

## THE CONVENTION ON BIOLOGICAL DIVERSITY: SOCIAL, ECONOMIC AND LEGAL CHALLENGES



Biological diversity – the variability of life on Earth – is vital to human well-being. But today biodiversity faces an unprecedented threat from human activities. This threat is often made worse by misguided social and economic policies that encourage the unsustainable consumption of our biological resources, the degradation of ecosystems and the extinction of species. As a result, the ability of biodiversity to provide us with vital products and services – ranging from floodwater protection to disease-resistant crops to new medicines – is being dangerously eroded.

The world's governments are responding to the biodiversity crisis through the 1992 Convention on Biological Diversity. Within its framework they have launched a comprehensive set of programmes and activities to address the many causes of biodiversity loss. A number of these programmes address the need to better understand the social, economic and legal challenges to the conservation and sustainable use of biodiversity. With the support of a new unit within the Convention's secretariat, governments are seeking solutions to these challenges:

### 1 – ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING

Until recently, all plants, animals and microorganisms were considered to be part of the common heritage of humankind. Foreign prospectors felt free to take these biological resources from their countries of origin and



use them to develop drugs and other commercial products. The resulting products would be sold by foreign companies under the protection of patents or other intellectual property rights. Meanwhile, the country of origin – often from the developing world, where most biodiversity is

found – would receive no benefit from the commercial exploitation of its resources.

Under the Convention on Biological Diversity, the international community has agreed that all States have sovereignty over their own genetic resources and are thus entitled to the “fair and equitable sharing of the benefits” that these resources provide.

Governments are committed to facilitating access to genetic resources on “mutually agreed terms” and on the basis of the country of origin’s “prior informed consent”. This country has the right to benefit from the exploitation of its resources in the form of financial payments, samples of what is collected, the participation or training of national researchers, the transfer of biotechnology equipment and know-how, or a share of any profits from the use of the resources.

A Working Group is now developing international guidelines on how to translate the concepts of benefit-sharing and access to genetic resources into practice. Meanwhile, governments are adopting national legislation in this field and exploring various kinds of benefit-sharing arrangements.

### 2 – TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES

The Convention recognizes that many indigenous and local communities interact closely with biological diversity. They contribute to the conservation and sustainable use of biological diversity through their role as natural resource managers. They have also refined age-old skills and techniques for the sustainable exploitation of biological resources. This knowledge can make an invaluable contribution to modern understanding of biological diversity.

Such communities deserve to share in the benefits derived from their achievements. Governments have therefore undertaken to respect, preserve and maintain traditional knowledge, innovations and practices. They pledge to promote their wider application with the approval and involvement of the holders of such knowledge, and to encourage the equitable sharing of the benefits arising from their utilization.

A Working Group is developing a programme to address the development of legal and other forms of protection for traditional knowledge, the participation of indigenous and local communities in the work of the Convention, and the strengthening of cooperation between and among the indigenous and local communities themselves.



### 3 – INCENTIVE MEASURES

Economic theory assumes that well-functioning markets will provide producers and consumers with good information about the value and scarcity of resources. In practice, however, the alarming loss of biological diversity can often be traced back to market imperfections, where market prices fail to reflect the actual value of biological resources. This value can include contributions to agricultural production, recreation, water supplies, and much more. Because markets do not assign monetary values to such contributions, prices give misleading market signals to individuals, companies and governments who may therefore overexploit biological diversity.

The failure of markets to reflect the value of biological diversity is one of the starting points for the Convention's work on incentive measures. This work concentrates on quantifying the value of biodiversity and then internalizing this value into market prices. A related objective is addressing perverse government-financed incentives that accelerate the loss of biodiversity. These range from public subsidies that support unsustainable farming, forestry and fisheries to publicly-financed projects that erode or destroy critical habitat by converting land to other uses or disrupting migratory corridors.



## 4 – INTERNATIONAL TRADE RULES

While the Convention does not specifically address trade issues, there is a close relationship between many of its provisions – as well as those of its subsidiary agreement, the Biosafety Protocol – and the provisions of the World Trade Organization (WTO). Biodiversity is just part of a broader discussion within the international community on the need to ensure harmony between trade rules and environmental law. The Parties to the Convention have emphasized the interrelationship between the Convention and the provisions of the WTO's Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) and the need "to further explore this interrelationship".



## 5 – ECOTOURISM

Tourism is one of the world's fastest growing industries and a source of growing stress on fragile ecosystems. Fortunately, a growing trend towards "ecotourism" offers promising avenues for the sustainable use of biological diversity. It offers opportunities for generating important revenues and economic activities, particularly in developing countries, thus providing an incentive for preservation. Sustainable tourism can also serve as a major educational opportunity, increasing knowledge of and respect for natural ecosystems and biological resources. Other benefits include providing incentives for maintaining traditional arts and crafts, traditional knowledge, and innovations and practices that contribute to the sustainable use of biological diversity.

If wisely managed, ecotourism has the potential to reconcile economic and environmental concerns and give a practical meaning to sustainable development. The challenge for the Convention is to develop guidelines that will help countries maximize the many benefits of tourism while minimizing its adverse impacts.



## 6 – LIABILITY AND REDRESS

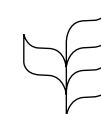
It is now a generally accepted rule of international law that States are obliged to prevent activities within their jurisdiction or control from damaging the environment in other parts of the world. This principle of State responsibility has been confirmed in several international treaties and in judicial decisions. During the Convention negotiations, however, governments were unable to reach consensus on a liability regime covering cases of transboundary damage to biodiversity. The Parties continue to work on this issue.

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