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Volume 75, Issue 8

Wednesday, 28 Oct 2026

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Elephant in the spotlight:

How meeting the GBF goals is made impossible through global legal systems

Nele Marien (Friends of the Earth International)

One big elephant in the room, preventing the halting and reversal of biodiversity destruction is the global legal system, which puts economic law above environmental law, with severe sanctions for non-compliance, while environmental agreements such as the CBD don't have functional compliance mechanisms.

The corporate-influenced system of *Investor–State Dispute Settlement* (ISDS) is the maximum expression of this. The mechanism lets a foreign investor sue a state before an international arbitration tribunal, when it considers a country applies measures that threaten their expected return on investments. Under most International Investment Agreements, foreign investors can use ISDS courts when countries increase their environmental legislation, or when they don't issue an environmental permit. Companies can claim financial compensation from the countries in which they have invested, or intended to invest, including for the loss of anticipated future profits.

ISDS awards routinely run into the hundreds of millions of dollars, with more than 152 known cases of over USD 1 billion. For example, the Tethyan Copper Company sued Pakistan after its application for a mining lease at the Reko Diq mine was rejected. An ISDS tribunal awarded the company US$5.8 billion - more than 25 times the invested amount. After a settlement, this very destructive mine was given permission to operate.

Regulatory chill

Facing debt, austerity and dependence on hard currency from extractive development models, governments know that creating or expanding a protected area, cancelling a concession, or simply tightening a standard can trigger litigation. Ministers in several countries have acknowledged this "regulatory chill" effect. The mere possibility of a large claim functions as a deterrent, and companies use ISDS threats strategically to shape policy before any tribunal convenes.

ISDS also allows corporations to undo measures already adopted: 17% of known cases end in "settlements" rather than final awards, which in most cases implies that the increased protection of biodiversity is rewinded, in order to avoid expensive claims or the expensive legal proceeding costs.

The amount of ISDS cases is increasing sharply: from 12 environmental ISDS cases before 2000, to 126 between 2011 and 2021. The sectors driving biodiversity loss are among the most litigious: fossil fuel corporations account for 20% of total cases and mining for 11%. Global South countries are respondents in roughly 62% of cases.

Addressing the elephant

While the CBD can't change the global legal system, it can study the impact of ISDS on biodiversity policies and outcomes, and can bring the topic to other relevant fora for their consideration.

Halting and reverting biodiversity loss should not be made impossible through global legal systems. On the contrary, they should serve people and biodiversity rather than corporate interests.

Read **The legal system that privileges corporate rights over environmental regulations** in the report "We Need to Talk About the Elephants in the Room"

Wild Animal Offsets Will Drive Extinctions, Indigenous Peoples Warn the UN

Cassandra Smithies (Global Justice Ecology Project)

Alarmed that buffalo, jaguars, orangutans and even whales are being converted into offsets to greenwash oil and mining companies, Indigenous Peoples and civil society request that parties at COP17 immediately stop taking steps to monetize their sacred animals and nature as "natural capital" for carbon and biodiversity markets because it will contribute to their extinction.

The Executive Director of Cultural Survival, Aimee Robeson (Chahta/Chikashsha) explains "if we truly care about biodiversity, we should not be tempted to monetize our relatives nor ecosystem services like carbon sequestration, because they have inherent value that cannot be reduced to a dollar amount. These market-based schemes are false solutions that exacerbate the polycrises we are facing. Not only are these schemes sacrilegious, but they also lead to net loss of biodiversity, to ecocide and to degradation of the very systems that support life on Mother Earth, including all of us. There can be no sacrifice zones, no trade-offs and no offsets if we want life on Mother Earth to survive for generations to come."

> 800 critically endangered Tapanuli Orangutan, - the rarest great ape species - are being used for offsets by a Gold Mine in Sumatra

"For Indigenous Peoples, nature is not an asset class, she is our Mother," says Tom Goldtooth (Diné/Dakota), Executive Director of Indigenous Environmental Network. "Using Indigenous Peoples' territories and sacred animal relatives for biodiversity and carbon credits violates the Sacred. We reject buffalo credits. Buffalo, which the White Man's slaughter reduced from 60-70 million in 1853 to a few thousand in the 1880s, are now being hailed as 'carbon storing machines,' and turned into soil carbon credits, so polluters can continue to pollute. Our buffalo, Tanka Oyate, are part of our genesis, not 'bison bonds.' Carbon trading is an offensive scam that threatens the future of humanity. Bring back the buffalo, not colonialism!"

For Wilmer Lucitante of UDAPT and the A'i Kofán Nation of the Ecuadorian Amazon whose territory was devastated by Texaco/Chevron, "turning our sacred jaguars into carbon credits is a false solution to climate change that accelerates their extinction. Instead of monetizing wildlife, we need to stop oil drilling and mining in the Amazon."

Similarly, Andine Fahira Lubis of WALHI denounced that the 800 critically endangered Tapanuli Orangutan, the rarest great ape species, are being used for offsets by Jardine Matheson's Martabe Gold Mine in Sumatra in the Batang Toru ecosystem in Indigenous Peoples' territories. "Not only is the hypocrisy of orangutan offsets staggering, offsets cannot redeem the irreplaceable."

Putting a price on nature will not save nature, it will destroy her. Indigenous Peoples' animals, lands and oceans are not sponges for greenhouse gases, to be grabbed and pillaged by Big Oil and the extractive industries responsible for the climate emergency, which accelerates the 6th extinction. The United Nations must not be complicit with green colonialism.

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We thank the Heinrich-Böll-Stiftung for their financial support.
***Submissions** are welcome from all civil society groups.*
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Protecting bees must not become a licence to engineer them

Julie Sohier (POLLINIS)

Bees connect landscapes. Every day they move between fields, gardens and protected areas, carrying pollen and microbes from flower to flower and linking plants with pollinator communities. That is precisely what makes a new generation of biotechnologies so troubling.

Researchers and companies are developing genetically engineered gut bacteria to turn honey bees into living pesticide factories. Inside the bee, these modified bacteria would continuously produce RNA-based molecules designed to kill Varroa mites, by silencing essential genes when the parasites feed on them. The bee's own genome stays the same, but its biology is changed through its microbiome.



Engineered microorganisms are alive. They can reproduce, evolve and ignore borders. Bees share flowers with thousands of wild pollinator species and flowers are hubs of microbial exchange. A strain released into one apiary is unlikely to stay there. Wild pollinators, already in decline, would be exposed without anyone asking whether they can cope.

This is exactly the kind of case the Cartagena Protocol was designed for. An engineered bacterium is a *living modified organism* (LMO). The Protocol exists to make sure that LMOs crossing borders, deliberately or not, have no adverse effects on biodiversity. But its risk assessment framework was built largely with modified crops in mind. Microorganisms that multiply, swap genes and travel inside a mobile host raise questions it was never designed to answer.

This puts a clear choice before every delegation at COP17 and MOP12. Will international governance anticipate environmental risks or will it let industrial deployment outpace the science needed to assess them?

Unintentional transboundary movement deserves particular attention. For an engineered microbe carried by bees, crossing a border is not an accident. It is the expected outcome. Article 17 of the Cartagena Protocol obligations to notify and respond assume that a release can be detected and traced. Parties should ask whether that holds for organisms that are invisible, self-replicating and spread by pollinators.

Risk assessment must also look beyond the modified organism itself. The bacterium is the LMO, but the risks show up in the bee, in the wild pollinators it meets and in the ecosystems they sustain with a persistence scientists can hardly foresee now. An assessment that stops at the microbe's genetic construct misses the point. What matters is the effect on target and non-target species, on biodiversity and on soil, water and air.

Until risk assessment can answer these questions, there should be no releases of LMOs intended to alter wild populations through their genomes, epigenomes or microbiomes. This is not hostility to innovation. It is what Target 17 of the Global Biodiversity Framework already commits Parties to: biosafety measures and the capacity to implement them, in place before releases, not after.

POLLINIS has gathered citizens to support these demands. The petition has gathered 50.000 signatures within days. We believe this shows how, when properly informed, people and communities around the world chose proper assessment and regulation over acceleration.

Bees are not suffering from a shortage of engineered bacteria. They are suffering from habitat loss and pesticides. Any claim that engineering pollinators is conservation should be weighed against measures we know work and have yet to fully implement.

Patents and business plans should not decide which ecological risks everyone else must bear.

Nature is not a laboratory.

No to modified bees! Please scan this QR code to sign or relay the petition. The petition is for individuals to sign. Signatures are anonymous. Only the total number will be displayed publicly.
https://mobilisation.pollinis.org/stop-abeillesmodifiees-en

Don’t ignore the youth - make our biodiversity actions be recognized!

Global Youth Biodiversity Network (GYBN)

Youth is the future. The decisions of today shape the world we will live in longer than anyone else. But youth is not only the future, nor are we only beneficiaries. Youth is acting now, at the forefront of biodiversity efforts. Yet, we remain one of the most under-resourced and underrepresented groups in global biodiversity governance.

GYBN consulted youth in different countries on their actions and their consideration in the global report and national assessments. What we found is that these reports largely ignore the myriad of actions led by young people and they fail to recognize us as key contributors to safeguard biodiversity.

Seeing many national reports failing to acknowledge our contributions to biodiversity, we started mapping our actions ourselves to make them visible to everyone. Until now, hundreds of young people all around the world have told us about their projects - organizing sustainability festivals, saving pollinators, researching fungi biodiversity. There is barely an area where we do not contribute.

At COP17, we want to make it clear to all policymakers: We are partners in protecting biodiversity. We are their conscience when not moving quickly enough. We are the future generations dealing with the consequences of their decisions.

However, now we need your support.

If you are a supporter of youth biodiversity actions, we need you to make our actions visible. Share our form in your networks and organizations. Talk to decisionmakers about the importance of youth contributions to biodiversity. Make sure that our contributions will be recognized and included in the next round of national reports!

If you are a young person, fill out our form and tell the world about your action for biodiversity! It doesn’t matter how small or big your efforts are related to biodiversity, if it is in your school yard, in your town or bigger, if it is in person or online - tell us about your goals, challenges and impacts and illustrate your actions with pictures or videos!

Our form: https://tinyurl.com/youth-contribution

You want to get a preview of what youth are doing for biodiversity? Do you want to share your actions with others?
Join our side event today, 28th Oct, 5pm at the Youth Pavilion in the Action Zone, Level 1!

