

CoP-11 on Biodiversity

An Opportunity to Go beyond Business as Usual

MILIND WANI, PERSIS TARAPOREVALA

With the Convention on Biological Diversity's 11th Conference of the Parties to take place in Hyderabad, this article points out that the treaty's implementation the world over has lacked resolve. India is no exception, with a great gap between the impression given by reports and the reality on the ground.

The Convention on Biological Diversity (CBD)¹ is an international treaty with three main objectives – conservation of biological diversity; sustainable use of its components; and fair and equitable sharing of benefits arising from genetic resources. The convention was tabled at the United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, in Rio de Janeiro on 5 June 1992 and came into force on 29 December 1993. Its primary objective is to develop national strategies for the conservation and sustainable use of biological diversity. It is also seen as a key document on sustainable development.

The convention recognises, under international law, that conservation of biological diversity is a common concern and is integral for the sociocultural and economic development of humanity. The agreement covers all ecosystems, species, and genetic resources. It links traditional conservation efforts to the economic goal of using biological resources sustainably. It sets principles for the fair and equitable sharing of benefits arising from the use of genetic resources, notably those destined for commercial use. It also covers the rapidly expanding field of biotechnology through its Cartagena Protocol on Biosafety, addressing technology development and transfer, benefit-sharing and biosafety issues. Countries that join the convention are obliged to implement its provisions and it reminds decision-makers that biological resources are finite and sets out a philosophy of sustainable use. The CBD currently has 193 nations as signatories, known as Parties, to combat the decline of biological diversity throughout the globe.

The highest decision-making body of the CBD, known as the Conference of the

Parties (CoP), convenes every two years and in October 2012, India will host the 11th Conference of the Parties (CoP-11) in Hyderabad.

This article argues that as the CBD secretariat moves towards achieving the three objectives, it has placed undue emphasis on engaging with the business sector at the cost of concerns over failing to enforce the legally binding convention, which entails divesting the Parties of their responsibilities. The second section of the article delves into the disparity between the portrayal of the implementation of the convention in India and the ground reality. The article concludes that the convention is an important piece of legislation, which, if implemented properly, could achieve its goals.

1 Challenges

Many agree that the implementation record of the convention has been dismal so far. Brazilian scientist and environmentalist Braulio Ferreira de Souza Dias, who took over as the executive secretary of the CBD secretariat on 15 February 2012, in an interview, stresses that his main focus is on implementing the convention "in a more effective manner".² His major priorities include streamlining the work of the CoP; mainstreaming of biodiversity into development agendas; promoting biodiversity concerns across society and government departments/ministries; resource mobilisation; continuous monitoring of the Aichi Targets;³ enhancing support to the Parties; promoting more effective scientific and technical cooperation; promoting recognition and support for community-based approaches; expanding the engagement of the business sector; and promoting the early ratification of the Nagoya Protocol.⁴

While these are commendable priorities there are some reservations regarding their feasibility.

Limited Time

The secretary acknowledges that the 2010 biodiversity targets were not achieved (Kothari 2008).⁵ Given this failure, we must ask whether the Aichi Targets are achievable in the given time

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frame. What is the guarantee, given the limitations of the secretariat's powers in enforcement, that these initiatives will not lose steam? Given the urgency of the problem, will the pro-business tilt of the CBD secretariat be beneficial or harmful to the agenda of the convention? Only time will tell whether the Aichi Targets are achieved. Time, however, is perhaps a luxury in short supply, considering that the issues of global warming and its consequences – climate change, desertification, biodiversity loss, peak oil and the rise in sea levels – are no longer concerns of the future but are on the world's agenda today (Hamilton 2010).

Legally Binding

Ecologists like S Faizi, member of the CBD Expert Group on Biodiversity and Poverty, insist that the key reason why the CBD has failed to live up to its potential is that the legally binding nature of the treaty has been bypassed. The convention is multilaterally negotiated, in line with the terms of treaty-making set by the Vienna Convention on the Law of Treaties, and its articles exist for enforcement and not for further negotiation. Despite the progressive nature of the treaty, COPs have so far not effectively reviewed and acted on infractions, thus leading to escalating biopiracy, zero reduction in the loss of biodiversity, continued alienation of indigenous communities, and the creation of administrative, policy and legal measures which remain paper tigers.

The Business of Government or Government for Business?

A recurring motif of the secretary's interview is the imperative to mainstream biodiversity by engaging with the business sector. However, many fear that such an engagement would dilute the force of the environmental aspect of the CBD and hence its effectiveness. Although the secretary speaks about structural changes in the way governments and businesses deal with biodiversity and the need to promote sustainable products so that the market internalises its responsibility towards biodiversity, how is this going to be enforced? When the legally binding convention is not

implemented, can the market be tamed? What sanctions can be brought to bear on erring corporations?

While the secretary underlines the need to engage with and promote better business attitudes so that businesses, driven by consumer demand, will learn to respect the rights of the custodians of biodiversity by incorporating better business practices, there is no critique of how ecologically harmful consumerism is artificially manufactured by the same business sector. Neither is there any critique of the economic system – a profit-driven social-production process, which produces goods and services at the cost of creating social inequality and environmental degradation – and its policy framework that legitimises ecological depredations by the business sector. Involving businesses also raises concerns about access to genetic resources and benefit sharing. Corporations have often claimed patents without respecting either the traditional rights of people or the sovereignty of nation states. Relying on market mechanisms for biodiversity conservation has been criticised because

financialisation of biodiversity is a product of the neo-liberal economic system where monetisation is the main tool for using and conserving biological resources. It implies putting a price tag for the use and exchange of biodiversity...it is difficult to define biodiversity in monetary terms and that there are limitations to the use of markets in the protection of biodiversity (Lovera and Titumu 2012).

The issue is systemic and cannot be resolved by merely appealing to the goodwill of individuals in the business or the political class. Using Karl Marx's analysis, James O'Connor speaks about three types of conditions of production on which the survival of the current capitalist system depends and which it impairs. These are – (1) the personal conditions of production associated with the reproduction of human labour power; (2) the external natural conditions of production such as forests, oilfields, water supplies, bird species, and so on; and (3) the general communal conditions of production, which include the built environment, for example, villages and cities and their infrastructure. Capitalism

is dependent for its own production on the use and transformation of such conditions of production, which it has proved incapable of "preserving intact and in relatively costless form. Degradation of these conditions of production generates rising costs for capitalism, squeezing profits", which business firms then seek to externalise (Foster 2002).

It is a secular theodicy that the ecological crisis can be addressed within the paradigm of the free-market economy and that persuading the business sector to change its ways is a matter of political goodwill. First, whether a sufficient percentage of private enterprises will prioritise ecological sustainability over profits is a moot question. Second, and by implication, will an overdependence on the business sector to do the right thing not increase the risk of slowly divesting nation states of their obligatory responsibility to enforce the convention and their power to act decisively in cases of infractions? How realistic is it to expect this in an era of neo-liberal globalisation marked by a retreat of the nation state and unfettered capitalism giving vent to its predatory instincts through an impersonal structural logic that results in the privatisation of profits/benefits and the socialisation of losses/costs, and untold ecological havoc?

2 India and the CBD

India's Fourth National Report to the CBD (2009)⁶ paints a rather rosy picture of the way the CBD is implemented. However, there are concerns about the gap between the image portrayed and the reality on the ground. This article focuses on two important concerns – people's

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participation in ecological conservation and legislative spaces.

People's Participation

Although the National Biodiversity Action Plan (NBAP) of 2008 documents India's strategic response towards doing its bit to meet its global responsibility, the government's sincerity can be measured against the speed with which state governments have signed contracts with Indian and multinational corporations (MNCs) for the sake of what they call "development-related projects", with no concern for biodiversity conservation and sustainability and little monitoring by the Ministry of Environment and Forests (MOEF). There are any number of case studies showing the harmful effects these have had on India's natural resource systems and their rich biodiversity, as also on the people who depend on them. Project clearances take place with faulty or no implementation of mandated procedures like holding public hearings and conducting environmental impact assessments (EIAs) (Kohli and Menon 2005). For example, more than 60 memoranda of understanding (MOUs) have been signed by the state

government of Odisha – in the teeth of opposition by local communities – for mining and other projects (Wani 2010). These will necessarily imperil the abundant biodiversity of the state. News from the states in the north-east, which are planning to build 168 hydroelectric projects, is another reason for concern about the irreversible damage this will do to the ecosystems and rich cultural heritage of the region (Vaghlikar and Das 2010). Stories of shoddy EIAs cleared by a half-hearted MOEF leading to large-scale deforestation, degradation, biodiversity loss and dislocation of people can be found across the nation.

The resistance of the MOEF towards seeking people's participation can be judged by a recent Delhi High Court order⁷ asking it to disclose the summary of the Western Ghats Ecology Panel report⁸ of August 2011 authored by Madhav Gadgil. The ministry attempted to hide the report under the fig leaf of an excuse that it was not final and that releasing it would hamper decision-making processes. The report recommends that the Western Ghats be declared ecologically sensitive and mining be completely banned in 60% of its area by 2016. It

raises doubts about the processes that have been followed to compile EIAs – required for mining, infrastructure, power and tourism activities. The MOEF had maintained that the report would hurt the economic interests of the states involved but finally released it, nearly a year after it was submitted, with a disclaimer that the ministry has not accepted the recommendations. The government has now set up an expert committee to review the report after several states vehemently objected to its recommendations on the one hand, and various quarters, including civil society and industry,⁹ reacted in an unprecedented manner on the other. Gadgil has criticised this as a premature move that does not seek the people's participation.¹⁰

Such actions prove that even though India has accepted the CBD, those in power still prefer the exclusionary and conventional top-down models of conservation rather than participatory systems that link sustainable livelihoods with conservation.

Public Policy and Legislation

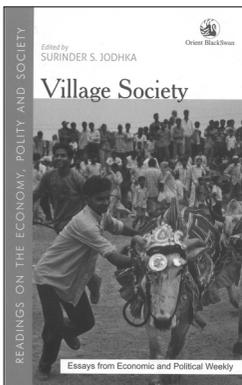
Articles 6a and 10c of the CBD mandate developing national strategies for conservation and sustainable use of biological

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Pp x + 252

ISBN 978-81-250-4603-5

2012

Rs 325

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resources and the protection and encouragement of traditional cultural practices of biological resources use. Article 8j exhorts Parties to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities...encourage equitable sharing of the benefits”. Plans like the draft National Biodiversity Strategy and Action Plan (NBSAP) of 2003 and the NBAP of 2008 are spaces where the objectives of 6a could have been realised. Unfortunately, the former, based on one of world’s largest environmental planning exercises, involving thousands of individuals, hundreds of stakeholder communities and scores of non-governmental organisations (NGOs) across India, was not accepted by the MOEF (Kothari 2012). Through a combination of the Wildlife Protection Amendment (2003) Act, the Biological Diversity Act (2002) and the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act (FRA), 2006 several legal spaces have been created for participatory conservation processes that acknowledge the legitimacy of traditional practices in conservation. The challenge lies in translating these good intentions into actions.

A study of *India’s Fourth National Report to the CBD* gives the impression that great strides have been made, but have these only been at the policy level? The report does not provide a substantive picture of the situation on the ground. A close reading reveals a language of half-truths that masks the ground reality. The protected area (PA) networks in India may have grown by 15% since 2002, as the report claims, but in what condition are these PAs? And what happened to the people residing in them? Was settlement of rights carried out satisfactorily? Have people been relocated without coercion and rehabilitated according to the norms? There may be 43 conservation reserves since 2003 but how are they managed? To what extent have local communities been empowered to conserve and manage these reserves, as required by the FRA?¹¹

These are important concerns. Glossing them over makes it possible to quietly subvert the aims of participatory

and sustainable conservation. This creates a situation where, on paper, India is working towards fulfilling the needs of the convention, but at the ground level the exclusionary conservation model with its powerful authoritarian hierarchies continues to prevail.

Future Imperfect

India’s fixation with gross domestic product-led growth resulted in the MOEF granting, in 2011 alone, “environmental clearance to 181 coal mines, 267 thermal power plants, 188 steel plants and 106 cement units...2,10,000 MW of thermal power capacity...that’s 60,000 MW more than what has been proposed till 2017!” (Dutt 2012). On the other hand, Faizi’s concern over more than 2,000 patents – based on Indian genetic resources and traditional knowledge – being taken abroad in the last year without the consent of the government point to a lack of political will (Kohli and Bhutani 2012). And yet, alternatives emerging out of resilient initiatives by local communities and NGOs do exist (Shrivastava and Kothari 2012). Giving them official recognition and aid would prove the government’s commitment.

In a country like India, with an entrenched and exclusionary conservation regime, it will take time to implement the new laws and programmes. Implementation of CBD-inspired laws will need to focus on changing the official mindset as well. The convention certainly has potential if applied in the right spirit. One hopes that COP-11 will force Indian policymakers to address these issues.

NOTES

- 1 See <http://www.cbd.int/>
- 2 See “Fewer Decisions, More Implementation”, *Square Brackets* (CBD Newsletter), May 2012, www.cbd.int/ngo/square-brackets/square-brackets-2012-05-en.pdf
- 3 The Nagoya Biodiversity Summit (Japan, October 2010) closed with agreement to adopt the Strategic Plan of the Convention on Biological Diversity or the Aichi Targets. The plan includes 20 headline targets, organised under five strategic goals that aim to address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society; reduce the direct pressures on biodiversity and promote sustainable use; improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity; enhance the benefits to all from biodiversity and ecosystem services and enhance implementation through participatory planning, knowledge management and

capacity building. For details, see <http://www.cbd.int/sp/targets/>

- 4 The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (ABS) to the Convention on Biological Diversity, a supplementary agreement to the CBD, provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD. See <http://www.cbd.int/abs/about/>
- 5 In 2002, governments of the world decided 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 benefit all life on earth. This was endorsed by the UN General Assembly and incorporated into the Millennium Development Goals.
- 6 This was the latest report available on the Ministry of Environment and Forests website.
- 7 “Release Western Ghats report, Delhi High Court Tells Environment Ministry”, Abhinav Garg, *Times of India*, 20 May 2012, http://articles.timesofindia.indiatimes.com/2012-05-20/pune/31788144_1_moef-rti-applicant-wgeep
- 8 The report is available at <http://www.indiaenvironmentportal.org.in/reports-documents/report-western-ghats-ecology-expert-panel-2011>
- 9 “MoEF Panel to Review Western Ghats Report”, Akriti Vasudeva, *Indian Express*, 21 August 2012.
- 10 “Review Panel Premature, Meaningless Without People’s Inputs”, *Indian Express*, 22 August 2012.
- 11 Both are rights that can be claimed under the FRA.

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