



ozone depletion
hazardous waste
prior informed consent
right to information
commission on sustainable development
climate
<b>biodiversity</b>
desertification
persistent organic pollutants
forests
trade and environment
multilateral agreement on investment
global environment facility
institutions for environment



## BIODIVERSITY



### United Nations Convention on Biological Diversity

**In force from** December 29, 1993, **ratified by** 176 countries  
(as of August 29, 2001)

#### Problem

While eighty per cent of the world's biological resources exist in the forests of the South, the North wants unrestricted access to this biodiversity, since it is a vital resource for their pharmaceutical and biotechnology companies. Most big companies are based in the US, where the retail value of drugs derived from plants by pharmaceutical companies is approximately US \$43 billion a year. Meanwhile, indigenous communities rarely profit from the use of their biodiversity or the traditional knowledge associated with it.

#### The convention

The Convention on Biological Diversity (CBD) recognises the rights of countries on their genetic resources. It emphasises the conservation of biodiversity, its sustainable use, fair and equitable sharing of benefits arising out of its use, and the preservation of knowledge and practices on indigenous communities.

During the negotiations, the US, a key Northern player, had wanted a purely conservationist biodiversity treaty. George Bush, then US president, refused to sign the CBD at the 1992 UN Conference on Environment and Development (UNCED) on ground that it made too many concessions to the South. The powerful US industry felt it was "highway robbery that a Third World country should have the right to a protected invention simply because it supplied a bug or a plant or an animal in the first place".

Two issues have dominated discussions at the CBD forum over past years — how to restrict access of Northern multinationals to the South's biodiversity and ensure that profits from the use of local knowledge are shared with the communities to which they belong (Access and Benefit-sharing, or ABS), and how to minimise risks from genetically modified products (biosafety).

- **Access and Benefit-sharing:** Governments have struggled for years to come up with ways to protect the rights of indigenous communities to their biological resources, and also the traditional knowledge related to their use. Some Southern governments have implemented national legislation to protect these rights, and such legislation has had varying degrees of success. But most governments in the South have been lethargic in implementing legislation to protect their biological resources from biopirates.

The CBD's ABS discussions have also been hindered by a discrepancy in international law. The CBD recognises the rights of communities to their biological resources, but not the World Trade Organisation (WTO), which only protects the intellectual property rights (IPR) of biotech and seed corporations. Thus Northern corporations claim ownership over Southern biodiversity with impunity. The North maintains that traditional knowledge involves a subject matter that is widely known or is in the public domain. Therefore, it cannot be deemed to be an IPR.

Recently, the CBD decided to collaborate with other regimes on the protection of biological resources and traditional knowledge related to them, particularly the FAO's International Undertaking on Plant Genetic Resources

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for Food and Agriculture (IU). As of a meeting in July 2001, IU had agreed to protect several important types of food crops from intellectual property restrictions altogether. As expected, this has met very strong resistance from industry interests.

- The Cartagena Protocol on Biosafety: Since biosafety talks began in 1995, sales of genetically modified (GM) crops have multiplied thirty times over. This fast rise meets with growing public concern over the risks involved in biotechnology. In order to address these concerns, a Cartagena Protocol on Biosafety (CPB), which regulates trade in GMOs, was adopted in January 2000, after two aborted attempts. The CPB creates an advance informed agreement (AIA) procedure that requires exporters to seek consent from importers before the first shipment of living modified organisms (LMOs) meant to be introduced into the environment (such as seeds for planting, fish for release, and microorganisms for bioremediation). It establishes an internet-based Biosafety Clearing-House' to help countries exchange scientific, technical, environmental and legal information about LMOs.

However, the protocol does not address key Southern concerns, such as the question of who will bear the liability costs, in case of an accident involving LMOs. This issue was postponed during the negotiations. Further, the protocol does not cover LMOs in transit or intended for contained use.

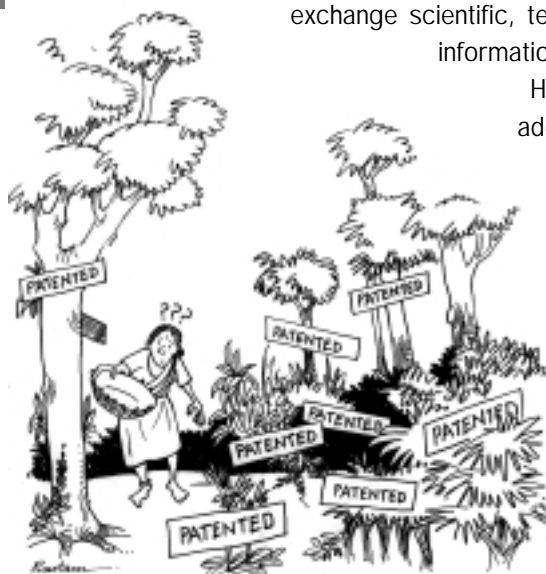
#### Challenges ahead

Southern governments so far have not pushed for what is in

their control — designing and implementing legislation to protect the knowledge and resources of their people. Further, sharing technical and scientific information across nations (especially North-South and South-South) was one of the main goals of the CBD, but progress on this has been considerably slow. The Sixth Conference of the Parties to the CBD (CoP 6) will meet prior to next year's Johannesburg Summit, in April. CoP 6 is expected to adopt a Strategic Plan, designed to promote effective implementation of the Convention.

But the challenges ahead facing CBD remain large:

- Southern nations need legislation to tackle biopiracy, to document the knowledge of indigenous communities and to establish ABS systems.
- Despite not having ratified the convention as yet, the US continues to dictate terms and conditions through countries such as Australia, Canada and the UK. The Bush administration is expected to favour industry interests.
- An effective dispute settlement and compliance mechanism to settle CBD-related disputes, without resorting to other forums such as WTO, is needed.
- Steps towards strengthening coherence between CBD and the range of international instruments and other biodiversity related conventions must be taken, and efforts are needed to ease technology transfer between North and South.



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