



Reporting from COP 10

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Green economy and biofuels: what did the CBD say?

Helena Paul, *Econexus*

With next year's Rio+20 Earth Summit due to meet in the 'biofuel republic of Brazil' it is little wonder that the fights over agrofuels will be intensifying in the years ahead. UNEP's flagship 'Green Economy' study published last month appears to bless a massive expansion of agrofuel – advocating for over a fifth (21.6%) of all liquid fuels to be bio-based by 2050. Sourcing all that biological feedstock is a feat that even UNEP admit will gobble up over a third (37%) of global agricultural and forest 'residues' – a hefty take from already overstressed ecosystems.

As expected, agrofuels were a major focus at the 10th Conference of Parties to the Convention on Biological Diversity (CBD), in Nagoya, Japan. Even though the evidence against them is mounting, they remain a priority for a number of governments. The chairs of the working group on biofuels and biodiversity, Canada and Colombia, tried to introduce a new text with a different title. Their supporters included the U.S., Brazil, Australia, New Zealand, Japan and Argentina, but the move was strongly resisted by Malawi, speaking for the Africa Group. Parties that insisted on retaining the original title starting with Biofuels and Biodiversity included Bolivia, Norway, Philippines, Ghana, Switzerland, Dominican Republic, Namibia and Tanzania. Parties therefore returned to working on the previous non-paper, resulting in UNEP/CBD/COP/DEC/X/37.

Biomass, the new bioeconomy and the green economy

The word biomass is now in the preambular paragraph for the decision, and in paragraph 13. The latter calls for its negative impacts on biodiversity to be minimized or avoided. The third preamble point simply notes the rapid development of new technologies to convert biomass into a wider range of fuels. Although this development is not as rapid as proponents would like, investments and subsidies are going into it. It potentially implies major impacts on biodiversity through the development of a biomass economy that seeks to convert biomass into a similar or broader range of products, including fuels, as are currently derived from fossil oil. The Rio+20 emphasis on the green economy could become an opportunity to promote the biomass economy, with serious implications for biodiversity. We therefore need to be ready to use this text to oppose irrational biomass developments.

Good aspects of the Decision

There are good points in this decision, for example, in the phrase "promote the positive and minimize or avoid the negative impacts of

biofuels on biodiversity", (see 3,6,7,8,10 and 11 in decision). The important addition of the word "avoid" in addition to minimize is supported by Article 14 of the Convention. Paragraph 7 refers to ecosystem functions, and also mentions areas that could be "exempted from" or "deemed inappropriate for biofuels". This is an important development as it begins the process of making it clear that some areas should not even be considered for developments such as biofuels.

What to get back in

Positive text in the SBSTTA recommendation was lost at Nagoya. Article 17 of the SBSTTA text "reiterates that the precautionary approach should be applied to the production and use of biofuels". It now applies only to Living Modified Organisms (LMOs) for biofuels and "the release of synthetic life, cell, or genome into the environment" (article 16 of the decision). Another important aspect relates to invasive alien species, which are mentioned only in the decision preamble, and should be returned to the operational text, since so many biofuels are invasive. Land tenure is mentioned in 2, but the words "land security" and "land rights" were both in the SBSTTA recommendation and would be preferable, as they are stronger and indicate clearer rights than tenure, despite being more contentious. While it is always a struggle to get proper recognition of indigenous rights into any text, we have references to full and effective participation of indigenous and local communities in paragraphs 3,4 and 7, and in 9 of the decision, but attempts to introduce references to UN-DRIP were opposed, mainly by Canada.

Next steps

Paragraphs 11 and 12 of the decision request the Executive Secretary to carry out certain tasks and report on progress to the next SBSTTA, but these are very limited in their scope. They relate to standards and methodologies, and list a number of organisations that are strong advocates of biofuels as collaborators. Civil society must keep emphasizing that biofuels are not a sustainable path, using the best available evidence regarding both first generation and next generation biofuels. Struggles over text are crucial but so is assembling and disseminating the evidence to persuade Parties and civil society that the biofuels agenda undermines the Convention and is destructive to biodiversity, indigenous peoples and local communities.

(cont'd on Page 6)

Open Letter to the Private Sector

In light of your recent professed commitment to the objectives of the CBD, we would like to accept your offer to collaborate with us in seeking biodiversity justice. We will set aside our cynicism and your profiteering from the (ongoing) colonial exploitation that caused these massive losses of biodiversity in the first place, because this global threat really does concern everyone, even those of you at the very tip-top of the food chain. Though we're aware, painfully aware, that this type of partnership tends to work in your favor and at our expense, you sound particularly sincere this time, so we'll just take you at your word.

Now that we're equal partners, we'd like to slightly tweak your proposal for "market-based conservation" that was featured so prominently at the Convention. And, by slightly tweak, we mean we'd like to flip it on its head. Hate to break it to you, because you clearly put a lot of time and expense into all those glossy publications and multimedia presentations, but these "mechanisms and modalities for biodiversity finance" and "incentives for direct investment in biodiversity public goods and natural capital" are not going to advance biodiversity conservation. They're going to scuttle it.

Never mind that the profits from such ventures will consolidate in the hands of an already-privileged few (that, after all, is the very definition of "business incentive"); making biodiversity a "viable business opportunity" under the global economic system as it currently stands will simply extend the processes of extraction and appropriation that are at the root of the problem. How often do we have to point out that, each time you open up a new "investment opportunity" – whether through structural adjustment in Sub-Saharan Africa or dams in India – you reproduce the same patterns of environmental degradation and social inequality that you had promised to change? Perhaps we weren't articulating clearly or something, but that's what decades upon decades of scholarship and social movements have been all about.

But you do make one point: economic markets wield a lot of power and capital that could potentially be useful for our cause. Here's what we propose: a system in which individual accumulation of wealth cannot come through the dispossession of groups of others and does not take priority over equitable access to and control over resources. Regulatory policy will recognize and protect both ecological and social diversity, and biodiversity conservation will be achieved through attending to these multivariate and interdependent interests. The power dynamics of our current economic system will be upended; we'll call it a "conservation-based market."

Such dramatic change must sound awfully daunting, it's no wonder you want to stick to the model you know. Luckily, those of us whose incentive to participate is not sponsored by the UN have nonetheless put a lot of time and energy into imagining alternatives, and we'll be more than happy to bring you up to speed.

By bringing together the infinite resources that you got from us, and the edifying experiences we received from you, we have everything we need to forge a path to a just and sustainable future. We are looking forward to partnering with you to revolutionize our political and economic systems on behalf of us all.

Warmly yours,

Emma Gaalaas Mullaney

Analysis of COP10: Synthetic Biology

Eric Hoffman

The CBD recognized that synthetic biology as it is used to produce biofuels is a potential risk to the environment and biodiversity. The final text urged parties and other governments to apply the precautionary approach to the introduction, use, and field release of synthetic organisms for the production of biofuels. Additionally, Parties, governments, and relevant organizations were asked to submit information on synthetic biology for consideration by the Subsidiary Body on Scientific, Technical, and Technological Advice (SBSTTA) was asked to provide more information on synthetic biology and its potential impacts on biodiversity.

Despite a strong effort by the Philippines to implement a moratorium on the release and commercial use of synthetic organism, this attempt was blocked by Brazil, Canada (and the U.S.), among others. SBSTTA must analyze the risks posed by synthetic biology and the CBD must implement a moratorium during COP-11 on the release and commercial use of synthetic organisms until there is an adequate scientific basis on which to justify such activities and due consideration of the associated risks for the environment and biodiversity, and the associated socio-economic risks, are considered.

Copped out? Yet agricultural biodiversity still feeds the world!

Patrick Mulvany, *Practical Action*

In October, Civil Society called on COP10 to: 1) support more biodiverse forms of agriculture and food provision, especially as practiced by small-scale food providers; 2) defend their access to and control over resources they need for food provision; 3) evaluate impact of IPRs on limiting biodiversity use and development and; 4) implement the 22 Findings of the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) (TOP 10 for COP 10, available at <http://www.cbdalliance.org/top-10-for-cop-10/>).

With the help of the over-hasty gavelling by the Chair in the final plenary, the Decision on Agricultural Biodiversity (X/34) was approved. The decision has many 'invitations' to various parties and institutions to do more and a few 'requests' to the Secretariat to study something. For most of the issues that we highlighted in our Briefing, with the exception of our call for 'land security', we at least prevented backsliding in the Decision but no more. There was no resolve to secure the future for the small-scale food providers who sustain agricultural biodiversity and feed the world, nor to severely regulate those who threaten them.

We are all aware that agricultural biodiversity is the result of the ongoing work on-farm, on the range and in coastal waters, of countless generations of women and men small-scale farmers, herders, fisherfolk, forest dwellers, indigenous peoples and many other small-scale food providers over millennia. It is multidimensional and multi-functional in terms of social, environmental and economic purposes. Agricultural biodiversity includes not only all of the world's crop and vegetable varieties but also livestock breeds and the diverse aquatic and marine species used by people for food and other purposes, as well as forest products important for food. It also encompasses all the pollinators, predators, soil organisms, mycorrhizae, and many others species in local agroecosystems that sustain the ecosystem functions needed by the primary food species. Essentially, agricultural biodiversity is the dominant form of biodiversity in human-managed terrestrial and coastal ecosystems, which hundreds of millions of people contribute to sustaining. It is the basis of all the food in the world. It's big!

Given the critical role of agricultural biodiversity to the future of life on Earth – its peoples, ecosys-

tems and the biosphere – we should expect more from the CBD after 20 years of deliberations. Surely, the CBD should not be simply 'inviting' FAO, the International Seed Treaty and others to be good and do what they should be doing anyway. The CBD should be demanding, regulating or commanding those with the power to do what is known to be necessary to sustain and build the agricultural biodiversity that the world needs.

Small-scale food providers have clear proposals for what is necessary. They have committed to strengthen and promote their ecological model of food provision and their local food webs that are at the heart of food sovereignty, their policy proposal. They express this in practice, in their seed swaps, in their campaigns to liberate diversity, and in their purposive approach to international institutions. Their approach defends and develops GM- and patent-free agricultural biodiversity of all species in the face of the aggressive commodification of nature, food and knowledge, and the capture of their resources, ecosystems and markets, by corporations that are being further facilitated by the 'new Green Revolutions' and the emerging carbon market. And they call for appropriate research that will support this. Their biodiverse model of production is resilient and is able to adapt to and mitigate climate change.

This is not a very radical proposal, yet the CBD – under the weight of corporate lobbying ventriloquised by compliant, and often wealthy, governments – shies away from what is needed, possible and affordable.

From Nairobi to Rome to Leipzig to Buenos Aires to Spoleto to Nagoya and now in Bali, with many stops in between, the road is littered with Decisions. Now is the time for action – and if governments will not or cannot deliver, and if the corporations who subsidise them are driven by other motives – it is now the turn of those who know how to develop and manage agricultural biodiversity, and who currently feed most people in the world, to take control. Now is the time for food sovereignty.



One of the most important decisions out of COP 10 was a de facto moratorium on geoengineering. Geoengineering is the international and large-scale manipulation of the Earth's systems, ostensibly as a response to climate change. While some proponents of rapid development of these technologies are determined to proceed as if the decision did not exist, the COP 10 decision was indeed a game changer and both the CBD as a body and the Parties who agreed to the decision would be wise to ensure it is respected.

Let's look at it in more detail.

Moratorium: Although governments and commentators often use the word "moratorium" (or "de facto moratorium") when speaking of the geoengineering decision, this language does not appear in formal texts within the UN Convention on Biological Diversity. Regardless, the decision carries considerable political clout. The 193 State Parties of the CBD are unanimously urging themselves and the world's three UN members who are not Parties to the Convention (USA, Andorra, Holy See) to invoke the precautionary approach and prohibit geoengineering activities at least until a number of conditions are met: The prohibition applies (1) as long as there is no "science based, global, effective, transparent control and regulatory mechanism"; (2) in keeping with the precautionary approach and the obligations of Article 14 of the Convention; (3) until there is an adequate scientific basis to justify geoengineering and (4) appropriate consideration of risks to the environment, biodiversity as well as social, economic and cultural impacts. The only exceptions that are specifically provided for are small-scale scientific research studies that would meet four specific conditions. Much of the geoengineering research currently underway (computer modeling, for example) would be allowed under this exception but virtually no open field trials of geoengineering technologies could meet all 4 conditions.

Of course, all agreements emanating from a Conference of the Parties are by consensus (except in unusual circumstances where a government requests a reservation) but it is rare for the COP to reach a consensus position on such a politically controversial issue. The new moratorium is particularly strong and unique because of its breadth – encompassing geoengineering on land, sea, and air.

Enforcement: Formally, the CBD has the intent but not the capacity to enforce the de facto moratorium. Informally, however, governments that have participated in establishing a consensus decision try hard not to violate such decisions and they risk their credibility and diplomatic reputations if they do so. Decisions of the CBD are, in fact, decisions of its member governments. Those decisions then apply in every intergovernmental forum.

Review/Rescind: Any future COP could choose to review and either strengthen or rescind the moratorium. However, any alteration must be unanimously accepted by all governments. The moratorium against "Terminator technologies" (seeds that are genetically modified to be sterile) established at COP 5 in 2000 was aggressively challenged by, among others, Canada and New Zealand, in 2005 and 2006. Despite considerable pressure, governments reaffirmed the moratorium in Curitiba in 2006, prompting the Brazilian President to declare the defense of the moratorium as one of COP 8's major victories. Indeed, the de facto moratorium draws much of its strength from the negotiating governments' recognition that – once established – it will not easily be removed.

Next Step – ICENT: A moratorium invoking the precautionary principle is

The Geoengineering Moratorium

ETC Group

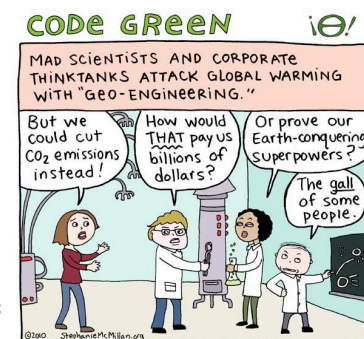
essential when gaps in knowledge are substantial, the risks are considerable, and the need for preventive action is imminent. In the absence of other timely mechanisms, moratoria represent a responsible and effective tool of international governance. In many instances, moratoria are UN member states' best defense against unilateral action by powerful countries or corporations.

It should be evident to all Parties that another approach is preferable. The United Nations system needs a monitoring and evaluation mechanism that would allow it to review and comment on new technologies as they move from discovery to diffusion and before commercialization. An authoritative, transparent and participatory mechanism established with credible and predictable processes would reduce risk both for science and economies as well as for society and the environment.

ETC Group proposes that the UN establish an International Convention for the Evaluation of New Technologies (ICENT). The current moratoria – and others that may arise at the CBD or in other UN bodies concerning nanotechnology and synthetic biology, for example – make it clear that it is time for a "political" change in climate. The Rio +20 Summit to be held in Brazil in May 2012 should formally launch negotiations that lead to ICENT. In the months ahead, ETC Group and its partners will offer specific suggestions to facilitate ICENT negotiations.

COP 10 (2010) Decision on Geoengineering :

Ensure, in line and consistent with decision IX/16 C, on ocean fertilization and biodiversity and climate change, in the absence of science based, global, transparent and effective control and regulatory mechanisms for geoengineering, and in accordance with the precautionary approach and Article 14 of the Convention, that no climate-related geoengineering activities* that may affect biodiversity take place, until there is an adequate scientific basis on which to justify such activities and appropriate consideration of the associated risks for the environment and biodiversity and associated social, economic and cultural impacts, with the exception of small scale scientific research studies that would be conducted in a controlled setting in accordance with Article 3 of the Convention, and only if they are justified by the need to gather specific scientific data and are subject to a thorough prior assessment of the potential impacts on the environment.



Finance, targets, green economy and innovative financial mechanisms

Helena Paul and Antje Lorch, *Econexus*



Discussions on funding, financial targets and innovative financial mechanisms were extremely difficult during the COP10 in Nagoya in October 2010 and clearly revealed the divide between North and South. They also reflect a wider struggle going on over the effectiveness and implications of market-oriented approaches to the three Rio Conventions, including biodiversity conservation. This struggle that is going to be central for "Rio+20", the 2012 United Nations Conference on Sustainable Development where 'green economy' is one of the two main topics on the agenda.

Financial Targets – once again no decision (till 2012?)

The COP10 approved 20 new targets for the Strategic Plan 2011-2020, but failed to agree on targets for increased financial resources. This is one of the most critical failures of the COP, especially when there is

clear evidence that Parties (in the global South) lack *resources* to implement CBD decisions. Donor countries opposing targets used a lack of understanding about how many resources were actually needed to implement CBD decisions, and missing baselines and measurement methodologies as an excuse to commit to any specific amounts. This closely parallels the failure of developed countries to make meaningful commitments in the climate talks.

The final COP10 decision involves a number of intercessional research and activities in order to finally set a target on financial resources at COP11 in 2012. The decision reads: "decides to adopt targets at its eleventh meeting, provided that robust baselines have been identified and endorsed and that an effective reporting framework has been adopted. This will allow progress towards the targets set out in this decision and towards target 20 of the Strategic Plan, including an effective reporting framework, to be used in assessing the information provided by Parties as outlined in this decision for the consideration of the Conference of the Parties at its eleventh meeting" (COP/DEC/X/3/para 8(i)).

The COP did adopt indicators, outlined in Decision X/3/para 7, including to track:

- aggregated financial flows ... of biodiversity related funding, per annum, from Official Development Assistance, domestic budgets, private sector, NGOs, etc;
- amount of funding provided through the GEF and allocated to biodiversity funding area; and
- resources mobilized from the removal, reform or phase-out of incentives, including subsidies, harmful to biodiversity which could be used for the promotion of positive incentives.

However, it is unclear how 'biodiversity-related funding' will actually be determined. This is something civil society will need to watch carefully, as academic research shows that OECD categorizations of 'biodiversity related' aid tend to exaggerate the biodiversity related aspects of projects (*Note 1).

Due to the funding situation at the CBD Secretariat, there is also the prospect that much of the work to set "robust baselines" or to make "an effective reporting framework" will not be completed. It is easy to imagine negotiations on targets failing at COP11 if donor countries again claim to be 'lacking information or baselines' to determine their financial commitments.

Global Environment Facility

During COP10, Parties were also meant to provide guidance to the Global Environment Facility (GEF) to set targets for new and additional financial resources for biodiversity. In the negotiations, Parties from the Global South forcefully noted that despite the increase in GEF allocations, the amount of real resources flowing has decreased. Since GEF funds are increasingly only given under the condition that funds are matched from other sources, countries have to take up additional credits to receive GEF funding, resulting in debts.

Parties agreed (X/26) to undertake a needs-assessment for implementation in order to develop an understanding of "the amount of funds that are necessary to assist developing countries and countries with economies in transition, in accordance with the guidance provided by the Conference of the Parties, in fulfilling their commitments under the Convention for the sixth replenishment period of the Global Environment Facility Trust Fund".

However, in an interesting turn of events, it appears that this decision was *excluded* from the core CBD budget. As such, at the time of writing, this decision is presently not funded either, which does not bode well for the 'goodwill' that the CBD depends upon to function.

Innovative financial mechanisms

The negotiations about Innovative Financial Mechanisms (IFMs) in the Financial Contact Group showed that differences among Parties were not about details, but about the whole concept of IFMs as such.

The proposed decision text soon ended up with brackets around or in every single paragraph, while some paragraphs even had two or three contradictory options. In particular, the ALBA countries represented by Bolivia made a strong stand about the need to establish safeguards before the development of IFMs. While Parties in general agreed on a need for safeguards they obviously could not come to an agreement about what they should include or even what should be protected from what. Bolivia's proposal "to ensure that IFMs would not lead to a 'commodification of nature'" certainly was the most contested safeguard - but also the one that shows how far countries differ on the issue. Here the split is not only between developing and developed countries, but also among developing countries that have different interests (see document UNEP/CBD/COP/10/L.46; <http://www.cbd.int/doc/meetings/cop/cop-10/in-session/cop-10-l-46-en.doc>).

However, it is important to bear in mind that there is a lot going on behind the scenes. An information paper was prepared for COP10 Nagoya to present the idea of a Green Development Mechanism, intended to be somewhat similar to the Clean Development Mechanism (CDM) under UNFCCC, a mechanism which is beset with problems. In the end the whole decision on IFMs, including references to the GDM, was not adopted as no consensus would be found. This does not mean that the issue is closed. The Green Development Mechanism is currently re-branding itself as the Green Development Initiative (see <http://gdi.earthmind.net/>). The GDI website has a draft paper on land tenure, in the context of CBD, IFC, GEF, and UNFCCC/REDD, suggesting they are thinking Rio+20. "Green economy" is one of the two themes for the 2012 United Nations Conference on Sustainable Development (the so-called Rio+20 conference).

But while "green" sounds positive, it has radically different meanings in different sectors. The COP10 Decision 21 on *Business Engagement* sets the green economy firmly in the context of the *Business and Biodiversity Initiative* launched at COP9 in Bonn. It promotes the involvement of organisations including the Business and Biodiversity Offsets Programme, the Biotrade Initiative of the United Nations Conference on Trade and Development, the World Business Council for Sustainable Development and the OECD. During the ongoing lead up to Rio+20, it is therefore key to observe how this term is used in order to ensure that the discussions do not become dominated by an agenda to "save" biodiversity through dealing and trade, including offset mechanisms. Off-set mechanisms have been established in the Clean Development Mechanism and proven very problematic on a number of levels. In a context of the CBD, off-sets could set conservation of high biodiversity areas against access to resources in areas defined as low biodiversity, and could lead to human right violations of those living on lands required as off-sets.

In COP10 Decision 3 *Strategy for resource mobilization in support of the achievement of the Convention's three objectives* (UNEP/CBD/COP/DEC/X/3), 8c, Parties and "relevant organisations and initiatives" are invited to submit information concerning IFMs by not later than 30 June 2011. It is vital to ensure there are substantial submissions and that civil society organisations continue to raise awareness about these attempts to replace funding commitments with doubtful market instruments.

***Note 1:** See article about this http://blogs.nature.com/news/thegreatbeyond/2010/07/biodiversity_aid_lags_in_corru.html

From Biofuels to the Biomass Economy – concern widens

(con'td from Page 1)

The biofuels industry has worked hard to convince policymakers that the serious problems with agrofuels can be restricted to the so-called 'first generation' (corn ethanol and vegetable biodiesels). It's a claim that owes more to wishful thinking than good science. Next-generation biofuels (such as cellulosic ethanol, algae and sugar-based diesel) may in fact pose a bigger threat to biodiversity – opening up forests, deserts, wetlands and grasslands to new commercial pressures and potential invasive species. A new report by the ETC Group, "The New Biomassers – Synthetic Biology and the Next Assault on Biodiversity

and Livelihoods" unveiled in Nagoya, launches a closely argued critique of these next generation fuels and of the "bioeconomy" concept now driving OECD research and industrial policies. In bioeconomy scenarios it is intended that not only fuel production but also production of electricity, plastics and chemicals will switch to biomass feedstocks. Enabling such a switch are new technological possibilities emerging out of Synthetic Biology – an extreme form of genetic engineering that also came up for discussion in Nagoya under 'new and emerging issues'. The New Biomassers argues that, far from a "Green Economy", switching to biomass amounts to a red hot resource grab on the lands of

the global South that will undermine the conservation and sustainable use of biodiversity. 86 percent of global biomass is to be found in the tropics and at least a fifth of global land grabs there are already driven by the need to secure biomass feedstocks for the 'bioeconomy' policies of the North. Not only are these land grabs driving landlessness and hunger, the resulting land use change and associated agricultural practices are already releasing significant quantities of greenhouse gases - putting the lie to the carbon neutral claims made for biomass. "The New Biomassers" report is available online at <http://www.etcgroup.org/en/node/5232>

The Future of the CBD

Friedrich Wulf
Biodiversity Campaigner, Friends of the Earth Europe, CBD Alliance Board Member

In CBD alliance briefing on the strategic plan for COP 10 (<http://www.cbdalliance.org/top-10-for-cop-10/>) we called on Parties to:

- Adopt a strong new strategic plan,
- Focus on and resource implementation,
- Mainstream biodiversity policies, and
- Declare a UN decade for biodiversity.

So what happened?

One of the key results achieved is, of course, the **strategic plan** (Decision X/2). The level of ambition and clarity especially of its overall mission suffered compared to the drafts prior to SBSTTA 14 and from SBSTTA 14. However, given the difficulties of the negotiation, there is something to be said for the fact that an outcome-based, well-structured strategic plan has agreed to at all, and by all. This plan will lead us through CBD *implementation* during the next decade.

The plan's music is in the **targets**. Many of these have been left quite unscathed and are remarkably clear. Key targets are:

- People are aware of Biodiversity, its values and how they can preserve them (t1)
- The values of BD must be integrated into policies, planning and accounting (t2)
- Perverse incentives must be eliminated, positive incentives developed (t3)
- Habitat destruction must be at least halved, if not stopped (t5). Habitats of importance for ecosystem services must be restored (t14), in the case of relevance to climate change by at least 15% (t15). Restoration is also necessary for species (t12).
- All use of land and other resources must be sustainable in terms of biodiversity (t4,6-7) and pollution, be it on purpose or by accident, must cease (t8)
- Protected areas systems must be representatively completed to cover 17% of land surface, effectively and equitably managed and well connected (t11)
- The Nagoya protocol on ABS must be ratified so it can en-

ter into force by 2015 (t16)

- All countries must develop national biodiversity strategies and implement them (t17)
- Finance must be improved so the Strategic Plan can be implemented, according to the needs which need to be quantified in 2011 (t20)

The idea of **mainstreaming** biodiversity has been taken up – at least as an idea. Many parties, too, are trying to get the issue into other sectors. However, one gets an idea of how hard this will be to achieve already when looking at the way even two of the (supposedly mutually supportive) Rio conventions relate to each other on the issue of climate change and biodiversity: while the CBD seizes every opportunity to flag the importance of climate change to be considered in its policies, the UNFCCC almost ignores this aspect [see e.g. annex II of UNEP/CBD/SBSTTA/14/6/ADD2]. So you won't be surprised to hear that is still a long way to go at any level for this to happen – be it in WTO at global level, in agricultural reforms such as the EU's CAP or simply in other parts of the administration at national or local level.

Of course, the plan is only as good as its **implementation** is. Now this has been – small wonder, given the interests of Parties not to give up any national sovereignty – an area without a breakthrough. While indicators for progress will be further developed and implemented (X/7), it is still in vain that we look for any tool to enforce compliance or to avoid blocking of decisions by minorities.

That, in the end, leads us to the glorious **decade of biodiversity** which has been decided now. Let's hope this is a suitable framework for actually acting against biodiversity decline. Be assured - civil society will remind parties at every occasion on their commitments in Nagoya and keep an eye on their implementation. This is the most pressing issue now: to transpose the decisions taken in Nagoya into national policies and actual reality. As Nike says: Just Do It.

COP10 outcomes on customary sustainable use (Article 10(c)): Parties recognise importance of customary sustainable use but fail to accept link with land and resource rights [New opportunities in 2011 through new focus on Article 10(c) in the revised POW on 8(j)]

Maurizio Ferrari

Customary sustainable use of biological resources is the focus of Article 10(c) of the CBD, which states that Parties shall (...): “protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”. Customary sustainable use played a role in two ‘issues for in-depth consideration’ at COP 10: ‘sustainable use of biodiversity’ (Article 10 of the CBD) and ‘traditional knowledge, innovations, and practices’ (Article 8(j) and related provisions).

At COP10, but even more so at preparatory meetings prior like SBSTTA and WG8(j) where COP decisions were shaped, a strong group of indigenous peoples, local communities and support organisations joined the discussions and shared information and recommendations on this issue. Customary use of biodiversity based on traditional knowledge, beliefs, rules and laws is inherent in their daily practices and interactions with natural resources. Through written reports, videos, presentations, side-events, and interventions they have tried to make Parties and observers better understand what this means and implies. They have also pointed out obstacles that they experience at national and local levels that prevent effective implementation of 10(c), and presented recommendations to improve implementation.

The core of their argument has always been that secure land and resource rights are vital to maintain these customary sustainable practices – without secure access to, and use of, the resources in their traditional territories, the knowledge and practices in these areas are greatly endangered. Full and effective participation in natural resource management and decision-making is also crucial. Other important issues include the need to have education that is appropriate to the communities’ language and culture (rather than imposed mainstream education); recognition of traditional authorities and customary laws, and the application of free, prior and informed consent (FPIC) approaches concerning activities proposed by external sectors in lands and territories of indigenous peoples.

The effort by indigenous peoples and local communities has partly paid off. The Convention increasingly recognizes, appreciates, and prioritizes indigenous peoples and local communities’ customary sustainable practices, as demonstrated by the unanimous decision to accept target 18 on traditional knowledge and customary use drafted by the indigenous participants in the new CBD Strategic Plan.

On the other hand, Parties refused to accept an explicit reference to secure land and resource rights in relation to customary sustainable use in their decision dealing with sustainable use of biodiversity. The paragraph on customary sustainable use deals with addressing obstacles and devising solutions to protect and encourage customary sustainable use of biodiversity by indigenous and local communities. This was a positive step, but some Parties asked for the deletion of any reference to land and resources rights. This would have been a very logical place to accept the proposals of the indigenous and local community participants. They called Parties’ reluctance to incorporate their suggestions “very disappointing”.

On a positive note, indigenous peoples will have many opportunities in 2011 to reiterate and expand their proposals, because COP 10 decided that a new major component on Article 10 with a focus on Article 10(c) will be included in the revised programme of work on Article 8(j) and Related Provisions. The Secretariat will convene an international meeting on Article 10 with a focus on Article 10(c) in 2011 (probably in June), where this will be more broadly discussed and shaped. COP10 also requested Parties, indigenous and local communities and non-governmental organizations to submit information to the Executive Secretary regarding the implementation of Article 10 of the Convention, with a focus on Article 10(c). These decisions will provide indigenous peoples and local communities with exciting new avenues to provide input in the 10(c) process and contribute to new CBD text that responds to local level experiences, concerns and needs.

Video of Louis Biswane from Suriname reading a statement on customary sustainable use in Working Group II at COP 10:

<http://www.forestpeoples.org/topics/convention-biological-diversity-cbd/video/2010/10/iifb-submission-article-10c-cbd-cop10-22>

Mixed reactions on new access and benefit-sharing treaty

Chee Yoke Ling, *Third World Network*

The palpable relief of adopting a number of major decisions at the recently concluded Conference of Parties (COP 10) to the Convention on Biological Diversity (CBD) was accompanied by lingering doubts over the new treaty on access and benefit-sharing.

After almost six years of work the 'Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilisation' was adopted. The objective is 'the fair and equitable sharing of the benefits arising from the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components'.

COP 10 adopted the Nagoya Protocol on ABS and established an Open-ended Intergovernmental Committee to prepare for the first meeting of the Parties to the Protocol. The Committee will meet on 6-10 June 2011 and 23-27 April 2012. The Protocol was opened for signature by governments at the UN headquarters in New York from 2 February 2011 to 1 February 2012. Fifty ratifications are needed for the Protocol to enter into force.

In the final hours of Nagoya under great pressure, most government delegates said that the Protocol is imperfect but that they could 'live with it'.

At the closing plenary past midnight into 30 October, Bolivia, Cuba, Ecuador and Venezuela expressed their deep disappointment over the ABS Protocol and put on record their rejection of the document even though they decided not to block its adoption. Other Southern countries also expressed their uncertainty about the final agreement. For example, Namibia, on behalf of the Africa Group, said that after all this time the Protocol is not the best of documents 'but we can live with it and more importantly, there is Article 25 on review (of the Protocol). When it is implemented we can see how it is - what we want is the best for Africa'. It also wanted its statement to go into the record of the conference. Since then, on closer analysis of the text that in the final stage was not the result of actual intergovernmental negotiations, there is growing concern over the flaws of the Protocol.

Scope

On scope, there were several aspects within the negotiations:

- The definition of the terms 'utilisation of genetic resources' and 'derivatives' of genetic resources took up considerable time over the past year. Developed countries wanted a narrow definition and developing countries the opposite. The final definition is open to interpretation.
- Secondly, China, India, Malaysia, Nepal and the Philippines argued strongly for benefit-sharing from the use of traditional knowledge that is publicly available and not identifiable with any specific indigenous or local community and thus belongs to the State. This was rejected by developed countries.
- Thirdly, the acquisition and use of genetic resources before the

entry into force of the new ABS Protocol was also debated. Developing countries argued for benefit-sharing of continuing and new uses of such genetic resources even though the genetic resources were obtained prior to the entry into force of the Protocol and now reside in public and private ex situ collections mostly in developed countries.

- Fourthly, another major subject of discussion centred on benefits derived from resources collected in areas outside national jurisdiction such as the high seas and the Antarctica region. The Africa Group in particular argued that while access cannot be regulated in these situations, no one should be allowed to benefit from these resources without sharing with the rest of the world. A global multilateral benefit-sharing mechanism is to be considered (see Article 7bis of the Protocol), although it is vague and potentially illusory.
- Fifthly, pathogens (viruses) used to develop vaccines and diagnostic kits were another highly contentious issue. Developed countries to various degrees wanted all these to be excluded from the Protocol, which according to developing countries would result in an empty and meaningless Protocol. The result is compromise text (Article 6(b)), which recognizes the need for flexibility in the cases "of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally". Again, the actual meaning of these Articles is yet to be defined in practice.

Compliance

The other highly contentious issue was the question of compliance. The impasse was over the requirement of mandatory checkpoints to monitor biopiracy resulting from non-compliance with the national ABS laws of a country of origin/provider country of genetic resources. In addition was the mandatory disclosure of information related to prior informed consent of a government and/or that of an indigenous or local community.

The final text requires one or more 'effective' checkpoints to be designated but leaves it to a Party to choose what that may be. Developing countries had insisted that patent and other intellectual property offices be the minimal mandatory checkpoint, and this was highly resisted by developed countries except for Norway.

An indicative list of checkpoints to guide Parties in national implementation of the Protocol was also resisted and this list no longer features in the adopted Protocol.

Although traditional knowledge and the rights of indigenous and local communities have been given stronger recognition in the Protocol compared to the CBD provisions, the compliance provisions on checkpoints do not cover traditional knowledge.

Many provisions are qualified with 'as appropriate' and 'where applicable', leaving much to be interpreted at the national implementation level.

The future of the Protocol and its impact in preventing biopiracy and ensuring that the CBD objective of fair and equitable benefit-sharing is met will continue to be fought out in the coming years.

An earlier version of this article is in the South-North Development Monitor (SUNS, No. 7032, 3 November 2010), which is published by the Third World Network.

REDD and rights: lost in translation

Forest Peoples Programme

18 February, 2011

Important achievements on rights and safeguards in REDD at UNFCCC now risk being seriously watered down and reinterpreted in REDD policy debates and practices, posing significant threats to the environment and indigenous peoples .

Indigenous peoples gathered in Cancun in December 2010 to defend previous gains on rights and safeguards in Reducing Emissions from Deforestation and Forest Degradation (REDD) in the UN Framework Convention on Climate Change negotiations. While some important commitments have been secured on paper, the current challenge is to ensure that these are properly translated and interpreted by those actors that are increasingly engaging in REDD readiness. A final assessment of how the Cancun outcome will impact on REDD is not possible at this stage, considering that policy processes and political positioning require time and resources to evolve and consolidate. However, evidence is starting to consolidate about the hiatus existing between rhetoric and practice, confirming that what was achieved in Cancun might turn out to be nothing but a strong political mandate to intensify support and proceed with REDD readiness while diluting some of the key requirements in terms of rights and safeguards. The convergence between the haste to access funds for readiness and start putting carbon credits on the market and the lack of political will to ensure stringent checks and balances might represent a major threat to indigenous peoples and the environment. REDD countries are resisting any additional commitments to Monitoring, Reporting and Veri-

fication while donor governments and agencies engaged in REDD are likely to translate the Cancun agreement as they see fit.

Three facts that occurred shortly before, during and immediately after the Cancun COP16 provide significant evidence of the potential dynamics that could be triggered by the Cancun agreement. A few days before the COP, the Interim REDD+ Partnership held a meeting which significantly downplayed the importance of safeguards in REDD. During the COP, the World Bank's Forest Carbon Partnership Facility (FCPF) decided - in a particularly non-transparent manner - to enlarge the number of countries under its recent Multiple Delivery Partners initiative, including Peru whose Readiness Preparation Plan (RPP) has been strongly criticized by indigenous peoples' organisations. Nevertheless, the FCPF decided to support it without any guarantee for the full respect of land rights and indigenous peoples' rights. Shortly after the conclusion of the Cancun COP, the FCPF and the UN-REDD produced a new, and apparently final, version of their joint RPP template, where previously existing language on the United Nations Declaration on the Rights of Indigenous Peoples and Free Prior and Informed Consent has been substantially watered down, and the procedures aimed at ensuring compliance to social and environmental safeguards have been revised. Similar efforts to conveniently translate the Cancun mandate in a less stringent manner are likely to happen in all REDD policy debates. Therefore, now more than ever, national and community level advocacy has to be tied to these international fora. At the same time, more efforts will be needed to support indigenous peoples' organizations in their countries, in order for them to produce their own principles for REDD and thus challenge their governments and international institutions to fully respect international obligations and standards on indigenous peoples' rights.

COP 10: What's in it for indigenous women farmers?

Virginia Dammay

Innabuyog, Cordillera, Philippines

As an indigenous woman farmer from the Philippines, coming to this meeting is a demand for acknowledgment. We want to show the world that we exist, and we also want to make governments realize that their decisions are crucial to our livelihood and impact us in significant ways.

For centuries, we have been developing an agricultural system that is suited to our situation. We have been able to develop and protect a wide range of traditional seeds through our own practice of planting, selection, and propagation that have been resilient to the changing environment. This also includes our innovative methods of using our locally available resources for pest, crop, and natural resource management. However, all of our methods and practices were affected when the Green Revolution was introduced in the Philippines and other Asian countries, and more recently, the Gene Revolution. The loss of our traditional seeds is now of great concern to us, especially with the commercialization of agriculture, the threats of climate

change, and the intensified promotion of GE crops or suicide seeds by multinational seed companies without any clear regulation by our governments.

The indigenous and traditional knowledge that has been practiced by our ancestors for centuries is now gaining recognition because it has been proven to be viable, sustainable, resilient and healthy. Sadly, this knowledge is now eroding. Developing and propagating these good practices will contribute tremendously to our food security, versus adhering to the interests of multinational companies to rake in more profit through their biotechnologies at the expense of poor peasants. Therefore, it is important that governments spend more time discussing how to support the efforts of small indigenous and farmer's organizations at this COP 10 meeting.

With the COP 10 outcome, we urge governments to recognize and protect our rights to land, territories and resources and also to protect our traditional knowledge, skills and contributions in biodiversity-based ecological agriculture.

More ambitious strategic approach needed in order to halt biodiversity loss by 2020

CEEweb for Biodiversity

Budapest, Hungary –The 10th meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD COP10) took place October, 2010 in Nagoya, Japan. Since the 2010 biodiversity target was not achieved, a new strategic framework for the period to 2020 was adopted.

In April 2002, the Parties to the Convention committed themselves to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth. Unfortunately the 2010 biodiversity target was not achieved and biodiversity continues to diminish. Parties in Nagoya should have used this special momentum to adopt an ambitious strategic approach for the coming decade to halt the loss of biodiversity by 2020.

New strategic approach under the CBD for 2011 to 2020

The purpose of the revised and updated Strategic Plan is to promote effective implementation of the Convention and to give a well-based platform for all stakeholders to contribute to Convention's three objectives. In order to do so it is important that the new Strategic Plan use lessons from the past to correct the shortcomings of the current strategic approach. The main reason behind the failure of delivery is that the strategic approach so far has lacked approaches clearly addressing the underlying causes (indirect drivers) that lead to biodiversity loss. Although the Strategic Goals of the Strategic Plan follow a logical framework deriving from the Driver Pressure State Impact/Benefit Response model and consequently, represent a step forward, the Strategic Plan only partly covers the necessary steps and measures needed to tackle all of the underlying causes of biodiversity loss.

Paradigm change in biodiversity policies is needed

The failure to meet the 2010 biodiversity target was caused by an excessive focus on sectoral problem solving and end-of-pipe solutions which do not effectively tackle environmental problems. Without focusing on the deep-rooted drivers, pressures

on environment, resulting inter alia in biodiversity loss, keep regenerating. As long as overexploitation of natural resources continues, excessive pollution exaggerates, and consumption and production grow, the achievement of nature conservation goals will remain unrealistic. Therefore, a paradigm change in biodiversity policies is needed in order to identify and tackle the deep-rooted drivers.

CEEweb's efforts to make paradigm change happen

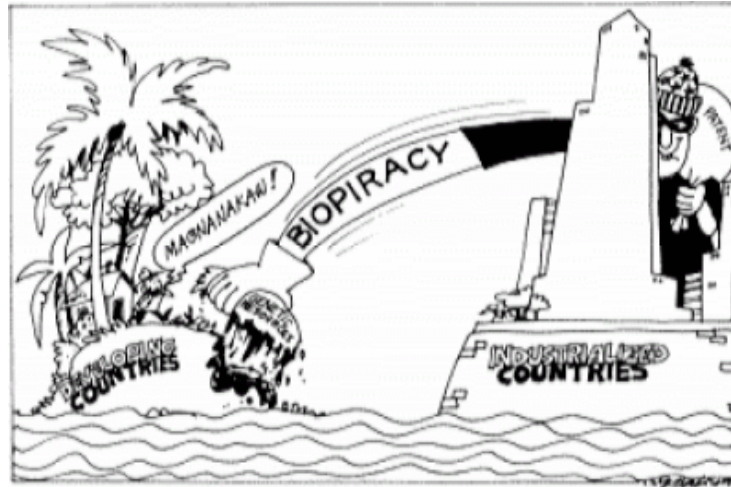
CEEweb for Biodiversity has been urging Parties to take a holistic approach and to give very clear guidance for implementation of the Strategic Plan. From a holistic point of view, it is crucial to tackle all the root causes of a problem at the same time in order to avoid shifting of pressure from one of the three attributes of the environment (abundance of natural resources, spatial structure and quality of the environment) to the other. Moreover, Goals and Targets of the Strategic Plan should give well-designed and unambiguous guidance to all levels of its implementation with clear commitments for relevant stakeholders.

In CEEweb's opinion, the strategic approach of the CBD should clearly address the drivers behind environmental pressures, such as our unsustainable consumption and production patterns. Our current socio-economic systems let energy expensive products and services flourish due to the cheap, unlimited access to natural resources. Going one step further, we can argue that the socio-economic systems are defined by the values of society. Among these values the most dominant is the belief in material wealth and in the continuous growth of GDP at the expense of other values such as a healthy environment, happiness or security.

In light of these complex interrelations, CEEweb will continue advocating for strengthened political will to reduce the impacts of consumption on the Globe's natural heritage.

About CEEweb for Biodiversity

CEEweb for Biodiversity is an umbrella organization of NGOs in the Central and Eastern European region. Our mission is the conservation of biodiversity through the promotion of sustainable development.



How the host fared

Shalini Bhutani

While environment ministers from across the globe were at Japan (Nagoya) for the CBD meetings, Japan's own commerce and industry officials have also been hard at work. Japan has upped its bilateral economic dealings with many countries in the Asian region, in which both trade and biodiversity are dealt with in the same breath. Let's take a look at Japan's treatment of both.

Until the late 1990's Japan's trade policy was single-mindedly focused on the World Trade Organisation (WTO) as a means for global trade. More recently, there has been a shift in the Japanese government's position towards a "multi-layered trade" approach through bilateral free trade agreements (FTAs). Nippon Keidanren (Japan Federation of Economic Organisations) comprised of 1,300 companies and 130 industrial sector associations, is behind both approaches. Trade and business interests determine the course.

The Japanese Government announced a New Growth Strategy in December 2009, which was approved by its Cabinet in June 2010. It expressly states "Achieving Growth by Pioneering New Frontiers", as one of Japan's strategic focus areas. This includes increasing trade with other Asian countries. The Japan-Singapore FTA (2002) was the first such bilateral for Japan. It has also inked an economic partnership agreement (EPA) with the 10-member ASEAN (2007) and has 'in principle' agreement on an EPA with India. Japan is also pushing India and others into a 16-country regional integration initiative of Comprehensive Economic Partnership in East Asia (CEPEA). Its Strategy also targets an APEC FTAAP (Free Trade Area of the Asia-Pacific) by 2020. Japan's approach to biological resources has to be located within the context of its aggressive economic strategies.

Japan's track record on biodiversity conservation is questionable. See, for instance, its practices of unsustainable whaling and dumping wastes in other countries. Additionally, Japan has acted as a 'biopirate' more than once. In the 1990's, the Japanese cosmetics MNC Shiseido patented over 10 compounds from Indonesian traditional medical system Jamu. In 2002, Cupuaçu, an Amazonian fruit, was registered as a trademark in Japan by the Asahi Foods company. It took

legal activism from NGOs and campaigns from local people to challenge these actions at patent offices. The main agenda of COP 10 was to negotiate an International Regime (IR) on Access and Benefit Sharing (ABS). Over 193 countries agreed on the Nagoya Protocol to convince bio-rich countries that such cases will not occur in future.

Japan, as a technological leader, is a "user" country that needs to access biological resources from others for its bio-trade. This also explains why its nodal agency for ABS to implement CBD objectives is its Ministry of Economy, Trade and Industry (METI). In contrast, the same portfolio in India, for example, is held by the Ministry of Environment and Forest (MOEF). METI has a vested interest in showing that ABS regimes can work for local communities. In 2005, Japan developed the practical "Guidelines on Access to Genetic Resources for Users in Japan" for its private sector and research institutes. Japan is heavily investing in PR to come across as a country that is committed to share the benefits it reaps from others bio-resources. However, in reality, in its FTAs with Malaysia, Philippines, Indonesia, Vietnam and Thailand, intellectual property rights (IPR) on seeds were on the negotiating table. Seeking private monopoly rights over biological resources goes against the intention to share benefits. Another step towards tighter IPR regimes is the support Japan gives to the Anti-Counterfeiting Trade Agreement (ACTA). Japan may be hosting CBD now, but in October 2010, Tokyo, with METI in the lead role, was hosting the 'final' round of ACTA talks that led to an agreement on a proposed global IPR enforcement treaty.

India too, has been the focus of Japanese biodiversity diplomacy. The Japan Bioindustry Association (JBA) has been 'helping' the MOEF to develop India's ABS regime. Japan has a keen interest in agricultural and medical biotechnology, and India's MOC has been luring foreign investors highlighting India's biotech strengths, including its biological resources.

As is typical in bilateral trade negotiations, few people have access to the trade treaties and EPAs, as the negotiations and the texts remain closed. Politicians and businesses may have found Nippon partners. And like delicately cut and beautifully plated sashimi, the Japanese platter might have made for them a pretty picture. But if it's raw on the inside, it is not going to go down well with many people.

Will we share the biggest part of the benefits?

François Meienberg and Christine von Weizsäcker

One of the main issues in the ABS Protocol negotiations was genetic resources held ex situ. It is obvious that a major part of genetic resources has already been taken from the countries of origin during the past 400 years, and are now kept in botanical gardens, research institutions, by genetic resource broker companies, companies for outsourced access, and even commodities on the shelves of supermarkets. It was thus a crucial question: **Will we share the benefits arising out of the utilisation of these resources or will the new Protocol legitimise the biopiracy which has occurred since the time of colonisation?**

Sharing nothing but the benefits from the utilisation of genetic resources acquired after the entry into force of the Protocol for a given country would mean refusing to share the biggest part of the benefits. Users would be able to examine ex situ collections in their own country or in non-Parties or check if the resource is available in the open market. If a user has illegally accessed a genetic resource in a country of origin, he would be able to pretend that he legally found it ex situ.

A recent case: The Nestle rooibos patents

This case exemplifies how benefits to Northern corporations are derived from genetic resources first accessed long ago. Nestle has newly applied patents on the use of rooibos for cosmetic purposes. Rooibos is clearly an endemic plant to South Africa and, even now, only grown in certain areas of South Africa. It is also evident that everybody can find rooibos tea on the shelves of his neighbourhood supermarket. Nobody will urge somebody who drinks rooibos tea at home to ask for prior informed consent of the South African Focal Point (as this does not fall under the common understanding of utilisation, as was once again confirmed during the ABS working group negotiations). But reading the CBD, it should be evident that the benefits - for example, out of the commercialisation of the new use as cosmetics based on genetic resources - should be shared with the country of origin.

It is maybe one of the most widespread misunderstandings of CBD obligations that benefits should only be shared when the genetic resource has been accessed under the rules of the Convention. This is spelt out nowhere in the Convention text. On the contrary, Art. 15 clearly states that the 'benefits arising from the commercial and other utilisation of genetic resources' should be shared fairly and equitably with the provider country.

Botanical gardens show that it is possible

The principles of Botanic Gardens Conservation International state, 'Share benefits arising from the use of genetic resources acquired prior to the entry into force of the CBD, as far as possible, in the same manner as for those acquired thereafter.'

Moreover, botanical gardens working together in the International Plant Exchange Network (IPEN) have agreed to use a material transfer agreement which includes the following paragraph: 'By signing this Agreement the recipients commit themselves to act in compliance

with the CBD and its agreed provisions on Access and Benefit-Sharing. This includes a new Prior Informed Consent (PIC) of the country of origin for any uses not covered by terms under which it has been acquired (such as commercialisation).'

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) also does not differentiate between genetic resources accessed by CGIAR centres (or other seed banks) before or after the coming into force of the CBD.

These examples show that it is state of the art to include ex situ accessions into future benefit-sharing agreements - irrespective of whether they have been accessed before or after the coming into force of the CBD.

Fortunately, in the final version of the recently adopted Nagoya Protocol on ABS, all wording which would have restricted the scope of the Protocol to genetic resources and the associated traditional knowledge acquired after the entry into force of the Protocol, has been deleted.

Therefore, new utilisations of genetic resources held ex situ are part of the Protocol. In addition, the Protocol now also includes a mechanism to share benefits of genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. Art. 7bis reads as follows:

'Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilisation of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent.' The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.'

One possible case under such a mechanism would be that of a genetic resource which left the country of origin a long time ago and is now kept in a botanical garden - but where the origin is not identifiable anymore.

However, no timeframe is given for the setting up of this mechanism. This will only be looked into at the second meeting of the preparatory Intergovernmental Committee for the Protocol in April 2012.

***François Meienberg is with the Swiss non-governmental organisation Berne Declaration. Christine von Weizsäcker is with Ecoropa.**

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Yanbaru Forest Under Attack

Hideki Yoshikawa, *Chief Secretariat*

Citizens' Network for Biological Diversity in Okinawa

The Biggest Contradiction Award, which the CBD Alliance aptly presented to the Japanese government at the closing of COP10 in Nagoya, is now manifesting itself as a devastating reality in the Yanbaru forest, Okinawa, Japan.

In December 2010, just two months after COP10, the Japanese government resumed the construction of six US military helipads in the Yanbaru forest.

The Citizens' Network for Biological Diversity in Okinawa calls for immediate stoppage of the construction of the helipads and the subsequent destruction of the Yanbaru forest: We ask the Japanese government to be true to the spirit of the CBD and to its role as the Chair of COP10.

Yanbaru Forest

Located in the northern area of Okinawa Island, the Yanbaru forest (about 26,000 ha) is one of the richest areas of biodiversity in Japan. It is home to over 1,000 species of high plants and 5,000 species of animals, including numerous indigenous and endemic species such as the endangered Okinawa Woodpecker and Okinawa Rail. It is also home to people who live in small and isolated communities.

The Okinawa prefectural government promotes the Yanbaru forest as a key area in its efforts to get the Ryukyu Islands designated as a UNESCO World Heritage Site. The Japanese government (deceptively?) announced its intentions to designate the forest as a national park just before the opening of COP10.

Helipad Construction and Opposition

However, since 1957 the Yanbaru forest has been used as a training site for the US military stationed in Japan. Today, 30% of the forest is a US military training area. In this training area, there are already 22 frequently used US helipads, which cause various problems to the environment and the nearby local communities. The construction of new helipads will undoubtedly increase the impact on the forest and local communities. Since the construction plan was revealed in 1999, local people, NGOs, and scientists/experts have been opposing the plan and expressing their concerns.

To move forward with the construction plan, the Okinawa Defense Bureau conducted a "voluntary" Environment Impact Assessment (EIA) in 2007 and concluded that the construction and use of the helipads would have no impact on the environment and the community. While local people, NGOs, and scientists/

experts point to the EIA's lack of transparency, accuracy, and reliability, the Bureau has been pushing the construction based on the EIA's "no-impact" conclusion.

Global Voices

Meanwhile, global voices have been loud and clear. The International Union of Conservation for Nature (IUCN) has twice requested that the Japanese government undertake a proper EIA with a "zero option" (no-construction option) for the helipad construction and to draw conservation plans for the endangered Okinawa Woodpecker and Okinawa Rail in the forest.

On the occasion of COP10 in Nagoya, a collation of 75 Japanese and international NGOs issued a joint statement calling for stoppage of 20 projects taking place in Japan, and the helipad construction was included in the projects; the Alliance of Zero Extinction listed the Yanbaru forest as one of the 587 sites in the world it had identified as home to 980 species on the brink, thus in need of urgent action to safeguard them; UK's The Guardian newspaper included the Yanbaru forest as one of the sites for its "Biodiversity 100," calling the Okinawa Defense Bureau to "consider alternative sites [for helipad construction] that will not impact Okinawa's unique biodiversity."

Stop the Helipad Construction

The Japanese government has shown no willingness to resolve the criticism and concerns around the helipad construction, as the Okinawa Defense Bureau's construction work continues in the Yanbaru forest. The US government and military remain indifferent by-standers. The Citizens' Network for Biological Diversity in Okinawa calls for your attention and action to urge the Japanese and US governments to immediately halt the helipad construction in the Yanbaru forest and to enter dialogue with the local people, NGOs, and experts/scientists in order to seek ways to protect the Yanbaru forest and the living environment for the local people.



Following The Protocol(s)

Kanchi Kohli and Shalini Bhutani

Is it not a due communication protocol that you ask someone before making decisions that will affect them? The Nagoya Protocol under the Convention on Biological Diversity (CBD) — access and benefit sharing (ABS), reiterates the point that due protocols with local communities must be followed. However, global politics and national regimes are yet to comply with the rules laid down for access and benefit sharing.

The most memorable outcome of the CBD COP10 gathering is the Nagoya Protocol. This international regime on ABS outlines how the 'benefits' arising out of any kind of use of biological material and associated traditional knowledge should be determined and shared.

Countries in the Latin American region had put on record at COP 10 that they do not accept a Protocol that does not meet the minimum requirements of preventing bio-piracy. Since then, at New York on February 2nd, representatives of Colombia, Yemen, Brazil and Algeria signed the Nagoya Protocol. The Mexican Government followed on February 24th, along with Rwanda on February 28th.

Accordingly, the Protocol has six signatures as of date. The Protocol enters into force 90 days after it is signed by 50 states. It is to remain open for signature for another year until February 1, 2012. The UN Secretary General's words on the occasion are a stark reminder of the now dominant view of living matter, when he remarked that the Protocol (will) "enable all people to enjoy the full benefits of nature's services, today and in the future." With this Protocol, the CBD drops any pretense about treating our biological world as a service, which cannot be sold and traded. Rather, it encompasses the view

that genes and know-how can be regarded as the property of one or a few. It turns a blind eye to the fact that many local uses and traditions cannot be attributed to one person or a few territories. Over the years, biological material and its use has transported itself across villages, state and even international boundaries. Consequently, granting ownership to one or a few makes it impossible to be fair and equitable in determining shares.

The CBD has accepted that the use of biological resources for research or commercial purposes is a given, even though it prefixes sustainability to it. While CBD can do little to take action when countries deplete or threaten biodiversity through usage, bio-based industries have shown little commitment to conservation.

Sharing benefits

The preamble of the Nagoya ABS Protocol emphasizes the economic value of both the biological resources and associated traditional knowledge. It states that if the profits are shared as benefits, conservation will be encouraged.

In any protocol, it is important to raise the question of ethics. The business of biodiversity has conveniently sidelined the fundamental questions surrounding the nature of access itself and which actors dominate there. User countries, including those in the South, move further into developing mechanisms which offer the facade that access and benefit sharing can actually be built on the same foundation. What follows are 'model' contractual agreements between two unequal parties. It completely steers the argument away from whether the access is justified in the

first place and what impacts it might have locally.

The Nagoya Protocol, in an attempt to acknowledge the rights of local and indigenous communities to take decisions on their resources, lays down full prior informed consent (FPIC) as a prerequisite before any access takes place. But it relies almost entirely on national laws and a CBD-country's own mechanisms to effect FPIC.

In India, the Biological Diversity Act of 2002 pays mere lip service to FPIC. The letter of the law requires a mere consultation with local level committees, which are yet to be formed in most parts of the country. Moreover, none of the approvals given to date have followed the consultation clause!

Even if the Nagoya Protocol comes into force, there is little future for biodiversity and its real keepers if the protocols of involving them are not put into use at home.