

CHAPTER 14

Policy Issues in Biodiversity Conservation 1: The Convention on Biological Diversity

*Erie S. Tamale
World-Wide Fund*

INTRODUCTION

The Convention on Biological Diversity (CBD) is an international legal framework which was adopted by different countries in 1992 to promote the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising out of the utilisation of genetic resources. It was one of the major outcomes of the United Nations Conference on Environment and Development (UNCED) which was held in Rio de Janeiro, Brazil in June 1992. Unique from other earlier conservation-related Conventions, the CBD emphasises an important principle that countries have sovereign rights over their own biological resources and they accordingly bear the responsibility for conserving and sustainably using such resources. It emphasises implementation at the national level and leaves the regulatory powers to the discretion of the national jurisdictional authorities. It comprises a preamble, 42 articles and two annexes namely: (i) Identification and Monitoring; and (ii) Arbitration and Conciliation.

Evolution of the CBD

The final text of the CBD evolved from a process that was started several years ago. Since the early 1970s, several international fora and conservation agencies, including IUCN, WWF and others expressed serious concern about the unprecedented rate of biodiversity loss. In 1972, the United Nations Conference on Human Environment initiated the political basis for linking the conservation of biodiversity, and other national resources, to development efforts. Similarly, the World Commission on Environment and Development (WCED) in 1987 highlighted the critical issues of biodiversity loss and their implications in the development process. Between 1984 and 1987, the Environmental Law Centre of the World Conservation Union (IUCN) together with experts from the WWF/IUCN Plant Advisory Group and IUCN's Commission on Environmental Law (CEL) explored possibilities for a global treaty on biodiversity and prepared successive drafts of articles for the treaty.

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In 1987, the 14th Governing Council of UNEP took up the challenge to address the global concern about biodiversity loss and to streamline the international efforts to protect biodiversity. By decision 14/26 of June 1987, an *ad hoc* Working Group of Experts on Biological Diversity was established with the mandate to explore “the desirability and possible form of an umbrella convention to rationalise current activities in this field and to address other areas which might fall under such a convention”¹. It had been envisioned that the umbrella convention would consolidate the then existing conventions, including the World Heritage Convention, CITES and the Ramsar Convention. However, after holding three sessions between 1988 and 1990, the Working Group reached a consensus that the idea was legally and technically impossible and therefore recommended that a new global convention on biodiversity was necessary.

On the basis of the Report of the Ad Hoc Working Group of Experts, the Governing Council, in July 1990, established the Ad Hoc Working Group of Legal and Technical Experts on Biodiversity, with the mandate to negotiate an international legal instrument for the conservation and rational use of biological diversity. This group held two negotiating sessions and utilised the earlier draft articles by IUCN in the negotiations. In May, 1991, the group was re-established and renamed the Inter-governmental Negotiating Committee for a Convention on Biological Diversity (INC). The INC held five formal working sessions of ten days each. This coincided with the UNCED preparatory process and therefore the CBD process was considered as part of the process for defining sustainable development and how to achieve it (Sanchez and Juma, 1994). The final text of the Convention was adopted on 22 May 1992 and was opened for signature at the UNCED on 5 June 1992. At the UNCED, 157 countries signed the Convention and by 29 December 1993, at least 30 countries had ratified it and it subsequently entered into force. To date, over 165 countries have ratified the Convention.

Administration of the Convention

The CBD is administered through five major organs, namely the Conference of Parties (CoP); the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA); the Secretariat; the Clearing House Mechanism; and the Financial Mechanism.

- (a) ***The Conference of Parties*** is the supreme governing body of the Convention. It is the general meeting of all parties to the Convention, i.e.

¹ UNEP Governing Council Resolution 14/26 (1987)

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those states which have ratified. Other agencies, including U.N. specialised agencies, the European Union, NGOs as well as non-contracting states, may attend the CoP as observers unless at least one third of the Parties present object. So far, two CoPs have been held. The COP.1 was held in Nassau, the Bahamas (28 November – 9 December 1994); COP.2 was held in Jarkarta, Indonesia (6 – 17 November 1995); COP.3 was held in Buenos Aires, Argentina (4 – 15 November 1996) and COP.4 will be held in Bratislava, Slovakia (4 – 15 May 1998).

- (b) ***The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA)*** is the multi-disciplinary technical advisory body on the Convention. It provides the CoP with timely advice on scientific, technical and technological matters relating to the implementation of the CBD. It consists of government representatives with competence in the relevant fields expertise. The first SBSTTA meeting was held at UNESCO headquarters in Paris (4 – 8 September 1995), the 2nd was held in Montreal, Canada (2 – 6 September 1996) and the 3rd was held in Montreal, Canada (1 – 5 September 1997).
- (c) The ***Secretariat*** is the administrative headquarters for the Convention. Its major functions are to arrange the necessary meetings, prepare the necessary reports, co-ordinate with the relevant agencies and perform any other duties assigned to it by the CoP. The Secretariat is located in Montreal, Canada and is headed by an Executive Secretary.
- (d) The ***Clearing House Mechanism*** is the facility that was established to promote and facilitate technical and scientific co-operation. It is intended to enhance co-operation between the numerous information systems and activities relevant to the objectives of the Convention and to contribute to capacity-building. It fosters information dissemination and exchange and networking.
- (e) The ***Financial Mechanism*** is the funding scheme/system for providing Contracting Parties, particularly developing countries, with financial resources, on grant or concessional basis, to implement the Convention. Contributions to the Trust Fund are sought from the Parties, mainly the developed countries, on a voluntary basis according to their capabilities. The mechanism functions under the authority and guidance of, and is accountable to, the CoP but its routine operation is currently carried out by the restructured Global Environmental Facility (GEF) on an interim basis. The GEF is governed by three major institutions: the World Bank, UNDP and UNEP. The World Bank acts as the trustee for the funds and

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chairs the GEF. UNDP is responsible for technical assistance and capacity building and is the administrator of the Small Grants Scheme for NGOs. UNEP provides the environmental expertise and houses the Secretariat for the Scientific and Technical Advisory Panel (STAP) of GEF.

The North-South debate over biological diversity

The CBD process probably represented one of the bio-diplomatic negotiations that demonstrated the nature of power relations between the North and the South over biological resources. Although it is widely acknowledged that the majority of the world's biodiversity is found in the developing countries, these countries have not hitherto equitably shared the benefits accruing from the use of "their" genetic resources. Multi-national companies from the North, because of their advanced technology, have over many years "freely" accessed and transferred these genetic resources from the south to boost the agricultural, pharmaceutical and other biotechnological industries in the north and therefore boosted the northern economies to the detriment of the south.

During the negotiation process of the CBD, governments of the North wanted to advance the notion of biodiversity being a global "common heritage of mankind" and emphasised the need for conservation of biological diversity in the south. On the other hand, countries of the south reiterated that countries have sovereign rights over their biodiversity. While appreciating the need to conserve their biodiversity, they argued that such conservation should not thwart opportunities to exploit/utilise biological resources in order to develop their economies. Furthermore, in exchange for their co-operation in conservation efforts, developing countries demanded that:

- the North should transfer finances and technologies to the South as incentives to enable the latter to undertake biodiversity conservation efforts;
- the North should recognise and respect the national sovereignty of countries in the South over their genetic resources;
- allowing access to genetic resources in a country should be at the discretion of national authorities in such a country and should meet certain conditions and mutually-agreed terms, including prior informed consent.

Ultimately, the South was successful in achieving these demands which are included in different articles of the Convention particularly Art. 3, 15, 16 and 21.

Significance of the CBD to developing countries: benefits and responsibilities

After succeeding in entrenching their demands in the CBD, several opportunities exist developing countries to benefit greatly from the Convention. Prior to the Convention, developed countries had, more or less, free access to genetic resources in the South. Developing countries were unfairly rewarded for bearing the burden of conserving these resources. The Convention seeks to correct this inequity and empowers the developing countries to negotiate with prospective users of their genetic resources from the north and determine the equitable benefit sharing arrangements. By ratifying and becoming parties to the Convention, developing countries open avenues for:

- financial assistance from the global fund popularly known as the Global Environment Facility (GEF) and other donor assistance to conserve biodiversity;
- scientific/research co-operation and information-sharing through the Clearing House Mechanism;
- transfer of technology from the North;
- opportunities for capacity-building to conserve and sustainably use biodiversity.

Ratification of the CBD provides three important opportunities for the Contracting Party:

- (i) It provides a stronger legal basis for the protection and sustainable use of biodiversity in the country.
 - (ii) It serves as a legal basis for a country to reject being made into a testing ground for the release of genetically-modified living organisms (GMOs).
- It prevents or minimises the unsafe transfer of biotechnology which may harm biodiversity.
 - Ratification shows a country's commitment to international co-operation in biodiversity conservation measures.

BASIC ELEMENTS OF THE CONVENTION

Overall Objectives: The CBD has three broad objectives outlined in Article 1, namely the:

- conservation of biological diversity;
- sustainable use of its components; and
- the fair and equitable sharing of benefits arising out of the utilisation of genetic resources by allowing appropriate
 - access to genetic resources;
 - transfer of relevant technologies;
 - provision of funding.

Major Principles: In its preamble, the CBD outlines the following basic principles:

- Biodiversity has several intrinsic values – ecological, economic, socio-cultural and scientific values.
- Biodiversity conservation is a common concern of all humankind.
- States have sovereign rights over their own biological resources.
- States are free to use their own biological resources for development but in a sustainable manner and are responsible for conserving them.
- Information, research and assessments are requisites for sound planning, forecasting and mitigation of biodiversity loss and implementation of appropriate conservation measures.
- *In situ* conservation is a fundamental approach to biodiversity conservation, but it should be complemented by *ex situ* measures, preferably in the country of origin.
- Indigenous people and local communities who intimately depend on biodiversity should equitably benefit from the use of their traditional knowledge.
- Women who play a vital role in biodiversity conservation should fully participate in biodiversity policy-making and implementation at all levels.
- International co-operation and information exchange are essential in the implementation of the Convention.

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- New and additional funding as well as access to relevant technologies from the north to the south are imperative for restraining further biodiversity loss, given that poverty eradication and socio-economic development are the overriding priorities of the south.
- International sharing of genetic resources and technologies is essential for meeting the food, health and other basic needs of the growing world population.

All the subsequent articles are cognisant of the above-outlined principles and provide the technical measures/approaches, legal framework and institutional mechanisms for achieving the stated objectives.

In general terms, articles in the CBD can be categorised into four major parts namely: (i) those on preliminary matters (Art. 1–5); (ii) those dealing with the substantive issues of biodiversity conservation (Art. 6–16); (iii) those dealing with the administrative and procedural issues (Art. 17–31); and; (iv) those on general matters/provisions (Art. 32–42). This guide concentrates on articles dealing with the substantive issues of biodiversity conservation and sustainable use.

Substantive Articles of CBD

- ***General measures*** or Framework of Action for biodiversity conservation, i.e. biodiversity strategies and action plans and cross-sectoral integration of biodiversity issues (Article 6).
- ***Identification and monitoring of biodiversity status and trends*** – including general inventories; ecosystem surveys; taxonomic studies; genetic research; studies on endangered species; assessments and forecasts; distribution patterns; and compilation of periodic status reports (Article 7).
- ***In situ conservation mechanisms*** including establishment and sustainable management of protected areas (PAs); protection of natural habitats; sustainable management of buffer zones; ecological restoration and control of alien species (Article 8).
- ***Ex situ conservation measures*** including off-site measures, e.g. gene banks, to provide "insurance" against extinction of certain germplasm, help to propagate useful genetic materials and assist in the recovery and eventual re-introduction of threatened species in their natural habitats (Article 9).

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- ***Sustainable use of biodiversity*** including regulation of use by the different sectors to minimise impact on biodiversity; modest consumption; minimisation of waste; mitigation of negative impacts; adherence to customary uses and traditional lifestyles; and remedial actions/regeneration (Article 10).
- ***Incentive measures for biodiversity conservation and sustainable use*** – incentive measures are those that create behavioural change, inducement or motivation for conservation and sustainable use of biodiversity (Article 11). These may include; direct incentives (cash or in-kind); supportive economic policy instruments (e.g. subsidies/tax exemptions for conservation-based investments; soft conservation loans, etc.); and other socio-economic policies (e.g. secure land tenure; access to PAs for traditional uses; improved social services).
- ***Research and Training*** including gathering and application of new knowledge about biodiversity as well as human capacity-building to train skilled personnel that can carry out research and apply research results to conserve, bio-prospect (i.e. explore the untapped benefits) and devise sustainable use models and practices (Article 12).
- ***Public Education and Awareness*** to arouse people’s general understanding and appreciation of the need to conserve biodiversity and to enlist their support/commitment to maintain/avoid impairment of the long-term potential use of biological diversity, through the media as well as formal and informal education (Article 13).
- ***Impact Assessment and Minimisation of Adverse Effects of Development Activities (policies and projects) on Biodiversity*** including mandatory EIAs for potentially adverse projects; trans-frontier notification and co-operative action to mitigate activities likely to significantly affect biodiversity; and the establishment of national/international emergency mitigation mechanisms or joint contingency plans (Article 14).
- ***Regulating Access to Genetic Resources*** involving the creation of conditions which facilitate access by other parties, for environmentally-sound uses, but based on mutually-agreed terms and prior-informed consent of the owner, subsequent to scientific research, including full participation of all the parties involved; and ensuring fair and equitable sharing of benefits arising from the use of the genetic resources (Article 15).

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- ***Access to and Transfer of Technology*** including facilitation of access to and transfer of technology consistent with patents and other intellectual property rights (IPRs); private sector promotion of joint technology development and transfer together with governments; and ensuring that existing IPRs are supportive (Article 16).
- ***Information Exchange and Scientific Co-operation*** involving governments informing each other about their domestic situation/problems and counteractive measures being undertaken; sharing of research results; repatriation of information on training and surveying programmes; co-operation for the enhancement of indigenous and specialised knowledge; undertaking joint research and technology development ventures; and co-operation to strengthen human and institutional capacity (Articles 17 and 18).
- ***Handling of Biotechnology*** including requirement for each Party, particularly those supplying genetic resources, to engage in biotechnological research; provide access to the results and benefits from the technologies; participate in biosafety procedures and instruments; and provide regulatory and impact information related to living modified organisms (Article 19).

Building the foundation for implementation

In order to benefit fully from the new regime of national sovereignty over genetic resources put in place by CBD, developing countries must meet some fundamental conditions and establish adequate capacity to take maximum advantage of the opportunities provided by the CBD.

- Efforts to conserve and maintain vast genetic resources of transactional value, i.e resources that are of economic interest to actors in other countries.
- Establishment of national legal regimes that give a framework for administration and enforcement of national sovereignty over genetic resources.
- Establishment of institutional capacity for biodiversity prospecting and capacity to negotiate, design and administer the "sale" of genetic resources at competitive prices.

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- Building technological and scientific capacity to carry out research, to assess, monitor and control, to mitigate negative impacts on biodiversity and to develop effective management strategies to enhance biodiversity.
- Enforcement capacity to curb corruption and criminal activities, including smuggling of germplasm out of the country, violation of IPRs of local communities.

FURTHER READING

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