

# **OBTUSE BUREAUCRACY ALLOWS LOOT OF GENETIC WEALTH**

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The laws that should have been drafted to implement the conditions of the Biodiversity Convention signed in 1992 have not been put into place even four years after the signing of the treaty. The inefficiency of the Environment Ministry which is responsible for drafting legislations relating to biodiversity is costing the country dearly. An obtuse, ill-informed bureaucracy totally out of its depth in understanding the complex issues of biodiversity is the main reason for the systematic loot of India's genetic wealth. It is high time that policy making with respect to India's most valuable economic resource, its genetic resources, is taken out of the hands of some joint or deputy secretary type of thing and is entrusted instead to competent technical experts.

Unbridled bio-prospecting in the absence of restraining laws is costing the country millions in potential revenue and destroying its rich and varied biodiversity. Even when there is an international treaty favourable to developing countries, the babus in the Environment Ministry wrapped in ignorance and inertia, have been unable to get their act together to protect the nation's biological wealth. The Convention on Biological Diversity (CBD) can be a strong ally in these times when an aggressive biotechnology industry in the west has placed our bioresources under attack from patent claims. The CBD is important because it rectifies a historical wrong. It reverses the principle of Common Heritage of Mankind according to which the genetic resources of the world belonged to everyone and not particularly to the nations where they were found. Now CBD has acknowledged the principle of ownership according to which genetic resources are recognised to be the property of those nations in whose sovereign territories they are located.

In addition, CBD lays down two other conditions of great importance to countries like India that are owners of bioresources where there is a strong base of indigenous knowledge. These are that of Prior Informed Consent and Material and Information Transfer Agreements with respect to the transfer of genetic resources from owner countries to countries/ companies / individuals that want to use these resources.

The clause of Prior Informed Consent lays down that parties wanting to use genetic resources must first take the permission of the local community or the relevant authority in the owner country. Material and Information Transfer Agreements are to govern the conditions under which these resources will be transferred to the user party. These conditions could for instance lay down the fee that will be levied for bioprospecting whether or not a product is developed. The basis of profit sharing between the local community or communities and the company making products. Extent of royalties payable to individuals or communities for the use of indigenous knowledge etc.

We must enact the CBD related laws immediately so as to protect our biodiversity and indigenous knowledge from marauding corporate giants who can take advantage of the current legal limbo and transfer out genetic material without proper agreements. Today even when foreign nationals are apprehended at airports carrying genetic material like seeds, soil samples containing micro organisms or butterflies and insects in their suitcases, it is difficult to proceed against them if the samples are not on the endangered or prohibited list. Unless ownership rights are established over genetic resources, they remain the Common Heritage of Mankind and their transfer cannot be considered illegal.

Countries other than India have taken prompt action to protect their bioresources and have secured the rights of their indigenous communities as custodians of the resources and repositories about the knowledge of their uses. This they have done by enacting domestic legislations to ensure that ownership rights are exercised over the country's bioresources and that any prospecting for biological material can only take place after Prior Informed Consent has been taken from local communities. The commercial exploitation of bioresources is subject to the conditions that have been laid down for Material and Information Transfer Agreements.

Australian states enacted legislation almost immediately after the conclusion of the Biodiversity Convention that all genetic resources found in their territories is their property. Apart from establishing ownership, these Australian states passed a law that any one producing anything out of Australian biological resources would automatically have to pay 7 % of the profits made to the concerned Australian state as royalty.

The Philippines which are closer and have conditions similar to ours have unlike us, acted with promptness to regulate the use of their bioresources and to earn revenue from it. On 18 May 1995, the Philippines adopted a Presidential Executive Order which regulates bioprospecting. This Order lays down three essential conditions for those interested in prospecting for bioresources in the Philippines. Prospectors have to negotiate a research agreement with the government, seek prior informed consent and share benefits with local communities and indigenous peoples. It is worth looking at the Philippine Order in some detail since it is a good document and could serve as a model for us. The Order includes among other things, the following.

Consent of Indigenous cultural communities .Prospecting of biological and genetic resources shall be allowed within the ancestral lands and domains of indigenous cultural communities, only with the prior informed consent of such communities, obtained in accordance with the customary laws of the concerned community.

Minimum terms of a commercial research agreement and academic research agreements include:-

- i) a limit on the samples that may be collected and exported
- ii) a complete set of all specimens to be deposited with the Philippine National Museum,
- iii) access to collected specimens and relevant data deposited abroad shall be available to all Filipino citizens,
- iv) the collector or principal must inform the Philippine government and affected communities if a commercial product is derived from ist activities,
- v) provision for payment of negotiated royalties or other compensation to the government, local community or designated beneficiary where there is commercial use,
- vi) the involvement of Filipino scientists in the prospecting and research at the cost of the collector,
- vii) transfer of equipment to a Philippine institute where appropriate,
- viii) a prospecting fee to be paid to the government and,
- ix) In the case of endemic species, the technology must be made available to the Philippines to use commercially, without having to pay royalty.