



The South FACE

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“Disclosure of Origin at the CBD, WIPO and the WTO: Conflict, Coherence or Complementarity?”

**Innovation and Access to Knowledge Programme, South Centre
24 January 2008, Palais Des Nations, Geneva**

The panel event was organized by South Centre in association with the Center for International Environmental Law, Geneva, to discuss the different approaches to the disclosure of origin issue at the WTO, WIPO and the CBD and examine areas of overlap, potential areas of conflict and the future of disclosure of origin provisions in these fora.

Chair: Dr. Xuan Li, Coordinator, Innovation and Access to Knowledge Programme, South Centre, Geneva

- The issue of misappropriation and biopiracy has received significant attention in recent years and efforts are currently underway at various international forums to find possible solutions. The current patent system, as governed by international common binding norms has been seen as the primary enabling mechanism for biopiracy. It has allowed developed countries to misappropriate biological diversity and associated traditional knowledge through TRIPS.
- Biodiversity rich countries (many in the Global South), as well as indigenous and local communities have long faced constant socio-economic pressure due to an intellectual property system that allows exclusive private appropriation of genetic resources without fair and equitable sharing of the benefits accruing from such use. This has exposed the biologically-rich developing countries to a high degree of vulnerability- a situation not acceptable.
- Disclosure of origin is only a small part of the solution and we need to look beyond the narrow lens of patents.



WIPO and CBD: The Relationship on Disclosure



- Issues of protecting indigenous/traditional knowledge associated with genetic resources and biodiversity have a human rights dimension. The processes at WIPO do not reflect this dimension. Why should WIPO be considered as an integral provider for the CBD under its mandate? Other UN agencies have shown equal competence in understanding IP issues viz., UNCTAD, WHO, UNIDO.
- CBD is a prior treaty to the TRIPS, hence under the Vienna Convention TRIPS needs to be compatible with the CBD mandate.
- Interestingly, the developed countries which have so far been fast learners have not demonstrated that they are as fast in understanding issues pertaining to bio piracy. The demand for inquiry reports- one after another- have proved that developed countries do not want to face hard realities of the situation in hand.

--- Mr. Dalindyabo Shabalala, Director, IP and Sustainable Development Project, Center for International Environmental Law (CIEL), Geneva

Disclosure of Origin at the WTO: Article 29bis and China's perspective



- Misappropriation of biodiversity through the patent system as mandated by the WTO- TRIPS Agreement was not realised at the time of TRIPS negotiations.
- It is unfortunate that the TRIPS CBD issue has been sidelined as an implementation issue and hence does not form part of the Doha round. However, developing countries have recently co-sponsored a proposal requiring amendment to TRIPS Article 29 to bring it in line with CBD principles. China has taken it up as a priority in an attempt to bring balance to TRIPS.

---Mr. Yusong CHEN, Permanent Mission of China to the WTO, Geneva

The Rationale of the Genetic Resource Certificate of Origin within the Context of the CBD

- In any framework of international law one must respect the "Constitutional framework" if discussions have to be within the Convention.
- In the current CBD debate an "international certificate of source/origin/legal provenance" is considered as a potential pillar of the International regime on Access and benefit sharing and this raises several questions.
- Biodiversity protection is at the heart of the Constitutional object of CBD. Biodiversity reflects complex dynamics. Then how important is it to know the precise origin of genetic resources?



-- Dr. Pierluigi Bozzi, Faculty of Economics, University of Rome 'La Sapienza', Italy

Indigenous Perspectives on Disclosure- critiques of the Approaches



- The current debate has focused on the indigenous people name and territory within the country. But how about trans-boundary people? The disclosure of origin/ source/ compliance relating to traditional knowledge is impractical and insufficient to address the rights and concerns of indigenous people.
- From an indigenous rights based perspective, what about non-patent use and commercialization of indigenous knowledge? Indigenous people should also have the choice in deciding whether or not to commercialize their knowledge.

--Le 'a Malia Kanehe, Legal Analyst, Indigenous Peoples Council on Biocolonialism, USA

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