

# Seedling



Biodiversity, Rights and Livelihood

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# Seedling

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Front cover picture: © David Rose / Panos Pictures. Burkina Faso. Planting shrubs to bind the soil and act as wind breaks to prevent the advancement of desertification.  
Back cover picture: © Hamish Wilson / Panos Pictures. Central Somalia. A woman winnowing sand to look for edible wild seeds.



# When Elephants Fight Over GMOs...

TEWOLDE EGZIABHER

As the world's attention was focusing firmly on the Cancun World Trade Organisation summit in September, an important international agreement quietly made its entry on the world stage, one which holds immense implications for developing countries. The Cartagena Protocol on Biosafety<sup>1</sup>, which aims to regulate trade in genetically modified organisms (GMOs), came into force on 11 September. The Protocol arrived after five long years of negotiations over intractable North-South issues that are set to continue to bedevil implementation.

The tension around trade issues is highlighted most forcefully by the US' move to take the European Union to the World Trade Organisation (WTO) dispute settlement mechanism over the EU's insistence that US exporters clearly label all GM food sold to Europe (see p 4). One of the US' main complaints is that Europe's stance forces Africa to reject GM foods and crops. But it is a distortion to blame Europe for Africa's caution in handling GM crops, including those coming as food aid. It must be noted that Africa's awareness of its poverty, low level of technical capacity and environmental complexity moved the African Group on Biosafety to come up with the first proposed draft Biosafety Protocol in 1996, long before any European country did so. This was because Africa is aware of its vulnerability and is thus afraid of GMO adventurism. We find

it unfair and repulsive that the US is attempting to use Europe's guilty feelings about Africa to blackmail Europe into accepting GM crops. The elephants that are America and Europe must stop trampling on the grass that is Africa and fight elsewhere. Africa must play its part too. The WTO Ministerial Meeting in Cancun, Mexico, which would have had direct or indirect implications on the WTO case, collapsed on 14 September 2003, largely because the South, and especially Africa, refused to accommodate the elephants.

While there is much to welcome in the adoption of the Biosafety Protocol, I worry that the US-EU case offers a foretaste of future problems in implementing the Biosafety Protocol. The reasons are many, flowing chiefly from the substantive differences between the developing countries and the US over GMO regulation. The US, which is unlikely to be a party to the Protocol, and the 60 parties to the Protocol start from opposing premises. The US starts from the premise of 'Substantial Equivalence', which says GM crops are as safe as non-GM crops unless proved otherwise. The EU and the developing world support the 'Precautionary Principle' embodied in the Protocol, which states that a GM crop is to be considered risky unless proved to be safe. From these perceived differences flow implications for implementation.



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This editorial is adapted from "When Northern elephants fight over GMOs", published on 29 September by Panos Features. See [www.panos.org.uk/newsfeatures/latest-features.asp](http://www.panos.org.uk/newsfeatures/latest-features.asp)

<sup>1</sup>[www.biodiv.org/biosafety/ratification.asp](http://www.biodiv.org/biosafety/ratification.asp)

The Protocol requires a country to allow the importation of a GMO only after it has obtained all the necessary information about it and carried out a risk assessment to evaluate the risks of harm to human health, to agricultural systems, to its environment and to its socio-economic conditions. The country of import is first informed by the exporter or by the country of export of the intention to export the GMO. The country of import conducts its assessment and then informs the exporter whether or not it will allow the import.

**“The realisation of the protocol is an extremely important advance, because it offers governments their first legal tool to refuse to grow or import GM foods and products.”**

In the case of GM commodities intended for food, feed or for processing, the intention to export is notified to all countries at once through a computerised database system called the clearing-house. Failure to communicate a decision to the country of export or to the

clearing-house cannot be taken as consent to import. This provision is to protect countries that might not have the capacity to undertake a risk assessment. In this case, the Precautionary Principle would be called on to prevent a country from exporting the GMO. There are some exceptions to the procedure:

- \* A GMO that is merely transiting through a country is exempt from the procedure. But if a country considers any GMO too dangerous to even be allowed transit, it has the right to refuse it.
- \* A GMO that is destined for contained use – under conditions from which it cannot escape into the open environment and cannot come into contact with humans or other forms of life – need not go through the procedure before importation.
- \* A GMO for use as a pharmaceutical for humans is subjected to the procedure unless there is another international law or a specified international organisation to regulate this.

The realisation of the Protocol is an extremely important advance, because it offers governments their first legal tool to refuse to grow or import GM foods and products. But when it comes to implementing and regulating the Protocol, developing nations are faced with all kinds of handicaps and obstacles. For instance, the Protocol depends on full information for its effective implementation – it requires a labelling and traceability regime to be put in place. No such thing exists at present. The US, the biggest producer of GMOs in the world, refuses to label GM products, so for the time being, countries do not necessarily know when an unlabelled US GMO is imported into

their territories and safety is being compromised.

The poverty of developing countries, especially the least developed (mostly in Africa), remains a crucial handicap: they are simply too poor to allocate adequate resources for biosafety. Even more worrying is the fact that, should a hazard arise, these countries will find it hard to muster the financial and technical capacity needed to combat it. Given this situation, socio-economic considerations should be important grounds for refusing to import a GMO. But the relevant provision of the Protocol is very weak. Nevertheless, neither this weakness nor any other international law prevents a poor country from adhering to the Precautionary Principle and making a rigorous socio-economic assessment before importing a GMO.

Risk assessment in the South is complicated by its complex tropical and subtropical environments. The limited risk assessment that has been undertaken for GMOs in the North is based on very different climatological and ecological conditions. Micro-organisms developed in laboratories for industrial purposes function optimally at high temperatures. If a micro-organism escapes into the open environment in the North, it is unlikely to survive the winter cold. But in the hot tropical and subtropical environments of the South, it may survive and flourish indefinitely. The South should, therefore, put in place biosafety systems that restrict contained use only to laboratory conditions from which escape of GMOs is impossible.

A major problem is related to the rich biodiversity of the South. It is well recognised that biodiversity increases towards the equator and decreases towards the poles. One risk GMOs pose is passing their genes to wild species. The greater the biodiversity, the more complex and uncertain becomes the evaluation of risks posed by GMOs. And yet, owing to low technical capacity, specific knowledge on the South's biodiversity is very poor. Additionally, most centres of origin of crops are in the South, which makes any mistaken release of a GM crop more devastating in the South.

The Protocol's information and risk assessment requirements recognise this fact and specifically address the centres of origin or genetic diversity. It should be in the interests of the North not to push GM crops into the South, and for the South to resort to caution. After all, virtually all crops of importance in the North have their centres of origin or genetic diversity in the South, and the North depends on the South for its future breeding programmes and its future food security. A more intractable issue is trade and the



## A Sign-on Statement for Africa

The Cartagena Protocol on Biosafety came into force on 11 September 2003. We see this day as special. Africa took the negotiations of the Protocol very seriously because its survival and prosperity are intimately linked to the health of its people, its agricultural systems and its environment. We take this day to renew our resolve to continue to pursue what is important for Africa and the world. To this effect:

1. We urge the African Group on Biosafety to continue negotiating for an effective system of liability and redress with regard to GMOs and their products. We also urge it to negotiate for a fully informative system of labelling and traceability of GMOs and their products, and for a reassuring system of compliance that will protect Africa not only from aberrant parties, but also from non-parties.

2. We call on the African states that have yet to ratify the Protocol to do so as soon as possible, and on all African states to make their biosafety laws based on the African Union's Model Law on Safety in Biotechnology. This must be done to bring in a uniform biosafety system that protects the whole of the African continent. This is essential because GMOs recognise no borders.

3. We urge African countries to apply the precautionary principle (a) in regulating the transit of GMOs through their territories and refuse such transit to dangerous GMOs, (b) in restricting GMOs for contained use to stringent laboratory conditions from which accidental escape of GMOs is impossible, and (c) in subjecting all GMOs intended for use

as pharmaceuticals to the Advance Informed Agreement (AIA) procedure until there is an international law to govern them.

4. We call upon African countries to make their biosafety as protective as their natural, social and economic environments require, noting that the Protocol empowers them to do so.

5. We call upon all African countries to apply the AIA procedure to all other GMOs.

6. We call upon all African countries not to be intimidated into making decisions upon notification as part of the AIA Procedure when their capacities do not allow a competent implementation. They are able to ask for as long a time as they need for a fully considered response complete with appropriate risk assessment.

7. We call upon the United Nations Environment Programme and the African Union as well as each African country to take capacity building seriously to implement this highly technical Protocol effectively.

8. We call upon the United States of America to keep its trade fight with the European Union out of Africa. We find it a distortion of facts to blame Europe for Africa's caution in handling GM crops, including those coming as food aid.

*This is a shortened version of the sign-on statement. For more information, contact Yonas Yohannes, Africa Biodiversity Network at [abionet@telecom.net.et](mailto:abionet@telecom.net.et) or Elfrieda Pschorn-Strauss, Biowatch, South Africa at [eps@intekom.co.za](mailto:eps@intekom.co.za)*

environment. Trade rules favour the North. The international agreement on Trade-related Aspects of Intellectual Property Rights – or TRIPs – makes GMOs especially problematic for the South. TRIPs makes the patenting of micro-organisms and microbiological processes compulsory. The North allows the patenting of GMOs and their sub-cellular components based on this provision. The cellular parts essential for genetic engineering are already patented. This means that any domestic development and use of GMOs will become internationally bureaucratic (negotiating for all the subcellular parts) and expensive (paying royalties on each patent). It also means that GMOs, even when developed in the South, will be controlled by the foreign patent owners of sub-cellular parts.

TRIPs puts the burden of proof on the person accused of the infringement of a process patent. This could spell trouble when a GMO cross-pollinates with the unmodified crop of a small holder farmer and his crop becomes contaminated by patented genes. Absurdly, the farmer is assumed to be a process patent infringer. The culprits – the wind and the insects – cannot be summoned to court as witnesses. A South that wants food sovereignty and its farmers to remain innocent of crime can refuse the planting of genetically modified crops in its territories. Happily, at the insistence of the South, there is now a commitment to negotiate a liability and redress regime under the Protocol in case of damages caused by GMOs. We must make sure that this commitment is not hijacked. Genetic engineering appeals to the South, because it

wants to develop fast. The technology promises to put beneficial traits found in living organisms to human use, and not using this capacity threatens to leave them even more behind in development. The South has no choice but to stay safe. It has to put in place biosafety systems firmly based on the Precautionary Principle and develop the capacity – no matter how expensive – to protect itself.



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The US-EU dispute over the EU's *de facto* moratorium on GM crops and products has generated much heat on both sides of the Atlantic. The verdict of the WTO's dispute panel will have significant implications for other countries thinking about rejecting GM crops. It may also be an important case to test the political muscle of the newly adopted Cartagena Protocol on Biosafety, which the EU may use in its defence.

# The next trade war?

**GM products, the Cartagena Protocol and the WTO**

**DUNCAN BRACK, ROBERT FALKNER AND JUDITH GOLL**



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On 20 May 2003 the United States initiated a dispute under the World Trade Organisation (WTO) about the European Union's *de facto* moratorium on the approval of new uses of genetically modified (GM) products. Following the failure of the consultation stage of the WTO's dispute settlement procedure, a dispute panel was established at the end of August, signalling the long-expected opening shots in what may turn out to be a serious and long-running trade conflict between the US and the EU.

The dispute settlement process normally takes between twelve and eighteen months to complete. Whatever its outcome, it is likely that further disputes may be initiated, given the rapid evolution of national regulatory regimes for GM products, and also the entry into force of the Cartagena Protocol, the multilateral environmental agreement regulating trade in GM products, on 11 September.

As commercial GM products have only been deployed since the mid-1990s, there is still considerable debate and uncertainty over their impact on health, the environment, industrial structures and market power. Given the deep-seated cultural differences towards science, technology and government regulation between US and EU consumers, trade disputes centering on GM products will be particularly difficult to resolve. This article aims to provide the background to the likelihood of many years of ongoing dispute.

## **Regulating GM products**

Crop varieties derived from biotechnology were first introduced for commercial use in the US in 1996, though the scientific and popular debate about their impacts originated in the 1970s, when the technologies first began to be developed. Concerns surrounding genetically modified organisms

(GMOs) include the impacts of commercial growing, marketing and trade of GM seeds, food, animal feed and the patenting of food genes.

The lack of scientific certainty over whether and how the risks associated with GM crops will transpire has prompted major disagreement over the appropriate course of action, with North American and European populations displaying widely diverging responses. The gulf separating the opinions of the US and the EU has largely been brought about by circumstances surrounding food production. The US, as perhaps the most advanced innovator in food technology, has not shied away from implementing GM technology, and is now the world's leading producer and exporter of GM products, accounting for 66 per cent of total worldwide planted hectares in 2002.

### The European approach

European consumers have demonstrated a much higher level of suspicion of GM products and the history of food scares within the EU, including BSE and foot-and-mouth disease, has led to widespread public demand for government regulations. EU legislation relating to GMOs has been in place since 1990, when a directive was agreed that allowed a member state to refuse the release of GMOs in its territory, provided the country had 'justifiable reasons' to believe that an approved product constituted a risk to human health or the environment.<sup>1</sup> In 1997, another directive established a similar process for authorising novel foods, including food products containing, consisting of or produced from GMOs.<sup>2</sup>

A revised version of the 1990 Directive entered into force in October 2002, which required a more stringent risk assessment process for the release of GMOs into the environment. It also called for general rules on mandatory labelling and traceability at every stage of the process of placing GM products on the market, including mandatory monitoring requirements for long-term effects.<sup>3</sup> As with the 1990 Directive, applications for the release of GMOs into the environment were assessed by the member state where the product was first placed on the market. If approved and if no objections were raised by other member states, the product could be marketed throughout the EU; if objections were raised, the decision was taken at the EU level.

In July 2003, two new regulations on GM food and feed, and on traceability and labelling of GMOs were adopted.<sup>4</sup> The new arrangements include a simplified authorisation process for GMOs for release into the environment, and GM food or feed, with a 'one-door-one-key' procedure, requiring only

a single risk assessment and a single application to obtain approval for the deliberate release of GMOs into the environment and for use in food or feed.

The new regulations extend the current labelling requirements to all GM food or feed, including foods produced from GMOs, irrespective of whether there is actually DNA or protein of GM origin in the final product. All products consisting of or containing GMOs must be labelled as such. Exceptions are allowed for conventional food or feed contaminated by 'traces' of GMOs (currently proposed to be defined as less than 0.9 per cent), which may occur during cultivation, harvest, transport or processing. The new regulations were expected to enter into force before the end of 2003, with a six-month compliance period, but the European's Commission's recent wavering on this matter will probably delay things (see box on p. 6).

After the 1990 Directive entered into force, a total of eighteen GMOs were authorised for commercial release in the EU, and fifteen GM food products were approved for marketing. But as concern grew over the possible impact of GM products and consumer resistance mounted, in June 1999 five member states (Denmark, Greece, France, Italy and Luxembourg) called for the suspension of all new authorisations pending the adoption of rules to ensure labelling and traceability, while a further seven states (Austria, Belgium, Finland, Germany, the Netherlands, Spain and Sweden) declared their intention to take a precautionary approach to GMO approvals until it could be demonstrated that there was no adverse effect on the environment or human health. As a result, no new GMOs have been approved in the EU since October 1998, while thirteen applications for release and ten applications for food products were frozen.

This *de facto* moratorium clearly constrained imports of GM products into the EU. As the largest exporter, the US was particularly affected, losing an estimated \$300 million worth of agricultural sales to Europe annually. It was this situation that led to the US decision, in May 2003, to challenge the moratorium through the WTO dispute settlement process. Even though the adoption of the new regulations will allow the moratorium to be lifted, the US shows no sign of backing down. Before turning to the possible outcomes of the US challenge, however, we should look at the other major international policy development of 2003: the entry into force of the Cartagena Protocol.

**"This *de facto* moratorium clearly constrained imports of GM products to the EU. The US was particularly affected, losing an estimated \$300 million worth of agricultural sales to Europe annually."**



<sup>1</sup> EU Directive 90/22/EEC, on the deliberate release of GMOs into the environment. An EU directive sets out general principles and procedures for EU member states to adopt, but they are allowed a degree of discretion in incorporating them into national legislation. An EU regulation is applied directly and uniformly throughout the EU.

<sup>2</sup> Regulation (EC)258/97, on novel foods and novel food ingredients

<sup>3</sup> Directive 2001/18/EC

<sup>4</sup> For a summary of the new provisions, see European Commission press release IP/03/1056, 22 July 2003, "European legislative framework for GMOs is now in place".



## The contamination issue heats up in Europe

Under Directive 2001/18 on the deliberate release of GMOs, all GMOs released must be labelled, registered and monitored. Food and feed thresholds of 0.9 % have been established, below which the products need not be labelled as genetically modified. In the case of seeds, the proposed levels in the Directive are between 0.3% and 0.7%. Since these proposals were released, environmental groups have been arguing that such levels would result in massive and uncontrolled releases of GMOs into the environment. GMO-free agriculture and food would become virtually impossible, they argue.

Resistance to the contamination of seeds on the grounds of environmental impact has been growing widely in Europe, because of concerns over safeguarding a GM-free supply. In mid-October, Eurocommerce, which represents the trade and retail sector in Europe, pointed out that the contamination of seeds will jeopardise non-GM agriculture in Europe.<sup>1</sup> In the same week, the biggest and most thorough studies on the environmental impact of GM crops were published in the UK, confirming that small quantities of GMOs in conventional seeds can lead to widespread and unmanageable contamination, and that GMOs can harm the environment.

Perhaps not by coincidence, a week after the release of the UK studies and only days before the controversial Seeds Directive had been expected to be voted on, the European Commission changed its position. It informed Member States that the proposed Directive must be considered from an environmental point of view, and not simply as an agricultural technicality. Instead of being discussed by the Standing Committee on seeds, the Directive will now go through the Regulatory Committee on deliberate releases of GMOs in the environment, where it will need a qualified majority for approval. Putting the Seeds Directive to this committee recognises that contamination thresholds in seeds will have a crucial impact on the ability to implement the management and monitoring obligations of Directive 2001/18.

*"This is good news for democratic principles," said Benedikt Haerlin, co-ordinator of the Save our Seeds Initiative, which has been fighting the Directive. "However the proposed contamination thresholds proposed by the Commission remain unchanged. It is now up to the member states governments to ensure that non-GM seeds are truly free of GMOs and to establish strict purity standards."*

The Save our Seeds (SOS) initiative demands that any GM contamination above the reliable and practical detection limit of 0.1 % must be labelled and the purity of conventional and organic seeds must be strictly protected. The SOS petition has been signed by more than 300 farmer, consumer and environmental organisations throughout Europe (with a combined membership of over 25 million citizens), as well as more than 100,000 individuals. For more info, contact Benedikt Haerlin, Zukunftsstiftung Landwirtschaft, Berlin +49 30-27590309, Email: [haerlin@zs-l.de](mailto:haerlin@zs-l.de), Web: [www.saveourseeds.org](http://www.saveourseeds.org)

<sup>1</sup> Eurocommerce points out that: “It will become impossible to guarantee the recently adopted threshold of 0.9% for the adventitious presence of GMOs in food and feed. It will also oblige operators along the whole of the food supply chain to carry out costly and cumbersome testing for the presence of GMOs, while it would be much simpler to ensure the absence of GMOs at the starting point of the food and feed chain.” [www.eurocommerce.be](http://www.eurocommerce.be)

## The Cartagena Protocol on Biosafety<sup>5</sup>

The Cartagena Protocol on Biosafety is the first international treaty dealing with the transboundary movement of GMOs. Signed in January 2000, after nearly four years of increasingly arduous negotiations, the Protocol quietly entered into force on 11 September 2003, just when WTO member states were meeting in Cancun, Mexico.<sup>6</sup>

As a legal instrument dealing with environmental and health aspects of trade in GMOs and GM food, the Cartagena Protocol has a direct bearing on WTO members' rights and obligations. Some see the two legal texts as potentially clashing. The US challenge to the EU moratorium does not directly involve the Protocol, as the EU legislation predates its entry into force; but its passing into international law has set the scene for potential future disputes over the relationship between international biosafety rules

and the WTO. And the Protocol has been cited by the EU in its defence, and may yet prove relevant to the dispute – see below.

The main objective of the Cartagena Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms (LMOs). The Protocol applies only to those LMOs that have resulted from genetic engineering, which allows the targeted change of an organism's genetic make-up by so-called recombinant techniques or by direct injection of genetic material, thus going beyond traditional methods of selective breeding.

Although the Protocol covers the human health- and biodiversity-related safety aspects of the transfer, handling and use of LMOs, the emphasis is clearly on ensuring safety in the transboundary



movement of LMOs. In a sense, the Protocol is a mixed environmental and trade agreement that explicitly regulates the international trade in GM material and products. The domestic use of LMOs remains largely in the hands of domestic regulatory authorities, although the Protocol provides guidance and assistance in this area, particularly for developing countries.

The Protocol's key regulatory mechanism is the so-called Advance Informed Agreement (AIA) procedure, which requires GMO exporters to provide detailed information on the organism in question and to seek the importing nation's prior approval for certain GMOs before any transboundary movement takes place. Importing nations are to carry out risk assessments before reaching a decision, and in doing so can invoke the precautionary approach. The inclusion of precautionary language in the operational text of the agreement marks a significant advance in international environmental law towards a more formal recognition of the precautionary principle. It also serves to strengthen the prerogative of importing nations to decide on whether or not to allow GMO imports into their territory.

### The biosafety negotiations

The Cartagena Protocol has its origins in demands made by developing countries during the late 1980s for an international regulatory framework for modern biotechnology. The issue of safety in biotechnology, or 'biosafety', emerged on the international agenda in the run-up to the 1992 United Nations Conference on Environment and Development (UNCED) – the Rio 'Earth Summit' – and during the concurrent negotiations on the Convention on Biological Diversity (CBD).

The failure to establish a biosafety framework at Rio revealed a significant difference in perspective between developed and developing countries. Whereas the former wanted UNCED to concentrate on biodiversity conservation and remained unconvinced of the need for a biosafety treaty, the latter pushed for a binding international biosafety instrument. Many developing country representatives saw biotechnology as an untested 'Northern technology' that could damage the South's rich biological diversity and socio-economic interests. It took three more years before a mandate for biosafety talks was eventually agreed in 1995. The G77 group of developing countries, which managed to unite behind a common negotiating position on this issue, succeeded in pushing for a biosafety protocol to the CBD, which was eventually agreed in January 2000 after almost four years of increasingly contentious negotiations.

The choice of the negotiating forum was to have a significant impact on the international process. Framing biosafety as a predominantly environmental issue left the negotiations in the hands of environment and health ministers, and until about 1998, trade concerns were relatively marginal, not least since GM crops only began to enter agricultural trade in the second half of the 1990s. By the time agricultural exporters and trade ministers had started to realise the trade implications of a future biosafety protocol, the scene was already set for an international treaty that was already designed as a precautionary instrument.

The negotiations on the Cartagena Protocol lasted from 1996 to 2000. What started as a relatively unnoticed set of meetings of scientific and regulatory experts soon developed into a highly politicised and public negotiation. By the time of the 1999 conference in Cartagena, Colombia, which was meant to adopt the Protocol, the growing rift between GMO-exporting nations (known as the Miami Group), on the one hand, and the EU and a large coalition of developing countries (the Like-Minded Group) on the other, came to dominate the biosafety talks. US-led opposition to the draft agreement eventually led to the collapse of the Cartagena meeting in February 1999, but the negotiations resumed shortly thereafter and were concluded successfully in January 2000, with both sides making concessions but leaving some areas of contention unresolved.

### The Protocol and international trade rules

Ever since the Cartagena Protocol's adoption, a debate has ensued about the compatibility of its provisions with the WTO's legal order. Critics of the biosafety regime have argued that it may give rise to unnecessary, and even illegal, trade barriers that clash with the norms and rules of the multilateral trading system. They insist that the biosafety rules have to be interpreted and implemented in a WTO-consistent manner, and that ultimately measures taken under the biosafety regime would be subordinate to the WTO's rules and dispute settlement mechanism. Proponents of the Protocol emphasise that the WTO leaves ample scope for trade restrictive biosafety measures, just as other multilateral environmental agreements do.

Moreover, they argue that the Cartagena Protocol represents an international standard of the kind that the WTO routinely recognises in its dispute settlement procedure. One of the thorniest issues in the biosafety negotiations was the relationship

**"Critics of the biosafety regime have argued that it may give rise to unnecessary, and even illegal, trade barriers that clash with the rules of the multilateral trading system."**



between the Protocol and the WTO's trade rules. The US-led group of GMO-exporting nations had insisted during the talks that the Protocol should not weaken existing obligations under the WTO. In contrast, the EU and the Like-Minded Group of developing countries sought to insert language that shielded the Protocol's trade provisions from future legal challenges under WTO jurisdiction. This so-called 'relationship' question could not be resolved in the end, and was left ambiguous.

Several other provisions of the Protocol also give rise to questions and concerns over the compatibility of biosafety and trade rules. The Protocol can lead to trade-restrictive measures in a number of forms:

- In the most extreme version, decision-making by importing nations can lead to an outright *import ban* on certain LMOs, which could fall foul of several WTO disciplines.
- Even if an LMO import is allowed, the importing nation may place *special conditions* (eg restrictions on use, mandatory labelling) on the LMO that affect its competitiveness in the market, again raising questions about WTO-consistency.
- Exporters are obliged by the Protocol to comply with certain *notification and identification requirements*. In the case of agricultural commodities, exporters are required to identify through accompanying documentation any LMOs for food, feed or processing that 'may contain' LMOs, a provision that was inserted into the treaty text at the last minute but remains highly controversial.
- Biosafety rules can also lead to *delays* in the processing of requests to authorise imports. This is the case with risk assessment that forms the basis for any decision by importing nations.

Any of these trade-related measures could potentially lead to a conflict with WTO rules. While the Cartagena Protocol repeatedly states that its provisions are to be applied in consistence

with other international obligations, differences in the rules and procedures laid down by the Protocol and the WTO agreements may cause some parties to contest such measures.

The relationship between WTO trade rules in multilateral environmental agreements was included in the agenda for the Doha Round of trade negotiations agreed in 2001, almost entirely at the insistence of the EU. But little progress has been made. Along with the other trade and environment components of the Doha agenda, the topic received almost no attention at the Cancun ministerial.<sup>7</sup> It seems quite unlikely that any significant progress will be made throughout the rest of the Round, and it is probable that the next step in the development of the relationship between WTO trade rules and trade measures in multilateral environmental agreements will come in the form of an Appellate Body ruling in a future WTO dispute. The trade measures of the Cartagena Protocol are the leading candidate for such a dispute.<sup>8</sup>

### The US-EU WTO dispute

On 13 May 2003, the US and Canada, joined on 14 May by Argentina, requested WTO consultations on the EU's authorisation system for GMOs and GM foods, and in particular its *de facto* moratorium, in place since 1998, on the authorisation of new products. In the following month, the three original countries were joined by Peru, Colombia, Mexico, New Zealand, Australia, India, Brazil and Chile (even though, slightly bizarrely, a number of these countries themselves maintain moratoriums on the approval of GM products<sup>9</sup>). Several other countries found themselves under US pressure to join. In June, the Chairman of the US' Senate Finance Committee responded to Egypt's decision not to join the US challenge to the EU by observing that while he was supportive of a possible US-Egypt Free Trade Agreement, "*one of the criteria that ought to be used to determine with whom the US negotiates future free trade agreements is whether a country shares the same vision of the global trading system as does the US.*"<sup>10</sup> Following Egypt's continued refusal to support the challenge, the US suspended plans to launch formal free-trade talks with the country.<sup>11</sup>

The almost certain lifting of the EU's *de facto* moratorium following the adoption of the new legislation in July 2003 (see above) means that there is a possibility that the complaint will be withdrawn. Whether this happens will depend on the actions taken by the EU and its member states over the next few months. But even if this dispute is ended, it is quite likely that the US and allies will launch a complaint about the new European regime, particularly its labelling and traceability rules.



<sup>7</sup> Draft Cancun Ministerial Text, Second Revision, 13 September 2003, available at: [www.ictsd.org/ministerial/cancun/docs/draft\\_cancun\\_minist\\_text\\_rev2.pdf](http://www.ictsd.org/ministerial/cancun/docs/draft_cancun_minist_text_rev2.pdf)

<sup>8</sup> For a full analysis of the issue, see Duncan Brack and Kevin Gray, *Multilateral Environmental Agreements and the WTO*, Royal Institute of International Affairs, September 2003, available at [www.riia.org/pdf/research/sdp/MEAs and WTO.pdf](http://www.riia.org/pdf/research/sdp/MEAs%20and%20WTO.pdf)

<sup>9</sup> See Heike Baumüller, *Domestic Import Regulations for GMOs and their Compatibility with WTO Rules*, ICTSD/ IISD Trade Knowledge Network, August 2003: [www.tradeknowledge.net](http://www.tradeknowledge.net)

<sup>10</sup> "US announces panel on EU GMO moratorium, as Grassley warns Egypt", *Inside US Trade*, 20 June 2003, p 1.

<sup>11</sup> Edward Alden, "US beats Egypt with trade stick", *The Financial Times*, 30 June 2003.



## Key issues in the WTO dispute

In launching its request for consultations, the US argued that the EU's actions constituted violations of the General Agreement on Tariffs and Trade (GATT), the agreements on Sanitary and Phytosanitary Standards (SPS Agreement), Technical Barriers to Trade, and Agriculture. Of these, the SPS Agreement, which governs the application of human, animal and plant health measures to international trade, is the most relevant.<sup>12</sup>

### *Are EU measures based on international standards?*

Like other WTO agreements, the SPS Agreement aims to achieve harmonisation in trade rules by encouraging the use of international standards. Domestic SPS measures may either be based on or conform to international standards, guidelines and regulations where they exist. Three international standard-setting bodies are specifically referred to, one of which is the Codex Alimentarius Commission (Codex), which deals with food safety. In June/July 2003, after protracted debate, Codex approved three risk analysis standards for GM food, including references to the tracing of products and food labelling as risk management tools. This would appear to support the EU's procedures, although the US, along with much of the food industry, has argued that "*tracing*" (the Codex language) is different from, and more limited than, "*traceability*" (the EU regulation's language).<sup>13</sup>

Another possible international standard, also referred to by the EU in its defence, is the Cartagena Protocol, and in particular its precautionary approach to international trade in GMOs. Whether the WTO dispute settlement process would recognise the relevance of an agreement that was not in force during the period covered by the dispute, and to which all of the three main complainants are not parties, is not clear.

The experience of another WTO dispute suggests that the Protocol could be considered relevant. In the shrimp-turtle case, a US embargo on imports of shrimp caught by fishing methods which kill large numbers of endangered sea turtles was challenged via the WTO. The dispute panel came down in favour of the US, on the grounds that the Inter-American Convention for the Protection and Conservation of Sea Turtles "*can reasonably be considered as a benchmark of what can be achieved through multilateral negotiations in the field of conservation and protection*"<sup>14</sup> – even though the case involved a number of countries in Southeast Asia which were not parties to the agreement. The Appellate Body watered down this conclusion, finding that while the Convention could not be considered to be a legal standard, it was reasonable

to use it as an example of appropriate regulation. In any case, international standards are encouraged rather than required. The SPS Agreement allows domestic measures to be higher than international standards if there is scientific justification.

### *Can the EU claim scientific justification?*

A series of disputes over the past few years give some pointers.<sup>15</sup> The EU's ban on imports of US beef grown with the use of growth hormones was held to be WTO-inconsistent, primarily because the EU had failed to provide adequate scientific justification for the ban. But in an important development, the Appellate Body concluded that the risk assessment process could take into account minority or divergent scientific opinion and did not have to reflect simply the majority or mainstream thought. This supports the notion of regulating on a precautionary basis – in many ways the heart of the debate about GM regulations – even though the Appellate Body did not accept the EU's contention that the precautionary principle itself had become part of international law.

Subsequent disputes – the Australian salmon, Japanese varieties and Japan apples cases – added detail to the interpretation of 'risk' and 'risk assessment'. The Appellate Body found that the *possibility* of harm alone was not enough to justify trade-restrictive measures; there had to be some *likelihood* or *probability* of negative consequences, though this could be very small indeed. Similarly, the measures had to be based on *some* supporting scientific information. Although the findings were not completely consistent between the cases, it is possible to draw the general conclusions that precautionary measures based on some scientific evidence and some real level of risk should be allowable under the SPS Agreement. Once again, this would seem to support the view that the EU legislation on GMOs, and its procedures for risk assessment, are WTO-consistent.

Whether the de facto moratorium, in place while the new legislation was being adopted, could be considered to be WTO-consistent raises slightly different questions. For it to be justifiable under the SPS Agreement, it would need to constitute a provisional measure: the EU would have to demonstrate that it was actively seeking "*to obtain the additional information necessary to make a more objective assessment of risk*" and review the measure "*within a reasonable period of time*". If, as expected, the moratorium is lifted once the new traceability and labelling regulations enter into force, this should enable the moratorium to be justified.

**"This would seem to support the view that EU legislation on GMOs, and the procedures for risk assessment that it incorporates, are WTO-consistent."**

<sup>12</sup> For an analysis of this issue, see Robert Howse and Petros Mavroidis, "Europe's Evolving Regulatory Strategy for GMOs – The Issue of Consistency with WTO Law: Of Kine and Brine", *Fordham International Law Journal*, Vol. 24, November/December 2000.

<sup>13</sup> *BRIDGES Trade BioRes*, 11 July 2003 ([www.ictsd.org](http://www.ictsd.org)).

<sup>14</sup> United States – Import Prohibition of Certain Shrimp and Shrimp products, Recourse to Article 21.5 by Malaysia, Report of the Panel, WT/DS58/RW, 15 June 2001, para 5.71.

<sup>15</sup> For a full analysis of these cases, see Howard Mann and Stephen Porter, *The State of Trade and Environment Law 2003: Implications for Doha and Beyond*. International Institute for Sustainable Development and Centre for International Environmental Law, 2003, Chapter 5, "The precautionary principle, the role of science and the WTO Agreements".





### *Are mandatory traceability and labelling requirements overly trade-restrictive?*

In common with most of the WTO agreements, the SPS Agreement requires measures to be no more trade restrictive than necessary in order to fulfil the objectives of the Agreement. Since the US and other GM exporters do not at present segregate GM from non-GM crops for domestic use, they would have to introduce costly crop identification and segregation systems or face the closure of export markets. The US has estimated that up to \$4 billion worth of US exports might be affected.<sup>16</sup> In addition, there are costs associated with labelling, traceability requirements, and testing of non-GM crops to discover whether accidental contamination with GM material has occurred. Cost estimates range from \$5 to \$25 per tonne, depending on the products and precise identity systems adopted.<sup>17</sup>

Because of the wording of the SPS provisions, the panel and Appellate Body may be forced into considering whether there are any feasible alternatives to the EU regulations, balancing this against the right of WTO members to determine their own level of sanitary and phytosanitary protection. But it is difficult to envisage any level of protection from GMOs that does not involve segregation of GM and non-GM products. It may well be that GM exporters will simply have to bear the costs of segregation. If these costs are deemed unjustifiable, or should be borne by the importers, this appears to be tantamount to arguing that measures under the SPS Agreement cannot be used at all to exclude, or even to identify, GMOs.

### Conclusions

It is dangerous to speculate as to the outcome of the US–EU dispute, but it does seem that the weight of arguments, and the precedents set by previous disputes under the SPS Agreement, appear to favour the EU. This would have a significant impact on trade, irrespective of how the EU will decide pending and future applications for the use of GM crops and foods. With stringent EU rules on

labelling and traceability in place, the US and other GM exporters will be forced either to introduce segregation strategies or abandon entirely European and other markets hostile to GMOs.

A victory for the US and its allies would equally have significant implications, but may prove something of a Pyrrhic<sup>18</sup> victory. As EU Commissioner Byrne pointed out in August, it is lack of consumer demand for GM products that lies at the root of low GM sales in Europe, and it is highly unlikely that consumers will become any more GM-friendly by a WTO finding requiring their governments to adopt lower levels of consumer protection. Such an outcome could possibly undermine public confidence in the WTO as an institution (not particularly high in any case) and lead to a backlash against any imports of US food, GM or not.

Towards the conclusion of the banana dispute between the US and the EU in the late 1990s, a WTO staff member was rumoured to have claimed that “GM foods will make bananas look like peanuts”<sup>19</sup>. Whatever the outcome of the current dispute, he was right.

*This article is shortened from a report entitled “The Next Trade War: GM products, the Cartagena Protocol and the WTO”, available on the web at [www.riia.org](http://www.riia.org) or from The Royal Institute of International Affairs, Chatham House, 10 St James’s Square, London, SW1Y 4LE, UK.*

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<sup>16</sup> R L Paariberg, *The US–EU Conflict over GM Foods: Implications for Poor Countries* (working paper, Weatherhead Center for International Affairs, Harvard University, 2002).

<sup>17</sup> European Commission (DG Agriculture), *Economic Impacts of Genetically Modified Crops on the Agri-Food Sector*, 2000.

<sup>18</sup> “Pyrrhic”: gained at too great a cost

<sup>19</sup> ie would make the banana dispute seem easy.



For three years, a new international patent treaty has been under negotiation at the World Intellectual Property Organisation (WIPO) in Geneva. This treaty would pave the way for a future world patent granted directly by WIPO.<sup>1</sup> This is bad news for developing countries and their citizens, who would lose even the limited freedom they have left to adjust patent systems to national development goals. However, it is not too late for the developing world to say 'no thanks' and stop the negotiating process.

# World Patents for Global Domination ?

GRAIN

A truly global patent system, with one central office issuing patents valid in any country in the world, has long been a dream among transnational corporations and patent system strategists. Before the World Trade Organisation's Trade-Related Intellectual Property Rights Agreement (TRIPS), it was regarded as an impossible dream, because complete harmonisation did not appear politically achievable. WIPO had repeatedly tried and failed, most recently during the 1980s. This was why industry persuaded governments to move the patent issues to the WTO negotiations, where political pressure could be organised on a much higher level than at WIPO.<sup>2</sup>

Moving patent issues to the WTO was a roaring success from the point of view of transnational corporations, the primary users and beneficiaries of patents. By establishing a new, much higher harmonisation floor, propped up with the brutal

sanction system of the WTO, in a single blow TRIPS imposed developed-country patent systems on the whole developing world. Patents on pharmaceuticals and living organisms became mandatory, while the possibility of adding on development incentives, such as a requirement for local working of the patent<sup>3</sup>, were radically curtailed.

This far-reaching harmonisation was 'sold' to reluctant developing countries on the grounds that a multilateral agreement on patents would mean an end to bilateral pressure from rich countries to further strengthen patent protection. In practice, quite the opposite has happened. TRIPS has sparked a new wave of more extreme bilateral demands from the US, the EU and other developed countries. Today, as soon as a trade, investment or development cooperation agreement is negotiated between a rich country and a poor one, clauses demanding TRIPS-plus patent protection are

<sup>1</sup> See GRAIN, *WIPO moves towards 'world patent' system*, July 2002, [www.grain.org/publications/wipo-patent-2002-en.cfm](http://www.grain.org/publications/wipo-patent-2002-en.cfm)

<sup>2</sup> For a full account of the background to TRIPS, see Peter Drahos and John Braithwaite, *Information Feudalism. Who Owns the Knowledge Economy*, Earthscan, London 2002.

<sup>3</sup> Local working means that the patent is only valid if used in the country of grant. E.g. a patent held by a foreign company will be invalidated if that company only imports the product and consequently uses the patent exclusively to stop local competition.



brought forward as a condition for market access, direct investment or even development assistance.<sup>4</sup>

This merciless offensive against the defenseless reflects the rapidly growing importance of patents and other intellectual property rights (IPRs) as the primary means of control over a globalised economy. When production of tangible goods is increasingly moved to poorer countries, strong IPR protection becomes absolutely crucial for the rich. In many cases, they no longer sell the goods as such, only their IPR component. Without the strongest possible legal rights, they might have to share their riches a little more equitably with those who produce them. Consequently, patents are now more valuable than factories, and the strength of companies is increasingly measured not by their productive capacity, but by the value of their patent portfolios.

Paradoxically, TRIPS gave WIPO a new and much stronger role, despite its previous failures to satisfy industry's demands for harmonisation. In close cooperation with the WTO secretariat, WIPO has been instrumental in the implementation of TRIPS standards in developing countries, often taking the opportunity to draft and recommend TRIPS-plus legislation. In this role, WIPO has pushed its own pro-patent agenda rather than serving the best interests of its clients. West African countries were advised to implement TRIPS well ahead of their commitment as Least Developed Countries (LDCs), and against using the flexibility TRIPS allows in compulsory licensing or parallel imports. In Cambodia, WIPO somehow failed to inform the government that, as an LDC, it was not obliged to grant patents on pharmaceuticals before 2016.<sup>5</sup>

TRIPS created the conditions for reviving the dream of the world patent. WIPO quickly recognised that TRIPS offered a stepping stone to the next level of harmonisation. Since TRIPS came into force in 1995, WIPO has been working hard on three key pieces of a strategy to create a world patent system with WIPO at the helm (see box). WIPO is quite open about this. Director-General Kamal Idris has even made available an unusually candid institutional wish list, known as the Patent Agenda, to this end.

### SPLT - The Heart of the Matter

The Substantive Patent Law Treaty (SPLT) is the political core of the Patent Agenda, since it deals with the substance of patents, with what can and cannot be patented, under what conditions and with what effect<sup>6</sup>. Not surprisingly, the SPLT is the most difficult piece of the puzzle for WIPO. Patent laws have historically been national territory, and

individual governments are very reluctant to give up their freedom to make their own rules. TRIPS was the first international treaty to prescribe minimum standards for central issues like the subject matter of patents, the term of protection, or the mechanisms of enforcement.

The SPLT is intended to go one important step further. TRIPS defines a harmonisation floor (the minimum standard), but SPLT will raise the floor and add a ceiling. The floor will be raised well above that set by TRIPS. But there will also be a maximum standard, an outright ban on additional patentability criteria. While today countries are free to make any additional requirements to grant a patent unless the matter is explicitly regulated by TRIPS, in the future they would only have such options if the SPLT explicitly specifies them.

This is a truly revolutionary change, but a necessary one if a world patent is to become reality. In order for patents to be centrally granted with global validity, governments across the world must agree to drop national differences and adopt a common patent law.

### Different From TRIPS

The SPLT is a direct sequel to TRIPS. But there are some important differences in terms of process and politics. One major reason for the success of TRIPS was that it encompassed only *"the standards of protection on which developed countries could agree among themselves."*<sup>7</sup> It was all about changing the rules for developing countries. Everything which could have divided developed countries was carefully kept outside the scope of TRIPS.

The SPLT, in contrast, is primarily about ironing out the remaining differences among the Trilateral countries (the US, the EU and Japan) themselves. This would seem like a much easier task. The changes involved are quite limited compared to the wholesale reshuffle that TRIPS involved for developing countries. Nevertheless, harmonising between the Trilateral powers will probably be much more difficult politically than it was to harmonise the rest of the world to their consensus level in TRIPS.

Another important difference is that TRIPS could be forced through by attaching it to the whole WTO package. Developing countries were faced with the choice of accepting TRIPS as a part of the package or not being part of WTO at all. Most of them accepted TRIPS as a necessary evil in order to secure expected trade benefits in other areas, in particular better access to developed country markets for their agricultural and textile exports.

<sup>4</sup> Peter Drahos, *The New Bilateralism in Intellectual Property*, December 2001, [www.maketrade-fair.org/assets/english/bilateralism.pdf](http://www.maketrade-fair.org/assets/english/bilateralism.pdf); OECD, *Regionalism and the Multilateral Trade System*, July 2003, <http://oecdpublications.gfi-nb.com>; GRAIN, *TRIPS-plus: where are we now?*, August 2003, [www.grain.org/docs/trips-plus-where-2003-en.pdf](http://www.grain.org/docs/trips-plus-where-2003-en.pdf)

<sup>5</sup> See Commission on Intellectual Property Rights, *Integrating Intellectual Property Rights and Development Policy*, London, September 2002. [www.iprcommission.org](http://www.iprcommission.org); Médecins Sans Frontières, *Doha Derailed. Progress Report on TRIPS and Access to Medicines*, Briefing for the 5th WTO Ministerial Conference, Cancún 2003. [www.accessmed-msf.org/documents/cancunbriefing.pdf](http://www.accessmed-msf.org/documents/cancunbriefing.pdf); Peter Drahos and John Braithwaite, *Information Feudalism. Who Owns the Knowledge Economy*, Earthscan, London 2002.

<sup>6</sup> [www.wipo.int/scp/en/documents/session\\_10/index/htm](http://www.wipo.int/scp/en/documents/session_10/index/htm)

<sup>7</sup> Jerome Reichman, "Securing Compliance with the TRIPS Agreement After US v India". *Journal of International Economic Law*. Vol 1 No 4, December 1998. Oxford University Press, Oxford.





## The building blocks of the world patent system

### **Patent Cooperation Treaty (PCT)**

The Patent Cooperation Treaty provides a possibility to file a single patent application for any or all countries that are PCT members (122 to date). Patents are not granted through the PCT system, but it conducts a preliminary search to assess if there is reasonable likelihood of patentability. Applicants must still submit individual applications to each patent office separately. The great advantage of the PCT for the patent applicant is that it establishes a “*priority date*” which is valid in all member states and automatically becomes the national filing date. In addition, the PCT allows a very generous delay (20-30 months) before national filing procedures have to be initiated. The PCT also makes life easier for national and regional patent offices, because the examination is partly done by the PCT system.

The PCT system has grown rapidly over the years. It is now WIPO's main activity and a very profitable business. In 2002, some 115,000 international applications were filed, generating fees of more than \$120 million. PCT fees provide 80 % of WIPO's total income and WIPO projections foresee continued rapid growth.

The PCT is currently under reform. The short-term objective is to simplify procedures and adjust them to the requirements of the new Patent Law Treaty (see below). But many developed countries, in particular the US, also have a more ambitious reform agenda, and want to make PCT decisions binding on member states, so that there would no longer be complete freedom for national patent offices to assess the merits of international patent applications independently.

For more information about the PCT system, go to [www.wipo.int/pct/en](http://www.wipo.int/pct/en)

### **Patent Law Treaty (PLT)**

The Patent Law Treaty is a new agreement which was negotiated in the late 1990s, concluded in 2000, but has so far only been ratified by seven of the 54 signatories.

The PLT harmonises many of the formal and procedural requirements of patent applications.

The PLT favours patent applicants to a much greater extent than most national patent laws. The requirements on the form of an application are so low that it will often be possible to submit it long before an actual invention is completed. Rudimentary applications can be kept pending almost indefinitely, and the burden is on the patent office to collect further information from the applicant.

The PLT text and other documents about the Treaty can be accessed at [www.wipo.int/treaties/ip/plt](http://www.wipo.int/treaties/ip/plt)

### **Substantive Patent Law Treaty (SPLT)**

The current negotiation of a Substantive Patent Law Treaty picks up where the PLT left off, and aims to harmonise as much as possible of the substantive content of patent laws, the rules about what can and cannot be patented and what is sufficient proof of patentability. The issues being discussed are at the core of the whole patent system are under discussion, so a successful negotiation will mean that all the most important rules for what can and cannot be patented will be harmonised. All documents concerning the negotiation can be accessed at [www.wipo.int/scp/en](http://www.wipo.int/scp/en)

### **The Patent Agenda**

The Patent Agenda is not a separate process in WIPO, but a policy document with the stated objective of facilitating the discussion about the future development of international patent cooperation. Its real intention is to pave the way for the development of a world patent under WIPO auspices. It is cleverly drafted and never explicitly says so, but the reader is led to that conclusion step by step.

The document has caused considerable controversy at WIPO meetings, because it was not initiated by the member states through formal channels, but independently by the WIPO Director-General. Nevertheless, it has served its purpose and no doubt informed many of the individual decisions paving the way for the world patent.

The latest version of the Patent Agenda is found at: [www.wipo.int/patent/agenda/en/welcome.html](http://www.wipo.int/patent/agenda/en/welcome.html)



The SPLT is being negotiated in a very different context. There are no external bargaining chips available, no opportunity to trade apples for pears. Any compromise must be struck within the bounds of the patent system itself.

Formally speaking, signing on to the SPLT will be optional. Countries can accept WIPO treaties on a case-by-case basis, in contrast to the package deal principle (*"single undertaking"*) governing the WTO. But in practice there would be considerable pressure on all WIPO members to join. Unlike some of the more specialised WIPO treaties, the SPLT will be so central to the future of the patent system – indeed, the power structures in the global economy – that it will be difficult to opt out.

### Core Issues

What are the core issues in the SPLT negotiation? What would likely change if countries eventually agree on a treaty text?

**"The SPLT would inevitably lead to a further concentration of power over the patent system in the hands of WIPO and the large patent offices."**

#### 1. Concentration of power

The SPLT would inevitably lead to a further concentration of power over the patent system in the hands of WIPO and the large patent offices. Harmonisation would largely take place on the terms of the dominant countries and reflect their political priorities. These countries increasingly regard the patent system as their primary tool of global domination, and there is no reason to believe they would voluntarily agree to make that tool blunter.

Power concentration would also be the inevitable result of the practical realities of day-to-day life in the patent offices. Patent examination is a very complex business both technically and legally. There is already a strong tendency for smaller patent offices to rely extensively on WIPO and larger offices in a number of different respects, from policy development and staff training to the actual examination and grant of patents. Even short of an actual world patent, it is likely that over time the bulk of patent examination activity would be concentrated to a handful of large offices, effectively achieving global harmonisation without any need for a formal agreement.

#### 2. Fewer exceptions from patentability

The only substantive issue that divides the Trilateral countries is the question of limits of patentability. The US allows patents on virtually anything, while Japan and especially the EU have stricter limits. There are two main prongs to the issue. One is which *national exceptions* from patentability should be allowed. The US wants none. The EU has so

far defended the exceptions allowed under TRIPS: for morality and public order, and for plants and animals. The other aspect is whether a patented invention must have a *technical character*. Under TRIPS, patents must be available "*in all fields of technology*", but not for non-technological subject matter. In US law there is no such limitation, which means that things like computer programmes and "*business methods*" can also be patented.

Even though the US is quite isolated in its insistence on removing present exceptions from patentability, it is very likely that it would have some success in a final compromise, simply because the EU and Japan have little else to offer in exchange for US concessions (see below). The EU is most likely to give in on the life patenting exception. Formally, the EU still maintains a ban on patenting "*plant and animal varieties*", but in practice, Europeans already grant patents on plants and animals to almost exactly the same extent as the US. Because of this, the EU could easily accept a change in SPLT without any consequence to its own patent practice. Neither would it be a problem for Japan or other developed countries. The change would only have an impact on developing countries, many of which still exclude plants and animals.

#### 3. Cultural and language compromises

The remaining major issues are more about culture and language than substance. This is not to say that they will be easily solved. Governments tend to be extremely reluctant to give up their ingrained habits and practices. But the changes involved will not make any substantial difference to the way the patent system works.

The most important of the cultural issues is the divide between the *first-to-invent* and the *first-to-file* principles. The US is alone in its insistence to grant patents on the basis of invention date rather than filing date. It is obvious to all those involved that there will be no SPLT unless the US agrees to change its system, but the issue is so sensitive that it is not even mentioned in the draft SPLT text.

### Technical issues

In addition to the major political issues there are a large number of minor, more technical ones, a few of which may have some practical consequences. There is one technical provision which would be important in counteracting biopiracy and the misappropriation of traditional knowledge. This is the article on prior art, which simply states that prior art shall be "*all information which has been made available to the public anywhere in the world in any form.*" This may appear self-evident, but it would imply a major change to present US practice,



which only fully takes into account information made available within US borders. Outside the US, information is only considered prior art if it exists in written form. This has been an important factor in many of the well-known biopiracy cases, for example in the neem case, where neem was patented in the US despite a history of use going back hundreds of years in South Asia. Since the prior art was mainly orally-transmitted knowledge, as traditional knowledge usually is, it did not count until an ancient Sanskrit text was found to prove the case.

### Complicated politics

Unlike the TRIPS negotiation, which was strictly a matter of developed countries against developing, the politics of the SPLT have become quite complicated. There is only one objective that appears to be shared among all actors: to reduce the workload in patent offices. Faced with an ever-increasing number of applications and similarly increasing technical complexity, large and small offices alike have difficulty in keeping up with the work.<sup>8</sup> The more similar the rules of patentability become, the more different offices can rely on the work of others. The advantages would be even greater on the applicant side. With less difference between national legislations, applications could be reused from country to country, translating into substantial savings for the applicants – primarily transnational corporations.

WIPO is the only party to exhibit unambiguous enthusiasm for the harmonisation project.<sup>9</sup> This is not surprising, since the success of the PCT system has made WIPO rich and powerful. Every further step toward global patents is likely to strengthen it even more, and there is little doubt that many of the top brass dream of WIPO's eventual transformation into the World Patent Office. WIPO's closest allies are what are known as the 'user groups', the representatives of *corporations and the patent trade* who are traditionally the only NGO observers in WIPO meetings. They often take very active part in the discussions, coming very close to the role of negotiating parties.<sup>10</sup>

Among governments, the US is the only one on some kind of offensive. The US government realises that some of the idiosyncrasies of its patent law, in particular first-to-invent, will not survive in the long run. Opinion is slowly turning within the US itself. US-based transnational corporations especially see the disadvantages of having to deal with a US-specific system. In this light, the US is testing what kind of concessions may be possible to wring from the rest of the world in return for giving up first-to-invent sooner rather than later. What it

is especially interested in is expanding the scope and power of the patent system, for example by reducing the exceptions to patentability or removing the 'technical character' requirement.

The EU is on the defensive. Its position appears to be that further harmonisation must be based on the European legal tradition, with as few concessions as possible to the US. But the EU absolutely does not want to be seen as blocking the SPLT. Under pressure, it would certainly compromise with the US in order to save the SPLT from failure. Japan, the third Trilateral member, takes a similar defensive stance to the EU, and is often supported by Korea. Australia and New Zealand are closer to the US in terms of legal traditions. Canada and Switzerland also take an intermediate position, although more for political than historical reasons.

### Developing country initiatives

Despite representing the majority of WIPO members, developing countries initially stuck to their traditional, mostly passive role in the negotiations. But since 2002, they have taken a more active role and have tabled a number of important amendments to the SPLT text. Most of these deal with the core issues of how far harmonisation should go and what national exceptions to patentability should be allowed. The intention of these amendments is to give governments more freedom to tailor their patent systems to national policy objectives. This means they would *reduce* the level of harmonisation in the SPLT.

Predictably, developed countries and WIPO responded with alarm. The amendments were interpreted as a threat to the whole negotiation. WIPO went so far as to refuse to put the first amendments into the draft text, in total disregard of established practice. Developing countries of course insisted, and WIPO had to accept.

### Why harmonise at all?

Developing countries have exhibited a remarkably united front on the core issues addressed by these amendments. From Argentina across Africa to China, the message has been clear that they are not willing to give up their right to use patent systems as a tool for wider national policy objectives. Developing countries realise that they have much more to lose than to gain from further patent law harmonisation.

So why negotiate further harmonisation at all? Developing countries have already committed

**"From Argentina across Africa to China, the message has been clear that governments are not willing to give up their right to use patent systems as a tool for wider national policy objectives."**

<sup>8</sup> Some recent examples show how extreme the situation can get. In early 2000, the US Patent and Trademark Office received a patent application of 400,000 pages. Not much later, the European Patent Office received one of 500,000 pages. Since May of this year, USPTO has on its hands a patent application from Shell Oil bearing no less than 7,200 individual claims.

<sup>9</sup> Formally, WIPO is not a party to the negotiation but the neutral arbiter and servant of governments. In reality it has assumed the role of a party, pursuing a clear agenda of its own.

<sup>10</sup> The patent trade organisations are by far the majority in this group, while industry groups such as UNICE (Union of Industrial and Employers' Confederations of Europe) and BIO (the US Biotechnology Industry Organisation) participate irregularly.





themselves to an excessive level of harmonisation with TRIPS. Few would have freely chosen to introduce patents on food, pharmaceuticals and living organisms to the extent that TRIPS requires. The limited derogations and longer implementation periods granted them under TRIPS have not softened – only delayed – the negative effects. What developing countries need is not further patent harmonisation, but a rollback of the TRIPS provisions. They need to regain their freedom to choose in what fields and under what conditions they want to provide patents. The SPLT can only take them in the opposite direction.

**“Developing countries have the power to make or break the SPLT negotiation.”**

Developing countries do have the power to make or break the SPLT negotiation. In contrast to developed countries, they have a common agenda. They have the necessary technical capacity and the political leadership to follow through on the initiatives they have taken. Developing countries need to:

*1) Simply say no to harmonisation through WIPO.*

Without developing countries, there will be no SPLT and no mutation of WIPO into a World Patent Organisation.

*2) Bring the discussion back to the WTO and make their demands for flexibility much more forcefully.*

Only at the WTO is there any possibility of *reducing* patent harmonisation. By making amendments at WIPO, developing countries will at best only limit the *increase* in harmonisation, on top of an unchanged TRIPS. Most of the issues raised by developing countries as amendments to SPLT properly belong in TRIPS and should be marched back there. For example:

- a) The right to general exceptions for public interest and development concerns.
- b) The right to refuse a patent on similar grounds.
- c) The requirement to declare the origin of biological resources and give proof of Prior Informed Consent. (This is already under discussion in TRIPS).

**There is no win-win scenario**

This is an ambitious agenda, but not impossible, especially after Cancún where developing countries finally assumed their legitimate role as equal members of the WTO. Yet even stopping the SPLT and reforming TRIPS will not solve the underlying problems because no amount of reforming TRIPS will change the fact that it is an agreement designed to subordinate national IPR policy to the free trade agenda. Repeal remains the only real solution to that problem.

In addition, if the multilateral patent harmonisation game is stopped at WIPO and flexibility demands are brought back to WTO, we will no doubt see more intensified efforts by industrialised countries to achieve progressive global harmonisation of TRIPS-plus standards through bilateral and regional treaties hammered out behind closed doors. These are already the key mechanism by which all countries are converging towards higher international standards for intellectual property protection.

Developing countries need to take charge of the international agenda of patent law harmonisation on their own terms, be it at WIPO or WTO. But even more urgently they need to stop the train that is moving faster and more quietly towards the same endpoint in their home capitals. Paradoxical though it may seem, bilateral treaties are also tools of global agendas to achieve global standards – to ensure security, predictability and freedom for transnational corporations.

There is no win-win solution to this conflict, because at the roots it is about the control over the world economy and the distribution of its benefits. Rich countries will continue to use any means at their disposal to persuade, pressure and downright force poorer countries to grant and enforce ever stronger monopoly privileges over knowledge and technology. Transnational corporations constantly move more and more of their production facilities to developing countries, to take advantage of low cost labour and infrastructure. Patents and other IPRs are the primary mechanism for ensuring that this sea change in the global economy does not also lead to a more equal distribution of wealth and power. By continuing to control the rights to produce, the rich and powerful can remain so without even having to dirty their hands with production anymore. Patents are the key to this neo-colonial world order, or even to what has been termed an ‘information feudalism’<sup>11</sup>, based not on free competition but on monopoly privileges granted to global corporations by the princes of the major military powers.

*Read more*

Little has been written on the harmonisation processes at WIPO outside very technical journals, but there is one recent report which give both a more in-depth overview than this briefing, and a critical view from the developing country side:

Carlos M. Correa and Sisule F. Musungu, *The WIPO Patent Agenda: The Risks For Developing Countries*, South Centre, Geneva, November 2002, 42 pp. Available at [www.southcentre.org/publications/wipopatent/toc.htm](http://www.southcentre.org/publications/wipopatent/toc.htm)

<sup>11</sup> Peter Drahos and John Braithwaite, *Information Feudalism. Who Owns the Knowledge Economy*, Earthscan, London 2002.



Conservation International's corporate sponsor list reads like a list of the US' top fifty transnational corporations. Biodiversity conservation is at the top of CI's list of goals. But as the list of CI's dubious ventures and questionable partners around the world grows, Aziz Choudry is starting to wonder if it is time to 'out' this 'multinational conservation corporation' and show its true colours.



# Privatizing *Nature*

# Plundering *Biodiversity*



17

**AZIZ CHOUDRY**

Headquartered in Washington, D.C., with operations in over 30 countries on four continents, Conservation International (CI) claims to be an environmental NGO. Its mission is "to conserve the Earth's living natural heritage, our global biodiversity, and to demonstrate that human societies are able to live harmoniously with nature."<sup>1</sup> This all sounds very laudable and CI has some very high profile fans.

This year Colin Powell shared the podium with CI President Russell Mittermeier at the launch of the Bush Administration's "Initiative Against Illegal Logging" at the US State Department. In December 2001, Gordon Moore, who founded Intel Corporation, donated US \$261 million to CI, supposedly the largest grant ever to an environmental organisation. Moore is chairman of CI's executive committee. CI has repaid Moore's largesse by naming an endangered Brazilian pygmy owl after him.<sup>2</sup>

<sup>1</sup> [www.conservation.org](http://www.conservation.org)

<sup>2</sup> "Intel co-founder Gordon Moore honoured by conservation group", *Mercury News Wire Services*, 14 June 2003

<sup>3</sup> see [www.conservation.org](http://www.conservation.org)

<sup>4</sup> RAN website, [www.ran.org](http://www.ran.org)

<sup>5</sup> Hermann Bellinghausen, "Conservation International, Trojan Horse of US Government and Transnational Corporations: Capise", La Jornada, Mexico City, 7 June 2003

<sup>6</sup> Multinational Conservation Organisations in Papua New Guinea: Neocolonialism To Be Sure, But Not To Worry... The Donors Sure Don't!, unpublished document, date and author unknown

<sup>7</sup> In Steven Benowitz, "Technology Motivating Industry", *The Scientist*, Vol. 10, No. 3, 5 February 1996

<sup>8</sup> The ICBG is a US-government backed programme involving the National Institutes of Health, the National Science Foundation, the Foreign Agriculture Service of the US Department of Agriculture and the US Agency for International Development. [www.fic.nih.gov/programs/icbg.html](http://www.fic.nih.gov/programs/icbg.html)

<sup>9</sup> Thomas Kursar et al, "Ecologically Guided Bioprospecting in Panama", *Pharmaceutical Biology*, 1999, Vol 37, and International Cooperative Biodiversity Group website at [www.fic.nih.gov/textonly/programs/icbg.html](http://www.fic.nih.gov/textonly/programs/icbg.html)

But a growing number of people are questioning CI's credentials as an environmental organisation. The complex global web of partnerships, collaborations, initiatives and projects which CI weaves is as expansive as it is mind boggling. Its major corporate supporters include Cemex, Citigroup, Chiquita, Exxon Mobil Foundation, Ford, Gap, J P Morgan Chase and Co., McDonalds, Sony, Starbucks, United Airlines and Walt Disney. CI claims that its corporate supporters "know that their customers, shareholders and employees share a common concern about protecting the environment."<sup>3</sup>

A more plausible explanation might be that a time when transnational corporations are confronted with global resistance and opposition to their activities, they are seeking to project a green image of themselves. For example, CI's website boasts of its partnership for conservation with Citigroup in Brazil, Peru, and South Africa. Rainforest Action Network has dubbed Citigroup "the most destructive bank in the world" precisely for its role in financing the destruction of old growth forests.<sup>4</sup> A June 2003 report by the Chiapas, Mexico-based Centre for Political Analysis and Social Investigation dubbed CI a Trojan horse of the US government and transnational corporations.<sup>5</sup> A Papua New Guinean critique on international conservation NGOs has also accused CI of neocolonialism, green imperialism, and being a "multinational conservation company."<sup>6</sup>

### Lubricating the gears of biopiracy

Bioprospecting is a central plank of CI's work. Its interest in hotspots of endangered biodiversity has particular implications for many indigenous peoples who have endured and resisted waves of colonial dispossession, genocide and ecocide, including the appropriation of traditional knowledge and

the flora and fauna which they have protected for many generations. For years pharmaceutical companies have been seeking to access indigenous communities' knowledge to find plants and traditional ways of using them because they have a far higher chance to find potential pharmaceutical products than from random screening. University of Illinois at Chicago scientist Norman Farnsworth says "there are 121 prescription drugs in use today, which come from only 90 plant species. About 74 percent came from following up folklore claims. There are 250,000 species of plants in the world, so a logical person would say there are many more jackpots to be found."<sup>7</sup>

In the genetic gold rush 'researchers' and companies, now backed by local and global patent regimes which grant the 'inventor' exclusive monopoly rights over new 'inventions' can deny the very communities which have developed natural cures or technologies the right to use them. CI's role is to provide relatively cheap scientific expertise for corporations well aware of the labour-intensive nature of searching out new potential products based on natural remedies or applications. A seemingly well-intentioned 'non-profit' organisation like CI can act as an intermediary to gather knowledge and agreement from local communities, and do much of the legwork in collecting and testing samples.

This friendly face of biocolonialism offers the modern-day equivalent of beads and trinkets to these communities. Exploitative and unethical 'benefit-sharing' agreements are drawn up, with a few market-based community economic development programmes for the locals on the side: some ecotourism here, some fair trade coffee production there. CI's track record suggests a motivation to conserve biodiversity for bioprospecting for its private sector partners rather than any concern for the rights of the peoples who have lived with, and protected these ecosystems for so long.

In Panama, CI has collaborated with a whole host of partners – including US-based International Cooperative Biodiversity Group (ICBG)<sup>8</sup>, Monsanto and Novartis – on what was claimed to be "ecologically guided bioprospecting", seeking pharmaceutical and agricultural products from plants, fungi and insects.<sup>9</sup> The ICBG was also tied in with CI's involvement in bioprospecting in Surinam, along with US pharmaceutical giant Bristol Myers Squibb, the Missouri Botanical Garden, and BGVS (the Surinam Drug Company), and Dow AgroSciences. CI and the Missouri Botanical Garden collected plant samples. CI worked to win the trust of indigenous communities and healers and negotiate a 'benefit-sharing'



Indigenous farmers in the Monte Azules Biosphere Reserve are accused of destroying the rainforest, yet they practice organic agriculture and stopped slash-and-burn practices 10 years ago



agreement. The indigenous communities were offered paltry percentage (believed to be around 2-3% of any royalties), and it is unlikely that the communities fully understood the implications before they consented.<sup>10</sup> Without adequate and appropriate protection for the traditional knowledge of the communities, CI has helped to clear the way for private companies to slap industrial patents on anything which looks promising. By 2000, ICBG reported that more than 50 active compounds had been isolated from the Surinam samples.<sup>11</sup>

In 1997, CI signed a comprehensive bioprospecting agreement with the California-based company Hyseq, which specialises in genomic sequencing. CI pre-screens drug candidates derived from flora and fauna samples, and in return, Hyseq pays CI on a country basis, and an annual fee. Hyseq is free to pursue intellectual property claims over any results.<sup>12</sup>

### Dubious political connections

Conservation International's involvement in the Selva Lacandona, Chiapas, is deeply disturbing. Through a 1991 debt-for-nature swap, CI bought the right to set up a genetic research station in the Monte Azules Integral Biosphere reserve in the Selva (rainforest). With CI, the Mexican government has been engaged in a repressive military campaign against indigenous peoples in Chiapas, especially those which support the Zapatistas. They have been forcibly evicting indigenous communities in Montes Azules, accusing them of destroying the rainforest.<sup>13</sup> The Selva is home to many Zapatista bases, as well as being an area rich in timber, biodiversity, oil, petroleum and mineral resources. The presence of the Zapatistas and autonomous indigenous communities in the region presents an obstacle to those like the Mexican government and transnational – especially US – corporations which want to exploit these resources.

The Mexico-based Centre for Political Analysis and Social Investigation CAPISE has revealed that CI's program of flyovers – part of their USAID-supported "environmental monitoring" program – flew over areas occupied by Zapatista communities in planes which bore USAID markings. In Chiapas, CI uses state-of-the art geographical information systems technology, including high resolution satellite imaging. CAPISE charges that the images from this operation are made available to USAID, and could be used to identify the location of natural resources of interest to commercial interests. CI has also given images to communities supported by the Mexican government as part of its campaign against the pro-Zapatista communities, which they claim are destroying the forest. In the name of environmental

protection, CI is pitting indigenous communities against each other, raising fears of conflict in an area which is already heavily militarised by Mexico's army. In March 2003, Global Exchange convened an emergency delegation to the area and, contrary to CI's claims, found the destruction most pronounced around military encampments, while the indigenous villagers accused of destroying the forest had outlawed slash-and-burn techniques and were practicing sustainable organic agriculture.<sup>14</sup>

The giant Mexican agribusiness/biotechnology corporation, Grupo Pulsar, works closely with CI in Mexico. Between 1996 and 2000 it donated US \$10 million to CI-Mexico. Pulsar's claimed concern for ecology and biodiversity does not extend to its main activities which include the promotion of monoculture in Chiapas, including the planned planting of 300,000 hectares of eucalypt trees. The Chiapas-based Centro de Investigaciones Economicas y Politicas de Accion Comunitaria (CIEPAC) believes that *"the Pulsar Group's 'donation' could more likely be a remuneration (but free of taxes, since it's a donation) for services lent by CI in bioprospecting within the Selva Lacandona. Pulsar has the technology, the resources and the business knowledge to know that there are large rewards awaiting the 'discovery' of some medicinal property extracted from samples from the Lacandona. CI facilitates the Pulsar Group's entrance, it helps orient its technicians in the*



Local people in Monte Azules reject the idea that the forced relocation of local people has anything to do with protecting the ecosystem, and everything to do with the Plan Puebla Panama

<sup>10</sup> BBC News, "Tribal cures for modern ailments", at [news.bbc.co.uk/2/hi/americas/431829.stm](http://news.bbc.co.uk/2/hi/americas/431829.stm), 28 August 1999, and RAFI Communiqué, September 30, 1997

<sup>11</sup> David Kingston, "Biodiversity conservation and drug discovery in Suriname. Explorations in nature's combinatorial library", *Pure Applied Chemistry*, Vol. 73, No.3, 200, at: [www.iupac.org/publications/pac/2001/pdf/7303x0595.pdf](http://www.iupac.org/publications/pac/2001/pdf/7303x0595.pdf)

<sup>12</sup> RAFI, *Biopiracy Update: The Inequitable Sharing of Benefits*, September 1997

<sup>13</sup> Hermann Bellinghausen, "US, World and Transnational Agencies Want to Clear Indigenous Out of Montes Azules", *La Jornada*, 25 March, 2002

<sup>14</sup> Orin Langelle, personal communication, 24 September, 2003



*prospecting, while at the same time pacifying local populations with programs that promote the expansion of monocrops around the Selva, while projecting a conservation façade to the world.*<sup>15</sup>

### Welcome to the 'friendship' zone

In Costa Rica, CI's interests are the 1.1 million hectare La Amistad (*'friendship'*) Biosphere reserve, which borders Panama and Costa Rica, and the AMISCONDE buffer area around the reserve. CI's partners in the AMISCONDE project included Monsanto, McDonalds, Keystone Foods, Nestlé and Coca-Cola.<sup>16</sup> Monsanto was involved in a conservation tillage project aimed at stopping neighbouring hillside farmers from encroaching on La Amistad. Erika Harms, Monsanto's marketing manager in Costa Rica described the company's involvement in the following way, *"Helping people understand how to relate differently to their environment is the answer to protecting the park. Part of this answer is more effective use of conservation tillage in which Roundup plays a role."*<sup>17</sup>

In Guyana, indigenous peoples have accused CI of gross disrespect in signing a November 2002 memorandum of understanding with the Guyanese government to establish a protected area in the south of the country, impacting on the Wapishana and Wai Wai peoples. A statement from the Amerindian Peoples Association outlined a number of concerns, including the failure of CI to consult with indigenous peoples, and the concern that unresolved claims to title to traditional lands that are now part of the new protected area were undermined by this new status imposed upon the communities.<sup>18</sup>

CI is using its considerable financial resources, political influence and environmental sweet talk to quietly access, administer and buy biodiverse areas throughout the world and put them at the disposal of transnational corporations. Conservation International's Centre for Applied Biodiversity Science (CABS) *"brings together leading experts in science and technology to collect and interpret data about biodiversity, develop strategic plans for conservation, and forge partnerships in all sectors that promote conservation goals"*.<sup>19</sup> CABS runs 3-4 week long Rapid Assessment Programs (RAPs) to *"rapidly provide biological information needed to catalyse the conservation of critically endangered habitats worldwide."* Through these and other programs CI has been assembling biodiversity databases for different regions. RAP's slogan is *"So many species... so little time."* No doubt this sentiment is shared by the pharmaceutical and agrochemical corporations which enjoy CI's support.

### The hottest spots for biodiversity destruction

Meanwhile, given the significant involvement of mining, oil and gas corporations in CI's program it is sobering to note that many of its *"biodiversity hotspots"* and project operations are on or adjacent to major sites of oil, gas and mineral exploration and extraction – Chiapas, Palawan (Philippines), Colombia, West Papua, Aceh (Indonesia) and Papua New Guinea, for example.

In September 2002, Anglo-Australian mining giant Rio Tinto launched a partnership with CI in south-eastern Guinea's Pic De Fon, giving support for a RAP of the rich biodiversity in a forest area which Rio Tinto was exploring (the company has diamond and iron ore operations in Guinea). Rio Tinto's environmental policy adviser Tom Burke sits on the advisory board for CI's Centre for Environmental Leadership in Business (CELB), along with executives from International Paper, Starbucks, and BP.<sup>20</sup> According to CI, the partnership in Guinea *"addresses Rio Tinto's business needs while furthering CI's conservation goals."*<sup>21</sup> The CELB is a partnership between CI and the Ford Motor Company, and its executive board is chaired by Lord Browne of Madingley, the Group chief executive of BP.

Another CI initiative is the Energy and Biodiversity Initiative (EBI). Convened by the CELB, participants include BP, ChevronTexaco, Conservation International, Fauna & Flora International, Shell, Smithsonian Institution, Statoil, The Nature Conservancy, and The World Conservation Union (IUCN). In August 2003, The EBI released a collaborative report, entitled *Energy and Biodiversity: Integrating Biodiversity Conservation into Oil and Gas Development*.<sup>22</sup>

CI also enjoys a close relationship with USAID – which actively promotes biotechnology and other US corporate interests around the world in the guise of development assistance.

CI is uncritical about the impact of economic injustice on the environment and biodiversity. It proposes market solutions to address environmental destruction that has been caused or exacerbated by free market capitalism. It advances the view that the best way to conserve biodiversity is to privatise it. US journalist and writer Bill Weinberg sees this worldview leading to tropical forests becoming *"corporate-administered genetic colonies."*<sup>23</sup> While frequently opining that slash-and-burn agriculture and over-population threaten biodiversity, CI willingly collaborates with, and fails to condemn, some of the world's most ecologically destructive corporations and institutions devastating the planet.

<sup>15</sup> CIEPAC, "Genetically Modified Organisms: Implications for Mexico and Chiapas", *Chiapas al Dia*, No. 175, 18 September, 1999, at [www.ciepac.org/bulletins/ingles/Ing175.html](http://www.ciepac.org/bulletins/ingles/Ing175.html)

<sup>16</sup> UN Division for Sustainable Development, 2000 at [www.un.org/esa/sustdev/mgroups/success/SARD-9.htm](http://www.un.org/esa/sustdev/mgroups/success/SARD-9.htm)

<sup>17</sup> Monsanto website, [www.monsanto.com](http://www.monsanto.com)

<sup>18</sup> WRM, "Guyana: Conservation International accused of 'gross disrespect' to Indigenous Peoples", *World Rainforest Movement Bulletin* No 65, December 2002, at [www.wrm.org.uy/bulletin/65/viewpoint.html](http://www.wrm.org.uy/bulletin/65/viewpoint.html)

<sup>19</sup> CABS website, [www.biodiversityscience.org](http://www.biodiversityscience.org)

<sup>20</sup> CELB website, [www.celb.org](http://www.celb.org)

<sup>21</sup> CI, "Guinea RAP launches industry partnership", *Conservation Frontlines*, Spring 2003, [www.conservation.org/xp/frontlines/2003/spring/features/partners/partners2.xml](http://www.conservation.org/xp/frontlines/2003/spring/features/partners/partners2.xml)

<sup>22</sup> EBI website, [www.theebi.org](http://www.theebi.org)

<sup>23</sup> Bill Weinberg, "Biodiversity Inc: Mexico Tries a New Tactic Against Chiapas Rebels—Conservation", *In These Times*, 21 August, 2003.



### Debt-for-nature hurts local people

CI is a proponent – and beneficiary of – controversial debt-for-nature swaps whereby commitments to preserve and ‘sustainably manage’ ecologically significant lands have been traded for writing off a small part of a government’s debt. CI’s Guerin-McManus describes this as the “*greening of international finance*.”<sup>24</sup> But many see these deals as an ingenious way to facilitate easier access to bioprospectors for industry, and easier extraction of yet more resources from the South – in particular, from indigenous peoples. And they fail to challenge the social and environmental injustices created or worsened by a model of ‘development’ that burdens the majority of the world’s peoples with unsupportable debts.

In its first year, 1987, CI bought a small portion of Bolivia’s debt in exchange for the Bolivian government agreeing to support the expansion of the Beni Biological Reserve, which contains some of the world’s largest reserves of mahogany and tropical cedar. Critics charged that logging actually increased in the “*multiple use and conservation*” buffer zone around the reserve. CI offered training and technical assistance on ‘sustainable use’ of the forest. The Chimane and Moxeno indigenous peoples were not consulted, and the lands were divided up by sustainable development ‘experts’, and they were denied the chance to manage their lands communally.<sup>25</sup> Along with the World Wide Fund for Nature, CI is currently involved in another debt-for-nature deal with the government of the biodiversity-rich Madagascar.<sup>26</sup>

CI works with the World Bank in the Critical Ecosystem Partnership Fund set up in 2000. World Bank President James Wolfensohn chairs the donor council for this initiative<sup>27</sup>, which adds an unconvincing dab of green to an institution which continues to finance environmentally destructive infrastructure projects and promotes a neoliberal model of economic development which views people and the environment as mere commodities.

CI also supports the World Bank-backed Mesoamerican Biological Corridor project and the Mesoamerican Coral Corridor, which is dubbed by its opponents a greenwashed version of the

proposed Plan Puebla Panama, a massive industrial development project. This is another dream scheme for corporate biopiracy. Investors in the Biological Corridor – which would stretch from Southern Mexico to Panama – plan to build gene banks and create an inventory of active chemical compositions of each naturally-occurring substance.<sup>28</sup> CI is also a partner in the Congo Basin Forest partnership, with the World Bank and the American Forest and Paper Association (US timber and paper industry lobby group), launched by Colin Powell at the World Summit on Sustainable Development in Johannesburg last year.<sup>29</sup>

The terms “*greenwash*” and “*corporate front group*” seem inadequate to describe Conservation International. Perhaps, as the Papua New Guinean critique puts it, CI is “*no more and no less a ‘non government’ organisation than is General Electric or Microsoft*.”<sup>30</sup> Perhaps it is time to consider a global campaign to expose this ‘green’ giant’s true colours and put a stop to its operations.



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<sup>24</sup> Marianne Guerin-McManus, *The Greening of International Finance: 10 Years of Debt-For-Nature Swaps*, 2000, unpublished paper

<sup>25</sup> see Chapter 8 in Brian Tokar, *Earth For Sale: Reclaiming Ecology in the Age of Corporate Greenwash*, South End Press, Boston, 1997

<sup>26</sup> Reuters, “Madagascar to swap debt for nature”, 15 September, 2003 at [www.cnn.com/2003/TECH/science/09/15/debt.green.reut/](http://www.cnn.com/2003/TECH/science/09/15/debt.green.reut/)

<sup>27</sup> CEPF website, [www.cepf.net](http://www.cepf.net)

<sup>28</sup> see Gian Carlo Delgado Ramos, *The MesoAmerican Biological Corridor: Biodiversity for Sale, in Plan Puebla Panama – Battle Over the Future of Southern Mexico and Central America*, NoPPP, 2002

<sup>29</sup> US State Department website, [www.state.gov/g/oes/rls/fs/2002/15617.htm](http://www.state.gov/g/oes/rls/fs/2002/15617.htm)

<sup>30</sup> Multinational Conservation Organisations in Papua New Guinea: Neocolonialism To Be Sure, But Not To Worry... The Donors Sure Don't!, unpublished document, date and author unknown





As Zimbabwe struggles with economic hard times and land reform problems, its farming sector is in disarray. A citizen's jury was held in a bid to improve the quality and relevance of policies that affect smallholder farmers. At a time when GM crops are being billed as the road to food security for Africa, Zimbabwe's citizen's jury showed that for many farmers, seed of any kind is only one of a large number of factors that affect their ability to feed their families.

# Izwi neTarisiro

## *Zimbabwe's Citizens Jury*

ELIJAH RUSIKE



22

In 2002, Zimbabwe, Malawi, Zambia, Mozambique and six countries in Southern Africa were faced with a critical food shortage as the result of a drought the previous year. For Zimbabwe, traditionally a regional food basket, this was a particular shock. Here the drought compounded serious problems created by the land reform process (see box opposite) and dramatic economic decline in the 1990s. Zimbabwe's commercial agriculture sector was in tatters and smallholder farmers were facing hard times (see box over page). In the midst of the imminent famine a national debate on genetically modified (GM) crops began. Zimbabwe was the first country in the region to question, and initially reject, genetically modified crops in food aid unless they had been previously milled. One of the things that the debate on GM highlighted was how far removed policy concerns and decisions were from farmers' daily lives and concerns.

In Zimbabwe, like many other countries, policy formulation has remained the preserve of technocrats and politicians. The participation of the primary beneficiaries of these policies has been zero or at most superficial. In the recent past, many policies developed by the technocrats to benefit smallholder-farming communities have fallen far short of their anticipated results. For example, the government recently declared all grains a controlled commodity and people were not allowed to trade it except to the state, which then distributed it. These controls resulted in people refusing to sell to the state and creating acute shortages, making it lucrative to sell on the parallel market - exactly what the policy makers wanted to protect people from.

One of the major reasons for this failure emanates from poorly informed policy formulation processes. Processes that effectively engage the primary beneficiaries have been shown to result in relevant

## Twenty years of land reform

Land has been a source of political conflict in Zimbabwe since colonisation. Under British colonial rule and the white minority government that in 1965 unilaterally declared its independence from Britain, white farmers seized control of the vast majority of good agricultural land, leaving black farmers to scrape a living from marginal “tribal reserves.” An end to white minority rule came after a protracted war of liberation in which land was a major issue, and elections saw the Zanu-PF party come to power in 1980.

The new government was bound by ‘sunset clauses’ in the independence agreement that gave special protections to white Zimbabweans for the first ten years of independence. These prohibited the compulsory acquisition of land for redistribution and resettlement. After 1990 these constraints were lifted and the government introduced new rules that strengthened its powers to acquire land. By the end of what became known as “phase one” of the land reform and resettlement program in 1997, the government had resettled 71,000 families (against a target of 162,000) on almost 3.5 million hectares of land. Only 19 per cent of this was classed as prime land, the rest was either marginal, or unsuitable for grazing or cultivation. There were positive and sustainable results from the resettlement process, though problems beset the resettled communities who lacked infrastructure and support networks, whether governmental or from their previous communities. Moreover, population density in the “communal areas,” the former tribal reserves, actually increased. More than one million families still eked out an existence on sixteen million hectares of poor land. Despite wealth in one sector of the economy, Zimbabwe remained one of the most unequal countries in the world.

By 1999, eleven million hectares of the richest land were still in the hands of about 4,500 commercial farmers, the great majority of them white. Moreover, some farms purchased for redistribution had in fact been given to government ministers and other senior officials rather than to the landless farmers. Most rural black Zimbabweans continued to suffer immense poverty. In the face of government failure to deliver, grassroots land occupations were already taking place in the 1980s and 1990s; in many cases government security forces then removed people from the land with some brutality. But, despite occasional saber-rattling by the government, white farmers were mostly left undisturbed; several became prominent supporters of Zanu-PF.

The conflict over land was related to growing tension between the government and the 60,000 or so veterans of the liberation war, who had been given little support in starting a new life after the war. What support they did receive was subject to abuse and corruption. Exacerbating these problems was a growing economic crisis in the country. The new government had borrowed heavily from the World Bank during the 1980s, and servicing the debt rose to 37 percent of export earnings by 1987. Loan conditions led to food subsidies falling in 1986 to two-thirds of their 1981 level. By 1997, Zimbabwe was in the throes of a serious economic and political crisis. Spiraling food and fuel prices inspired urban strikes and political protests. Inflation topped 100% in 2001.

Under enormous pressure internally and from outside the country, in July 2000 the Zimbabwean government announced “phase two” of its land acquisition programme. This “fast track” resettlement program would acquire 3,000 farms for redistribution (this figure was increased to almost 5,000 in 2002). The acquisition process was hampered by a number of factors, the most significant being the occupation of many commercial farms by settlers led by war veterans. By the end of 2001, 114,830 households were officially recorded as having physically moved and resettled on 4.37 million hectares. But fast track has been chaotic, cumbersome and increasingly harsh. Since the introduction of the fast track process, government policy and stated aims in relation to redistribution and land occupations have repeatedly changed, making it increasingly easy for the government to acquire land, evict ‘squatters’ and halt a farm’s activities.

Source: Human Rights Watch, *Fast Track Land Reform in Zimbabwe*, [www.hrw.org/reports/2002/zimbabwe/](http://www.hrw.org/reports/2002/zimbabwe/), March 2002



and progressive policies that promote sustainable development. But how can the full participation of the smallholder farming communities be achieved? What framework could guide their participation?

It was with this background that ITDG conducted a citizens jury, locally referred to as Izwi neTarisiro, in Zimbabwe. The aim of the citizens jury was

to demonstrate the value of small holder farmer contributions to policy debates, and improve the quality and relevance of policies that affect smallholder agriculture. The purpose of the jury was to locally adapt, test and evaluate a participatory, deliberative and inclusive framework that could encourage smallholder involvement in agricultural policy formulation.

## Zimbabwe's struggling farm sector

The combination of erratic rainfall, the drop in commercial maize production due to the land reform programme, the government monopoly on cereal imports and the HIV/AIDS pandemic have stripped Zimbabwe of its former status as southern Africa's breadbasket. Food security decreased significantly during the 1990s. The supply of maize available through the government's Grain Marketing Board is erratic and scarce. The price of maize on the parallel market has risen by more than 200% over the last year. Many households are resorting to coping mechanisms such as gold-panning, prostitution and selling livestock.

Production on commercial farms has declined dramatically in recent years as the result of the fast track land reform process and occupations by settlers (see land reform box). The Commercial Farmers Union estimated that 31% of farms were experiencing total or partial work stoppages in late September 2001. By January 2002, about 1,000 commercial farms had closed operations completely – either the resident farm owners had left, or were allowed to stay but not allowed to farm by militia occupying the land. The areas particularly affected were Mashonaland East, Central, and West, the most productive arable land in Zimbabwe. The Commercial Farmers' Union estimated that close to 250,000 head of cattle (nearly 20% of the national commercial herd) had been forcibly 'destocked' by late 2001, and that over 1.6 million hectares of grazing land had been burnt out, while commercial maize planting was down to 45,000 hectares from 150,000 hectares in the 1999/2000 season. Export crops such as tobacco were similarly affected. The shut-down of the commercial sector has added to Zimbabwe's high unemployment levels and food insecurity.

Small farmers have suffered from the failure of the land reform process to provide them with productive, viable farm land, and a loss of productive ability as the result of HIV/AIDs. They also suffered from recurrent drought, a shortage of agricultural inputs (partly because the government procured many of these for the newly resettled farmers) and high prices when they were able to get them. The first consignment of donated maize arrived in Zimbabwe, usually a maize exporter, in January 2002, and the World Food Programme began emergency food distribution to 45% of the population in February. It anticipates having to continue that level of support in the near future.

Sources: Human Rights Watch, *Fast Track Land Reform in Zimbabwe*, [www.hrw.org/reports/2002/zimbabwe/](http://www.hrw.org/reports/2002/zimbabwe/), March 2002; World Food Programme, *Zimbabwe country profile*: [www.wfp.org/country\\_brief/index.asp?region=3](http://www.wfp.org/country_brief/index.asp?region=3); Jeffrey Alwang et al, *Why Has Poverty Increased in Zimbabwe?*, World Bank, March 2003



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Population density in Zimbabwe,  
by region



### The citizens jury

There are 1.4 million smallholder farmers in Zimbabwe. The government is in the process of resettling some 750,000 of these, which will leave more than 1.3 million smallholder farmers in the communal areas. Smallholder farmers constitute by far the majority of Zimbabwe's farmers and are the most affected by agricultural policies. Yet they are typically excluded from the policy formulation.

The first part of the citizens jury was a national workshop to scope out the real issues that concern smallholder farmers in Zimbabwe. Partner organisations selected 43 participants from 16 districts in the country to attend the national workshop. Partner institutions included Veco-Zimbabwe, the Biotechnology Trust of Zimbabwe, Rural Development Organisation, the Zvishavane Water Project and the Community Technology Development Trust.

The workshop identified several key issues that directly affect smallholder farmers (see below). These issues included seed issues and intellectual property rights.

### Jury selection and criteria

After the workshop, 16 jury members were selected from among the participants. The following criteria were used in their selection:

- Ability to speak in front of others
- Differing backgrounds and crops grown
- One person per district
- Equal gender composition
- Full time farmer and resident in the rural area

Farmers selected into the jury were drawn from seven of the country's eight provinces: two from Mashonaland East Province, one from Mashonaland West Province, five from Manicaland Province, four from Mashonaland Central Province, one from Matebeleland North Province and one Midlands farmer (see map).

Jury members were separately introduced to the jury process and procedures. This induction was a confidence building measure meant to encourage jury members to allow for better and open discussion that would allow them to work as a team. A mock jury process was conducted and had witnesses, jury members and an oversight panel. All this was to foster closer relations among jurors. A lawyer with experience in public policy formulation processes was invited to discuss how policies are made and where smallholder farmers' voices can contribute in policy formulation.

### The witnesses

Seventeen specialist witnesses presented their visions or those of their institutions for smallholder agriculture by the year 2020. The chief criteria for selection were specialist subject knowledge, ability to communicate in Shona, the local language, and willingness to answer questions from the jury. The witnesses comprised four government officials, five NGO representatives, four academics, two farmers' union representatives and two from parastats. Two people were selected to become oversight panel members. One panel member was deputy director in the Ministry of Lands while the other was a renowned regional independent consultant.

### Issues affecting small farmers in Zimbabwe

The following issues were raised by participants of the workshop preceding the Citizens' Jury as the most pressing concerns of small holder farmers:

#### 1) Farmer representation

Grassroots issues are not represented well at the national level by Farmers' Unions and no feedback is given from national level to grassroot structures. Poor leadership often greatly affects representation of farmers at all levels.

#### 2) Lack of knowledge and information

Smallholder farmers often lack knowledge and information of how they can increase productivity or improve their livelihoods. This lack of information is compounded by lack of exposure to how farmers in similar circumstances elsewhere are addressing similar issues.

#### 3) Shortage of inputs/high prices

Input availability and affordability has become a huge challenge for farmers. Inputs such as fertilisers and seed are often unavailable at the local grocer, and when they are they are either too expensive or they are the wrong type.

#### 4) Seed

The potential benefit and threats of such technologies as genetic modification are often not clearly explained to farmers. Promotional materials often just promote these while the negative effects are not mentioned. Discussions and debates on such issues are often left to academics. Much of the seed on the market is hybrid seed which cannot be reused next season while at the same time seed prices have soared to beyond the reach of many.

#### 5) Lack of agro-processing

Products from smallholder farmers are usually sold as raw materials rather than processed products. Technology is not available to add value at source, limiting the farmer's profitability.



*Smallholder farmers sharing knowledge on an exchange visit in Nyanga district.*

ITDG/Elijah Rusike

#### 6) Machinery/equipment

Smallholder farming is labour intensive and lacks basic implements that can assist farmers to ease operations.

#### 7) Poor co-ordination among development agencies

Development efforts in smallholder farming issues are often poorly coordinated such that there is a tendency towards duplication and overlap. Institutions are too rigid in their structures and ways of working, making it hard for farmers to work with them.

#### 8) Lack of participation in policy formulation

Smallholder farmers do not participate directly in any policy making and decision making bodies. Grassroots farmers have valuable knowledge of the capabilities and limitations of their environment which should be valued and included.



*Growing traditional varieties of sorghum has helped shield farmers in Chivi district from some of the hardships resulting from the erratic rainfall Zimbabwe has experienced in the past few years.*

ITDG/Janet Boston







Farmers from Chivi had their interest in seed fairs revived in the 1990s through exchange visits between Zimbabwe and Peru, where seed fairs have great cultural and spiritual value. Seed fairs are now an annual event in many villages in the region.

#### 9) Inappropriate farming methods

Extension workers have pressured farmers into following particular farming methods which are assumed to increase farm productivity. Such farming systems have emphasised monoculture and the heavy use of chemicals. Inappropriate tillage systems have often destroyed soils. Farmers own production systems have often been seen as irrelevant and backward.

#### 10) Piracy of information and resources

Smallholder communities often lose valuable resources because of a lack of knowledge of their value. Medicinal plants or other valuable knowledge is surrendered in faith to outsiders who go on to use this knowledge for their own academic gains or who end up with claims on that knowledge while never acknowledging its source or never paying royalties.

#### 11) Poor infrastructure: roads and phone

Most smallholder farming areas lack basic necessary infrastructure to fuel economic activity. Roads are either impassable in some seasons or transporters shun such routes because of poor or little business. The lack of adequate information on such things as markets and knowledge militates against smallholder farmers. The high cost of, radios and other communications, and the energy to power them, limits accessibility.

#### 12) Markets, trust and contract

Smallholder farmers are highly exploited when it comes to marketing. This exploitation is exacerbated by lack of information about markets. The inability to meet quality requirements and production volumes has ruled farmers out of lucrative contract deals. Transport and poor infrastructure have also worsened marketing headaches for the farmers.

#### 13) Limited or no access to credit

Smallholder farmers often fail to access loans because they fail to raise the required collateral or because they are considered too risky to invest in.

#### 14) Water for agriculture

The issue of water for agriculture has become a central issue particularly because of the current dry spell that has affected all farmers.

#### 15) HIV/AIDS and its impact on labour

Diseases, particularly HIV and AIDS, have had devastating impact on smallholder farming as the able bodied have either been infected or are taking care of the infected. This directly affects production as it robs smallholder farmers of labour. Where a leader becomes sick and passes away there results in lack of continuation or even breakdown of the initiatives they were spearheading.

#### 16) Natural resource management problems

Smallholder farmers are faced with a tough challenge to manage their environment. This is because of the communal tenure system which stipulates that grazing areas are communally owned. The responsibility for conservation therefore becomes everyone's business and in most cases this means nobody's business. Even those areas where there is an element of individual ownership there is no title to the land and as such conservation measures in fields and homestead becomes the individual's own initiative.

#### 17) Access to research and extension

Because agriculture forms the core of livelihoods for smallholder farmers, access to agricultural research and extension is very important. Research has tended to concentrate on issues that are not relevant to smallholder farmers. Extension has tended to be unavailable or of poor quality.

#### 18) Limited livelihoods options

There are limited other livelihood opportunities for smallholder farmers. Few income generating activities are available between harvest and the next planting season. A missed harvest often devastates livelihoods because farmers cannot obtain cash for inputs for the following season.

### The verdict

After hearing evidence and deliberating for four days, the Citizens jury delivered a verdict on a range of issue including water and agriculture, rural livelihood options, HIV/AIDs and labour, and natural resource management. Some of these are shown in the box on p 27. The witnesses achieved consensus on a wide variety of issues, and demonstrated the ability to grasp and form



## Key points from the verdict

### Research and Extension

#### We desire:

- The promotion of extension systems that encourage group approaches
- Sufficient knowledge of breeding for both modern and traditional seeds
- Committed and dedicated extension workers for backstopping support
- Farmer led farm site research driven by the farmer's research agenda
- Extension approaches that value the farmer's knowledge
- The promotion of farmer to farmer extension approaches
- Full cycle farmer training using such training as farmer field schools

### Farming Systems

#### We desire:

- Soil fertility systems that are locally available
- The formation of strong farmer groups
- The promotion of the conservation of traditional crops and livestock
- Value addition of farm produce
- Crop rotation
- Mixed and intercropped farming systems
- The promotion of growing a wide range of crops and varieties
- The promotion of the use of local plants as pest repellants
- Research into the improvement of chemical repellants
- The availability of adequate draft animals
- Local capacity to make tools and equipment
- The promotion of systems that do not harm the local ecosystems

### Intellectual Property Rights

#### We desire:

- Laws that protect our seed from being used to develop hybrids and protect the exploitation of our natural resources for corporate gain
- That the plight of developing countries be considered in the formulation of international laws and treaties that affect them
- Freedom to trade their seed on the local market
- Freedom for farmers to exchange and produce their own seed
- There should be laws that enforce compensation and consent where our knowledge is to be used for commercial gain

#### We oppose:

- The total surrender of seed production rights to large corporations

### Genetically Modified Organisms

#### We support:

- Full awareness and education about GMOs
- More research into the assumed pros and cons of GMOs
- Mandatory compensation where people are affected by GMOs
- Self reliance of smallholder farmers in seed production

#### We oppose:

- The use of genetically modified organisms for food as there is no guarantee about their safety and effect in the future
- The use of genetically modified organisms because of the risks they pose to the environment.



ITDG/Janet Boston

*Through community mobilisation, the revival of traditional cropping systems (including groundnuts shown in the background here), seed fairs and water harvesting, food security is much less of an issue for farmers in Chivi district.*



ITDG/Janet Boston

*Now the farmers' main concern is how to market the surplus. Rural transportation and infrastructure is extremely limited. Beyond local markets, farmers are at the mercy of a few traders, who tend to exploit them.*



considered opinions and recommendations about complex subjects that were new to many of them (such as GMOs). Farmers raised a number of concerns on the economic, environmental, social and safety of GM crops. They brought up concerns over cross pollination, the contamination of wild relatives, pest resistance, the impact on friendly insects, seed cost, intellectual property rights, biopiracy and many more issues. The issue of food sovereignty was raised by farmers as they recognized that *"Zimbabwe has not yet been capable of producing any GM crop seed and as such it would have to rely on external big companies"*. A particular concern in the Zimbabwean context was how sanctions might affect the seed supply.

The citizens jury was very valuable in bringing together a wider variety of experts from the government level to small holder farmers to share concerns and knowledge, and demonstrate the valuable contribution farmers can make to policy debates. The direct interaction of smallholder farmers with policy makers revealed that there are potential disparities between policy formulation and policy implementation. It was interesting to note that the official government extension policy lists 32 approaches, but only 11 are employed in practice. The extension 'toolbox' includes farmer field fora, participatory extension approach, farming systems research and other approaches that small farmers felt would be helpful but are not realised on the ground.

<sup>1</sup> [www.peals.ncl.ac.uk/publications/leisa.pdf](http://www.peals.ncl.ac.uk/publications/leisa.pdf)

<sup>2</sup> [www.iied.org/sarl/research/projects/t5proj01/IIEDcitizenjuryAP1.html](http://www.iied.org/sarl/research/projects/t5proj01/IIEDcitizenjuryAP1.html)

<sup>3</sup> [www.gmpublicdebate.org](http://www.gmpublicdebate.org)

A number of citizens juries have been carried out around the world in recent years on the subject of GMOs<sup>1</sup>, such as the Prajateerpu process in Andhra Pradesh<sup>2</sup> and one in the UK<sup>3</sup>. These examples of 'deliberative democracy', which aim to give a voice to those who have been historically excluded from decision making, are becoming increasingly popular. They offer an important and effective mechanism of aligning policy decisions with real world situations - in this case, the lives and concerns of small farmers.



Elijah Rusike works for the Intermediate Technology Development Group (ITDG), Southern Africa. He is presently facilitating the Nyanga Sustainable Livelihoods Project. ITDG's food production programme in Southern Africa has facilitated a number of seed fairs, farmer-to-farmer exchanges (with some farmers coming from outside the country) and field days, where farmers showcase their farms to other farmers. Elijah can be contacted at [itnyanga@africaonline.co.zw](mailto:itnyanga@africaonline.co.zw) or by mail c/o ITDG, P.O. Box 215, Nyanga, Zimbabwe.



# Sprouting Up...

## Seed security for Africa's farmers

FULVIO GRANDIN

The World Food Summit of June 2002 was a catalytic event the Africa Biodiversity Network (ABN). Our frustrations with government and the UN Food and Agriculture Organisation's support for the genetic manipulation of agriculture inspired the ABN to get organised to represent and support sustainable practices for food security. ABN's position was clear: seed and food security are inseparable for small-scale farmers throughout Africa, as the informal agricultural sector is largely dependant on an informal seed sector for its genetic resources. In both established and emerging farmer communities there are strong technical and cultural traditions of seed saving and distribution that not only support food security but also form and uphold much of the foundation of cultural practice and identity. Added to this is the crucial role of traditional farmers in the preservation and improvement of food crop varieties.

Any strategy to attain food security therefore needs to address the key issues around seed - access to and availability of seed, sustainability of the means of production, cultural and ecological diversity inherent in agriculture and the independence of farmers. All these issues are potentially compromised by the new wave of corporate control of the global seed industry and farmers need to be supported. To this end, the ABN Seed Security Programme was launched with formal participation of a number of African NGOs and the support of the Gaia Foundation and GRAIN.

As a first step, a Seed Security Study was conducted in various countries by local ABN member organisations. The objectives of the study were to gather country information on the status of informal sector seed activities and on the key players that could then affect and participate in broader programs; and to engage with farmers and community groups in order to best capture and represent their experience and vision and to build capacity locally to strengthen and consolidate local partnerships. The study, conducted from January till June this year, included Ethiopia, Kenya, Malawi, South Africa, Uganda and Zambia. Mozambique has recently been included and is currently conducting its study. This was a vital step for the ABN as the research phase served to initiate our activities as a network and to develop the working relationships we could then build on to broaden our scope and develop and promote the type of agriculture most appropriate for Africa.

The key findings of the initial research were shared at an ABN workshop in Nairobi, Kenya in June and can be summarised as follows:

- The well-established and evolved practices of seed saving and distribution amongst farmers have supported informal agriculture and food security for generations. Tied to this is a wealth of traditional knowledge shared within communities.

- This informal sector has played a significant role in the preservation and development of open-pollinated food crops.
- There are important links between agriculture and seed selection with cultural practices and identity.
- A high diversity of food crop seed empowers farmers with choices to mitigate environmental hazards such as drought and disease.
- The independence of the informal seed sector allows it to adjust accordingly to both external and internal influences.

These valuable practices of small-scale farmers are often compromised because the informal agricultural sector is typically not afforded the institutional and economic support systems extended to formal or commercial agriculture. In most African countries, insensitive and inappropriate government policies and pressures from the commercial sector consolidating its control over agriculture threaten farmer livelihoods and associated cultural biodiversity. In the modern context it is critical for African communities to influence the policies and programs that shape their socio-cultural, economic and natural environments. It is within this framework that the ABN has developed its Seed Security Program.

How is the ABN planning to achieve this?

1. Through the *development of networks* that increase the participation of the informal seed sector and its support structures in strengthening seed security at household and community level.
2. To *increase the capacity* of these networks and of small-scale farmers to enhance both the diversity and the productivity of their seed and thereby the robustness of informal seed systems.
3. To act as a *catalyst for wider action* by increasing the commitment of NGOs and government to support this sector.

ABN has now compiled a three-year program that engages with local organisations in on-the-ground activities with farmers and farming communities. The framework provides an outline for country groups to decide on and develop their own projects based on the findings of and the partnerships developed through the seed study.

Fulvio Grandin is Coordinator of the ABN Seed Security Program. He can be contacted at [eco@netactive.co.za](mailto:eco@netactive.co.za)





# Francisca Rodríguez

GRAIN: Tell us a bit about who you are.

FR: I am a woman with a strong vocation for working for women. My family were campesinos, small farmers, and the desire to be near rural and women farmers comes from there. My first jobs and social relations were within the rural environment; I married a farmers' leader. After the military coup in Chile.<sup>1</sup> I went to work with the Ranquil Confederation, a family farm federation that existed at the time of the coup.

There I began this work with women, and I had to arrange my activities to fit in with my home life and my children. This was challenging, because there were financial pressures and I worked in the fields as well, first as a seasonal labourer and then growing flowers. But the experience was very important for me. I learned a lot at the side of the men who ran the organisation at that time. I learned the importance of inter-organisational ties and international relationships, and it taught me something extraordinarily important: the value of

being Latin American. When you work at that level, you stop being Chilean and become "latina", which greatly strengthened my formative experience.

How did you get involved in Vía Campesina?

I was one of the 60-80 people present at the founding of Vía Campesina, as the representative of a Chilean family farming federation, la Federación Surco Campesino. As a result of the fall of socialism and the weakening of international organisations, a lot of people were asking themselves how to keep moving forward. At the time of the campaign against 500 years of Latin American colonisation there was great enthusiasm to mobilise a resistance movement. A call went up to establish a movimiento campesino, a family farm movement. The call to begin this adventure was an invitation to create an alternative to the existing economic model, wherein we, as campesinos, would create the new structure. It was irresistible.

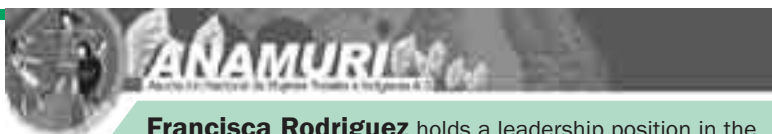
When we met in Belgium to debate the principles of the new organisation, we realised that ours would be an organisation based on objectives and principles, rather than statutes and structures. Our challenge was to build the road, or way (Vía) that was an alternative to the prevailing economic model, and that is why we called it Vía Campesina. This is an elementary fact that we should not forget: we are family farmers building an alternative way. And we have been doing just that. Not only have we introduced important statements and concepts, such as Food Sovereignty, but these are tied to action. For example, our presence at the World Trade Organisation (WTO) Ministerial meeting in Seattle: this was organised participation that showed the possibility of building a movement collectively.

Vía Campesina is an organisation that does not have much in the way of structures or formalities, but which is now more recognised in each country than more formal international organisations. Maybe that is because the campaigns are tightly woven into the concerns of family farmers, which is why nobody feels left out. Furthermore, this is a movement of very plain men and women. There is no one great personality, but all of the associates are people with much valuable experience.

What role do campaigns play in Vía Campesina?

There have been three defining moments in Vía Campesina. The first was when we defined the concept of Food Sovereignty and developed a campaign around it. This was a tool to defend and strengthen our rights, and it confronted the WTO. Our most important struggles have been directed at the WTO, to keep it out of agriculture, so that the WTO neither defines the social relationships involved in agriculture, nor the ways of doing it.

<sup>1</sup> On September 11, 1973, Chile awoke to a US-supported military coup which led to the usurping of democratically elected socialist president Salvador Allende by General Augusto Pinochet.



**Francisca Rodríguez** holds a leadership position in the National Association of Rural and Indigenous Women (ANAMURI), the most important women's organisation in Chile. ANAMURI works with rural and indigenous women all over Chile, including fisherfolk, small farmers, artisans, seasonal laborers and keepers of folk traditions. She is also part of the international coordination commission of Vía Campesina, an international movement which coordinates peasant organisations of small and middle-scale producers, agricultural workers, rural women, and indigenous communities from Asia, Africa, the Americas, and Europe. Francisca can be contacted at [anamuri@ia.cl](mailto:anamuri@ia.cl), Tel: + 562 672 0019. ANAMURI's website is at [www.anamuri.cl](http://www.anamuri.cl). Vía Campesina can be contacted at Operative Secretariat Tegucigalpa, Apdo. Postal 3628MDC, Honduras. Tel: + 504-2394679, Fax: + 504-2359915, E-mail: [viacam@gbm.hn](mailto:viacam@gbm.hn)

Food Sovereignty led us to our first campaign, which we defined as the struggle for genuine agrarian reform. At the outset, we didn't understand the full magnitude of what this implied, but as we moved ahead with making concrete our expression of Food Sovereignty, our concept of agrarian reform also expanded. Now it is not just the struggle for land, it is also a matter of producing food that the country needs, and the right to decide what kind of agriculture we want.

The second important step was the beginning of the debate about the seeds campaign. We recognised that family farming must have a future, that we would have no rôle if it dies out. So our campaign includes not only family farmers and native peoples but also the entire social framework. We have made an important jump by stating that agriculture is not simply a problem for the family farmer, but for each country as a whole.

The third important step taken by Vía Campesina was to develop an integrative proposal involving women and young people, family farmers' know-how and wisdom, and what we could call institutional know-how. I think that this holistic approach guarantees the life of VC's member organisations, gives them meaning, pulling them out of their shells and projecting them. It also allows Vía Campesina to relate to other organisations and build a collective process.

#### What is the specific contribution of the seed campaign?

The seed campaign has deep meaning for farmers and indigenous peoples, and it gives a prominent role to women. It strengthens the concept of Food Sovereignty and transforms it into a commitment to action. The campaign helps integrate the various aspects of agriculture, but also weaves in issues related to labour, value systems and campesina culture. That returns some of our humanity to us, providing strength to face the hardship involved in all of this. Agriculture has been transforming us into machines that work harder than before, suppressing the creativity that used to characterise the farming process. Technology subjugates and annihilates people, and knowledge at the service of capital dehumanises science. How do we stop this all encompassing madness, which leads to extermination instead of progress? When I look at the seed campaign, being part of Vía Campesina makes more sense: building this alternative way. I see the campaign as part of that great road that we are building around the world.

#### What role do you see women playing in it?

The main role! Women have made tremendous progress in the movement. Agrarian reform and

economic changes have made many men leave farming so that women take on a more visible economic role (we have always played an important part, but now it shows more). Women have assumed leadership in the campaign, and we are also giving greater visibility to our specific contribution to family farming.

#### Have there been any dissenters among the groups involved in the campaign?

Not that I know of. I have heard some skepticism, like we are advocating a return to the past. I have only heard that from men – not women – and particularly from associates in Europe and North America, where family farms have been hardest hit by the economic model. They say that knowledge has been lost and that the work is hard, that it takes a long time, and that it was possible in the past because the whole family was involved. There are men who say that they have lost the ability to select, store and take care of seed. They describe a notable loss of knowledge, and more than anything a loss of self confidence. With the women it is different: when the subject is mentioned, they pick up on it and begin to reflect on it. Generally, the men's skepticism dies away when the subject is debated within the family, because men want to deny it, but women have answers and reasons to show that they are wrong. Women act as the memory for many men. As heads of the family, men are the ones who respond to the technical assistance programs and the training activities related to new farming techniques, and are more influenced by all of that.

#### Does the campaign have the potential to rebuild knowledge or rebuild the family?

We cannot claim that the campaign is going to provide complete salvation from this crisis nor the break-downs that affect farm life, but it is going to help. The changes will happen over a long period



*Chilean women farmers, like their Bolivian counterparts above, know a lot about potatoes. When their husbands tried to persuade them to plant new hybrids promoted by extension workers, the women hid their traditional varieties in their skirts and planted them alongside the new ones.*





of time: the campaign will be long. For example, if food is a major focus, the campaign will become a campaign of tremendous political significance. It will be mutually supporting and feed itself, because the effects on the general population will have important repercussions in the countryside. This is a campaign for everyone.

*What activities are being carried out now?*

We are in the process of raising the general level of consciousness, but we are also raising our own levels of sensitivity. We are spreading our message abroad, and what is wonderful is that we are spreading it through action. Every new thing that we recover or discover, we are communicating to the world immediately. It doesn't stay enclosed within our homes and our organisations, it is being broadcast like seed. As we unravel the causes of the abuse and oppression that we have suffered, the campaign will continue to broaden.

This will be a campaign that brings hope. There has been more resistance than we thought, and this has been more important than we could see. When we see what men and women have been doing in different countries, things are going to become much easier. People feel the need to share what they know, because sharing knowledge means self-esteem. Our knowledge and wisdom were always stifled because we were considered ignorant and backwards. Today we know that on the contrary, we are very advanced, and that helps us to recover our knowledge.

Our primary activities are seed exchanges and fairs, but it is very important that we recover popular research. Together with the other activities, we have to prepare popular researchers. We, native peoples and campesinos, have to do the research ourselves in order to recover. But recover for what? There are strong and diverse vested interests regarding knowledge, and we must be very clear about this. Too many researchers are sheep in wolves' clothing. We need our own researchers to know what has been stolen from us, and that information has to be published and spread. And as part of this campaign we have to feel a lot of rage - not impotence - because rage means that we will not longer tolerate what has been done to us, that we are not going to stand for it anymore. To do that we have to know what was taken from us, who took it, and why.

*This is a campaign for everyone and led by campesinos. What role do you see for other social organisations or NGOs?*

The campaign is led by campesinos and took off from a family farming knowledge base that we do not want to see die. For the rest of the people there is a very important role: to understand, to become

conscious. People have to understand how far this newly imposed food system has taken us, what we have lost and how that affects us. Family farmers are defending their trade. It is our mission on Earth, that we enjoy, that provides our lives with fulfillment. Just as a doctor would want his child to become a doctor, our trade is just as noble, just as important, and we would like to see it continue with our children, so that the cycle is not broken. Our occupation is productive and people have to know the value of food, that it has to do with quality of life and with national interests. That is why it is a campaign for everyone.

The trade of family farmers should be valued. That value has always been recognised and that is why many people have tried to take advantage of it, although nowadays such behaviour is more perverse than before. That consciousness led to slavery, to the creation of large farms, and is the reason why we have been isolated and treated like animals that are needed to do the work. Those who have run society have presented us as fools and they laugh at us. But behind that are vested economic interests that must be understood, and so this campaign has to create new relationships between the rural and urban worlds.

*Meaning that in the non-campesino sector we have a great deal to learn?*

Yes, but you also have important know-how and wisdom to contribute. There's a need for collective creativity. We have to think about how to broadcast the message and how to generate, together, a feeling of rebellion. Because what will happen if we recover our seeds and we keep working and planting, but people continue to buy junk food and continue to feel that what is imported from abroad is better than what we have here? This is a question of generating conscientiousness on both sides. As our associates of Movimento dos Sem Terra (Landless Farmers Movement) have said, this process is part of the creation of new men and women - the foundations of a new society. No wrong lasts a hundred years. Nothing is irreversible, although we are told that it is, and the free trade agreements affirm that it is. We have the strength of the majority. All the processes are evolving and depend upon everyone achieving conscientiousness.

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# Comment...

## Seeds of a new misery

ROGER GBEGNONVI

As soon as he was out of prison for his 'crimes' of uprooting GM crops, the Frenchman José Bové went to Larzac<sup>1</sup>. There he advocated civil disobedience to French farmers, in the face of continuing imposition of genetically modified organisms (GMOs) in the fields of agricultural globalisation. For José Bové and friends to sound the alarm in this way throughout the world, it means that the situation is serious. Do Africans who have been promised happiness – at last – through the use of GMOs know their fate?

GMOs are to agriculture what egg-laying hens are to animal reproduction: these eggs can only be eaten, they cannot reproduce. The same goes for genetically modified (GM) maize. On the surface it looks a thousand times better than natural maize from farmers in Bimbèrèké or Savi, which is small and puny. But the seeds from GM maize cannot be used as seeds for the next crop, and the farmer needs constantly to go back to industry and its traders to buy more GM seeds for the next year's crop. By contrast, today the farmer

simply needs to collect the amount of seeds required from his yield for the next season's sowing, which makes the farmer dependent only on himself.

The globalisation of agriculture through the imposition of GMOs will transform all farmers – including African farmers – into agricultural workers closely dependent on the large western companies which produce and sell GMOs. Farmers won't be the only ones dependent on the industry: all those whom they casually feed with their "chicken bicycles"<sup>2</sup> and their natural seeds will also be affected. Once the imposition of GMOs has succeeded, the companies will be able to sell anything they like and will have the power to determine what we eat.

All the food will come from the same global 'Worldfood bank', so that from Bembèrèké to Boston, via Cancun and Calcutta, we will all eat the same GM produce; to the delight – that is to say the increased profits – of large industry and trading organisations around the world. Complete harmonisation of the food supply will be achieved, and the harmonisation of our thinking will soon follow. When you hear that through the use of GMOs, poverty will be fought off in Africa, you should not only be cautious, you should rebel, as their use will only lead us to misery and dependence.

When the new wealth of the global traders and industrialists is at its highest point, we will realise that Africa, far from emerging from anything, has sunk further into epidemics, pandemics, famines, revolts and ridiculous wars. The humanitarian ballet will then be in full swing. Religious protestations in Rome will continue to support the Catholic-Italian campaign which has suddenly sprung up to appease tensions in Africa which, of course, has nothing valid to say about the merits of GMOs. This is a cynical and humanitarian bluff from the universal dogooders. We should not simply be cautious, we should rebel. Today we need to fight against GMOs with our minds and spirits, so that tomorrow our children do not physically take up arms in a war against themselves and against us, their parents. In this way, we can stand up to the indecent crusade from all corners from those who think that the GMOs are good enough for Africans.

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### Footnotes

<sup>1</sup> an anti-globalisation festival held in August 2003 in France

<sup>2</sup> "Poulets bicyclettes" (chicken bicycles) are frequently seen in West Africa. These bicycles do the rounds of the villages before selling the chickens in town, and many families are dependent on this as a source of income.



Photo: FAO

A 'poulet bicyclette' doing its rounds. The chickens are sometimes attached in a basket on the back.

