisory bodies, reviews progress reports by member nations and collaborates with other international organizations and agreements.

The COP has initiated work on a number of thematic work programmes addressing agriculture biodiversity, forest biodiversity, island biodiversity, inland water ecosystems, dry and sub-humid lands and mountain biodiversity. Till date the COP has had nine ordinary meeting and one extraordinary meeting.

COP 1 – held in Nassau, Bahamas from November 28 to December 9, 1994

COP 2 – held in Jakarta, Indonesia from November 6 to 17, 1995

COP 3 – held in Buenos Aires, Argentina from November 4 to 15, 1996

COP 4 – held in Bratislava, Slovakia from May 4 to 15, 1998

ExCOP 1 - First Extraordinary Meeting of the Conference of the Parties to the Convention on Biological Diversity held in Cartagena, Colombia from February 22 to 23, 1999 and in Montreal, Canada from January 24 to 28, 2000. The Cartagena meeting led to the adoption of a supplementary agreement to the Convention known as The Cartagena Protocol on Biosafety or the **Biosafety Protocol**.

COP 5 – held in Nairobi, Kenya from May 15 to 26, 2000

COP 6 – held in The Hague, Netherlands from April 7 to 19, 2002. The major achievement of COP 6 was adoption of **Bonn Guidelines** on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization.

COP 7 – held in Kuala Lumpur, Malaysia from February 9 to 20, 2004. One of the major achievements of COP 7 was the adoption of **Akwé: Kon Guidelines** that were voluntary guidelines for the conduct of cultural, environmental and social impact assessments

COP 8 – held in Curitiba, Brazil from March 20 to 31, 2006

COP 9 – held in Bonn, Germany from May 19 to 30, 2008

2.5. Biosafety Working Group

Article 19.3 of the CBD provides for Parties to consider the need and modalities of a protocol setting out procedures in the field of the safe transfer, handling and use of living modified organisms (LMOs) resulting from

biotechnology that may have an adverse effect on biodiversity and its components. An ad hoc working group known as the **Biosafety Working Group (BSWG)** was established to this end at COP-2.

After its establishment, the working group primarily worked towards charting out the designs of a Protocol to address issues pertaining to Biosafety. After five years of negotiations, the Biosafety Protocol was finally adopted.

2.6. Cartagena Protocol on Biosafety

The Cartagena Protocol on Biosafety also known as Biosafety Protocol was adopted on January 29, 2000 and was entered into force on September 11, 2003. The Biosafety Protocol seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. At present, 189 States are Parties to the Protocol.

The Protocol addresses the safe transfer, handling and use of LMOs that may have an adverse effect on biodiversity, taking into account human health, with a specific focus on transboundary movements. It makes clear that products from new technologies must be based on the precautionary principle and developing nations are allowed to balance public health against economic benefits. An Advance Informed Agreement (AIA) has been made mandatory before the transboundary movement of LMOs.

The Protocol further establishes a Biosafety Clearing- House (BCH) to facilitate information exchange, and contains provisions on capacity building and financial resources, with special attention to developing countries and those with domestic regulatory systems.

The governing body of the Protocol is the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Protocol (COP-MOP). Its primary role is to regularly review the implementation of the Protocol and to make decisions necessary to promote its effective implementation. To date the COP-MOP has held three ordinary meetings and has taken a total of 46 decisions.

COP – MOP 1 – held at Kuala Lumpur, Malaysia from February 23 to 29, 2004

COP – MOP 2 – held at Montreal, Canada from May 30 the June 3, 2005

COP – MOP 3 – held at Curitiba, Brazil from March 13 to 17, 2006

COP – MOP 4 – held at Bonn, Germany, from 12 to 16 May 2008.

3. India's Compliance with CBD

3.1. Introduction

India signed the CBD on June 5, 1992 and hence, when the Convention came into force in the year 1993, India was already a signatory to it. India ratified the CBD on 18 February, 1994.

Article 6 of the Convention on **General Measures for Conservation and Sustainable Use** states that each Contracting Party shall, in accordance with its particular conditions and capabilities:

- (a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned
- (b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 26¹ and Article 10 (a)² are closely linked to Article 6. The first calls for Parties to present, through their national reports, information on measures which have been taken for the implementation of the provisions of the Convention and their effectiveness in meeting the objectives of the Convention. The latter encourages Parties to integrate consideration of the conservation and sustainable use of biological resources into national decision-making.

¹ Article 26 – Reports

Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention.

² Article 10 (a) – Sustainable use of Components of Biodiversity

Each Contracting Party shall, as far as possible and as appropriate:

- (a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;
- (b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;
- (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;
- (d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and
- (e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

Article 6 creates an obligation for national biodiversity planning. A national strategy will reflect how the country intends to fulfill the objectives of the Convention in light of specific national circumstances, and the related action plans will constitute the sequence of steps to be taken to meet these goals.

The requirement to integrate consideration of the conservation and sustainable use of biological resources into national decision-making, and mainstream issues across all sectors of the national economy and policy-making framework, are the complex challenges at the heart of the Convention.

Article 6 of the Convention requires the Parties to prepare **Biodiversity Action Plans** in their respective countries to implement the outcomes of the CBD. The signatory countries, including India, are required to establish Biodiversity Action Plans pursuant to this obligation. The National Biodiversity Strategy and Action Plan was initiated in India under this mandate of the CBD.

In 1992, the Ministry of Environment and Forests (MoEF) initiated consultations with ministries, governmental agencies, NGOs, and academicians for preparing a national action plan for conserving the biodiversity. A National Policy and Macro-level Action Strategy on biodiversity was prepared. This document was a macro-level statement of policies, gaps and strategies needed for conservation and sustainable use of biological diversity. However, a need for a more detailed plan, including state level action planning, was felt. Hence, the ministry decided to prepare a **National Biodiversity Strategy and Action Plan (NBSAP)**.

NBSAP was formally initiated in 2000. MoEF assigned the task of Technical Coordination of the Plan to a national NGO, Kalpavriksh, and a 15 member Technical and Policy Core Group (TPCG) was set up to aid in the same. The administrative execution was entrusted to the Biotech Consortium of India Ltd. (BCIL). Funding for the project came from the Global Environment Facility through the United Nations Development Programme (UNDP).

The Strategic Plan of the Convention on Biological Diversity was decided in COP 6, held at the Hague in April 2002, as a vision for the implementation of the Convention by 2010. Two operational goals of this Strategic Plan stated that:

- To develop NBSAPs and integration of biodiversity concerns into relevant sectors as an effective framework for the implementation of the objectives of the Convention
- Better understanding of importance of biodiversity and the Convention which leads to broader engagement across society in implementation

In 2004, while the NBSAP was underway, India lobbied at the COP 7 of CBD that the year 2006 should be made the deadline for all countries to prepare and submit their respective NBSAPs.

3.2. Process of development of NBSAP

The basic aim of initiating the process of NBSAP was to develop an implementable action plan that would help conserve India's vast biodiversity. The broad aim was to devise a plan that would orient utilization of biological resources into sustainable directions, and ensure that decisions regarding access to such resources and the benefits accruing from them are taken democratically and equitably. The NBSAP process envisaged the formulation of several sub-national plans known as Biodiversity Strategy and Actions Plans (BSAP) rather than preparing one national level plan. The BSAP was prepared at the following five levels:

- 18 Local and regional level plans for sub state sites
- 33 State level plans for all of India's states and Union Territories
- 10 Inter-state (Eco-regional) level plans for ecologically significant regions cutting across state boundaries
- 13 Thematic level plans for major topics related to biodiversity
- 30 sub-thematic reviews commissioned for addressing specific aspects of biodiversity

Initially, 35 sub-thematic reviews were commissioned for addressing specific biodiversity aspects. However, not all reviews were submitted or completed. There are only 30 completed sub-thematic reviews commissioned for specified aspects of biodiversity.

These BSAPs were designed using flexible and innovative methodologies such as decentralized planning, moving upwards from grass-root level, public participation, public hearing, data collection, awareness programmes, organizing workshops and biodiversity festivals, etc, for outreach and feedback.

Later on, attempts were made to build elements from all the BSAPs into the National level plan.

The process of development of NBSAP was attempted to be highly participatory, transparent and with openness to all points of view and interest groups reaching out to a large number of village-level organizations and movements, NGOs, academicians and scientists, government officers from various line agencies, the private sector, the armed forces, politicians and others who have a stake in biodiversity.

Methodologies used for preparation of NBSAP were also flexible and innovative. All plans were prepared by multi sectoral groups involving participation of persons from diverse backgrounds from both within and outside the government using various methodologies. Some of these methodologies were indicated to the executing agencies through the guidelines developed by the TPCG.

3.3. The National Biodiversity Strategy and Action Plan

The national level document, originally called the draft National Action Plan was built on the following sources:

- Draft BSAPs at local, state, eco-regional and thematic levels produced during developmental process of NBSAP
- Draft sub-thematic reviews commissioned or voluntarily offered during NBSAP development process
- A large number of secondary sources that included previous national level documents such as National Wildlife Action Plan, National Forestry Action Plan, country reports for Agenda 21, National Conservation Strategy, Biodiversity Conservation Prioritisation Project Report, National Environment Action Project, 9th and 10th Five Year Plan, inputs and comments from several people, etc.

The draft document was produced in two volumes. The basic aims of NBSAP were:

- Biodiversity conservation and ecological security
- Livelihood security

1. Volume I

Volume I contained eight Chapters.

The **first** chapter dealt with background, objectives, scope and approach of the NBSAP methodology. It also critically analyzed the project.

The **second** chapter contained the statement of principles on which the analysis and recommendations were based.

The **third** chapter dealt with evolutionary, physical and, historical context of India's biodiversity as well as contained subsections dealing with physical and geographical, evolutionary and socio-economic features of India, relevant to biodiversity.

The **fourth** chapter discussed the overall profile of India's biodiversity.

The **fifth** chapter dealt with some of the key causes for the loss of biodiversity including proximate causes like habitat destruction, hunting exploitation, fishing, introduction of exotics-plants and animals, homogenization of ecosystems, etc and root causes like current model of development; progressive erosion of customary rights, increasing inequities in the society, inappropriate land and water tenure and their management systems, changes in ethical and moral values, lack of recognition of the full values of biodiversity, inflexible and contradictory laws, demographic changes, inappropriate trade systems, etc.

The **sixth** chapter discussed the ongoing initiatives in conservation, sustainable use, and equity, and the major actors involved. It included the history of such initiatives, description of current status, assessment of their efficacy, and identification of strengths, weaknesses and gaps. This chapter was divided into two subsections, namely, **Natural Ecosystem and Wild Taxa**, as well as **Agricultural Ecosystems and Domesticated Taxa**. These were further subdivided into the following sections:

- understanding and information (including research and monitoring),
- in-situ conservation,
- ex-situ conservation,
- sustainable use,
- equitable access, use, and sharing of benefits,
- capacity building,
- inter-sectoral coordination,
- policies and laws,
- financial measures,
- technological measures, and
- International fora.

The **seventh** chapter dealt with broad strategies and related actions for achieving conservation, sustainable use, as well as equitable access and sharing of benefits for both natural ecosystem and wild taxa along with agricultural ecosystems and domesticated taxa. A total of 101 strategies and 345 actions were recommended in this chapter.

The **eighth** chapter dealt with the overall implementation mechanism needed for the strategy and actions presented in the earlier chapter.

The Volume also provides definition of key terms, glossary, list of abbreviation, index of agencies and organizations identified as lead agencies responsible for

each action, annexure with list of TPCG, executing agencies and various people who contributed or commented on the NBSAP.

2. Volume II

Volume II included summaries of each of local, state, eco-regional and thematic level BSAPs and sub-thematic reviews. It also contained annexures relevant to various parts of Volume I such as listings of protected areas and threatened species, forest types, germplasm collections, and so on. It also included a chart showing points of commonality between the strategies of NBSAP and those recommended in local, state and eco-regional level BSAPs.

3.4. Key Strategies and Actions

The key recommendations contained in the Final Technical Report of NBSAP were:

- Preparing a land and water use plan, mapping the areas of the country that are essential for ecological and livelihood security and declaring them off-limits to large scale commercial developmental purposes
- Creating and strengthening decentralizing institutions of governance with the basic planning and decision making unit being at the village and hamlet level
- Re-orienting development-related policies, laws and schemes to ensure that biodiversity and people's livelihoods are secured
- 'Eco-regional planning' on the basis of ecological boundaries such as river valleys, forest blocks, coasts, etc., including 'eco-regions' cutting across state and international boundaries
- Strengthening the Environmental Impact Assessment procedure, by integrating biodiversity in all its aspects (especially agricultural biodiversity, currently missing), and increasing the role of citizens
- Integrating biodiversity concerns through inter-sectoral and inter-departmental coordination at local, district, state, and national levels
- Expanding and strengthening the network of conservation sites for wild animals and plants, including protected areas (national parks and sanctuaries), community conserved areas (like sacred sites, community forests, village tanks), Biosphere Reserves, Ecologically Sensitive Areas, Heritage Sites, Medicinal Plant Conservation Areas, etc.
- Conserving areas ("agrobiodiversity protected areas") critical for indigenous crop and livestock diversity, and promoting practices that would help to conserve this diversity amongst farmers, pastoralists, fisher folk, and others, including through food policy

- Respecting, protecting, and building on traditional knowledge of biodiversity, including through community-led development of biodiversity knowledge registers, and innovative legal or other means of traditional knowledge rights that do not fall into the trap of privatized intellectual property rights like patents
- Strengthening and promoting community-level crop gene banks and seed banks
- Promoting indigenous, nutritionally-superior food crops such as coarse millets in the Public Distribution System, mid-day meal schemes, Food for Work programme, and other such public sector programmes
- Regulating tourism in natural land and waterscapes, and facilitating genuine ecotourism through strictly enforced guidelines, including by enhancing the capacity of local communities to manage it
- Tackling a range of threats to biodiversity, including quiet but widespread ones like alien (exotic) invasive species, and climate change
- Facilitating sustainable, bio-resource based livelihoods (including micro-enterprises), of fisher folk, *adivasis* and other forest-dwelling communities, small peasants, artisans, and pastoralists, with special attention to disprivileged sections like women, nomads, and the landless
- Building capacity of all sections of society to handle various issues of biodiversity conservation, especially of decision-makers, urban citizens, and others who are particularly alienated from ecological and livelihood concerns
- Estimating the full economic and social values of biodiversity, especially its role in ensuring water and climatic stability, soil productivity, and people's livelihoods
- Re-orienting state and national budgets, to squarely integrate the true and full value of biodiversity and the environmental services performed by natural land and waterscapes, and redirect funding for rural and urban development into conservation and sustainable use
- Increasing funding for conservation measures, including through innovative financial mechanisms such as a tax on industries that use biological resources, an urban tax on rich citizens that benefit from 'free' services provided by natural ecosystems
- Promoting traditional and new technologies that reduce the negative impact of current human activities and use ecologically sustainable alternative materials, such as organic farming, non-conventional energy, environmentally friendly architecture
- Facilitating and developing ecologically conscious consumer groups and markets, such as for organic food, alternatives to plastics, and other eco-friendly produce

- Ensuring that decisions on genetically engineered or modified organisms (GMOs) are evaluated taking into account long term ecological and socio-economic studies by independent agencies, ensuring the participation of key stakeholders in decision-making and disclosure of information generated in evaluating biosafety.
- Advocating the integration of biodiversity and livelihood issues specific to India, at all international forums, including environmental treaties, and economic agreements such as under WTO.

3.5. Implementation: Issues and current status

The draft went through extensive assessment by executive executing agencies, sub-thematic reviewers, and other partners of the NBSAP process, as also a few hundred other institutions, experts, government officials, NGOs, and activists. Its Executive Summary was made available in various languages to the public via websites and was made accessible to anyone for review. Information on its availability was also circulated through the mass media, NGOs and other networks. The draft was also publicly discussed during the Final National Workshop in December 2002. Apart from this, the Executive Summary of the first draft was also sent out to all those persons that had requested to participate in the NBSAP process in response to the Call for Participation.

The first draft was produced in October 2002. Shortly thereafter, the second draft was also made available in March 2003 and was widely circulated. Both the drafts were circulated under MoEF's name and included revisions based on comments of the Government of India ministries, state governments, NGOs, community groups, and individual experts.

The third revised version was prepared and was reviewed by a peer review group set up by the MoEF in mid-2003. The peer review group shared their views with the members of the technical implementing agency at a meeting organized and hosted by the MoEF in May 2003. It was only after this that a fourth draft was prepared and sent for external editing and finalization. A final draft was produced in December 2003 thereafter, and the same was expected to be approved as the NBSAP.

However, in January 2004, MoEF took the view that the final draft could only be published as a Final Technical Report and not as NBSAP as it needed the approval of the Union Cabinet. The MoEF also stated that since the Cabinet had recently mandated MoEF to come up with a National Environment Policy (NEP) and since that would be a more over-arching document, the NBSAP would have to be in harmony with it. The NBSAP could therefore not be accepted as final till the NEP was finalized. The TPCG and the technical implementing agency considered this

point unreasonable, given the fact that the NBSAP process had started four years earlier than the new process of development of NEP.

In May 2004 the MoEF further changed its position and did not sanction the publication of the draft even as a Final Technical Report. The MoEF stated that the draft cannot be published until the NEP and Cabinet approval of the NBSAP draft were both completed. A few could be photocopied however. It was also contended that MoEF was not comfortable with some parts of the report. MoEF officially conveyed to the technical coordinating agency not to make the report public in March 2005. However, a list of the specific points of discomfort was not made available in writing to the agency or the TPCG.

The information on the discrepancies was made available to the technical implementing agency through external sources like Parliament questions and using the Right to Information Act. In December 2004, in response to a 'Short Notice Question' raised by a Member of Parliament, the Ministry sent a written response which stated that: the draft report contained numerous irreconcilable discrepancies, scientific inaccuracies as well as certain implausible and unacceptable recommendations.

The **main issue** as stated in the letter was that the draft report was inconsistent with the draft NEP of 2004 that had already been put on the Ministry's website. It was stated that any long term Biodiversity Action Plan of the country should be in conformity with and flow from the proposed Environment Policy. The Ministry was therefore, of the view that the draft report should be scrutinized and then synthesized with the Environment Policy before being sent to the cabinet for approval.

In March 2005, MoEF wrote to Kalpavriksh, the technical coordinating agency, asking it not to publish or in any form make publicly available, the report submitted in December 2003. However, the technical coordinating agency, in consultation with the TPCG, decided to make the report available to the public in a published form, as the Final Technical Report of NBSAP. Hence, this report was posted on the agency's website and was also made available electronically for anyone who requested it. The final report was titled, "**Securing India's Future: Final Technical Report of the National Biodiversity Strategy and Action Plan (NBSAP)**".

The report was released to the public on October 04, 2005 in form of a printed version of the concise summary and a CD containing the full final technical report, all the BSAPs, sub-thematic reviews and other documents related to the process. The day after the release, On October 05, the MoEF issued a press statement. The key points of the statement were:

- A team of scientists who reviewed the report have concluded that major part of the report is scientifically invalid.
- MoEF has rejected the report and started the process of developing the action plan afresh.

The Ministry however, submitted another report to the UNDP soon after rejecting the draft report.

3.6. Criticisms on Implementation

It has been contended by the technical and administrative agencies, the TPCG as well as various persons involved in the process of NBSAP that the decisions of MoEF during the later stages of implementations were in complete contrast to the open and transparent process carried out throughout the initial NBSAP phase. It was alleged that the MoEF ignored the energy and inputs that thousands of people had put into the process, and also violated the contractual agreement between MoEF and UNDP/GEF.

Some critics have contended that since 2003 when the final national draft of the NBSAP was submitted to it, the MoEF has betrayed the spirit of the process making it non-transparent, sitting on and then “rejecting” the draft on flimsy grounds, and delaying the formulation of the final action plan.

The sudden change of stance of the Ministry is believed to be due to the change in constitution of the Ministry. Sources from the technical agency contended that since the new Secretary of the Ministry took charge, there have been unexpected turns in the process of NBSAP. There has been an undeniable confusion in the MoEF's mishandling of the report.

When the Ministry submitted a new report to UNDP, the agencies involved in NBSAP process asserted that the report was a diluted version of the rejected draft report containing similar points that were a part of the draft report that the MoEF had found incorrect and inaccurate. It was also argued that this submission was made merely as a compromise since the Ministry was facing a deadline of the year 2006 when COP 8 was to be held.

The major reason as stated by critics for the MoEF's change of stance is that the new Secretary of the Ministry was swayed in favor of draft NEP of 2004 and that the Ministry wanted NBSAP to be in tune with the newly conceived NEP. The causes stated for this change of stance are:

- MoEF favored draft NEP of 2004 to draft report of NBSAP since it was more politically motivated and human centric.
- 90 groups and people's movements from across India stated in an Open Letter on 29 October 2005, the draft NEP was more an apology for conventional economic growth than a strong statement on how to conserve the environment. This led to the Ministry favoring the NEP even though NBSAP four years older.
- Another reason stated for the MoEF disfavoring the draft report was due to the fact that it challenged the view that environment expertise lied only in the government or some other formal scientific institution.
- The final technical report of NBSAP was pro-environment with recommendations for development of people's livelihood. The report also argued that the root of India's Biodiversity crisis was due to a fundamentally flawed developmental process and in decision making process that put power in the hands of a small elite group living in big cities. The report further stated that current phase of "globalization" was a major environmental threat. The critics argue that statements like these in the NBSAP attracted displeasure of the Government of India.

3.7. Recommendations by critics on India's Stance

The critics have alleged that India has lost its proactive role in the last few years, and worse still has started violating the CBDs provisions. In doing so, it is further endangering its already fast-eroding biodiversity, threatening the future of its uniquely and culturally diverse traditional communities and opening up traditional knowledge to various forms of biopiracy and misuse.

If it is to regain its international leadership role in the field of biodiversity, India must reverse the trend of the last few years. It must:

- Review and modify national laws and policies to bring them more in line with the CBD. It must strengthen EIA notifications to stop destructive projects and enable full citizens' participation, as well as reinforce the Biological Diversity Act and Rules to strongly protect traditional knowledge and empower communities, and the Wild Life Act to make conservation more effective, participatory and respectful of the rights of communities.
- Maintain the integrity of protective principles in current legislation that seek to protect farmers and community rights, biodiversity and indigenous knowledge.
- Finalize and implement a NBSAP that is true to the spirit and content of the NBSAP draft report submitted to the MoEF in end-2003.

- Halt the alarming spread of genetically engineered crops; in particular, safeguard India's position as country of origin of several crops.
- Develop and implement a legal regime for liability and redress, sensitive especially to the likely socio-economic impact on small farmers and traditional agricultural practices, especially in relation to new technologies.
- Oppose the promotion or acceptance of Genetic Use Restriction Technologies including "terminator", consistent with its domestic position banning such technologies.
- Halt the opening up of biological resources and people's knowledge to private corporations, which shifts control away from communities and threatens biodiversity with further erosion.
- Show greater commitment to community-centered conservation policies, and more openness to the involvement of indigenous/local communities in the operations of this forum.
- Display leadership in the South Asian region in the development of such ethics, including through forums like the South Asian Association of Regional Cooperation (SAARC).
- Respect India's own constitutional principles mandating a bottom-up, decentralized approach that provides legitimacy to the government to represent the people at international forums such as the CBD.

3.8. Current trends in Implementation

Although, implementation of a Biodiversity Action Plan based on the draft report of NBSAP has not yet seen the light, a large number of local, state, eco-regional and thematic plans have already been implemented. Many implementation measures had been initiated even before the national plan process was over. Many states have implemented the recommendations of the respective BSAPs such as Arunachal Pradesh, Assam, Haryana, Sikkim, Madhya Pradesh, Mizoram, Karnataka, Rajasthan, Punjab, Uttaranchal, West Bengal, etc. Some states have also constituted Biodiversity Boards to look into implementation and other incidental matters.

BSAPs of various sub-state, eco-regional and thematic levels have also been adopted and implemented. Some sub-state BSAP that have been implemented are at Simlipal in Orissa), North Coastal Andhra and Deccan Area in Andhra Pradesh, Vidarbha in Maharashtra, Rathong Chu in Sikkim, Uttara Kannada in Karnataka, Lahaul Spiti in Himachal Pradesh and so on.

In the last two centuries India has lost over half its forests, 40 per cent of its mangroves and a significant part of its wetlands. At least 40 species of plants and animals have become extinct, including the cheetah and the pink-headed duck, with several hundred more under the same threat. Crop and livestock breeds are

not exempt either. All 18 indigenous breeds of poultry face the possibility of extinction.

A compelling need to implement the report is brought out by these facts. The report is wide-ranging in its recommendations, which stem from an understanding that the greatest threats come from a destructive process of development. It weaves together the effects that everything, from traditional water harvesting to globalization to a centralized political system, ultimately has on the biodiversity of the country.

Some Important Articles

Ashish Kothari , *Why does India not have a National Biodiversity Strategy and Action Plan?* ECO, Vol 15, Issue 4, March 23, 2006.

Kalpavriksh Environmental Action Group, *Towards the formulation of India's National Biodiversity Strategy and Action Plan, A Background Paper*

Lyla Bavadam, *Strategy and inaction*, Frontline, Vol 23, Issue 02, Jan 28 to Feb 10, 2006.- <http://www.flonnet.com/fl2302/stories/20060210001108400.htm>

Kanchi Kolhi, *Twists in tale of planning*, *India Together*, August 2004 - <http://www.indiatogether.org/2004/aug/env-pubpart.htm>

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4. Biological Diversity Act, 2002

Biodiversity encompasses the variety of all life on earth. India is one of the 12-mega diverse countries of the world. With only 2.5% of the land area, India already accounts for 7.8% of the global recorded species. India is also rich in traditional and indigenous knowledge, both coded and informal.

Recognizing the sovereign rights of States to use their own biological resources, the CBD (1992) expects the parties to facilitate access to genetic resources by other Parties subject to national legislation and on mutually agreed upon terms (Article 3 and 15 of CBD). Article 8(j) of the CBD recognizes contributions of local and indigenous communities to the conservation and sustainable utilization of biological resources through traditional knowledge, practices and innovations and provides for equitable sharing of benefits with such people arising from the utilization of their knowledge, practices and innovations.

Biodiversity is a multi-disciplinary subject involving diverse activities and actions. The stakeholders in biological diversity include the Central Government, State Governments, institutions of local self-governmental organizations, industry, etc. One of the major challenges before India lies in adopting an instrument, which helps realize the objectives of equitable sharing of benefits enshrined in the Convention on Biological Diversity.

After an extensive and intensive consultation process involving the stakeholders, the Central Government brought Biological Diversity Act, 2002 with the following salient features:-

- i. to regulate access to biological resources of the country with the purpose of securing equitable share in benefits arising out of the use of biological resources; and associated knowledge relating to biological resources;
- ii. to conserve and sustainably use biological diversity;
- iii. to respect and protect knowledge of local communities related to biodiversity;
- iv. to secure sharing of benefits with local people as conservers of biological resources and holders of knowledge and information relating to the use of biological resources;
- v. conservation and development of areas of importance from the standpoint of biological diversity by declaring them as biological diversity heritage sites;
- vi. protection and rehabilitation of threatened species;
- vii. involvement of institutions of state governments in the broad scheme of the implementation of the Biological Diversity Act through constitution of committees.

(Refer to Session 8 for more information on the Biodiversity Act)