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Keep Biopiracy At Bay

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The upcoming World Trade Organisation ministerial meeting in Hong Kong will be a testing ground for the Indian government's stated commitment to protect traditional knowledge.

For the last few years India has been pushing for an amendment to TRIPS (the international Trade-Related Intellectual Property Rights agreement) on the subject of traditional knowledge and biodiversity. India is among a group of 17 mega-biodiverse countries that have proposed such an amendment.

The proposed amendments could help check corporations and individuals from exploiting biological resources for commercial gain without the permission of (and without adequate reward going to) the communities that have nurtured the resources and developed the knowledge over generations.

The demand is that TRIPS should require patent applicants, anywhere in the world, to do the following: Disclose the source of biological resources that have been used in their innovation; acquire the prior informed consent (PIC) of communities that are the customary guardians of biological resources or related traditional knowledge that has been used in the innovation; and provide for equitable benefit-sharing (proceeds from commercial use) with them.

Principles of consent and benefit-sharing are already required by the UN Convention on Biological Diversity (CBD), but need to be incorporated in TRIPS.

The rationale behind these proposed amendments is to prevent biopiracy. Bio-piracy is the commercial use of biological resources and related traditional knowledge without the consent of their customary holders or originators (usually traditional communities).

Well-known examples of biopiracy are the patenting of the wound-healing properties of turmeric in the US, or the patenting of the fungicidal properties of neem in the European Patent Office.

There are hundreds of other lesser-known examples of biodiversity and related knowledge exploited for private commercial gain. The government needs to be complimented for taking a stand in international circles.

But there remain serious flaws in its position, and in its performance back home. Firstly, it is regrettable it has given up its former position of no IPRs on life forms, which it was championing at WTO.

It has now, in its domestic legislation, allowed for IPRs on plant varieties. Secondly, its policy and legal moves towards community empowerment to stop biopiracy are retrogressive.

For instance, its interpretation of the concept of PIC is more about taking the consent of governments than of local communities.

In domestic Indian law, if a pharmaceutical company wants to make commercial use of a plant and its traditional uses, it will need to get the PIC of the government, but not necessarily of the communities concerned.

Under the Biodiversity Act, 2002, enacted to implement India's obligations to the CBD, powers regarding access to bioresources and IPRs vest largely with the National Biodiversity Authority (NBA), and the State Biodiversity Boards (SBB).

The NBA grants approval to foreigners wanting access to biological resources and traditional know-ledge, and to Indians or foreigners wanting to apply for intellectual property rights on innovations based on such resources/knowledge.

It is also supposed to ensure benefit-sharing with local communities. The SBBs deal with granting access to Indians. The third tier of management under the Act, the local Bio-diversity Management Committees (BMCs), could have also been given powers relating to these aspects.

But the Act's already limited potential to do so was made even weaker by the Biodiversity Rules notified in 2004.

First, community representation on state and national biodiversity boards is weak. Second, there is no provision for the participation and decision-making of local communities.

It is largely left to the national authority to take the views of communities into consideration. The local committee only responds when consulted, and in any case consulting does not necessarily include obtaining PIC of the local community.

Third, the main role of local committees is limited to documenting local know-ledge in biodiversity registers; it does not even have the right to protect these registers from misuse or theft.

Fourth, the rules regarding equitable benefit-sharing do not define equitable. Payment of benefits is to be made not directly to the community, but through the district administration, which creates an unnecessary layer of bureaucracy.

Fifth, new plant varieties (mainly crops) covered by the Protection to Plant Varieties and Farmers' Rights Act, 2001, (PPVFR) are exempted from the provisions of the Biodiversity Act.

It is essential for the government to push for the requirements of PIC, benefit-sharing and disclosure of origin at the WTO, and for the international community to amend TRIPS accordingly.

But at the same time, given the government's implementation of these very principles within India itself, its international position rings rather hollow.

The Indian government and the international community must interpret PIC to mean prior informed consent and participation in decision-making of the concerned indigenous community, and not simply consent of the national government.

Mechanisms of benefit-sharing must be on terms mutually agreed between the concerned community and the outsider who desires access, and benefits must flow directly to communities rather than through layers of a non-transparent, unaccountable, and often corrupt bureaucracy.

And finally, communities must have the power to say no to patenting of life forms if they believe it runs contrary to their interests and rights. The authors are members of Kalpavriksh Environmental Action Group.