
BioSoc: the Biodiversity and Society Bulletin

Research highlights on biodiversity and society, poverty and conservation

RELAUNCHING BIOSOC!

January 2011 sees the return of BioSoc — our bulletin highlighting new research and policy developments on the theme of biodiversity and society. This year we would like to give more exposure to research and writing from developing countries and invite you to contribute. If you would like to draw attention to a recent publication — be it research findings, new policy, or conference proceedings — please get in touch. Depending on the level of interest we will publish the bulletin either monthly or bi-monthly.

BioSoc reviews should be a maximum of 500–600 words, written in clear and simple language, and should highlight new developments or critical issues. All publications reviewed must be freely accessible to the reader. The review must include the full citation and relevant download details.

Please send your ideas to pclg@iied.org

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The Nagoya Protocol: a real opportunity for biodiversity conservation and poverty reduction?

Fair and equitable benefit-sharing is one of the three objectives of the Convention on Biological Diversity (CBD). When it was first adopted at the 1992 Earth Summit, many developing countries welcomed the CBD as a key weapon in a battle against rampant biopiracy and saw the opportunity to share benefits as a new way of generating wealth from natural assets. Ten years later, access and benefit-sharing (ABS) remained a controversial issue with a proliferation of national-level frameworks but no international agreement. At the 2002 World Summit for Sustainable Development, under pressure from the so-called “megadiverse countries”, agreement was reached to push for an international regime on ABS. Nearly a decade later - after much heated discussion and negotiation — the text for this regime, known as the Nagoya Protocol, was adopted at the 10th Conference of the Parties (CoP) to the CBD at Aichi-Nagoya, Japan in October 2010.

An article in the latest Law Environment and Development (LEAD) Journal reviews the agreement and its implications. It highlights the controversial issues that kept negotiators busy until the early hours of the last day of the CoP. These included:

- the scope of the Protocol — for example, whether it should be retroactive

and whether it should apply to biological resources in general rather than just genetic resources;

- whether the Protocol should include benefits from traditional knowledge already in the public domain – e.g. that associated with ex situ genetic resources;
- whether access to genetic resources should be subject to the prior informed consent of indigenous and local communities, even if access to associated traditional knowledge is not requested; and
- which measures Parties should put in place to ensure compliance.

The authors conclude that some major achievements were made. These include: the binding nature of the Protocol; a clear definition of 'utilisation of genetic resources' integrating the use of biochemicals (despite the lack of an indicative list of possible uses); obligations to ensure legal certainty and compliance supported by monitoring; facilitation of non-commercial research; stronger involvement of local and indigenous communities; measures to increase capacity and awareness; additional obligations on technology transfer; specific obligations on dispute settlement; and the encouragement of multilateral approaches across national boundaries.

But they also point to some of the Protocol's drawbacks. These include its ample use of qualifiers — such as 'as appropriate', 'where applicable', 'as far as possible', and 'if available' — that undermine the strength of signatories' obligations. The Protocol also suffers from weak language, using terms such as 'endeavour', 'encourage', 'consider', and 'promote' in central provisions.

The authors are particularly concerned that the Protocol places limited obligations on user states: there is no requirement for proactive legislation that ensures benefit sharing with providers - instead a much softer requirement to ensure compliance with existing ABS frameworks on a country-by-country basis. Nevertheless, given the clash of interests among CBD parties, any kind of agreement is a major step forward. The Nagoya Protocol therefore deserves to be supported, swiftly ratified and implemented. Only then will its relative strengths and weaknesses be put to the test. The proof of the pudding, as they say, is in the eating.

SOURCE

Kamau, E.C., Fedder, B., Winter, G. 2010. **The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing: What is New and What are the Implications for Provider and User Countries and the Scientific Community?** Law, Environment and Development Journal. 6/3 246–262

The report is available to download from: <http://www.lead-journal.org/content/10246.pdf>

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BIOSOC

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