

**TRIPS Action Network
(TAN)**

**Global Day of Action
Against Trade Related
Intellectual Property Rights**

June 18, 2001

**Anthology of Events, Press
Releases
and Position Statements**

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**The Trips Action Network (TAN)
Global Day of Action Against
Trade Related Intellectual Property Rights (TRIPS)**

List of Actions on June 18th around the world

AfriTAN - African section of the TRIPS Action Network

National campaigns to draw national government and media attention to popular demands for an end to patents on life and on essential medicines. This event coincided with meetings of the TRIPS Council in Geneva, and there were also actions undertaken in Geneva. It was felt that early action would enable national campaigns to influence national delegations at the TRIPS Council meetings in June and September; as well as national preparations for the November WTO Ministerial.

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AEFJN is launching a campaign on "Medicines for all in Africa" on that date. Our national groups and our 38 members (International institutes working in Europe and in Africa) have written letters to their governments and to the European Commission (Pascal Lamy).

Begona Inarra aefjn@village.uunet.be

Brazil

Associação Brasileira Interdisciplinar de AIDS

Desde fevereiro de 2001, por pressão de Laboratórios americanos, o Governo dos Estados Unidos mantém junto à Organização Mundial do Comércio (OMC), uma denúncia contra a Lei de Patentes brasileira, sob a alegação que esta fere o Tratado Internacional de Propriedade Intelectual (TRIP), uma vez que permite o licenciamento compulsório e a fabricação de medicamentos sob a forma de genéricos e similares, dentre os quais os anti-retrovirais que compõem o chamado coquetel anti-AIDS.

Cumpramos ressaltar que, hoje, a imensa maioria dos 36 milhões de pessoas que vivem com HIV/AIDS no mundo não têm acesso ao coquetel por causa dos elevados preços praticados pela indústria farmacêutica multinacional.

No Brasil, cerca de 100.000 doentes de AIDS estão em tratamento com anti-retrovirais graças à sua produção por laboratórios nacionais e a sua distribuição gratuita pelos órgãos governamentais.

Uma possível decisão da OMC em favor do governo norte-americano, além de significar pesadas sanções comerciais contra o Brasil, dificultará o acesso aos medicamentos de última geração e poderá prejudicar de forma irreversível o Programa de AIDS brasileiro, condenando à morte de milhares de brasileiros.

Por esse motivo, em defesa da soberania nacional e do direito à vida, é que o Fórum de ONG/AIDS do Estado do Rio de Janeiro, apoiado por diversas Organizações da Sociedade Civil de âmbito nacional e internacional, estará provendo um ATO PÚBLICO DE PROTESTO contra o Governo dos Estados Unidos nesta quarta-feira (13/06), das 11:30 às 13:30 horas, na Praça 04 de Julho, em frente ao Consulado Americano no Rio de Janeiro.

A sua presença é fundamental para engrossar nossa voz. Juntos somos mais fortes.

Contact: Darcy Vargas, forumongaidstrj@hotmail.com

Chile

Fundación Sociedades Sustentables planned actions for the 18 June Action Day in Chile. We did several press interviews in radio and newspapers to inform the public about what is TRIPS and its implications to our country, plus a call to the government to oppose patents of life and join the African initiative. The idea was to introduce the issue into the public opinion, as it is something really unknown.

Maria Isabel Manzur sustenta@rdc.cl; Fundación Sociedades Sustentables

Colombia

The statement of the Colombian's Ngos and Human Right's Network. It was:

- sent to the media
- disseminated through www.biodiversidadla.com / www.ilsa.org.co
- sent to WTO

Contact: Margarita Flórez, debate@multi.net.co

France

A letter was sent to the Prime Minister, the Agriculture Minister, the Environment Minister, and the Economic Minister on the 16th of June. This letter was signed by Solagral, Greenpeace France, AITEC and MSF.

Contact: Helene Ilbert, Solagral, h.ilbert@solagral.asso.fr

Geneva

For the June 20th Special Session at the TRIPS Council on Access to Drugs, Les Genevois gathered at the WTO in solidarity with the movement. It was the "Comite Suisse de l'Appel de Bangkok"--a consortium of Swiss local activists--that has taken the information on this and ran with it!!!

Contact: Shefali Sharma, ssharma@iprolink.ch

Resistance

Visual stickers were sent to various groups/cso's/ngo's, again in English, Spanish and French - one has a famous cartoon rabbit holding a 'no patents on life' banner, one is a field of rice and one is a globe - these have the website www.resistanceisfertile.com on them, as a lot of grassroots groups have decided to work under this banner together - on J18, the patents pages went on line.

Contact: Joyce @ GEN in London; genetics@gn.apc.org

India

Gene Campaign together with Centre for Environmental Concerns as well as other civil society groups in Andhra Pradesh (AP), organized a two day event in Hyderabad on 17 and 18 June. The 17th meeting was a strategy meeting calling together some key members of Gene Campaign/ AP, Centre for Environmental Concerns and the various human rights, environmental and agriculture groups working in (particularly) rural districts of AP. The purpose was to brainstorm to revitalise the IPR and Community Rights campaign, craft an action plan for the future, share work and develop afresh a long term strategy to work to secure rights to food and livelihoods.

The event on the 18th was a public workshop intended to generate awareness about the issues and bring people from the public on board, spell out the current status of TRIPS and AoA and point out the threats to self reliance contained in these treaties. The workshop developed the popular basis of the protest to be launched against TRIPS and identify the changes sought. Since many top level policy people were invited, the workshop also intended to sensitize the people influencing policy within and outside government.

The recommendations/ demands/ charter of actions etc that were formulated at the conclusion of the workshop will be forwarded to Pascal Lamy/ EU& the TRIPS Council/ WTO. At the national level, this will be sent to the Chief Ministers of all states in India, the Prime Minister and the Commerce Minister (nodal Ministry in India for WTO dealings) and all political parties in Parliament. This will also be forwarded to the National Committee on International Trade, India's body advising the government on WTO.

Contact: Dr. Suman Sahai, Email - genecamp@vsnl.com

ActionAid India (policy unit and the Andhra Pradesh Regional Office) supported a meeting in Hyderabad on 17-18 June on TRIPS (organised by Gene Campaign). ActionAid presented the preliminary findings of our seed sector study carried out in three sub regions of AP as part of this event as well.

Contact: Satyam@actionaidindia.org, sandeep@actionaidindia.org

Nepal

The National Food Security Alliance of Nepal is planning a joint action on 18th June.

1) NAFOS released a press release with a report of study carried out by the NAFOS member (Forum for protection of Public interest) on TRIPS Agreement and Policy Response in Nepal. The report is going to be submitted to the Nepal's accession to WTO office today.

2) Second event was a radio talk programme on the same issue with involvement of NAFOS secretariat, the head of organisation Green Energy Mission, the under secretary from Ministry of Industry, Commerce and Supply and one member of alliance from media (Nepal Forum of Environmental journalist).

3) Finally, ActionAid Nepal, produced a short briefing programme on TRIPs, what is going on at international negotiations, what are national experiences, what we are doing at national level, etc.

Contact: Yamuna Ghale, yamunag@actionaidnepal.org

Pakistan

On June 17, ActionAid Pakistan in collaboration with farmers groups and other NGOs organized a seminar on "Agricultural Issues and International Agreements-Focus on TRIPs", under the SAAG (Sustainable Agriculture Action Group) platform. Marginalised farmers, political leaders, NGOs and government representatives participated in the event. On 18th-a peaceful rally to address the government to take a position for substantive review of TRIPs 27.3b, and to mention the hazards of patenting and PBR act.

Contact: Aftab Alam (aftab@actionaidpakistan.org); Tahir Hasnain, tahir@sdpi.org

Uganda

Public Dialogue on TRIPS, Food Security and Access to Drugs

In order to sensitize the public, civil society and other stakeholders in Uganda joined the rest of the world to mark the day with a number of activities.

The Trade Related Intellectual Property Rights Agreement (TRIPS) is one of the World Trade Organization (WTO) Agreements signed by the Government of Uganda and it is currently under review. One of the critical concerns in the agreement is the provision in Article 27.3 b, which allows for protection of new inventions using patent regimes. The new inventions could include new plant and animal varieties. Whereby one has to pay royalties to access the benefits of the new inventions like improved seeds and animal breeds. This can have far reaching consequences on food rights and access to drugs especially for the poor people.

From this background, the FRA, a coalition of NGOs and individuals organized events to mark the TRIPS Day of Action to raise public awareness on the potential impact of the TRIPS Agreement on food security and access to drugs. The outcome of the events will contribute to processes of developing Government position in preparation for the Fourth WTO Ministerial meeting in Doha - Qatar, in November 2001.

Contact: Kimera Henry Richard, for: FRA Steering Committee
ActionAid Uganda also supported this initiative, James Kintu,
KintuJ@actionaiduganda.org

United Kingdom

ActionAid

ActionAid planned an action targeted at the UK Trade Minister on the 18th of June which included handing in the AA supporter petition to the government - over 7,000 letters. ActionAid celebrated biodiversity through a design on the pavement in the form of a 'mandala' or rangoli ("a prayer in a picture" often made of coloured sand by Buddhist monks or flowers). The Mandala was made of patented foods - e.g. maize, basmati, cinnamon, cocoa etc. The idea was to celebrate biodiversity and highlight the issue of patenting on plants, crops, genes and biodiversity.

We also handed out mock seed packets calling on the UK government to stop their support for food patenting. The packets each had a few seeds in them.

The action is part of an International effort to coincide with the TRIPs Council Meeting in Geneva. TRIPs - Trade Related Aspects of Intellectual Property Rights agreement is part of the WTO which makes provision for patents on genetic resources. More information can be found on our website: www.actionaid.org.uk

Contact: zoe@actionaid.org.uk, Alexw@actionaid.org.uk,
Rtripathi@actionaid.org.uk

ITDG

ITDG has prepared a briefing on the International Undertaking on Plant Genetic Resources, and is circulating an international sign-on letter to members of the FAO Commission on Genetic Resources for Food and Agriculture.

Contact: Patrick Mulvany, Food Security Policy Adviser, ITDG, patrickm@itdg.org.uk
www.ukabc.org

Oxfam GB

Release of Oxfam briefing paper on WTO patent rules and access to medicines - on website: www.oxfam.org.uk

Interagency press conference in Geneva involving representatives from NGO's in Kenya and Brazil and highlighting demands outlined in joint Statement.

Popular campaigns action - email / letter writing action by supporters to government trade minister and Pascal Lamy. This action or a similar action could be replicated globally for more impact. More detail is available on Oxfam's website -

<http://www.oxfam.org.uk/cutthecost/index.html>
Ongoing lobbying of governments north and south
Contact: amitchell@oxfam.org.uk

Third World Network & Oxfam

Joint NGO Statement on Patents and Medicines. The statement was released on June 19th at a press conference with MSF, Oxfam and TWN in Geneva. For more information on this Statement or to sign on, please contact:

Cecilia Oh, Third World Network
twnet@po.jaring.my

Liz Leaver Oxfam GB
lleaver@oxfam.org.uk

Grain Genetic Resources Action International (GRAIN) produced a briefing on 'IPR AGENTS TRY TO DERAILED OAU PROCESS - UPOV and WIPO attack Africa's Model Law on community rights to biodiversity'; June 2001, grain@baylink.mozcom.com
Contact: henk@grain.org, grain@baylink.mozcom.com

United States

ACT UP

ACT UP & the Health Gap Coalition organized a march in New York city on the 23rd of June against the global AIDS pandemic and the high cost of medication.

Contact: Paul Davis, pdavis@critpath.org

Oxfam US

Oxfam US and CPTECH worked on a activity in Washington, D.C. on June 20 that announced an initiative by members of congress to ask the USTR to drop its complaint against Brazil in the WTO.

Contact: Rivera, Severina SRivera@oxfamamerica.org

IATP

Institute of Agriculture and Trade Policy circulated a letter to national and international groups to be sent to the U.S. government, and supporting a rally at the regional headquarters of Syngenta, the world's largest supplier of biotech seed on the 25th of June.

Contact: Kristin Dawkins, kdawkins@iatp.org and Neil Sorensen, nsorensen@iatp.org

CARTP

The Coalition Against Rice-Tec Patent (CARTP) planned an event against Rice-Tec, holder of the last remaining claim on Basmati rice in Austin, Texas. CARPT was at various food stores in the community giving away organic Basmati rice and seed, and played the video of Vandana Shiva's visit on the access television as well.

Contact: Sally Jacques, CARPT, isms@onr.com

"Our World is Not for Sale"
Citizen Groups and NGO Statement to the U.S. Government
Regarding Trade Related Intellectual Property Rights (TRIPS)

Dear U.S. government officials,

The undersigned citizen groups and non-governmental organizations would like to express our profound dismay to the United States for its position on the patenting of life forms, plant varieties and pharmaceuticals in the TRIPS agreement generally and article 27.3(b) in particular, at the FTAA, and in other international and bilateral negotiations. Farmers, local economies, consumers, the elderly and the infirm, and people from developing countries around the entire globe suffer greatly under patent regimes. The patenting of genetic resources is eroding biodiversity and the rights of farmers to save seed and remain the self-reliant backbone of the economy. Millions of people have already died because they lack access to affordable treatment for HIV, and people everywhere struggle to cope with the rising costs of medicine and the lack of generic alternatives.

The U.S. government has been unwilling to listen to the concerns of its own citizenry and the voice of the international community in this regard. The U.S. position on TRIPS has been negotiated in secrecy in collaboration with transnational corporations and wealthy business interests. Moreover, the U.S. has exerted illegitimate pressure on other countries of the region to adopt TRIPS compliant national legislation and stricter patent laws. The US has allowed a patent on Basmati rice and many other plants and microorganisms from other countries with utter disregard for the traditional social or economic interests of the peoples of those countries.

We support the position taken by the African Group of countries in the World Trade Organization on the review of the TRIPS Agreement, which would prohibit patents on all forms of life and recognize the Convention on Biological Diversity, where the conservation and sustainable use of biological diversity, the protection of rights and knowledge of indigenous and local communities, and the promotion of farmers rights are more fully taken into account.

The TRIPS agreement also threatens public health in countries around the globe by giving patents on medicines for a minimum of 20 years, giving a monopoly to patent-holders during that time. This negatively impacts the developing world's ability, in particular, to produce and distribute affordable generic alternatives to branded drugs. We are appalled by the dispute settlement case lodged by the U.S government against Brazil in the WTO for doing so. People everywhere, in developing and developed countries, are outraged at these kinds of pressures imposed on impoverished countries to prevent them from using the flexibility of TRIPS to improve the access of ordinary people, particularly the poorest, to medicines.

Patents support the private monopolization of life and biological resources, and are causing serious adverse environmental and developmental effects, and are jeopardizing food sovereignty, security, safety and the livelihoods of millions of farmers. Such patents have also received strong objections from the public on ethical, religious and moral grounds. We support the view that substances and processes that exist in nature are a discovery and not an invention and thus are not patentable. Moreover, we support the notion that the genetic pool is a common heritage of humanity as a whole and recognize the contribution of indigenous and farming communities to the improvement of our shared genepool.

We demand:

- complete transparency in the negotiation of all trade agreements;
- the adoption of the African Group's position to prohibit patents on all life forms and recognition of the Convention on Biological Diversity;
- the cessation of pressures from the U.S. government on other countries to adopt more stringent intellectual property laws;
- immediate withdrawal of the of the one remaining claim for a patent on Basmati rice at the U.S. Patent and Trademark Office;
- the option of excluding medicines from patenting on humanitarian or public-health grounds and for the treatment of poverty-related diseases in all intellectual property negotiations; and
- the immediate dismissal of the complaint lodged by the U.S. government against Brazil.

Signatories:

Institute for Agriculture and Trade Policy (IATP), Minneapolis, Minnesota

Coalition Against the RiceTec Patent, Austin, TX

Red de Ecologia Social (REDES), Montivideo, Uruguay

United States

ACT UP/East Bay, Oakland, California

Africa Action, Salih Booker, Executive Director, Washington, D.C.

Anarchist Action of Rochester, Rochester, New York

Beyond Biodevastation/Biojustice 2001 Coalition, San Diego, California

Bill Rose-Heim, Cameron, Missouri

Christian Church (Disciples of Christ) in the Upper Midwest, Des Moines, Iowa

Council for Responsible Genetics, Cambridge, MA

Environmental Research Foundation, Annapolis, Maryland

Forest Guardians, Santa Fe, New Mexico

Franklin W. Neff, Retired from the University of Missouri, Lenexa, Kansas

Global Exchange, San Francisco, California

Ithaca-area Safe Food Campaign/Organic Consumers Association, Ithaca, New York

John Wickham, Environmental Consultant, Washington, DC

Jonothan L. Logan, PhD, Molecular biologist, New York, New York

Lester Boleyn, Clergy, Cumberland, Maryland

Lissa E. Harris, graduate student, Dept. of Natural Resources, Cornell University Ithaca, New York

Martin Heller, PhD, Center for Sustainable Systems, Ann Arbor, Michigan

Middle East Children's Alliance, Berkeley, California

Maudelle Shirek, Vice Mayor, City of Berkeley, California

Multinational Sustainable Marketing, Saint Paul, Minnesota

National Lawyers Guild International Law Project on Human, Economic and Environmental Defense (HEED), Los Angeles, California

Organic Consumers Association, Little Marais, Minnesota

Pesticide Action Network North America, San Francisco, California

Pete La Follette, Green Party, Santa Barbara, California

Rochester Food Not Bombs, Rochester, New York

Sisters of Mercy of the Americas, Institute Justice Team, Des Plaines, Illinois

The Ruckus Society, Oakland, California

Southern Neighborhoods Network, Nashville, Tennessee

Australia

Bathurst Social Justice Group, Bathurst N.S.W.

J. Price, Health Promotion Officer, Sydney

Kirsten Blair and Mark Wakeham, Environment Centre of the Northern Territory, Darwin

Margaret McCue, networker, Urunga, N.S.W.

Canada

Brewster and Cathleen Kneen, The Ram's Horn, British Columbia

Susan Black and Jan Westlund, Manitoba Eco-Network, Canada

Neil Bergman, Area Minister, Maritime Area of the Christian Church (Disciples of Christ)

Penny Swanson, Librarian, British Columbia

Yellowhead Ecological Association, Clearwater, British Columbia

Colombia

Margarita Flórez, Ad Hoc Group on Biodiversity

Carlos Salgado and bBeatriz Torres, Ilsa

Catalina Toro and Pilar Valencia, Centro de Debate y Acción ambiental

Costa Rica

Friends of the Earth, COECOceiba

Silvia Rodriguez, Programa CAMBIOS-UNA, Heredia

Egypt

Egyptian Biodynamic Association, Klaus Merckens, Cairo

France

OGM dangers, Herve Le Meur, President, Paris

Solagral, Paris and Montpellier

Mexico

Grupo de Tecnología Alternativa S.C.

New Zealand

Dale Hinkley, New Zealand, Research Consultant

GE Free NZ in Food and Environment (R.A.G.E) Inc., Nelson

Nelson GE Awareness Group, Nelson

Pacific Institute of Resource Management, Wellington

Zelka Vallings, Chairwoman, GE Free Northland, Northland

Nigeria

Prof. J.A.Ekpere, University of Ibadan, Ibadan

South Africa

Andrew Taynton, Safe Food Coalition

United Kingdom

Biodynamic Agricultural Association, Gloucestershire
Centre for Social Markets, India and the United Kingdom
The Genetics Forum, London
GM Free Dacorum

Zimbabwe

Andrew Mushita, Director, Community Technology Development Trust

PRESS RELEASE

Embargoed until April 19, 2001

Contact: Kristin Dawkins, 612-849-0889.

Ben Lilliston, 612-870-3416.

Other contacts listed below.

FTAA Negotiations on Intellectual Property Threaten Access to Pharmaceuticals and Seeds, Undermine International Agreements and Human Rights

Quebec City - As negotiators from throughout the Western Hemisphere gather in Quebec City to push for another free trade deal, representatives of civil society groups are gathering their voices in protest. Many groups object outright to the proposal of hemispheric trade liberalization. Others object to specific terms on the negotiating table, including the US proposal for more stringent intellectual property rights (IPRs) than currently exist.

Generally, most protesters would like to see a vision for cooperation in the region based on the needs of our peoples for a sustainable human development that is democratically participatory and transparent, equitable and respectful of the regenerative capacity of natural ecosystems.

The Free Trade Agreement of the Americas (FTAA), however, is premised on the further liberalization of commercial trade and it is being negotiated in virtual secrecy. The US negotiating position for FTAA, in fact, is the only one that has been made public. In a modern-day revival of the Monroe Doctrine, in which the rest of the Americas are viewed as the United States' "back yard," the US seeks to drive the negotiating process. Spokespersons for a number of organizations from across the Americas have expressed concerns.

"The FTAA negotiations are fundamentally illegitimate," says Alberto Villareal of REDES-Friends of the Earth Uruguay. "They intend to go further than even the North American Free Trade Agreement or the World Trade Organization in deregulating global corporations. In these secretive meetings, they hope to set new extremes for liberalized trade that will become precedents to reopen the stalled WTO negotiations."

"As expected, the US seeks to tighten the protections of the pharmaceutical and agrichemical companies in ways that will slow the development of and access to new varieties of seeds and affordable drugs" says Kristin Dawkins, Vice President at the Institute for Agriculture and Trade Policy in Minneapolis. "The US proposal would allow the transnational private sector to appropriate the resources and knowledge of peoples throughout the world, with severe consequences for food security and health, especially in rural communities and especially for women who make up the majority of the world's farmers and the world's poor."

The details surrounding IPRs are expected to be one of the hot button issues during FTAA negotiations this week.

For instance, the US has argued that policies in Brazil and South Africa to provide free and affordable drugs to AIDS victims are illegal cases of patent-infringement under the World Trade Organization's current IPR rules (known as "TRIPs.") The US is advocating even more stringent "TRIPs-plus" standards in the FTAA.

Just yesterday, pharmaceutical companies dropped their patent-infringement case against South Africa. "This is a huge victory for the poor people of South Africa. Now they have a chance to survive this disease," says Severina Rivera, an attorney with Oxfam America, which is partnering with Medicines Sans Frontieres and the South African TRIPs Action Coalition on this case. "Our next campaign is to get the US to drop its case against Brazil's AIDS-drugs policies in the WTO. "

"It is not appropriate to treat health care as a matter of commerce only," says Rob Weissman of the Consumer Project on Technology based in Washington DC. "Countries should have discretion to use compulsory licenses to achieve public interest goals. This is particularly important in complex fields of technology, where inventions are essential inputs for other inventions."

The FTAA position on IPRs falls within an intense international debate over patents. Last August, the United Nations Sub-Commission on the Promotion and Protection of Human Rights has passed a resolution suggesting IPR conflict with the right of everyone to enjoy scientific progress, the right to health, the right to food and the right to self-determination. The World Trade Organization (WTO) is now actively debating a proposal from African nations to prohibit patents on all forms of life. A few governments and many non-governmental organizations have suggested that perhaps intellectual property rights should be deleted from the WTO's body of law or, indeed, from any trade agreement including the FTAA.

"Plant patents are encouraging biopiracy and the spread of genetically engineered organisms," says Maria Isabel Manzur of the Fundacion Sociedades Sustentables in Chile. "First they come to our countries to take useful plants back to the laboratory, then they patent them and sell them back to us. We know that the only goal of commercial interests is to create an absolute dependency, obligating farmers to buy seeds every year. And the new genetically engineered varieties can be even more dangerous than toxic or nuclear wastes, because they can reproduce themselves and spread uncontrollably throughout an ecosystem."

"We are concerned that stronger, deeper patent protections for corporations will create even greater patent injustice," says Severina Rivera of Oxfam America, which has declared its opposition to the FTAA as a whole. "We believe that rules on intellectual property must strike a balance between rewarding private innovation

and promoting broader social objectives. Where interests conflict, such rules must favor vital social objectives over the rights of patent holders."

Contrary to the principle that patents are necessary to promote innovation, most innovators are salaried employees of corporations or other major institutions; they are often constrained from sharing their research in order to ensure the eventual monopoly rights accrue to their institution and none other. "The genetic code is the sum of life's evolution on earth and should not become private property," says Laurel Hopwood of the Sierra Club.

"No individual, institution or corporation should have the ability to claim ownership over species or varieties of living organisms." The Sierra Club has also declared, "We hold that respect for this natural treasure demands that no government should have power to grant patents or property rights over it. Just as civilized societies have decided that there can be no ownership of human beings (slaves), we believe that there should be no ownership of the genetic code, which should continue to be the shared common heritage of all."

Aware of popular opposition to patents on life, numerous governments are attempting to legislate protections for genetic resources that stop short of actual patents. The WTO TRIPs Agreement allows for IPR-based alternatives to actual patents under the "sui generis" clause. The Convention on Biological Diversity, signed by 180 countries, stipulates that intellectual property rights "must be supportive or and not counter to" the goals of conservation, sustainable use and the equitable sharing of any benefits derived from biodiversity. The Andean Community recently stipulated that when a patent is granted for inventions based on the biological or genetic heritage or knowledge of local communities, the patent 'shall be subordinated' to the acquisition of that material in accordance with international, Andean Community and national law.

In keeping with these mandates, considerable effort has been directed to codifying the rights of Indigenous Peoples, Farmers' Rights, and other community rights at every level of government in ways that are nonetheless consistent with the powerful WTO. "In all of these debates," says Alberto Villareal of REDES - Friends of the Earth Uruguay, " it is important to realize there are a range of opinions - from those who support 'sui generis' regimes to those of us who object on grounds that they all interfere with the free exchange of germplasm, which is ultimately essential to the sustainability of biodiversity and food security."

A critique of the US negotiating position for the FTAA is highlighted in "America's Plan for the Americas" published by the Alliance for Responsible Trade (ART). Specifically, the US will not have to revise its national laws, already highly protective of monopolistic industries, but argues others must. For example, on:

- **Patents - Other governments' rights to refuse patents for plant varieties and/or humans and animals or to revoke such patents, as is available in TRIPs, would be eliminated. Other governments would have to limit their use of compulsory licensing to the terms of TRIPs and strictly limit the use of patented products or processes by competitors to marketing approvals only.**
- **Trade Secrets - Other governments would be required to prohibit companies from developing generic versions of products for at least five years after the initial product enters the market. If marketing approvals are delayed, governments would have to compensate patent holders with longer patents.**
- **Enforcement - Other governments would be expected to "significantly bolster" their enforcement capacity with regard to protecting patents, allowing full compensation for patent holders' claims and to take criminal action while exercising authority to seize pirated or counterfeit goods.**
- **Copyright - Other governments would have to strengthen protections for on-line and Internet exclusivity.**
- **Trademarks and Geographical Indications - Symbols of geographical indication would have to be considered trademarks, and restricted as such.**

And other governments would be expected to set up procedures enabling applicants to file simultaneously in multiple countries, and not to require license registration.

The Alliance for Responsible Trade is releasing the most recent version of its "Alternatives for the Americas" document, including a detailed proposal for a fair and just regime to protect peoples' intellectual rights, in Quebec City this week.

For more information, please call:

**Alberto Villareal, REDES-Friends of the Earth Uruguay, in Quebec:
418-872-1488.**

**Kristin Dawkins, Institute for Agriculture and Trade Policy, in Quebec:
612-849-0889.**

**Rob Weissman, Consumer Project on Technology, in Washington DC:
202-387-8030.**

Maria Isabel Manzur, Fundacion Sociedades Sustentables, in Santiago: 56-2 209-7028.

Severina Rivera, Esq., Oxfam America, in Quebec: 418-523-3186. For copies of Oxfam America's study "Cut the Cost Patent Injustice: How World Trade Rules Threaten the Health of the People" call

202-462-3836 in Washington, D.C.

Laurel Hopwood, Sierra Club, in Ohio, 216-371-9779.

Tom Hanson, Alliance for Responsible Trade, in Quebec: 312-925-7236.

GLOBAL SEED TREATY THREATENED

A Treaty to Save the World's Seeds for the Benefit of All may Fall at the Last Hurdle

THE PROMISE

At the end of June, the World's governments will meet in FAO Rome to conclude negotiations on a legally-binding agreement that will govern the use of the crop seed varieties and genetic resources which underpin global and local food security. It is urgently required because of the rapid loss of these varieties-- more than 75% in the past century-- and because of the increasing use of intellectual property rights to claim sole ownership over crop seeds and their genes, which is restricting farmers' access.

This agreement is called the International Undertaking on Plant Genetic Resources for Food and Agriculture, or IU for short. It covers many of the major food crops in the world. It aims to ensure the conservation, sustainable use and 'free flow' of the genetic resources of these crops so that they are "preserved... and freely available for use, for the benefit of present and future generations". It recognises Farmers' Rights to access and use seeds.

It also ensures that when these genetic resources are used commercially by industrialised countries for plant breeding or food, farmers in developing countries receive a fair share of the profits generated, in return for their contribution to the crops' development.

THE NEED

For centuries, farmers have developed crop varieties within their diversified agricultural systems - varieties to suit every possible social, economic and environmental requirement. This has been achieved through the free exchange of seeds between farmers who, by planting them in different conditions thereby generate greater diversity. Under challenging conditions, this diversity provides greater food security by spreading risk through the use of many different varieties. The food security of two thirds of humanity is still based on these traditional agricultural technologies and seed exchanges rather than industrial agriculture.

Furthermore, the hundreds of thousands of local varieties of the main food crops developed by these farmers constitute an invaluable part of the world's agricultural biodiversity, which the international community has pledged to protect. Under the Convention on Biological Diversity it is recognised that this conservation must be an active process of sustainable use by farmers in their fields – in other words, farmers are the custodians of this vital source of food and ecological security and manage this on behalf of us all.

At present, the IU only covers 30 food crops. It should cover all those food crops that are important for food security - some 100 or more crops.

THE PROBLEMS

Two substantial problems arise.

First, 'Biopiracy' is rife. Intellectual Property Rights regimes create private ownership rights which remove locally adapted varieties from communal ownership and exchange, threatening future development of these varieties. Universities and corporations are claiming unjustifiable intellectual property rights on them, and industry is now seeking to extend the IPR system as far as it can to seize control of the genes contained in these varieties.

The commercial seed industry held its World Seed Congress in South Africa in May 2001 and, under pressure from the Canadian and US governments, has hardened its attitude against the IU, reneging on its support for "commercial benefit sharing" -- that is, paying back

Open letter from CSOs

23 April 2001

To: Members of the Chairman's Contact Group negotiating the International Undertaking

cc Members of the FAO Commission on Genetic Resources for Food and Agriculture

International Undertaking on Plant Genetic Resources for Food and Agriculture (IU) KEEP OUR SEEDS FREE FROM PROPERTY RIGHTS

We are writing as Civil Society organisations concerned that access to genetic resources for food and agriculture is maintained and that it is not restricted by Intellectual Property Rights (IPRs). We believe that the IU has the potential to ensure this.

We wish to urge you and all members of the Contact Group to do all you can to achieve successful negotiations on the IU in your next meeting in Spoleto. Time is running out but agreement is within your grasp if you focus on the important issues and are not distracted by minority views. An agreement supported by a majority of countries would be an acceptable first step.

We trust that you have secured the commitment to "conclude negotiations by a fixed date" that Ambassador Gerbasi requested of you at the FAO Council. As you will be very aware, that date has, in effect, arrived if you are to fulfil the Council's request for a finalised IU to be presented to the next FAO Conference. We urge you to agree sufficient text in Spoleto this month to enable an Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture to conclude negotiations on the IU and present this to the FAO Conference in November 2001.

You are aware of the key issues that need resolution: **Access; Commercial Benefit Sharing; Financing; the List of Crops** that will be covered by the IU to include all those which are of global importance for food security. Our views on these have been widely circulated among Contact Group members and are available on various websites¹.

Because these vital genetic resources are drawn from a multitude of countries, the IU's Multilateral System of access, free from IPRs and other restricting mechanisms, is vital for all who want to improve crops, including farmers. As you know, without the IU there would be a need for costly and ultimately unworkable sets of bilateral arrangements in which all would lose out.

Our insistence is that you negotiate a just, equitable and effective IU that facilitates universal access to those genetic resources essential for food and agriculture:

- we will not accept an agreement in which access is restricted by IPRs;
- we want to see you include a list of at least 30 genera of crops essential for food security
- we want you to re-open Article 15 on Farmers' Rights and/or commend the issue to the Right to Food negotiations at UNHCHR.

Our colleagues will be attending the next Contact Group meeting as observers and all our organisations and their networks are watching the outcome: increased public attention is being brought to bear on these negotiations – you must not fail. Global food security and the livelihoods of millions of rural households depend on your work in Spoleto: do not abdicate your responsibilities.

Yours sincerely

(Signatories below)

¹ See for example: www.rafi.org, www.grain.org, www.ukabc.org, www.evb.ch/bd/food.htm

Al Grupo de Contacto convocado por el Presidente de la Comisión de Recursos Genéticos para la Alimentación y la Agricultura de la FAO

Abril 2001

Compromiso Internacional sobre Recursos Fitogenéticos para la Alimentación y la Agricultura
NO A LOS DERECHOS DE PROPIEDAD INTELECTUAL SOBRE NUESTRAS SEMILLAS

Los que suscribimos, miembros de organizaciones de la sociedad civil, estamos profundamente preocupados por mantener el acceso amplio a los recursos genéticos para la alimentación y la agricultura y que éste no sea restringido por sistemas de propiedad intelectual. Creemos que el Compromiso Internacional tiene la capacidad de garantizarlo.

Solicitamos a ustedes y a todos los miembros del Grupo de Contacto que hagan sus mejores esfuerzos para el éxito de las negociaciones sobre el Compromiso en la próxima reunión en Spoleto.

Cada vez hay menos tiempo, pero aún pueden lograr un acuerdo si se enfocan en los temas realmente importantes y no permiten que las negociaciones se desvíen por las perspectivas de una minoría. Un acuerdo apoyado por la mayoría de los países sería un primer paso aceptable.

Confiamos en que cumplirán con el compromiso de “concluir negociaciones para una fecha fija” que el Embajador Gerbasi les requirió en el Consejo de la FAO.

Estamos seguros que son concientes de que esa fecha ha llegado, para poder cumplir con la solicitud del Consejo de presentar a la próxima Conferencia de la FAO un texto negociado del Compromiso Internacional. Preocupados por la situación, les urgimos a que en Spoleto lleguen a un texto suficientemente consensado para posibilitar una sesión Extraordinaria de la Comisión de Recursos Genéticos para la Alimentación y la Agricultura de la FAO con el fin de concluir las negociaciones y presentar este texto a la Conferencia de la FAO en noviembre del 2001.

Sabemos que están al tanto de los temas claves que necesitan ser resueltos: **acceso, distribución equitativa de beneficios, financiamiento, lista de cultivos** que deben ser cubiertos en el Compromiso Internacional incluyendo todos aquellos que son de importancia global para la seguridad alimentaria. Hemos circulado ampliamente nuestros puntos de vista sobre estos temas a los miembros del Grupo de Contacto, y están disponibles en varios sitios de internet².

Un sistema multilateral de acceso, claramente fuera del alcance de derechos de propiedad intelectual y otros mecanismos restrictivos, es vital para todo quien quiera mejorar los cultivos, incluidos los y las agricultores/as, ya que estos recursos genéticos de vital importancia están distribuidos en muchos países. Como saben, sin el Compromiso Internacional, se necesitarían costosos acuerdos bilaterales, que en última instancia no se podrán implementar, y en los que todos perdemos.

Insistimos en que deben negociar un acuerdo para un Compromiso Internacional que sea justo, efectivo y equitativo; y que facilite el acceso universal a todos los recursos genéticos esenciales para la alimentación y la agricultura:

- no aceptaremos un acuerdo en el que el acceso se vea restringido por derechos de propiedad intelectual
- demandamos que incluyan una lista de un mínimo de 30 géneros de cultivos esenciales para la seguridad alimentaria.
- demandamos que se reabra la discusión del Artículo 15 sobre los Derechos de los y las Agricultores/as en concordancia con lo anterior, y/o que este tema sea encomendado a las negociaciones sobre Derecho a la Alimentación del Alto Comisionado de las Naciones Unidas para los Derechos Humanos.

Nuestros colegas participarán en la próxima reunión del Grupo de Contacto, como observadores, y todas nuestras organizaciones y redes están pendientes de los resultados: la atención pública sobre estas negociaciones está en alerta -no pueden fracasar. La seguridad alimentaria en el planeta y el sustento de millones de personas dependen de su trabajo en Spoleto: no abduquen de su responsabilidad.

Atentamente

²: www.rafi.org, www.grain.org, www.ukabc.org, www.evb.ch/bd/food.htm

Avril 2001

A l'attention des Membres du Groupe de Contact du Président négociant l'Engagement international

Copie : Aux Membres de la Commission des Ressources Génétiques pour l'Alimentation et l'Agriculture de la FAO

L'Engagement International sur les Ressources Génétiques pour l'Alimentation et l'Agriculture (l'Engagement international)

GARDEZ NOS SEMENCES LIBRES DE DROITS DE PROPRIÉTÉS

Nous vous écrivons en tant qu'organisations de la société civile qui sommes convaincus que l'accès aux ressources génétiques pour l'alimentation et l'agriculture doit être maintenu et non pas limité par des Droits de Propriétés Intellectuels (DPI). Nous pensons que l'Engagement international a la capacité d'assurer ce droit.

Nous en appelons à votre bienveillance et à celle de l'ensemble des membres du Groupe de Contact afin que lors de votre prochaine réunion à Spoleto, tout soit tenté pour que les négociations en cours dans le cadre de l'Engagement international soient couronnées de succès. Certes, le temps commence à manquer, mais un accord est à portée de la main si vous vous concentrez sur les points importants et si vous ne vous laissez pas distraire par une minorité de pays. Un accord soutenu par une majorité d'Etats serait une première étape acceptable pour tous.

Nous sommes certains que vous entendez respecter l'engagement de : " conclure les négociations à une date définie" qui vous a été demandé par l'Ambassadeur Gerbasi lors du Conseil de la FAO. Comme vous le savez trop bien, si vous avez décidé de suivre la demande du Conseil de lui fournir un Engagement international prêt à être présenté à la prochaine réunion de la FAO, la date butoir est arrivée. A Spoleto Nous vous demandons instamment de tomber d'accord sur suffisamment de texte pour permettre à une Session Extraordinaire de la Commission des Ressources Génétiques de se réunir pour achever les négociations sur l'Engagement international et ainsi présenter ses conclusions lors de la conférence de la FAO en novembre 2001.

Vous connaissez bien les points cruciaux qui nécessitent une prise de position de votre part : L'accès ; Le Partage des bénéfices Commerciaux ; Le Financement ; la Liste des Plantes qui seront couvertes par l'Engagement international et qui devra inclure toutes celles qui ont une importance majeure pour la sécurité alimentaire. Nos vues sur ces questions ont été largement distribuées à tout les Membres du Groupe de Contact et sont également disponibles sur de nombreux sites internet³.

C'est parce que ces ressources génétiques proviennent d'une multitude de pays, qu'il est vital pour tous ceux qui veulent améliorer les plantes, y compris les agriculteurs que le Système d'Accès Multilatéral de l'Engagement international soit libre de DPIs et autres mécanismes restrictifs. Comme vous le savez, sans l'Engagement international il serait nécessaire d'avoir recours à de nombreux accords bilatéraux qui seraient en fin de compte inefficaces et à cause desquels tout le monde serait perdant.

Nous insistons pour que vous vous négociez un Engagement international juste, équitable et opérationnel qui facilite l'accès universel aux ressources génétiques indispensables à l'alimentation et à l'agriculture : . Nous n'accepterons pas un accord à cause duquel l'accès à celles-ci est réduit par des DPIs ; . Nous voulons vous voir émettre une liste d'au moins 30 variétés de plantes vitales pour l'alimentation et l'agriculture ; . Nous voulons que vous réouvriez les discussions sur l'Article 15 sur les Droits des Agriculteurs et/ou que cette question soit transférée dans le cadre des négociations en cours sur le Droit à l'Alimentation dans le cadre de la CDHNU.

Nos collègues Pat Mooney et Henk Hobbelink seront présents comme observateurs des CSO, lors de la prochaine réunion du Groupe de Contact et toutes nos organisations et leurs réseaux surveilleront les positions qui y seront prises : L'intérêt du grand public sur ces négociations est entrain de croître. Vous n'avez pas le droit d'échouer. La sécurité alimentaire mondiale et l'existence de millions de familles rurales dépendent de votre travail à Spoleto : Ne fuyez pas vos responsabilités.

Cordialement

³: www.rafi.org, www.grain.org, www.ukabc.org, www.evb.ch/bd/food.htm

SIGNATORIES
(327 FROM 59 COUNTRIES)

KEEP OUR SEEDS FREE FROM
PROPERTY RIGHTS -
Endorsement list

INTERNATIONAL

Action Aid
Center for International
Environmental Law (CIEL)
CGIAR NGO Committee
Genetic Resources Action
International (GRAIN)
Greenpeace International
Indigenous Peoples' Biodiversity
Network
International Partners for Sustainable
Agriculture (IPSA)
ITDG (Intermediate Technology
Development Group)
Rural Advancement Foundation
International (RAFI)
DiverseWomen for Diversity

Africa

Coalition of African Organizations
for Food Security/Sovereignty and
Sustainable Development
(COASAD)
International Traditional Healers
Organisation

Cameroon

Health and Environment Program

Ghana

Integrated Social Development
Centre

Lesotho

Machobane Agricultural
Development Foundation
(Helvetas)

Namibia

Namibian Agronomic Board

Nigeria

Sisters of Charity

Senegal

Pesticide Action Network (PAN)

South Africa

Safe Food Coalition
Biowatch South Africa

Tanzania

Christian Council of Tanzania

Zambia

Organic Producers and Processors
Association
Sisters of Charity

Zimbabwe

African Farmers' Organic Research
and Training
Community Technology
Development Trust (CTDT)
Dr Kingstone Mashingaidze, Africa
University

AMERICAS

Argentina

Acción por la Biodiversidad
Centro Ecologista "Renacer"
Iniciativa Arcoiris de Ecología y
Sociedad Grupo de Reflexion Rural
PEUMA Grupo de Accion Ecologico
Social

Belize

Belize Association of Producer
Organizations (BAPO)

Bolivia

AGRUCO

Agroecologia Universidad
Cochabamba
Asociación mixta de agricultores
orgánicos "Mama Killa"
El Comité Civil de Dialogo Heroes
de Ocosingo del Frente Zapatista
de Liberacion Nacional de San Luis
Foro ecológico y social
Foro Boliviano sobre Medio
Ambiente y Desarrollo-
FOBOMADE
Fundation Indígena Amouta
PROBIOMA
Productividad Biosfera Medio
Ambiente

Brazil

AS-PTA - Assessoria e Servicos a
Projetos em Agricultura Alternativa
Associação potiguar Amigos da
natureza
BioNatur
Centro Ecológico Rio Grande do sul
Consortium Centro Ecológico
Ipê/CETAP/CAPAs
Ecoa - Ecologia e Ação
ESPLAR-Centro de Pesquisa e
Assessoria
Flavio Luiz Schieck Valente General
Coordinator of Agora - Segurança
Alimentar e Cidadania
Fundação CEBRAC, Brasil
Greenpeace
IBASE - Brazilian Institute of Social
and Economic Analyses
IDEC - Instituto Brasileiro de defesa
do Consumidor
InKa - Instituto Kayowa
Mater Natura - Instituto de Estudos
Ambientais
Rios Vivos Coalition

Canada

BC Food Systems Network
Biotechnology Consortium
Canadian Council for International
Co-operation
GE Free Canada
Inter Pares
Mennonite Central Committee
Organic Food Council of MB
SSND, School Sisters of Notre Dame

Chile

Alianza por una mejor calidad de
vida Red de Acción en Plaguicidas
de Chile
Fundación Sociedades Sustentables
Movimiento Agroecológico de
América Latina y Caribe –
MAELA

Colombia

CALA, Centro de Asistencia Legal
Ambiental
Centro de Debate y Acción
Ambiental
Fundación América Latina
Fundación Mónica Mejía Aragón
Fundación Swissaid - Programa
Semillas
Instituto Latinoamericano de
Servicios Legales, Ilsa
Instituto Mayor Campesino
PAN-Colombia
Pesticide Action Network
Proceso de Comunidades
Negras.PCN

Costa Rica

COECO Ceiba-FoE Costa Rica
Grupo Soberania
Mesa Nacional Campesina
Programa Cambios – Universidad
Nacional
Rodrigo Carazo Odio
Presidente de Costa Rica (1978-82)
Universidad Nacional
Magda Zavala,
profesora universitaria,
investigadora y escritora

Cuba

Centro de Estudios de Agricultura
Sostenible de la Universidad
Agraria de la Habana (CEAS-
UNAH).

Republica Dominicana

Comité regional de promoción de la
salud comunitaria (CRPSC)
Instituto de Desarrollo de la
Economía Asociativa (IDEAC)

Ecuador

Acción Ecológica
 Cecilia Chérrez / Aurora Donoso
 Instituto de Estudios Ecologistas
 del Tercer Mundo
 Rapal Ecuador
 Red Interamericana de Agriculturas y
 Democracia

Guatemala

E-LAW (Environmental Law
 Alliance World Wide)
 IDEADS (Instituto de Derecho
 Ambiental y Desarrollo
 Sustentable)
 RODA (Red de organizaciones No
 Gubernamentales en Derecho
 Ambiental de Mesoamérica)
 TRIGO (Trinacional Golfo de
 Honduras awarded with the Paul
 Getty Price 1998)

Honduras

OFRANEH, Fraternal Organization
 of Honduran Blacks

México

Asociacion de Promotores para el
 Desarrollo Autónomo de los
 Movimiento Sociales
 Centro de Estudios para el Cambio
 en el Campo Mexicano (Ceccam)
 Centro de investigacion y accion de
 la mujer latinoamericana a.c.
 (CIAM)
 Centro Mexicano de Derecho
 Ambiental, A.C
 Cultura Joven A.C
 INIFAP
 Centro Nacional de Investigación
 para Producción Sostenible
 Manejo Agroecológico de Plagas
 Agrícolas
 Instituto de Promoción para el
 Desarrollo Rural A.C.
 MAELA Movimiento Agroecológico
 de América Latina y Caribe
 NOCON, S.A. DE C.V. Agricultura
 sustentable y productos
 biodegradables
 Organización red nacional de
 promotoras y asesoras rurales
 RAPAM - Red de Accion sobre
 Plaguicidas y Alternativas en
 México
 Red de Permacultura
 Sergio H. Aguilar R. Programa
 Bosque de Niebla y Proyecto
 Uxpanapa
 Comité regional de promoción de la
 salud comunitaria (CRPSC)

Nicaragua

Amigos de la Tierra
 Asociación para el Desarrollo
 Agroecológico Regional

Centro Humboldt
 CISAS – Centro de información y
 servicios de asesoría en salud

CCER- Coorinadora civil para la
 emergencia y la reconstruccion
 Consejo internacional de salud de los
 pueblos

Paraguay

MAELA - Movimiento
 Agroecológico Latinoamericano y
 del Caribe

Panama

Dirigente indígena

Peru

APEC - Asociación de Productores
 Ecologicos del Centro
 Asociación Kechua-Aymara for
 Sustainable Livelihoods (Peru)
 CEAR Centro de Apoyo Rural
 Red de Acción en Plaguicidas y sus
 Alternativas para América Latina

United States

Africa Faith & Justice Network
 Anarchist Action of Rochester
 Biotechnology Consortium (Canada
 and USA)
 CA Justice and Peace Committee
 Cornucopia Network of New Jersey
 Cumberland Countians for Peace &
 Justice
 Dr. Kathleen McAfee, Department of
 Environmental Studies, University
 of California at Santa Cruz
 Edmonds Institute
 Elizabeth Seton Federation
 Flowerfield Enterprises
 Food First
 Institute for Agriculture and Trade
 Policy, Minneapolis
 Mankato Area Environmentalists
 Mennonite Central Committee
 Miguel A. Altieri, Ph.D
 Mothers for Natural Law
 Native Seeds/SEARCH
 (Southwestern Endangered
 Aridlands Resources Clearing
 House
 Northwest Resistance Against
 Genetic Engineering
 Occidental Arts and Ecology Center
 Pesticide Action Network North
 America Regional Center
 (PANNA)
 Peter Montague, Ph.D, Director
 Environmental Research
 Foundation Annapolis, Maryland
 Religious of the Sacred Heart Justice
 and Peace Commission
 Rochester Food Not Bombs

Safe Food Campaign/Organic
 Consumers Association (Ithaca
 NY)
 Sisters of the Holy Names
 Sussex Society of Public Interest
 The Organic Consumers Association
 in the USA
 The Ruckus Society
 United Church of Christ
 University of California, Berkeley
 ESPM-Division of Insect Biology
 W. J. Smith, Center for energy and
 environmental policy, University of
 Delaware
 Washington Biotechnology Action
 Council, USA
 Western Sustainable Agriculture
 Working Group

Uruguay

CEUTA (Centro de Estudios
 Uruguayo de Tecnologías
 Apropriadadas)
 COEDUCA (Cooperativa de
 Educación y Comunicación
 Alternativas)
 Comunidad del Sur
 ECOSUR
 RAPAL
 REDES- Friends of the Earth
 Uruguay

Venezuela

Red de Acción en Alternativas al uso
 de Agrotóxicos, RAPAL-VE, PAN

ASIA**Bangladesh**

Farhad Mazhar, Nayakrsihi Andolon
 New Agricultural Movement

Cambodia

CEDAC (Cambodian Center for
 Study and Development in
 Agriculture)

India

Consumer Rights, Education and
 Awareness Trust (CREAT)
 Dr.G K Veeresh President,
 Association for promotion of
 Organic farming
 Forum for Biotechnology and Food
 Security
 GENE CAMPAIGN
 Green Foundation
 Women's Centre, Bombay

Indonesia

BIOFORUM INDONESIA
 PAN Pesticide Action Network
 Indonesia

Japan

Agriculture Network of Local
 Government Employees

Consumers Union of Japan
Japan Seed Fund
Network for Safe and Secure Food
and Environment

Korea

Sisters Global Concerns

Nepal

International Centre for Integrated
Mountain Development
Saleem A. Sial,
Sustainable Water Harvesting Project
USC Canada in Nepal

Pakistan

Indus Farming e-Network
ROOTS for Equity

Philippines

Infanta Integrated Community
Development Assistance Inc
(ICDAI)
MASIPAG, Magsasaka at
Siyentipiko para sa Pag-unlad ng
Agrikultura (Farmer Scientist
Partnership for Development)
Phildhrra

Europe

ANPED / The Northern Alliance for
Sustainability
CPE European Farmers Coordination
Ecoropa
Friends of the Earth, Europe

Austria

Dreikönigsaktion
FIAN-Österreich
Global 2000
Katholische Frauenbewegung
Koordinierungsstelle der
Österreichischen
Bischofskonferenz für
internationale Entwicklung und
Mission

Belgium

Africa-Europe Faith and Justice
Network (AEFJN)
Agriculture, Drugs and
Development;
European Fair Trade Association,
advocacy office
FIAN-Belgium
KWIA, Flemish Support Group for
Indigenous Peoples/Oxfam-
Solidarity
Oxfam-Wereldwinkels/Oxfam Fair
Trade Flanders
Oxfam Solidarity
Service Civil International

Denmark

NOAH, Friends of the Earth
Denmark

Finland

Peoples Biosafety Association

France

OGM dangers (GMO
hazards)Réseau Foi et Justice
Afrique-Europe (AEFJN) Antenne
de Paris
SDI - Strategic Development
Initiative
Solagrall

Germany

"No Patents on Life!"
Achim Seiler, Ph.D, Science Center
Berlin
AG Landwirtschaft&Ernährung
BUKO Agrar Koordination
Church Development Service - An
Association of the Protestant
Churches in Germany
Forum Environment and
Development
GERMANWATCH
League for Pastoral Peoples
People for Animal Rights
Prof. Dr. Ulrich Köpke, Institute of
Organic Agriculture, Bonn
SARD-Mallinckrodt/SARD Prize

Weltladen-Dachverband (German
Worldshop Association)
Werkstatt Solidarische Welt,
Bildungsstätte der Comboni-
Missionare

Greece

Inspection & Certification of Organic
Products

Georgia

Biological Farming Association
ELKANA
Agrobiodiversity Protection Society
DIKA

Ireland

Mercy International Justice Network
Sisters of Charity
Sisters of Mercy
Society of African Missions

Italy

Comitato Scientifico
Antivivisezionista (CSA)
Fondo Imperatrice Nuda contro la
sperimentazione animale (FIN)

Luxembourg

Frères des Hommes

Netherlands

Both ENDS
Foundation 'The Court of Eden'
Stichting Zaadgoed, voor biologische

veredeling, Seedgood Foundation,
for organic plant breeding
Technology and Agrarian
Development Group (TAO)
Wageningen University
XminY Solidarityfunds

Russia

Viola (NGO)

Spain

AGATUR
Asociación de monitores de medio
ambiente
Colectivo liberación
Confederación Sindical de
Comisiones Obreras (CC.OO.)
Consejo Superior de Investigaciones
Científicas (CSIC)
Coordinador de Ecologistas en
Acción del País Valenciano
Coordinadora de Organizaciones de
Agricultores y Ganaderos COAG
Ecologistas en Acción
Ecoloxista d'Asturies
Instituto de Productos Naturales y
Agrobiología (IPNA)
Instituto Sindical de Trabajo,
Ambiente y Salud (ISTAS)
Plataforma Rural
Secretaría de Medio Ambiente y
Desarrollo Sostenible d'EUPV
Sociedad Española de Agricultura
Ecológica (SEAE)
Veterinarios Sin Fronteras

Sweden

Swedish Society for Nature
Conservation

Switzerland

Ärztinnen und Ärzte für
Umweltschutz
Basler Appell gegen Gentechnologie
Berne Declaration
Blueridge Institute
CCD-UMES-FZLN, Comité Civil De
Dialogo del Frente Zapatista De
Liberacion Nacional
FIAN – Section Suisse
International Traditional Healers
Organisation – Geneva Office
Keine Patente auf Leben
L'Antenne suisse du Réseau Foi et
Justice Afrique-Europe
NOGERETE, Frauen gegen Gen-
und Reproduktionstechnologie
Pro Specie Rara
Sativa Rheinau GmbH, Rheinau
Schweizer MIVA
Swiss Coalition of Development
Organisations (SCDO)
Pro Natura - Friends of the Earth
Switzerland
Swiss Labour Assistance / Schweizer
Arbeiterhilfswerk (SLA/SAH)

United Kingdom

Africa Europe Faith and Justice Network
 Biodynamic Agricultural Association
 British Province of the Missionaries of Africa
 CAFOD Catholic Fund for Overseas Development
 Centre for Food Policy
 Christian Aid
 CIIR Catholic Institute for International Relations
 Corner House
 Devizes & Marlborough Friends of the Earth.
 Econexus
 Elm Farm Research Centre
 English Province of the Congregation of Christian Brothers
 Farmers Link
 Gaia Foundation
 Gaia Trust
 Genetics Forum
 Genetic Engineering Alliance
 Genetic Food Alert UK
 HDRA (Henry Doubleday Research Organisation)
 Institute of Our Lady of Mercy
 Land Heritage
 Mairead Philbin and all the Sisters of Charity St. Joseph's
 Marist Brothers UK
 Mill Hill Missionaries
 Pesticide Action Network UK

National Federation of Women's Institutes, England & Wales (240,000 members)
 Norfolk Genetic Information Network (ngin)
 Permaculture Association
 Poor Servants of the Mother of God Religious of the Assumption
 Religious Sisters of Charity, Shepherd's Bush
 Susila Dharma Britain
 Dr. Abid Qaiyum Suleri, Ph.D. Food Security (UK), Sustainable Agriculture and Biodiversity Programme
 Scarborough Against Genetic Engineering (SAGE)
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 Sisters of St. Joseph of Peace
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 Society of the Sacred Heart
 Soil Association
 Sr. Barbara Porter RSCJ
 Swindon Friends of the Earth
 The Land is Ours
 WGTRR; Working Group on Traditional Resource Rights
 World Hunger Year (WHY)

OCEANIA**Australia**

Australian Conservation Foundation
 Consumer Food Network, Australia
 Environment Centre of the Northern Territory
 GE-Free Bathurst
 GE-Free Tasmania
 GeneEthics Network
 Heritage Seed Curators Australia Inc.
 Places for Living
 South Australian Genetic Food Information Network
 WTO Watch Qld AUSTRALIA

New Zealand

Fair NZ
 Kay Weir
 Mercy International Justice Network
 Nelson GE Awareness Group
 Pacific Institute of Resource Management, Wellington
 Physicians and Scientists for Responsible Genetics
 Sisters of Mercy

31.04.2001

a little of the profits it makes from the genetic resources into a system which helps conserve them.

Civil Society Organisations (CSOs) regard this as unacceptable and urge countries to stand firm in their demand that those who benefit from the commercial use of genetic resources should pay. These negotiations are meaningless if there are no tangible benefits to farmers in developing countries, who are guardians of these resources.

Second, some Latin American countries are failing to recognise the essential need for a multilateral agreement to cover the complex international composition and origin of most crop plants' genes, which know no national boundaries. These countries prefer to cling on to bilateral deals between countries despite the fact that the stronger always wins. CSOs see no benefit for the world's farmers and consumers in bilateral agreements and criticise those who are destroying the agreement for the unrealisable dream of potential national gain. The views of these countries fly in the face of nearly 10 years of international debate that has recognised the distinctive nature of these crop genetic resources requiring different, multilateral treatment because of their complex cross-boundary nature.

PRICE OF FAILURE

US pressure on the seed industry is part of a concerted attempt to stall or dilute the IU negotiations. These have come close to collapse since November 2000, with the US and its allies repeatedly trying to re-open negotiations in areas which are already agreed by a majority of countries.

If the IU is not achieved there will be serious consequences for:

- farmers' livelihoods
- conservation of agricultural biodiversity
- food security
- the future of public gene banks
- and the implementation of the 20 point Leipzig Global Plan of Action that would deliver benefits especially to developing countries for the conservation and development of plant genetic resources for food and agriculture (PGRFA) - the crop seed varieties and genetic resources which underpin global food security.

Failure would result in paralysis of the free flow of genetic resources for food and agriculture, as they become increasingly privatised and controlled by the private sector. By privatising, access and use are inhibited, which stops the free-flow of crop genetic resources that are the very basis of their evolution.

THE OPPORTUNITY

The IU will provide the mechanism for benefits to be shared with farmers. It will also keep these vital resources in the public domain -- free from privatisation and dominant commercial control. This includes the half a million samples of crops and forage species taken from farmers and already held in trust in international genebanks by the Consultative Group on International Agricultural Research centres – as well as the many hundreds of thousands of varieties in national collections and farmers fields.

The International Undertaking on plant genetic resources (IU) will be legally binding. It will be governed under the auspices of the Food and Agriculture Organization (FAO) in harmony with the Convention on Biological Diversity (CBD). All countries will have the right to participate in its governance together with Civil Society.

Furthermore, the IU has the potential to be a prime example of responsible global governance, ensuring that those genetic resources which underpin social needs are maintained in the public domain. This agricultural biodiversity is our 'life insurance' against

future adversity be it from climate change, war, industrial developments or ecosystem collapse. As these threats grow, so does the need to maintain the free-flow of seeds and thereby the agricultural biodiversity on which we will be even more dependant on in times of instability.

Thus, if agreed, the IU should:

- assure food security in the long term
- recognise the enormous contribution that farmers all over the world have made to the conservation and development of plant genetic resources for food and agriculture (PGRFA) and implement Farmers' Rights,
- ensure the continuity of their work in the future, through returning a fair share of the benefits from the commercial use of PGRFA for plant breeding and food is returned to developing countries, who provide the capital base for food security
- give traditional farmers' knowledge the same status as scientific plant breeding
- include the distinctive requirements of PGRFA in the Convention on Biological Diversity
- conserve the enormous but rapidly decreasing diversity of PGRFA developed by farmers over centuries
- keep PGRFA in the Public Domain.

OUR DEMANDS

CSOs insist governments should achieve a just, equitable and effective IU that facilitates universal access to the genetic resources essential for food and agriculture.

- We will not accept an agreement in which seeds are privatised;
- It should include all the major crops essential for food security
- The agreement should include a fair sharing of benefits from the commercial use of PGRFA and programmes for PGRFA Conservation in order to preserve the resource-base of our food
- We want greater recognition of farmers' contributions and improved benefits through, for example, reopening Article 9 on Farmers' Rights and commending the issue to the Right to Food negotiations at the UN High Commission on Human Rights

MAKE OR BREAK MEETING

From 25 to 30 June, 160 governments will be locked in final negotiations in the headquarters of the Food and Agriculture Organisation of the United Nations (FAO) in Rome, Italy. CSOs observing these proceedings will be reporting regularly on Governments' performance (see www.ukabc.org).

Failure is unacceptable and irresponsible - present and future generations will be affected by the outcome.

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For further information see:

www.rafi.org, www.grain.org, www.ukabc.org, www.evb.ch/bd/food.htm
www.greenpeace.org/~geneng/

[1440 words]



IPR AGENTS TRY TO DERAIL OAU PROCESS

UPOV and WIPO attack Africa's Model Law on community rights to biodiversity

Genetic Resources Action International (GRAIN)
June 2001

Early last month, a meeting was held in Addis Ababa between the Organisation for African Unity (OAU), the Union for the Protection of New Plant Varieties (UPOV) and the World Intellectual Property Organisation (WIPO). Purpose of the meeting? To seek comments on the OAU Model Law that aims to balance the rights to biodiversity of local communities, farmers and breeders in Africa. What could have been a benign exchange of views yielded instead an undisguised attempt from the side of industrial interests to subvert the whole OAU process.

The OAU initiative to develop a "Model Legislation on the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources" started back in 1997, when the Organisation embarked on a process to assist African countries in fulfilling their obligations to the Convention on Biological Diversity and the TRIPS Agreement of the World Trade Organisation. The Biodiversity Convention mandates countries to regulate access to biodiversity and respect the rights of local communities. TRIPS requires all members to protect intellectual property rights (IPR) on plant varieties, be it through patents or a *sui generis* system.

The Model Law aims to balance the rights of farmers, plant breeders and local communities based on the explicit recognition that in Africa all parties have an important role to play in the conservation, improvement and sustainable use of biodiversity. The process of drafting the Model Law itself generated a lot of enthusiasm and participation from all walks in Africa – lawyers, NGOs, ministries, farmers' organisations – since the

The OAU Model Law 101

The Model Law has four components:

Access to Biological Resources

Requires: a permit and the prior informed consent of communities; payment of collecting fee; sharing of benefits from commercial products; etc.

Community Rights

Inalienable and collective rights to: control access to resources and knowledge; partake of 50% of any benefits handed to the government under the access regime; properly exercise their own intellectual rights; etc.

Farmers' Rights

Protection for farmers' breeds and seeds according to criteria based on customary practices; the right to save, use, multiply and sell seeds, with the limitation that sale of material owned by a breeder should not be on a commercial scale; etc.

Plant Breeders' Rights

Intellectual property over new varieties that are distinct, stable and sufficiently homogenous or a multiline; the exclusive right to sell and produce such varieties; etc.

Some of the crucial features of the Model Law are:

- Breeders' rights are subordinate to farmers' rights
- The law prohibits patent protection of any life form
- Strong support to the role of women

beginning. And it was consistently blessed with support from the governments themselves. In July 1998, the OAU Heads of State endorsed the Model Law and recommended that it become the basis of all national laws on the matter across Africa. Since then, discussions have taken off in several countries on how to adapt the Model Law to national realities and a number of governments have begun drafting national legislation in line with it.

In September 2000, African Ministers of Trade, meeting in Cairo, passed a resolution stressing the need to further raise awareness about the Model Law and invited UPOV and WIPO, among others, to collaborate *“in the furtherance of this initiative”*. This was the mandate behind last month’s meeting in Addis. But instead of offering supportive suggestions and expertise on how to *“further”* the fundamental principles and unique ambitions of this Africa-wide endeavour, the two agencies want to totally change them. They basically insist that it be rewritten to conform with their own intellectual property regimes.

WIPO wants more patenting in Africa

WIPO, in a four-page submission to the OAU, used a professorial and technical approach to clamp down on some of the core political issues that the Model Law addresses:

- As a central principle, the OAU Model Law holds that patents on life are immoral and go against the basic values of African citizens and should therefore be outlawed. WIPO was quick to point out that the prohibition of patents on life forms goes against TRIPS Art. 27.3(b) which requires patents on at least micro-organisms. This ignores the fact that the Africa Group at WTO has taken the position – which was formally endorsed by OAU – that TRIPS should instead ban the patenting of micro-organisms, as well as other life forms. The Africa position is still under discussion in the TRIPS Council, which is reviewing Art. 27.3(b). In the Model Law, the OAU is coherently implementing the principles that Africa defends in international and other fora.
- The OAU wants those who collect biological resources in Africa to affirm that they will not apply for patents over these materials or their derivatives. WIPO is afraid that this means that bioprospectors cannot secure exclusive monopolies on products made or extracted from the goods. They’ve read it right. How else can Africans prevent biopiracy of their resources and knowledge? (Has WIPO done anything about *that* lately?)
- WIPO rejects the principle of “inalienability” of community rights embedded in the Model Law. This principle is one of the cornerstones of the entire system and is intended to ensure that no one – including members of a local community – can make exclusive claims over collective community knowledge or resources.
- WIPO also advocates that communities take out patents themselves – or let others do it for them – and should obtain *“no less than one hundred percent”* of the commercial benefits generated

Who are WIPO and UPOV?

UPOV and WIPO are two Geneva-based agencies that promote hard-line intellectual property schemes worldwide. WIPO is part of the United Nations, but UPOV is not, even though it is administered through WIPO and has its office in the same building. WIPO’s mandate is to promote IPR in general, while UPOV’s is to promote plant variety protection or plant breeders’ rights specifically. In that sense, they share plenty in common, except that UPOV works for the benefit of the seed industry in particular. And since 70% of UPOV’s members are rich countries in the North, we know which seed industry.

OAU, for its part, is actually not the OAU anymore. From a political association of all African states – the exception being Morocco – it is now trying to become something like the European Union. And has officially changed its name, as of this month, to the African Union.

through trade in African biodiversity. This is a “no go” at the local level, since patents are too expensive and complex to handle and such an approach would end up benefiting urban lawyers more than the rural communities that manage biodiversity.

For the rest, WIPO’s submission pinpoints numerous deficiencies in terms of how the Model Law scopes out the definition and operationality of Community Rights. Most everyone involved in the OAU process – especially national governments currently trying to draft national legislation based on it – has been wrestling with this too. But rather than helping to make these rights really work in the context of rural Africa, WIPO’s solution is to make them fit into global IPR conventions. This is not very useful for African policy makers who are now struggling to develop legislation that serves biodiversity management in Africa. One could have expected more from an organisation that employs hundreds of lawyers and wants to play a role in laws related to traditional knowledge and genetic resources in Africa.

While UPOV wants... Africa!

If WIPO’s contribution to the “*furtherance*” of the OAU process was misdirected and counterproductive, UPOV’s input consisted of an iron-fisted bash on the whole initiative. UPOV officials even reworked more than 30 articles of the Model Law to suit the standards of their own Convention!

The first question is: who is UPOV to come in and challenge a Model Law that has been carefully developed to serve Africa by balancing the rights of all the different actors working with biodiversity across the continent and turn it into a law to serve the interests of foreign biotech and plant breeding corporations? UPOV has only two members in Africa – Kenya and South Africa – whose plant breeders’ rights systems mainly protect industrial crops and export industries. The whole problem with UPOV’s approach to the Model Law is that it clearly considers its own Convention to provide the one and only “model” for implementation of TRIPS. But TRIPS does not oblige countries to adopt legislation that conforms with UPOV. The reality is that Africa has a choice – and UPOV’s ten-page attack on the OAU Model Law boils down to destroying that choice.

While we could write another ten pages of comment on UPOV’s comments, there are probably four important issues to highlight.

1. The “*food security*” and “*development*” crusade

The UPOV Convention, and national laws based on it, provides for the granting of IPRs over plant varieties that are new, distinct, uniform and stable. They don’t have to be food crops. They don’t have to be high-yielding. They don’t even have to be improved in any sense of the word. Yet UPOV officials tell Africans a different story. All of a sudden, they claim that UPOV stands for food security and development. The Union’s submission to the OAU is full of vain rhetoric about how its monopoly rights system will actually help feed people.

UPOV’s reasoning is that by giving strong commercial control to plant breeders, they will deliver seeds that produce higher yields, which farmers will buy, which means that food security is assured. The reality, however, is that these plant breeders’ rights are mostly granted to huge breeding and biotech corporations based in the industrialised countries, which undermines the development of any independent national seed sector. The other reality is that most of these monopoly privileges are on crops that aren’t grown for food.

Earlier this year, GRAIN surveyed the data from ten developing countries that implement plant breeders’ rights along UPOV’s lines to see how much food security this has brought them. All told, only 36% of the varieties currently protected by plant variety certificates in those countries could be considered food crops. And many of those get transported to

consumers in industrialised countries. In the case of Kenya, only one title out of the 136 applied for under the UPOV system there was for a food crop – a green bean grown for the European market. The rest were flowers and industrial crops. So much for food security.

2. All for the industry

UPOV's critique of the OAU Model Law makes numerous recommendations designed to bring the scheme closer to the needs of transnational corporations. For example, UPOV wants OAU to de-link breeders' rights from both quality control (criteria regarding the agronomic value of new varieties) and the public interest. These things are "*too vague*", says UPOV. On the contrary, they are important principles with which countries can orient national research and breeding efforts – but that is not what UPOV is concerned with. UPOV's concern is to strengthen market control for corporate breeders.

In fact, several measures which were developed through the OAU process to protect the interests of small farmers in Africa apparently sent the Geneva officials aghast. In the Model Law, the breeders' rights component is one part of an integral approach to protect a wide set of interests – not the industry's alone. For UPOV, that is simply wrong. A breeders' rights law, in their view, has to provide strong rights exclusively for breeders, full stop. If there are other interests involved that need protection, they should go elsewhere.

This mentality – that the only thing that counts is the interest of the industry – is typical in UPOV circles. But it goes totally against what the OAU Model Law tries to do: strengthen the contribution of *all* stakeholders in the creation of food security.

3. Killing farmers' rights

This is the probably the most serious and unacceptable part of UPOV's attack on the Model Law. The Model Law was intended to uphold and advance the rights of farmers and local communities first, foremost and above everything else. The farmers' rights component is central to the whole legislation, as can be seen from how the breeders' rights are time and again made subject to the farmers' rights. This clearly makes sense in Africa, where the role of farmers in developing better crop varieties has traditionally be underestimated and ignored. For UPOV, this is "*ineffective*" and must be turned right side up.

In reality, many African officials who are against patenting life are willing to live with breeders' rights as a softer form of IPR *so long as those rights do not impinge on the rights of the farmers and other local communities*. It may be difficult to achieve, but that is precisely what the OAU is trying to allow for: greater equity of space and a better balance of power, in order for Africa to progress. UPOV is adamant that the opposite is true: farmers' rights – which it wants to narrow down significantly – have to be subordinate to breeders' rights or no one will get anywhere in Africa.

4. Wrong agriculture

Taken together, UPOV's "contribution" to the OAU process advocates an agenda for agricultural and rural development that revolves around dependency, uniformity and external markets. Quite the contrary of what the basic philosophy behind the Model Law is. For UPOV, scientists do "*breeding*" while farmers do "*unconscious selection*", and food production can only increase through expensive technologies and industrial farming systems. This flies in the face of many experiences in strengthening ecological agriculture where high yields are perfectly attainable without UPOV's "distinct, uniform and stable" plant varieties.

The breeding that UPOV wants, and which most farmers don't do, is good if you want local producers to produce for livestock and other industries on the other side of the planet. It fits the export-oriented monoculture pattern like a glove. It does not, however, fit a more self-reliant, farmer- and local consumer-oriented kind of food system. The Green Revolution, which propagated the industrial agriculture pattern throughout the South, has already failed in Africa – meaning it is the wrong agenda. The drafters of the Model Law knew this all along.

Thanks, but no thanks

In his immediate reply to the submissions of WIPO and UPOV, Dr Tewolde Berhan Egziabher, head of Ethiopia's Environmental Protection Authority, reminded everyone that the two agencies were invited by Africa's Trade Ministers to contribute to the furtherance the OAU process. They were not invited, he said, *"to change the essence of the Model Law"*. After all, the central features of the Model Law – those relating to community rights and access to genetic resources – had already been approved at the highest level: by the Heads of African States.

The Model Law's provisions on community and farmers rights, which the IPR gurus from UPOV and WIPO complain so bitterly about, are no more and no less than a regional transcription of global agreements such as the Convention on Biological Diversity and the International Undertaking on Genetic Resources for Food and Agriculture. By drawing up the Model Law, the OAU has shown that Africa takes biodiversity, and international agreements related to it, seriously.

In July, a pan-African experts meeting is planned in Algeria to further discuss the OAU Model Law and its national implementation. Without a doubt, WIPO, UPOV and their partners in Africa will be present to further press their point of view – which could undermine the basic principles on which the African legislation is built. This should not be allowed to happen.

The OAU consulted these two Geneva agencies in good faith. As Dr Tewolde put it, *"While we are grateful to UPOV and WIPO for their friendly gestures, we reaffirm our obligation to the decisions of the OAU (...). We would, therefore, appreciate support within the context of those decisions and recognition of OAU's right to lead Africa, especially on emerging critical issues."*

Those who have been behind the development of the OAU Model Law deserve our support. And those who are now trying to destroy it deserve our rejection.

For further information:

The OAU produced an explanatory booklet about the Model Law which is available from the Scientific, Technical & Research Commission of the OAU, PMB 2359, Lagos, Nigeria. Tel: (234-1) 263-3430, Fax: (234-1) 263-26093, Email: oaustrcl@rcl.nig.com. Apart from a 30-page explanatory text, the booklet contains the English and French versions of the Model Law itself. An electronic version can be downloaded from GRAIN's web site: <http://www.grain.org/publications/oau-en.cfm>

GRAIN has published a number of briefings and articles about TRIPS, UPOV and WIPO, and the implications of their activities for the management of biodiversity. They are available from our office or can be downloaded from our website. Suggested titles related to this paper are:

“WIPO’s Mission Impossible”, *Seedling*, September 1998
<http://www.grain.org/publications/set981-en.cfm>

“UPOV on the War Path”, *Seedling*, June 1999
<http://www.grain.org/publications/jun991-en.cfm>

“Plant Variety Protection to Feed Africa?”, *Seedling*, December 1999
<http://www.grain.org/publications/dec991-en.cfm>

For a Full Review of TRIPS, March 2000
<http://www.grain.org/publications/tripsfeb00-en.cfm>

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Press Release

Delay the Implementation of TRIPS Agreement: Report

Kathmandu, June 18, 2001. At a time when the international community of civil society is observing *the International Day of Action Against TRIPS* (the infamous Trade Related Aspects of Intellectual Property Rights), a coalition of Nepalese civil society organisations, namely, National Alliance for Food Security in Nepal (NAFOS) has also planned to organise a series of programmes to mark the day.

Coincidentally, one of its member organisations, namely, Forum for Protection of Public Interest (PRO PUBLIC), which was engaged in a *National Study on TRIPS Agreement and Policy Response*, commissioned by Nepal's Accession to WTO is submitting its first draft report today.

The report is being prepared because of the need felt by the Ministry of Industry, Commerce and Supplies to make an informed decision on the kind of legislative and policy response to be made, *before* and *after* becoming a member of the WTO, to counter the impact of TRIPS Agreement.

TRIPS Agreement, which became operative since January 1, 1995, was introduced in the WTO at the insistence of the major industrialised countries despite tremendous opposition from the developing countries. It is likely to have deleterious impact on the Nepalese consumers, farmers, small and medium scale industries, bio-diversity and food security.

The study has conducted in-depth analysis of the implementation of TRIPS Agreement at the national level, notably, in four countries from different regions. They are: India (South Asia); Thailand (Asia-Pacific); South Africa (Africa); and Brazil (South America).

The study has recommended that the transition period provided by the TRIPS Agreement should be fully exploited, and if need arises an extension should also be requested. As a Least Developed Country (LDC), Nepal is not required to comply with the requirements of the TRIPS Agreement before January 1, 2006, even if it becomes a member of WTO prior to that date.

It has also been suggested that during the intervening period the government should prepare legislation in the areas of biodiversity, farmers' rights and competition. Further, the report argues: "in order to prevent the loss of biodiversity, the process of bio-diversity registration should be completed prior to the deadline for the implementation of TRIPS Agreement."

Finally, the report urges the government to include the provisions of compulsory licensing (as in Brazil); parallel import (as in South Africa); and exclusion of mere discoveries from patenting (as in India) while amending the existing patent legislation.

For further information please contact:

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Ms. Yamuna Ghale, ActionAid Nepal at 410-929 / 421-232; e-mail: yamunag@actionaidnepal.org

PRESS RELEASE

JUNE 11 2001

CARPT

From: CARPT (Coalition Against RiceTec, Inc)

Contact: 444-4859

**JUNE 18 INTERNATIONAL DAY OF ACTION ON LIFE-FORM PATENTING.
AUSTIN ACTIONS AT LOCAL FOOD STORES**

Austin will join in an international effort against life-form patenting on June 18, between the hours of 11 am - 1 pm and at 5-7pm. Volunteers will give away organic rice and organic seeds to the public outside, Whole foods Market on North Lamar, Central Market and Wheatsville Co-op.

The Coalition Against RiceTec, Inc, (CARPT) is joining in a world-wide effort to shed light on life-form patenting by holding give-away of organic rice and seeds on June 18th at area grocery stores. For centuries farmers have shared seeds and knowledge about how to grow and breed plant species, In recent years traditional farming, knowledge and herb gathering have been undermined by corporations which have taken out patents on indigenous species originally belonging to the public domain. Utilizing laws which were developed for the benefit of inventors of technology, it has become possible to patent centuries-old species with only minor modifications. In this way the rights of Third World farmers and herbalists to the gifts of nature and culture are being stolen, as the previously free species are privatized with their seeds and fruits put up for sale by Northern corporations. A case in point is the Houston company RiceTec's patent on Indian Basmati rice.

After mass protests by Indian farmers and a suit brought by the Indian government, RiceTec has recently been forced to give up all but three of its 26 patent claims. The Coalition against the RiceTec Patent is calling upon RiceTec to give up the last three claims as well.

The gifts of nature and culture must be allowed to nurture human beings freely and must not be appropriated for the profit of the corporations!

Please understand the gravity of this issue and join us by planting your free seeds. Life is a gift, knowledge is a gift, species are gifts!

Stop the co-modification of life! Stop life form patenting now!

GIVE-AWAY - For the liberation of species and knowledge

PLEASE ACCEPT THESE SEEDS AND GRAINS AS A FREE GIFT

Patenting laws which were originally intended to protect technological inventions now allow corporations to lay claim to indigenous plant species and to centuries-old methods of farming.

This privatization of the gifts of nature and culture which were previously handed down from generation to generation, robs poor farmers in the Third World of their capacity to produce their livelihood. It is evidence of a trend which transforms free goods into commodities and turns the livelihood of the many into profit for the few. Houston corporation RiceTech has recently been forced by a suit brought by the Indian government to give up all but three of its 26 count patent claim on Indian basmati rice.

For more information see the following websites:

<http://www.iatp.org>

<http://www.wtwatch.org>

<http://www.sustain.org/biotech>

<http://www.gefoodalert.org>

<http://www.indiaserver.com/betas/vshiva/>

<http://www.rafi.org>

Respect the Gifts of Nature and of All Cultures.

NO to Life Form Patenting

NO to enslavement of species, of knowledge, and of people.

Coalition Against the RiceTech Patent (CARPT)

P.O. Box 3295 * Austin, Texas 78764 * (512) 444-4859

CAMPAÑA GLOBAL: NO AL PATENTAMIENTO DE LA VIDA OMC analizará patentes sobre seres vivos, incluidos genes humanos.

Este lunes, 18 de junio se reunirá el Consejo de la Organización Mundial del Comercio -OMC- en Ginebra para discutir el acuerdo denominado TRIPS, relativo a los derechos de propiedad intelectual sobre el comercio, donde se obliga a los países a establecer sistemas de patentes sobre medicamentos y seres vivos (microorganismos, plantas, animales, genes, etc.).

La medida regulada por la OMC permite homogeneizar los sistemas de patentes a escala mundial, de tal manera que las corporaciones biotecnológicas de los países desarrollados puedan cobrar derechos de patentes sobre sus inventos y tecnologías en todos los países. Pese a que originalmente las patentes se diseñaron para invenciones mecánicas, el sistema se ha distorsionado a tal punto que es posible patentar seres vivos, incluso genes humanos.

Actualmente, los países desarrollados están otorgando patentes indiscriminadamente a corporaciones e individuos que les otorgan derechos privados y propiedad sobre recursos naturales, organismos genéticamente modificados, medicamentos e incluso sobre genes humanos, para obtener ganancias excesivas y establecer monopolios corporativos globales que ponen en riesgo la salud, la seguridad alimentaria y la economía de las naciones subdesarrolladas.

Por lo tanto, el sistema de patentes, que se planteo para facilitar la transferencia de tecnología de los países del Norte a los países del Sur, se está utilizando actualmente para facilitar el robo de nuestros recursos biológicos y el conocimiento tradicional.

En Chile, ya existen numerosos recursos genéticos autóctonos patentados en el extranjero (como la vinchuca, el clavel del campo, porotos, plantas medicinales, entre otros) y es altamente probable que también se hayan reclamado patentes sobre los genes humanos de nuestros pueblos indígenas.

Por otro lado, el comercio exterior de nuestro país se puede ver perjudicado como ocurrió con el caso del poroto Enola, mexicano, que fue patentado en Estados Unidos y que hoy México no lo puede exportar.

En este contexto, las organizaciones ciudadanas de campesinos, consumidores, ambientalistas, científicos, médicos, etc. se han organizado en una campaña global en contra del patentamiento sobre seres vivos y medicamentos esenciales. Por ello, la reunión de este lunes 18 de junio en Ginebra, es una buena oportunidad para revisar y revertir las patentes sobre la vida, y armonizar el acuerdo TRIPS con la Convención de la Diversidad Biológica y el Acuerdo de las Naciones Unidas sobre Derechos Económicos, Sociales y Culturales que establece los derechos humanos básicos a la alimentación, salud y autodeterminación.

Finalmente, instamos al Gobierno de Chile a sumarse a esta iniciativa, y que apoye una revisión del Acuerdo TRIPs, que de otra manera podría perjudicar gravemente nuestros intereses nacionales.

Santiago, 17 de junio de 2001.

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Resolution on Impact of WTO on Food and Livelihood Security adopted at the State level workshop on Agriculture, food Security and Rural Development & the WTO” held on 18th June 2001 at the Press Club, Hyderabad

We, members of civil society and concerned citizens from all walks of life, demand equity and justice from the World Trade Organization. The chapter on Trade Related Intellectual Property Rights (TRIPS) has provisions that strike at the very heart of the fundamental right of every citizen of the world to have access to food, health and the means to earn a living. TRIPS has been particularly callous to the rural and tribal communities of the developing world because it threatens their right to food and livelihoods by attacking their resources and taking them away.

It is not without reason that the TRIPS chapter has become a single most contentious issue in GATT/WTO regime. It is equally clear that were earlier coerced into agreeing to the TRIPS clauses, are not willing to accept the conditions as they are. They are seeking changes that will stop the poor in their lands from being marginalised any further. They want modifications in TRIPS that will allow the rural and tribal communities to uphold and exercise their right to food and livelihood. There is a very simple way of bringing in greater justice into the TRIPS processes. That is to make TRIPS compliant if the Convention on Biological Diversity (CBD).

There is much that is wrong with TRIPS.

- The TRIPS agreement hinders access to and the fair equitable sharing of benefits arising from the utilization of genetic resource. It enables bio-piracy since it doesn't require disclosure of the source of biological materials which are sought to be patented
- The TRIPS agreements creates conditions that will hinder the transfer of technology to developing countries
- The TRIPS agreement hinders the presentations of and respect for the knowledge, innovations and practices of indigenous and local communities.
- The TRIPS agreement is likely to be detrimental to the conservation and sustainable use of biological diversity

We want the following changes

1. The review of article 27.3(b) be one of a substantive nature, not merely of implementation, as is being mooted.
2. That a clause of disclosure be introduced in TRIPS. “Revise the requirement for patent application to help prevent misappropriation of knowledge regarding genetic resources and ensure consistency with access and benefit sharing regimes of the CBD”.
3. That a substantive review of article of 27.3(b) , be completed and the review seek to harmonize the TRIPS agreement with the CBD and the International Undertaking on Plant Genetic Resources (IUPGR).
4. The period for implementation of article 27.3(b), be extended till after a substantive review of TRIPS is completed.
5. That the exceptions to patentability under article 27.3(b) be expanded. At a minimum, members must have the discretion not to grant plant and animal patent that the current language of article 27.3(b) allows.

The discretion to refuse patents over life is essential to give members who are also CBD parties the flexibility they need to experiment with approaches for implementing CBD

6. That the flexibility that the GATT allowed in defining sui generis systems be retained. UPOV should not be made only effective” sui generis platform acceptable under TRIPS
7. That s “sustainability review” provided under article 71.1 of the TRIPS agreement be under taken, to assess the impact of TRIPS.

The TRIPS review should ensure that implementation of the TRIPS agreements supports its objectives, as set out in its Preamble and Article 7, as well as the broader objective of the WTO to promote trade “in accordance with the objective of sustainable development”. In the event that the TRIPS agreement fails to meet these objectives, or is found inconsistent with the successful implementation of international agreements, such as the CBD, WTO Members should amended it, as permitted by article 71.1 and Article X of the WTO agreement. As required in article 16(5) of the CBD, Parties must cooperate to ensure that IPRs are supportive of, and “do not run counter” to the objectives of the CBD.

8. that a moratorium be put on unilateral pressure and challenges at the WTO dispute settling system. WTO members should agree to a moratorium on any challenges against developing countries until the reviews under sarticle 27.3 (b) and 71.1 are complete, and any extended transitional periods are over. Further, WTO members should refrain from exercising unilateral pressure that aims to have developing countries implement intellectual property regimes that offer a higher level of intellectual property protection than required by the TRIPS agreement. (The EU has been having bilateral consultations with countries like Jordan and Pakistan recommending that they accept UPOV 1991)

9. “That CBD objectives are taken into consideration in the WTO dispute settlement processes. In the event of a conflict, the TRIPS agreement must not interfere with a Party’s legitimate implementation of its CBD obligations.

10. That the Human Rights concerns that have been raised with respect to TRIPS be taken on board. The TRIPS should be modified so that it does not violate the rights of people to food, health and livelihood security.

Resolution of UN Sub-Commission for protecting Human Rights.

E/CB.4?Sub.2/2000/7 (dated 17 August, 2000) has taken note that “actual or potential conflicts exist between the implementation of TRIPS agreement and realization of economic, social and cultural rights in relation to , inter alia, impediments to the transfer of technology to developing countries, the consequences of the enjoyment of the right to food of plant variety rights and the patenting of genetically modified organisms , “bio-piracy” and the reduction of communities (especially indigenous communities) control over their own genetic and natural resources and cultural values, and restrictions on access to patented pharmaceuticals and the implications on access to the patented pharmaceuticals and the implications for the enjoyment of the right to health..”

Accord sur les droits de propriété intellectuelle liés au commerce
Texte d'appel

L'annulation du procès des firmes pharmaceutiques contre le gouvernement d'Afrique du Sud est un incontestable succès. Face à une opinion publique farouchement opposée au contrôle de l'approvisionnement en médicaments du pays par un secteur privé qui s'impose comme seul maître du jeu, les firmes ont ainsi enregistré un recul important. Ce cas témoigne de la disproportion des intérêts en jeu. D'un côté, des millions de personnes sans moyens face aux pandémies et de l'autre, des firmes en situation de quasi monopole, libres de fixer leurs prix de vente à un niveau 100 fois plus élevé que leurs coûts de revient.

C'est également les intérêts des firmes que tend à favoriser l'ADPIC par le renforcement des droits de propriété intellectuelle, au détriment du droit des plus démunis à l'accès aux soins et à la sécurité alimentaire. En ce sens, l'accord est dangereux, particulièrement pour les pays en développement. On voit ainsi se développer un conflit hiérarchique croissant entre le droit des entreprises à être rémunérées pour leurs innovations et les droits fondamentaux des populations à la santé et à l'alimentation. Ce conflit trouve une nouvelle illustration dans la plainte que les Etats-Unis ont déposée à l'OMC contre le Brésil, pays qui utilise également des médicaments génériques anti-sida. Alors que la politique mise en œuvre par le gouvernement brésilien a fait ses preuves, à la fois sur les plans économique et sanitaire, elle est vivement remise en cause par les intérêts privés.

Les organisations signataires de ce texte demandent :

- **un moratoire immédiat des discussions OMC**, tant que l'évaluation des impacts de l'accord de Marrakech n'est pas réalisée et que les droits des pays à établir leurs critères de qualité et de préférence ne sont pas respectés.
- **la rediscussion des termes de l'ADPIC, notamment en matière de santé et d'alimentation**. Nous refusons un simple réexamen technique de cet accord et **demandons que les exceptions à la brevetabilité cessent d'être des exceptions, celles-ci étant toujours soumises à arbitrage de l'OMC. Ces exceptions concernent notamment l'article 27.3 b, le recours aux importations parallèles et aux licences obligatoires**. Qu'il s'agisse de l'alimentation, des médicaments ou des semences, des formes de **droits garantissant un accès libre aux innovations doivent être** mises en œuvre à l'échelle internationale et nationale. Les pays africains demandent, comme de nombreuses organisations non gouvernementales, que la vie ne soit pas brevetable. Nous soutenons le projet de loi africain sur le droit de protection des obtentions végétales.
- **une extension de la période de transition dont bénéficient les pays en développement et un assouplissement de leurs obligations pour la mise en application de l'ADPIC**. Parmi ces pays, et en particulier parmi les pays les moins avancés, nombreux sont ceux, qui par manque de capacités financières et techniques, ne pourront remplir à temps les obligations découlant de l'ADPIC. Afin d'éviter la multiplication des différends commerciaux et des sanctions économiques envers ces pays, une plus grande flexibilité est nécessaire afin de leur permettre de choisir une législation viable à long terme sur les plans social et technologique.
- **la conclusion et la signature de l'Engagement International de la FAO renégocié fin juin 2001**. Cet Engagement garantit la libre circulation des ressources génétiques pour l'agriculture et l'alimentation. Toute restriction à cette circulation est une menace pour la sécurité alimentaire des générations actuelles et futures. Les brevets sur les technologies de type Terminator ou GURTs (« *Genetic use restriction technologies* ») doivent être condamnés et remplacés par des politiques de long terme autorisant la liberté du réensemencement des variétés et des échanges de savoir.

Statement by Médecins Sans Frontières (MSF) on TRIPS and affordable medicines
Press briefing at the occasion of the TRIPS Council session on access to medicines

Geneva , 19 June 2001, by Ellen 't Hoen

MSF is an independent humanitarian medical relief organisation founded in 1971. MSF works in 400 projects in more than 80 countries.

In 1999 MSF started the Campaign for access to essential medicines in response to the ever growing access to medicines gap between the developing and developed world.

To enjoy the benefits of scientific progress is a human right. Yet in the field of public health and particularly with regard to pharmaceuticals access to innovations is unequally distributed in the world. One- third of the world population lacks access to the most basic essential drugs and, in the poorest parts of Africa and Asia this figure rises to one-half.

Developing countries where three-quarters of the world population lives account for less than 10% of the global pharmaceutical market. A number of new medicines that are vital for the survival of millions are already too costly for the vast majority of people in poor countries.

The implementation of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), scheduled to be completed by 2006 by all member states may be expected to have further serious consequences for the availability at affordable prices of new essential medicines.

Essential medicines are not like any other commodities, yet under the present WTO rules for intellectual property they are regulated very much like any other product. But medicines are not CD-Roms, they are not Barbie dolls, they are not computer games. They are for millions of people around the world a matter of life and death.

Today, there is a dire imbalance between the sanctity of patents and the health of people. Access to essential medicines should not be a luxury reserved for the wealthy, but should be reinforced as a critical component of the human right to health.

We therefore welcome the TRIPS Council session on affordable medicines that will give the WTO member-states a forum to discuss ways to ensure that intellectual property rights do not form barriers to access to medicines.

Though there is a growing awareness among politicians of the faults of the current patent system, pharmaceutical companies have declared at numerous occasions that patents are not the problem and that strong IP protection is needed to ensure new drugs for the future.

The experience of our doctors in the field shows differently:

- In South Africa we run an AIDS project in Khayelitsha, a township with a population of 400.000 people. Around 25% of the population is HIV positive and at this moment an estimated 5000 people need treatment with antiretroviral drugs. These drugs are priced at more than 2300 \$ for one year adult treatment. People in Khayelitsha cannot afford this. We have started treatment with antiretroviral therapy in the township, but we cannot make use of the offer of Indian generic manufacturers of triple therapy for 300\$ or less because of patents held by multinationals.
- In Kenya people pay 6\$ per unit of fluconazole an essential drug to treat cryptococcal meningitis. This disorder affects around one in ten people who have AIDS. In some countries, the prevalence is up to 25%. Without treatment, life expectancy is less than 1 month. Generic versions of fluconazole are available for prices as low as 0.10 \$ per unit. Pfizer has just announced a donation but only least developed countries - which excludes Kenya - are eligible.

- 8 million people get active tuberculosis (TB) each year. 2 million people die of TB each year. Yet it has been over 30 years since the last major new TB drug was developed. While pharmaceutical companies argue that their patents must be sacrosanct for the sake of R&D, private sector R&D neglects the need of the poor. Of the 1393 new chemical entities developed between 1975-1999, only 13 were for the treatment of tropical diseases.

The present patent system simply does not provide incentives for R&D into diseases of the poor.

The medicines are in the North and the need in the South. The challenge for those meeting tomorrow is how to bridge this gap. Brazil has made important steps to ensure that its HIV/AIDS population can benefit from pharmaceutical advances. By offering universal access Brazil has cut the death rate from AIDS with 50%, and saved 472 million \$ in hospital expenditure. At the core of the successful Brazilian programme is the ability to produce the medicines generically and locally. Since Brazil began producing some AIDS drugs generically, the prices of equivalent products fell by 79%.

As from 2006 all WTO member states should have changed their national IPR laws to be compliant with the TRIPS Agreement. Policies such as those of Brazil, or prices for antiretroviral drugs as offered by Indian manufacturers will no longer be possible because the new drugs will fall under a more stringent patent system required by the WTO TRIPS.

This leaves us with the question what will happen when sources of affordable new medicine in the developing world have dried up and developing countries may be left at the mercy of Big Pharma.

MSF therefore strongly supports a pro- public health interpretation of the TRIPS Agreement. Our demands to Member-States include:

- To let developing and least developing countries benefit from a wide scope of interpretation of TRIPS Article 31, and in particular to support fast track administrative compulsory licensing procedures, especially when they relate to public health.
- To further support compulsory licensing for export to address public health needs.
- To consider humanitarian and health exceptions to patent rights under article 30.
- Ongoing assessment of the effects of the TRIPS Agreement on access to medicines.

MSF is not against patents and not against patent legislation. True innovation deserves to be protected and to be awarded. We advocate a balanced IP regulation that takes into account the specific needs and priorities of developing countries and that follows the principles that are outlined in the TRIPS: patents should benefit the innovator and those who need access to the innovation. Should it not be possible to achieve this balance under the present international agreements it will be necessary in the TRIPS review process to strengthen the public interest further by providing explicit exceptions for key health care technologies. Innovation and technological development is not a goal in itself but should be a means to a better life and a more just and humane society. Human life and dignity should count for more than the interest of the commercial sector.

Les organisations signataires au 20 juin 2001 :

ACT UP PARIS,

AGIR ICI,

AGIR POUR L'ENVIRONNEMENT,

AITEC,

ARTISANS DU MONDE,

ASSOCIATION AMÉRICAINE DE JURISTES,

ATTAC,

CCFD,

CETIM,

CHAMBRE AGRICULTURE DE BRETAGNE,

COMITÉ POUR L'ANNULATION DE LA DETTE,

ECOROPA,

FÉDÉRATION ARTISANS DU MONDE,

FÉDÉRATION INTERNATIONALE DES LIGUES DES DROITS DE L'HOMME,

FONDATION DANIELLE MITTERAND,

FONDATION INTERNATIONALE LELIO BASSO,

FORUM DE DELPHES,

FRANCE LIBERTÉS,

GREENPEACE FRANCE,

INITIATIVES DE DÉVELOPPEMENT STRATÉGIQUES,

INSTITUT POUR LA RELOCALISATION DE L'ÉCONOMIE,

IREPD GRENOBLE,

PLANET AFRICA,

PROPAGE,

TECH-DEV,

URFIG,

SEPANSO,

SOLAGRAL,

SOLIDARITÉ DE GAILLAC...

Council for TRIPs - TRIPs and Access to Medications - (20 June, 2001)

Delegation of Brazil

Thank you Mr. Chairman,

At the outset, may I personally congratulate you for your indication as Chairman of the TRIPs Council. It is a very auspicious sign that the exercise of discussions on "TRIPs and Access to Medications" takes place under the Chairmanship of a representative from an African country, a continent that has been particularly affected by health problems. We trust that discussions under your guidance will be productive and results-oriented.

I also wish to congratulate the African Group for taking the lead in this process. While the question of access to medication concerns the whole WTO Membership - and developing countries are particularly interested in achieving results from this process - , the African continent deserves special attention in light of the grave situation of AIDS, tuberculosis and malaria pandemics in that continent.

Mr. Chairman, Brazil is proud to be one of the co-sponsors of a document circulated in this Council on the issue of "TRIPs and Public Health". The document reflects the reading of nearly 50 developing country Members on the relevant provisions of the TRIPs Agreement related to public health. In the drafting process of this document, all delegations contributed actively to bring meaningful elements to the discussion. Such a "team work" was largely facilitated by the fact that the participants shared the same goals of ensuring that TRIPs should not - and, indeed, in our view does not - prevent protection of public health. In the substantive debate, we hope that other delegations may support the elements contained in this paper. Confirmation that TRIPs should not run counter to the protection of public health will be crucial to provide clear guidance for Members, avoiding the explicit or implicit threats of using the dispute settlement mechanism to enforce restrictive, imbalanced and, indeed, incorrect interpretations of TRIPs.

The Members that subscribe this paper consider that the special discussion on TRIPs and Public Health at the TRIPs Council is not a one-off event. It should be part of a process to ensure that narrow readings the TRIPs Agreement do not in any way undermine the legitimate right of WTO Members to formulate and implement their own public health policies. In this regard, and without prejudice to other possible actions, we believe that the Ministerial Conference in Qatar in November this year will be the best opportunity to confirm this understanding in an unambiguous and unconditional way. This should go a long way to build the required confidence between developed and developing countries for any future discussions we may embark on, not only on this subject. It would also send a very powerful message to all those growing sectors of civil society, both in the North and in the South, that see the WTO as a soulless organization at the service of the rich and the powerful.

As it became known to the world public opinion since the beginning of this year, Brazil has a successful Programme for Universal Distribution of HIV/AIDS Medicines. The Programme clearly demonstrates that, important as they are, prevention policies alone are not sufficient to control the AIDS pandemics: indeed prevention and cure are intrinsically linked (In this respect, an article in the "Opinion" section of today's 'International Herald Tribune' by three renowned health experts mention the consensus among experts that "prevention and treatment are inseparable - or, in the authoritative words of the UNAIDS expert committee, 'their effectiveness is immeasurably increased when they are used together'"). Treatment based on access of patients to AIDS drugs plays an essential role in achieving concrete results. In Brazil, the benefits of access to drugs are very concrete: in the last four years, the number of deaths related to AIDS has decreased by half (although in some hospitals in São Paulo, where the incidence of HIV-infected patients is the highest in the country, the number of deaths was decreased by 71%). While such an aggressive policy to fight AIDS justifies itself on the ethical ground, as it saves human lives and alleviates suffering of patients, it also brings very concrete benefits for the better allocation of resources: the dramatic decrease in opportunistic infections resulting from drugs-based treatment has reduced in 80% the number of admissions in hospitals. This has brought an economy of US\$ 422 million dollars in hospital admissions - not an insignificant figure for a country like Brazil.

Two elements are absolutely necessary for the success of the Brazilian Programme for Universal Distribution of HIV/AIDS Medicines (and indeed to make it sustainable): the local production of medicines and negotiations with the pharmaceutical industry. The two elements are closely linked to each other and directly related to our discussions here. In the case of drugs used in Brazil in the treatment of AIDS, local manufacturing has been utilized so far for products that were already in the public domain, without any infringement to patents. But the possibility of issuing compulsory licenses is also an essential element of the negotiation between the Government and pharmaceutical industries. Besides that, local production of pharmaceutical products is often crucial to ensure that medications are readily available at affordable prices. Local manufacturing of pharmaceutical products also encourages sustainable access to medications by insulating the price of patented medicines against currency devaluations, as well as supporting the development of local expertise, which is vital in addressing local needs.

The Brazilian AIDS Programme is strictly consistent with the TRIPs Agreement. The Brazilian Law on Industrial Property provides strong patent protection for pharmaceutical products, and efficient mechanisms to fulfill the objectives of the TRIPs Agreement in a coherent way with our public health policy. While Brazil has never resorted to compulsory licenses under the current law, a recent experience of our Ministry of Health in negotiations with one pharmaceutical company has demonstrated that the very existence of compulsory license mechanisms - together with the political will of the Government to issue it - is important to persuade patent holders not abuse their rights to the detriment of public health objectives. In this case, a pharmaceutical company, which was refusing to bring its unreasonably high prices on two patented anti-retrovirals, has agreed to cut its price in 64% and 59% respectively, when the Government gave unambiguous signs of its intention to issue a compulsory license. Therefore, this remains an essential element to our health policy - and we intend to keep it.

As regards the issue of parallel imports, Mr. Chairman, Brazil believes that Members should confirm their right of applying regimes of exhaustion of rights in their jurisdiction. For developing countries, in particular least-developed countries and smaller economies, parallel importation can be a significant way of increasing access to medications, where the prices charged by patent holders for their products are unaffordable. I must say that I welcome the reference by the EC that differential prices should not impinge Members on any right in respect to parallel imports.

In this respect, we favour discussions on differential prices as means to improve access to affordable medicines, although the issue may be best discussed in other fora with the mandate to address public health policies, such as UNAIDS, UNICEF and the WHO, for instance. We note that nothing in the TRIPs Agreement prevents Members from establishing differential prices schemes. It is a prerogative of Members to adopt the most appropriate measures to accommodate such schemes, such as prohibition of parallel imports from poor countries to high-income countries, for instance. At the same time, discussions on differential pricing should in no way result in restriction to or modification of the rights ensured to Members by the TRIPs Agreement to make use provisions such as parallel imports and compulsory licenses, as may be necessary.

The beginning of special discussions on the issue of "TRIPs and Public Health" in the TRIPs Council is a momentous occasion for Members to ensure that nothing in the TRIPs Agreement will prevent Governments from taking measures to protect public health. We hope that the debate here will confirm this understanding.

Economic theory has for a long time established a link between price and value. The nature of such link, however, has never been fully resolved. In the end, our discussions today is also about the relation between price and value. The price of medicines seen as a profit-bringing commodity and the value of human life. We understand that as any other industry, the pharmaceutical producers have to remunerate their activity. We are not against them. But we hope that, with our help, they will find ways of doing it without beating what should be the very purpose of their activity: to save lives and to alleviate poverty.

RESOLUTION TAKEN AT THE MEETING ON "IMPACT OF WTO ON FOOD AND LIVELIHOOD SECURITY"

HYDERABAD, 18 JUNE, 2001

We, members of civil society and concerned citizens from all walks of life, demand equity and justice from the World Trade Organisation. The chapter on Trade Related Intellectual Property Rights (TRIPS) has provisions that strike at the very heart of the fundamental right of every citizen of the world to have access to food, health and the means to earn a living. TRIPS has been particularly callous to the rural and tribal communities of the world because it threatens their right to food and livelihoods by attacking their resources and taking them away.

It is not without reason that the TRIPS chapter has become the single most contentious issue in the GATT/WTO regime. It is equally clear that developing countries that were earlier coerced into agreeing to the TRIPS clauses, are not willing to accept the conditions as they are. They are seeking changes that will stop the poor in their lands from being marginalised any further . They want modifications in TRIPS that will allow the rural and tribal communities to uphold and exercise their right to food and livelihood. There is a very simple way of bringing greater justice in to the TRIPS process. That is to make TRIPS compliant with the Convention on Biological Diversity (CBD).

There is much that is wrong with TRIPS.

- . The TRIPS Agreement hinders access to and the fair and equitable sharing of benefits arising from the utilisation of genetic resources . It enables biopiracy since it does not require disclosure of the source of biological materials which are sought to be patented.
- .The TRIPS Agreement creates conditions that will hinder the transfer of technology to developing countries.
- The TRIPS Agreement hinders the preservation of and respect for the knowledge, innovations and practices of indigenous and local communities.
- . The TRIPS Agreement is likely to be detrimental to the conservation and sustainable use of biological diversity

We want the following changes

1. That the review of Article 27.3(b) be one of a *substantive* nature, not merely of implementation.,_as is being mooted.
2. That a a clause for Disclosure be introduced in TRIPS
*Revise the requirements for patent applications to help prevent misappropriation of knowledge regarding genetic resources and to ensure consistency with access and benefit sharing regimes of the CBD. WTO Members should revise Article 27.3 (b) and/or Article 29 of the TRIPS Agreement,
- 3.*That a substantive review of Article 27.3(b), be completed and the review seek to harmonise the TRIPS Agreement with the CBD and the International Undertaking on Plant Genetic Resources (IUPGR)
- 4.*The period for implementation of Article 27.3(b). be extended till after a substantive review is completed.
- 5.*That the exceptions to patentability under Article 27.3(b) be expanded.
. At a minimum, members must have the discretion not to grant plant and animal patents that the current language of Article 27.3(b) allows.

The discretion to refuse patents over life is essential to give Members who are also CBD Parties the flexibility they need to experiment with approaches for implementing CBD.

- 6.* That the flexibility that the GATT allowed in defining *sui generis* systems be retained. UPOV should not be made the only "effective" sui generis platform acceptable under TRIPS.
7. That a "sustainability review" provided under Article 71.1 of the TRIPS Agreement be undertaken, to assess the impact of TRIPS.

The TRIPS Review should ensure that implementation of the TRIPS Agreements supports its objectives, as set out in its Preamble and Article 7, as well as the broader objective of the WTO to promote trade "in accordance with the objective of sustainable development". In the event that the TRIPS Agreement fails to meet these objectives, or is found inconsistent with the successful implementation of international agreements, such as the CBD, WTO Members should amend it, as permitted by Article 71.1 and Article X of the WTO Agreement. As required in Article 16(5) of the CBD, Parties must cooperate to ensure that IPRs are supportive of, and "do not run counter" to, the objectives of the CBD.

- 8.* That a moratorium be put on unilateral pressure and challenges at the WTO dispute settlement system.

WTO Members should agree to a moratorium on any challenges against developing countries until the reviews under Articles 27.3(b) and 71.1 are complete, and any extended transitional periods are over. Further, WTO Members should refrain from exercising unilateral pressure that aims to have

developing countries implement intellectual property regimes that offer a higher level of intellectual property protection than required by the TRIPS Agreement. (The EU has been having bilateral consultations with countries like Jordan and Pakistan and recommending that they accept UPOV 1991.)

9.*That CBD objectives are taken into consideration in the WTO dispute settlement process. In the event of a conflict, the TRIPS Agreement must not interfere with a Party's legitimate implementation of its CBD obligations.

10. That the Human Rights concerns that have been raised with respect to TRIPS, be taken on board. The TRIPS should be modified so that it does not violate the rights of ordinary citizens.

Resolution of UN Sub-commission for protecting Human rights.

E/CB.4/Sub.2/2000/7 (dated 17 August, 2000) has taken note that "actual or potential conflicts exist between the implementation of the TRIPS Agreement and the realisation of economic, social and cultural rights in relation to, inter alia, impediments to the transfer of technology to developing countries, the consequences for the enjoyment of the right to food of plant variety rights and the patenting of genetically modified organisms, 'bio-piracy' and the reduction of communities' (especially indigenous communities') control over their own genetic and natural resources and cultural values, and restrictions on access to patented pharmaceuticals and the implications for the enjoyment of the right to health..."

Signed/-

Paper submitted by a group of developing countries to the TRIPS Council, for the special discussion on intellectual property and access to medicines, 20 June 2001

IP/C/W/296

Advance copy received 19 June 2001

TRIPS and Public Health

Submission by the Africa Group, Barbados, Bolivia, Brazil, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand and Venezuela

- The special discussion on TRIPs and Public Health at the TRIPs Council is not a one-off event. It should be part of a process to ensure that the TRIPs Agreement does not in any way undermine the legitimate right of WTO Members to formulate their own public health policies and implement them by adopting measures to protect public health.
 - The TRIPs Agreement allows for implementation of public health policy measures. Nevertheless, where the provisions of the Agreement may be considered insufficient to protect public health, Members may wish to bring further proposals for modifications in the Agreement, with a view to increase its flexibility.
 - Nothing in the TRIPs Agreement should prevent Members from taking measures to protect public health.
 - Each provision of the TRIPs Agreement should be read in light of the objectives and principles set forth in Articles 7 and 8. The protection of intellectual property rights, in particular patent protection, should encourage the development of new medicines and the international transfer of technology to promote the development of manufacturing capacities of pharmaceuticals, without restraining policies on access to medications.
 - Compulsory licenses are an essential tool for Governments to carry out public health policies, as they may facilitate access to medicines through prevention of abuses of rights, encouragement of domestic capacities for manufacturing pharmaceuticals and in cases of national emergency or other circumstances of extreme urgency, or of public non-commercial use. Nothing in the TRIPs Agreement limits the grounds for Governments to issue compulsory licenses.
 - Parallel imports can also be an important tool to ensure adequate access to medications. In light of TRIPs Article 6, the TRIPs Council should confirm the unconditional right of Members to determine the way in which exhaustion of rights regimes are applied in their jurisdiction.
 - While we favor discussions on differential pricing arrangements, they are only part of a broader set of initiatives to improve access to medications. Differential pricing should in no way be used to limit the flexibility of the TRIPs Agreement in any of its provisions. Given that the issue is not within the sphere of discussions on intellectual property rights, it should not be covered by the TRIPs Council, but rather by other intergovernmental international organizations, such as the World Health Organization.
 - Other issues related to the provisions of the TRIPs Agreement also deserve further discussion by Members, such as the extension of transitional arrangements.
 - Finally, the Ministerial Conference in Qatar in November 2001 will be the best opportunity to take such action as will ensure that the TRIPs Agreement does not in any way undermine the legitimate right of WTO Members to formulate their own public health policies and implement them by adopting measures to protect public health.
1. At the TRIPs Council meeting held on 2 to 6 April 2001, Members agreed to hold a special session of the TRIPs Council in June 2001 to initiate discussions on the interpretation and application of the relevant provisions of the TRIPs Agreement with a view to clarifying the flexibilities to which Members are entitled to and, in particular, to establish the relation between intellectual property rights (IPRs) and access to medicines. The decision to hold such discussion was based on a proposal by the African Group, which was supported by virtually all Members.
 2. The main purpose of this paper is to address the relationship between the TRIPs Agreement and public health. Clearly, the World Trade Organization has no mandate to establish public health policies, which should remain within the mandate of other international bodies, such as the World Health Organization. In this sense, the purpose of the discussions on TRIPs and public health at the TRIPs Council should be

to ensure that the TRIPs Agreement does not undermine the implementation of public health policies by Members.

3. The special discussion on TRIPs and public health at the TRIPs Council is not a one-off event. It should be part of a process to ensure that the TRIPs Agreement does not in any way undermines the legitimate right of WTO Members to formulate their own public health policies and implement them by adopting measures to protect public health.
4. Our commitment to the TRIPs Agreement stems from our expectation that the protection and enforcement of intellectual property rights, in accordance with the objectives of the Agreement (Article 7), "should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations". With a view to fulfilling these objectives, we remain committed to implementation of the TRIPs Agreement based on its proper and flexible interpretation and in accordance with the objectives and principles contained in Articles 7 and 8 of the Agreement.
5. Some provisions of the TRIPs Agreement may elicit different interpretations. This "room to maneuver" served the purpose of accommodating different positions held by Members at the time of negotiations of the Agreement. We strongly believe that nothing in the TRIPs Agreement reduces the range of options available to Governments to promote and protect public health, as well as other overarching public policy objectives. The TRIPs Council must confirm this understanding as early as possible.
6. The issues raised in this paper are not exhaustive. According to the developments in this exercise of interpreting the TRIPs Agreement, we may wish to bring (collectively or individually) further clarifications and complements to this document. All elements and views presented in the document are without prejudice to individual positions that Members may take in further discussions in the TRIPs Council or in other WTO bodies, including dispute settlement procedures.
7. Although the TRIPs Council has only recently begun to discuss the implications of TRIPs to public health, other intergovernmental organizations and civil society have already been paying careful attention to such implications for some time.
8. A number of recent events have illustrated the effects of the TRIPs Agreement on public health policies. In this respect, one landmark case was the lawsuit brought by a Pharmaceutical Industry Association and 39 of its affiliate pharmaceutical companies against the Government of South Africa regarding provisions of its Medicines and Related Substances Control Amendment Act. The South Africa Government's resolve on the correctness of its policy, serious weakness in the technical arguments of the plaintiffs together with strong pressure from domestic and international public opinion resulted in the withdrawal of these companies from the case. The case also signaled that public opinion is seriously concerned that intellectual property rights may be interpreted and implemented in a manner that runs counter to the promotion of public health policies by Governments.
9. Further, in April 2001, the 57th Session of the United Nations Commission on Human Rights adopted Resolution 2001/33, on "Access to Medication in the Context of Pandemics such as HIV/AIDS", which was approved by the overwhelming majority of its Members. The Resolution recognizes access to medicines in the context of pandemics as an essential human right. The United Nations Commission on Human Rights, in this Resolution, "calls upon States, at the national level, on a non discriminatory basis for all, to: (i) refrain from taking measures which would deny or limit equal access for all persons to preventive, curative or palliative pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them; (ii) adopt legislation or other measures, in accordance with applicable international law, including international agreements acceded to, to safeguard access to such preventive, curative or palliative pharmaceuticals or medical technologies from any limitations by third parties; adopt all appropriate positive measures to the maximum of the resources allocated for this purpose so as to promote effective access to such preventive, curative or palliative pharmaceuticals or medical technologies". Among other actions, the Human Rights Commission "also calls upon States, at the international level, to take steps individually and/or through international co-operation, in accordance with applicable international law, including international agreements acceded to, such as: (i) to facilitate access in other countries to essential preventive, curative or palliative pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them wherever possible as well as to extend the necessary cooperation wherever possible, especially in times of emergency; and (ii) to ensure that their actions as members of international organizations take due account of the right of

everyone to the enjoyment of the highest attainable standard of physical and mental health and that the application of international agreements is supportive of public health policies which promote broad access to safe, efficient and affordable preventive, curative or palliative pharmaceuticals and medical technologies".

10. In 21 May 2001, the 54th World Health Assembly also approved two Resolutions that are relevant for the discussions at the TRIPs Council: the Resolution "Scaling Up the Response to HIV/AIDS" and the Resolution "WHO Medicines Strategy". In the Resolution "Scaling Up the Response to HIV/AIDS" (WHA54.10), the World Health Assembly recalls "efforts to make drugs available at lower prices for those in need" and urges Member States "in order to increase access to medicines, to cooperate constructively in strengthening pharmaceutical policies and practices, including those applicable to generic drugs and intellectual property regimes, in order further to promote innovation and the development of domestic industries consistent with national law".
11. The Resolution "WHO Medicines Strategy" (WHA54.11) also contains several important elements for discussion at the TRIPs Council. The World Health Assembly notes that "the impact of international trade agreements on access to, or local manufacturing of, essential drugs and on the development of new drugs needs to be further evaluated". Further, the Resolution urges Members to "cooperate with respect to resolution 2001/33 of the United Nations Commission on Human Rights" and "in order to increase access to medicines, and in accordance with the health needs of people, especially those who can least afford the costs, and recognizing the efforts of Member States to expand access to drugs and promote domestic industry, cooperate constructively in strengthening pharmaceutical policies and practices, including those applicable to generic drugs and intellectual property regimes in order further to promote innovation and the development of domestic industries, consistent with applicable international law". The WHA also requests the Director-General "to continue and to enhance efforts to study and report on existing and future health implications of international trade agreements in close cooperation with relevant intergovernmental organizations".
12. In June 2001, the General Assembly of the United Nations will hold a Special Session on HIV/AIDS. The TRIPs Council could take into consideration some of the important conclusions of the Report of the Secretary General to this meeting (document A/55/779, issued on 16 February 2001). In paragraph 48, for instance, the UN Secretary General notes that "[g]lobally trade policy provisions need to be used more effectively to increase access to care. The availability of low-cost generic drugs needs to be expanded, in accordance with national laws and international trade agreements and with a guarantee of their quality. The relevance of compulsory licensing and the development of national manufacturing capacities need further expansion". In paragraph 101, the Report also remarks that "[w]e need to find ways of more effectively using trade policy provisions, such as compulsory licensing or parallel importation, to increase access to care. The availability of low-cost generic drugs needs to be expanded, in accordance with national laws and international trade agreements and with guarantees of their quality."
13. At the XI Summit of the Heads of State and Government of the Group of Fifteen (G-15), in Jakarta (30-31 May 2001), the Heads of State and Government stressed the "urgent need to address pandemic and endemic diseases such as HIV/AIDS, Tuberculosis and Malaria" and stated that "the implementation of the Trade-Related Intellectual Property Rights (TRIPs) Agreement should in no way prevent developing countries from taking measures, such as compulsory licensing and parallel imports to ensure access to life-saving drugs at affordable prices to overcome hazards to public health and nutrition caused by HIV/AIDS and other diseases". They also considered "the forthcoming Special Discussion in the Council for TRIPs of the WTO as an opportunity for promoting a convergence of views in this regard".
14. Finally, in civil society, a number of important non-governmental organizations, such as "Médecins Sans Frontières", Oxfam and Consumers International also have emphasized their concern that the TRIPs Agreement may be applied in detriment to health policies.

TRIPs and public health

15. There are different elements that relate the TRIPs Agreement to public health issues. In particular, provisions related to patents on pharmaceutical products have an obvious effect on national policies on access to medications. In the Preamble of the TRIPs Agreement, Members recognize "the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and techno-logical objectives". They also recognize "the special needs of the least-

developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base. In this context, patent rights cannot be paramount to overarching public policies, in particular health policies".

Whenever Governments deem it appropriate, a number of the provisions of the TRIPs Agreement can be applied in order to ensure access to medications.

16. Adequate access to medications at affordable prices is recognized as one of the most effective elements of public health policies to reduce mortality and infection rates. In the case of HIV/AIDS, for instance, some of the most successful policies have been possible through provision of increased access to generic and patented medicines to those in need. Access can be limited by a number of factors, such as financial hurdles; physical and infrastructure barriers; and information gaps, among others. When intellectual property rights are properly granted and exercised, they may meet their objective of contributing to the development of new medicines. However, there should be a common understanding that confirms the right of Governments to ensure access to medications at affordable prices and to make use of the provisions in the Agreement whenever the scope or exercise of IPRs result in barriers to access to medicines.

(a) Objectives and Principles of the TRIPs Agreement

17. Each provision of the TRIPs Agreement should be read in light of the objectives and principles set forth in Articles 7 and 8. Such an interpretation finds support in the Vienna Convention on the Law of Treaties (concluded in Vienna in 23, May 1969), which establishes, in Article 31, that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".
18. Article 7 is a key provision that defines the objectives of the TRIPs Agreement. It clearly establishes that the protection and enforcement of intellectual property rights do not exist in a vacuum. They are supposed to benefit society as a whole and do not aim at the mere protection of private rights. Some of the elements in Article 7 are particularly relevant, in order to ensure that the provisions of TRIPs do not conflict with health policies: the promotion of technological innovation and the transfer and dissemination of technology; the mutual advantage of producers and users of technological knowledge; social and economic welfare; and the balance of rights and obligations.
19. Article 7 states that the protection and enforcement of intellectual property rights "should" contribute to the aforementioned objectives. Such language stems from a recognition by Members that the mere existence and the exercise of IPRs, such as patents, do not necessarily result in the fulfilment of the objectives of the Agreement. In the context of health policies, for instance, patent rights should be exercised coherently with the objectives of mutual advantage of patent holders and the users of patented medicines, in a manner conducive to social and economic welfare and to a balance of rights and obligations. Where confronted with specific situations where the patent rights over medicines are not exercised in a way that meets the objectives of Article 7, Members may take measures to ensure that they will be achieved - such as the granting of compulsory licenses.
20. The objective of the promotion of technological innovation and the transfer and dissemination of technology places the protection and enforcement of IPRs in the context of the interests of society. Such an objective is essential for the promotion of health policies, as it encourages the development of domestic production of pharmaceutical products. Whenever economically feasible, local production of pharmaceutical products is extremely important to ensure that medications are more readily available in the market, and at more affordable prices. Local manufacturing of pharmaceutical products also encourages sustainable access to medications by insulating the price of patented medicines against currency devaluations, as well as supporting the development of local expertise, which is vital in addressing local needs. As mentioned above, these objectives can be obtained by the normal exercise of patent rights. Where the patent holder fails to meet the objectives of the TRIPs Agreement and of public health policies, however, Members may take measures to ensure transfer and dissemination of technology to provide better access to pharmaceuticals.
21. Also regarding patent protection of pharmaceutical products, the concept of "balance of rights and obligations" and of "mutual advantage of producers and users of technological knowledge" are relevant to ensure that the exercise of the exclusive rights provided by patent rights is subject to limitations, which are expressed in different provisions of TRIPs, such as those relating to compulsory licenses and parallel imports.

22. In Article 8, the TRIPS Agreement affirms that Members may adopt measures to protect public health, among other overarching public policy objectives, such as nutrition and socio-economic and technological development. Any interpretation of the provisions of the Agreement should take into account the principles set forth in Article 8. The reading of such provision should confirm that nothing in the TRIPS Agreement will prevent Members from adopting measures to protect public health, as well as from pursuing the overarching policies defined in Article 8.
23. Article 8.2 allows Members to take measures to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology. In the implementation of public health objectives, one situation of abuse of rights could be, for instance, the practice of excessively high prices of patented pharmaceutical products. Under normal circumstances, the exercise of patent rights can encourage the creation of new drugs and promote sustainable availability to society, as part of the "balance of interests" foreseen in the objectives of Article 7. Nevertheless, in many instances, the owners of patented pharmaceutical products may abuse their exclusive rights, by selling or offering for sale drugs at prices beyond reasonable margins of profit, which prevents adequate access to medications by the general public. Another situation of abuse of rights could occur when the owners of patented pharmaceutical products do not offer their products in sufficient amounts to meet the demands of the market. In such non-exhaustive situations, patent rights are exercised in a way that conflicts with public health policies as they prevent adequate access to medicines.

(b) Parallel Imports

24. Article 6 of the TRIPS Agreement is extremely relevant for Members, especially developing countries, and particularly the least developed and smaller economies among them. Article 6 provides that Members are free to incorporate the principle of international exhaustion of rights in national legislation. Consequently, any Member can determine the extent to which the principle of exhaustion of rights is applied in its own jurisdiction, without breaching any obligation under the TRIPS Agreement.
25. Whenever Governments deem it appropriate, adoption of the principle of international exhaustion of rights can be a useful tool for health policies. Where the prices of pharmaceutical products are lower in a foreign market, for instance, a Government may decide to allow importation of such products into the national market, so as to allow offer of drugs at more affordable prices. Such measures may be beneficial to prevent anti-competitive practices on behalf of patent owners who offer their patented products at unreasonably high prices in the domestic market. In this case, patent owners would compete with other legitimate products: given that their exclusive rights would be exhausted, the interests of the patent owner would not be damaged.
26. For developing countries, in particular, least-developed countries and smaller economies, "parallel importation" can be a significant way of increasing access to medications, where the prices charged by patent holders for their products are unaffordable. Moreover, in situations where the local manufacture of the product is not feasible, and therefore compulsory licenses may be ineffective, parallel importation may be a relevant tool to ensure access to drugs.
27. In light of the importance of Article 6 as an instrument for health policies, we consider that Article 6 should be implemented in such a way as to ensure the broadest flexibility for Members to resort to parallel imports. Members should therefore confirm their right of applying regimes of exhaustion of rights in their jurisdiction.

(c) Compulsory licenses

28. Compulsory licenses are important instruments to protect public health. Obviously, compulsory licenses alone will not address all the problems related to public health, as other structural factors can also contribute to limiting access to pharmaceuticals. The TRIPS Council, however, is called to consider the extent to which intellectual property rights, on particular patents, may impose a barrier to access to medicines. Members should take the view that the TRIPS Agreement in no way stands in the way of public health protection, and therefore that it should provide the broadest flexibility for the use of compulsory licenses.
29. Empirical evidence demonstrates that many Members have extensive experience in resorting to compulsory licenses, without damaging the patent protection system. Some developed countries, for

instance, are not only among of the main users of the patent system, but also seem to be great users of compulsory licenses (1). The national legislation of several Members also provides for compulsory licenses on different grounds, such as refusal to deal, failure to work, public interest, inadequate supply and health.

30. Compulsory licenses can represent a significant tool for Governments to ensure access to pharmaceuticals. Normally, patent owners are expected to provide access of their patented medicines to the market. In specific circumstances, however, Governments may deem it necessary to grant compulsory licenses to allow interested third persons to produce the medicine, in order to ensure that it will be more readily available, or more affordable to the general public.
31. Some of the most relevant provisions of the TRIPs Agreement with respect to compulsory licenses are Articles 31, 7, 8 and 40 of TRIPs and Article 5 of the Paris Convention. When read together, such provisions allow scope for Members to ensure that regulatory policies can be exercised by governments to promote public health policies. Based on Articles 5A of the Paris Convention and 31 of TRIPs, Governments may issue compulsory licenses as a way of ensuring that medicines will be available at more affordable prices.
32. Clearly, Article 31 of TRIPs does not define the grounds upon which to issue compulsory licenses, but merely establishes procedural requirements to be followed by Members. Therefore, Members are free to determine the grounds upon which to issue compulsory licenses.
33. As regards the relationship of the provisions related to compulsory licenses with Articles 27.1 and 28 of TRIPs, we believe that both set of provisions address different matters and circumstances. In no way Articles 27.1 and 28 limit the right of Members to issue compulsory licenses.
34. In many cases, developing countries - particularly least developed countries and smaller economies - have limited industrial capacities and very small domestic market to manufacture medicines locally in order to ensure adequate access to drugs. In this regard, it should be noted that nothing in the TRIPs Agreement prevents Members from granting compulsory licenses for foreign suppliers to provide medicines in the domestic market. In addition, Members may adopt regimes of international exhaustion of rights in national legislation to allow parallel imports into the domestic market. In this respect, the reading of Article 31(f) should confirm that nothing in the TRIPs Agreement will prevent Members to grant compulsory licenses to supply foreign markets.

(d) Differential pricing

35. Given that differential pricing (or tiered pricing) is not an intellectual property issue, we believe that it should not be covered by TRIPs, although Members might be interested in following the development of discussions in other competent international fora, such as the World Health Organization.
36. We believe that differential pricing arrangements can play a relevant role in providing better access to affordable medicines. Governments should also consider the establishment of global data bases on drug prices, which would facilitate decisions by Governments related to the establishment of price controls, authorization of parallel imports and granting of compulsory licenses.
37. In no way should discussions on differential pricing be prejudicial to the right of Members to make use of the provisions of the TRIPs Agreement, such as parallel imports and compulsory licenses.

(e) Other issues

38. Nature and scope of obligations in the TRIPs Agreement (Article 1.1): Article 1.1 is important to ensure the freedom of Governments on the means of implementation of the minimum standards of the TRIPs Agreement in national legislation. In many cases, more extensive protection in national legislation than is required by the TRIPs Agreement may result in limitations for the implementation of health policies. We consider that Members should be free to implement the TRIPs Agreement in ways that best accommodate the protection of health policies in national legislation.
39. Protection of Test Data (TRIPs Article 39.3): Article 39.3 of the TRIPs Agreement leaves considerable room for Member countries to implement the obligation to protect test data against unfair competition practices. The Agreement provides that "undisclosed information" is regulated under the discipline of unfair competition, as contained in article 10 bis of the Paris Convention. With this provision, the Agreement clearly avoids the treatment of undisclosed information as a "property" and does not require granting "exclusive" rights to the owner of the data.

40. The TRIPS Agreement requires Members to grant this protection only in respect of new chemical entities. There is no need to provide it for a new dosage form or for new use of a known product. The protection is to be granted against "unfair commercial use" of confidential data. This means that a third party could be prevented from using the results of the test undertaken by another company as background for an independent submission for marketing approval, if the data had been acquired through dishonest commercial practices. However, Article 39.3 does permit a national competent authority to rely on data in its possession to assess a second and further applications, relating to the same drug, since this would not imply any "unfair commercial use".
41. Transitional arrangements (TRIPs Articles 65.4 and 66.1): The TRIPs Council could consider extending the transitional periods foreseen in TRIPs Article 65.4 and 66.1.
42. Non-violation (TRIPs Article 64.3): There is no consensus on the scope of non-violation complaints made pursuant to TRIPS. It seems inconceivable that a non-violation complaint could be applied to measures to protect public health, in particular measures for providing access to essential medicines.

Via Campesina

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OPEN LETTER

Via Campesina calls governments to protect Plant Genetic Resources against corporate greed. No to Intellectual Property Right's on life forms.

For: the Commission on Genetic Resources for Food and Agriculture of the FAO (CGRFA) negotiating on the INTERNATIONAL UNDERTAKING on Plant Genetic Resources for Food and Agriculture

Subj.: position and call of Via Campesina to the meeting of the CGRFA in Rome, Italy (June 2001)

Date: 19th of June 2001.

Annex: Via Campesina position on Biodiversity, biosafety and genetic resources

Dear Sir, Madam,

After the meeting of the Contact group in April this year Via Campesina is still very concerned about the negotiation process.

In this letter we would like to ask your attention for the following points:

1) No IPR's on plant genetic resources and other life forms

Via Campesina considers the administration of the world's plant genetic resources as a crucial issue on which no bargains can be made: all plant genetic resources have to be seen as part of the Earth's gene pool that have to be considered as a global commons to be jointly shared by all peoples. IPR's can under no condition be accepted. This condition is seriously eroded by additions such as "in the form received" (art 12.3d of the text). This International Undertaking on Plant Genetic Resources has to define clearly as a basic condition that IPR's on plant genetic resources are not allowed.

2) The issue of access to genetic resources

A negotiation is taking place on a list of crops that would fall under the multilateral framework. At the moment around 30 crops are on this list. Although some consider this as a step in the right direction, Via Campesina thinks this position is unacceptable as it means that all other crops do not fall under the framework (varieties for food production but also for medical or other products) and leaves them in the current situation without protection against IPR's.

3) The issue of benefit sharing

Via Campesina wants to reiterate its position as we have stated in our letter of 24-4-2001: We cannot accept IPR's as a mechanism to redistribute the benefits derived from plant genetic resources. Instead of creating mechanisms that give industry the possibilities to control these resources in order to commandeer the major part of these benefits, policies have to be defined that support and develop agriculture and food production with due respect to and recognition of the rights of the communities in such a way that people can benefit equally in the fruits of these resources. The International Undertaking has to protect plant genetic resources in order to keep such policies possible.

4) the issue of farmers' rights

We want to reiterate our position that these rights go beyond the legal frameworks for intellectual property. They are accepted by the governments and peoples of the world through FAO Resolution 5-89, International Labour Organisation Convention 169, Clause 8-J of the Biodiversity Convention, and Point 14.60 of Agenda 21, signed by the heads of state of almost all the countries of the world. The current proposed text on Farmers Rights has not improved and remains a retrograde step compared to those other agreements, and a bleak lip service to what these rights entail.

5) the responsibility of the governments involved in the negotiating process and the role of industry

It has become clear that some governments in response to the interests of industry, especially the seed industry, try to obstruct the negotiations in order to avoid a decision on a multi-lateral juridical framework. Via Campesina thinks that this behaviour is irresponsible and unacceptable seen the important issues at stake.

ASINSSEL, world's leading seed trade association, has adopted a statement in which it states that it "does not support the current IU text" and puts forward a number of demands that totally undermine it. Some governments who have in the past already blocked any progress on the IU negotiations because they do not want to find themselves to a multilateral sanctioned treaty, are now using the Asinssel positions to put forward further objections.

Via Campesina calls upon all governments to negotiate an International Undertaking that will give a juridical base to the protection of plant genetic resources against corporate interests, that will avoid that these resources will be turned into a mere source of profits for industry and that will guarantee free access to these resources as well as their sustainable use by farmers in food and agricultural production based on local resources.

Yours sincerely,
For Via Campesina

Rafael Alegria

Prof Nanjundaswamy

Via Campesina

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Position of Via Campesina on

BIODIVERSITY, BIOSAFETY AND GENETIC RESOURCES

Aspects related to our daily life and peasant activity are being discussed in the world at this time; such as the regulation and use of biodiversity, the use and preservation of genetic resources and the release of transgenic organisms affecting the health of the population, the rural environment and peasant economy. The international institutions responsible for such aspects are facing a great dilemma: To adopt the rational and intelligent use of the natural resources in order to achieve a sustainable development, or to adopt, under the pressure exerted by the free trade, the domination of the financial capital, and abandonment of food security.

This commission's work leans on three subjects, basically: Biodiversity, Genetic resources and Biosafety and these are the proposals of our organization.

Biodiversity: Life in good hands

For VIA CAMPESINA, biodiversity has as a fundamental base the recognition of human diversity, the acceptance that we are different and that every people and each individual has the freedom to think and to be. Seen in this way, biodiversity is not only flora, fauna, earth, water and ecosystems; it is also cultures, systems of production, human and economic relations, forms of government; in essence it is freedom.

Diversity is our own form of life. Plant diversity gives us food, medicine and shelter; just as human diversity, with people of different conditions, ideologies and religions, give us cultural richness. This shows that we must avoid the imposition of models in which just one way of living or model of development predominates.

Biological and cultural wealth is concentrated in the so-called developing countries, located mainly in the tropics and always protected by peasant or indigenous communities. Culture and biodiversity always develop together.

Peasant women and men and small-scale farmers, together with fisherfolk and artisans, indigenous peoples and black communities, are the ones who have historically preserved, created and sustainably managed the agricultural biodiversity, which was, is and will be the basis of all agriculture.

Therefore, VIA CAMPESINA proposes:

1. That biodiversity should be the basis to GUARANTEE FOOD SECURITY as a fundamental non-negotiable right of all peoples. This right must prevail over the directives of the World Trade Organization (WTO). We must go back to the beginning: human beings developed agriculture to meet their need for food; now there are 800 million hungry people in the world. To solve this problem we must think in terms of using the local foods which diversity offers us, supporting regional and local markets, and applying research and technology more equitably.
2. A MORATORIUM on bioprospecting (exploitation, gathering and harvest, transport and genetic modification) and access to genetic resources and to the knowledge that peasant and indigenous communities have of these resources; until there are mechanisms to protect the rights of our communities to prevent and control biopiracy.

3. Protect and promote the RIGHTS OF FARMERS to genetic resources, access to land, work and culture. This must be done through a broad informational and participatory process involving the actors in biodiversity; for this purpose a process and mechanism of permanent consultation and monitoring with the organizations of producers, indigenous people and their communities must be established.

Genetic Resources, the Rights of Farmers and Rural Communities

The Importance and Evolution of Genetic Resources

For us, seeds are the fourth resource that generates wealth for us from nature, after land, water and air. Genetic resources are the basic element for producing food, clothing, shelter, fuel, medicines, ecological balance and rural aesthetics - all of great importance to us and to consumers.

Since human beings created agriculture, more than 10,000 years ago, we the peasants have been protecting and preserving genetic diversity; we have selected more productive varieties and improved less efficient ones.

Conservation, storage and development of new varieties has been carried on from generation to generation, thus genetic resources were considered a responsibility of rural producers. After the Second World War and the middle of the century, when the urban population underwent enormous growth in relation to the rural population, food became a theme and domain for international organizations, and food production was also dealt with by governments and institutions. In short, the so-called "Green Revolution" came about; agri-business companies grew rapidly; everything related to the production of inputs and seeds began to acquire greater value as it became a profitable enterprise.

Later, new uses were found for genetic resources; the Human Genome Project was created and biotechnology encroached into the genetic manipulation of plants, animals and human beings.

These different historical stages were accompanied by corresponding concepts of property for genetic resources. Before the incursion of transnational corporations, genetic resources were considered humanity's heritage, and this was reflected in international agreements, granting producers the concept of Farmers Rights over genetic resources. Later, the seed and input companies, along with some plant breeders, pressed for recognition and protection of "plant breeders' rights", and created the International Union for the Protection of Authors' Rights over Plant Varieties (UPOV). At the present stage, a great deal of the work in biotechnology is being conducted under a scheme of protected patents by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), under which living materials come under regimes similar to those controlling industrial property.

As peasants we know we have the sovereign right to use our resources while ensuring that they are handled in an environmentally healthy way. We therefore consider that we have the supreme authority to decide in the regulation of access to genetic resources.

The Rights of Farmers and Rural Communities

Full recognition of Farmers' Rights is a right which we can only explain through history and diversity. This right goes beyond the legal frameworks for intellectual property. It is accepted by the governments and peoples of the world through FAO Resolution 5-89, International Labour Organization Convention 169, Clause 8-J of the Biodiversity Convention, and Point 14.60 of Agenda 21, signed by the heads of state of almost all the countries of the world. Thus, as peasants, indigenous people and communities, we claim the right to ownership of life; we recognise the great plant and human diversity which exists in the world; we support the development of the necessary relevant national regulations and legislation to defend genetic resources through respect for and implementation of farmers' rights.

Via Campesina's Proposal on Farmers' Rights

1. Farmer's Rights have a profound historical character. They have existed ever since human beings created agriculture to meet their needs; we have kept them in force through our conservation of Biodiversity; we ratify them with the continuing development of new resources and their improvement. We are the ones who protect genetic resources, who assist in the evolution of species; we are the repository of the effort and knowledge of the generations that created the biological richness. Therefore we demand that our rights be recognised.

2. Farmer's Rights include the right to the resources and their associated knowledge, inextricably joined together; this means accepting traditional knowledge, respect for cultures and the recognition that cultures are the foundations of knowledge.

3. The right to control, the right to decide the future of genetic resources, the right to define the legal framework of ownership of those resources.

4. Farmer's Rights are eminently collective; they should therefore be considered as a different legal framework from those of private property and intellectual property.

5. These rights must apply at the national level; there must be a commitment to promote the enactment of the corresponding legislation, respecting the sovereignty of each country to establish local laws based on these principles.

6. The right to the means to conserve Biodiversity and achieve food security, such as territorial rights, the right to land, water and air.

7. The right to decide in defining, formulating and executing policies and programs related to genetic resources.

8. The right to appropriate technology, and the right to participate in, designing it and to carry out research programs.

9. The right to define the control and use of benefits derived from the use, preservation and management of the resources.

10. The right to use, choose, store and freely exchange genetic resources.

11. The right to develop models of sustainable agriculture which protect Biodiversity, and to influence policies which promote them.

Intellectual Property

We oppose intellectual property over any form of life. We want to elevate to a universal principle the fact that genes, as the essence of life, cannot be owned. The only owner of life is the holder of that life, who lives it, sustains it, feeds and preserves it.

It is an aberration that genetic materials which peasants and indigenous people have kept alive, cared for and protected for more than 10,000 years could now be the property of corporate business. And that we have to pay royalties for those seeds which were gathered from our lands and homogenized or modified abroad.

Ownership of knowledge about forms of life carries a grave risk; the monopolization of patents. This phenomenon could be beyond the control of governments, and the inappropriate use of genes by the transnationals could cause severe problems of biosafety by promoting the use of large homogeneous populations susceptible to pathogens.

We oppose, not advances in knowledge, but its monopolization and inappropriate use.

To show the dimensions of how the ownership of knowledge is concentrated and how inequities are growing, suffice it to mention that 95% of the world's food patents are held in only 7 countries, all of them OECD (developed countries), and the other 5% of patents is distributed among the more than 180 remaining countries.

In the field of health, it has been shown that 74% of the curative knowledge of medicine, principally from plants, comes from popular and traditional knowledge; that is, it was not created in a laboratory, only gathered and patented. But so far the transnational pharmaceutical companies have not remunerated or recognised this knowledge to the communities.

Patenting of plants, animals and their components means that peasant and indigenous communities lose control of the resources that we have traditionally used and known. This means limited and controlled access to genetic resources which no doubt will impose new forms of control over nations and their human populations. Use of patented (material) by farmers can mean that purchased seed comes with a technological package which leads to a lack of sustainability in the agricultural ecosystems and in the family economy. That is not all; it also breaks rural traditions like the keeping of seed for later cycles of cultivation, exchange of seeds among farmers and communities, and the development of knowledge linked to practice in the management of natural resources.

We are opposed to the cloning of human beings, for it is an attack on the dignity of our species; it favours the homogenization of people; it promotes the formation of perfect prototypes; and it revives racist and xenophobic phobias which we believed had been overcome. The Human Genome Project has been developed in various institutions and universities of the world and is encountering problems related to the ownership of the research. For example, the United States Health Office patented plasma from Papua New Guinea indigenous people without their consent. It is estimated that the Office of Patents and Trademarks has already delivered more than 1250 patents on human genetic sequences.

Genetic Contamination (Transgenic or GMO Food)

A large number of tests are being carried out across the world with transgenic organisms, in plants, animals, micro-organisms and human beings; a significant proportion is being mass-produced for commercial distribution.

What are Transgenic Organisms (GMOs)?

These are plants, animals, micro-organisms or human beings in which one or more genes from another species have been introduced; for example, plants with genes from animals, humans or micro-organisms, or vice versa. With this, the dynamic evolutionary and reproductive systems of life are broken. The former barriers, where it was only possible to crossbreed members of the same species, are now non-existent.

To produce these transgenic organisms, they use techniques like bombardment with micro-particles of gold or tungsten covered with the DNA, which they are trying to introduce, or the microinjection of DNA into germ cells or embryos. Another technique uses biological vehicles like viruses or bacteria to introduce the new genes through artificial chromosomes, or even the creation of synthetic DNA.

Transgenic Foods

Worldwide there are 37 million hectares sown to transgenic crops, which compared to the world's agricultural area of 1,400 million hectares is 2.6%. From this area is obtained a considerable quantity of food whose use is not regulated.

Transgenic products are basic materials for a large amount of foodstuffs, the majority of which are manufactured. On the label there is no proper notification that this is a transgenic food, nor is the massive import or export of these foods regulated.

The Risks

a) Impacts on Health: For human health the main risk that has been identified is that GMOs become carriers of the trans-genes which they have received from other species, presenting a secondary mobility which enables them to integrate themselves into human cells. This is highly possible, since in order to produce GMOs, they use fortified genes, mainly with resistance to antibiotics. For example, Novartis's transgenic maize uses Penicillin G which is a medication no longer used by humans and capable of producing the enzyme penicilaze which degrades penicillins. In the case of Calgene's transgenic tomato, they used genes resistant to Kanamycin and Geomycin. Monsanto's transgenic cotton is resistant to streptomycin which is widely used as a medicine.

The Scientific Committee of the European Union has recently determined that milk and meat produced with Bovine Growth Hormone (Bovine Somatotrophin, rBST) has a carcinogenic effect, principally fostering prostate and breast cancers.

It has been found that consumption of Monsanto's transgenic "Round-Up Ready" soy, treated with the herbicide Round-up (glyphosate), has the effect that glyphosate causes the production of phyto-estrogens which can provoke severe reproductive disturbances; transgenic soy can also cause allergy problems.

b) Effects on the Peasant Economy: GMOs can mean the loss of peasant autonomy and greater dependency on the transnational corporations, both technologically and economically. Proof of this is that the companies which promote GMO varieties demand a contract with the farmer in which, in addition to the seed, there is also a commitment to buying inputs. As well, penalties are established if the farmer lends this seed to someone else, and the responsibility for possible ecological risks that the GMOs may entail is assigned as the farmer's responsibility.

The most important effects on the peasant economy and on national production have to do with the genetic manipulations carried out to substitute raw materials which the industrialized countries need from the Third World. In this respect we cite the following cases:

A). "A technology has been produced which incorporates into plants a sweet substance called Thaumatina, which could displace sugarcane crops and negatively impact economies dependent on this crop."

B). "The Calgene company has produced a compound which is an alternative to cocoa butter in colza, which is a temperate zone crop. The product could displace from the market thousands of third world peasants and farmers, and lead to the collapse of the economies of various countries which depend on exports of cocoa."

c) Impacts on the Environment: Transgenic plants have alien genes which could cause genetic pollution. But moreover, since it is a question of plants which are resistant to herbicides, they become potential plagues which would be difficult to control. Because of this, we can anticipate that a transgenic plant would be dominant over traditional crops; it could also establish itself in regions of wild flora, altering the ecosystems. They could also transfer their genes horizontally to other organisms and make them into potential plagues.

Proposals on Transgenics (GMOs)

- 1. That a moratorium be declared on the release and trade of transgenic organisms and their derived products. The Precautionary Principle — described in Agenda 21 of the Earth Summit — should be applied. It establishes the right not to authorize transgenic organisms until there exists complete evidence of their safety and absence of risk. Societies must have had the opportunity to understand and debate in an informed manner the potential risks and impact of these technologies, and to exercise the right to decide about their use. This is the right of future generations.**
- 2. Given that genetic manipulation constitutes a risk which could unleash unpredictable and irreversible impacts, all decisions related to the use, handling and release of transgenic organisms should be the subject of consultation and informed participation by all sectors of society which could be negatively affected,**
- 3. Evaluation and risk management must be carried out, taking into account in a holistic way all aspects of biosecurity.** This includes investigating interactions with the environment, biodiversity, socioeconomic and cultural aspects, human health, and food security.
- 4. There must be guarantees of effective protection of local and traditional agricultural systems and food security, and assurance of human and collective rights.**
- 5. Agreements and considerations of Biosecurity and multilateral agreements on the environment must override trade agreements and policies.**