

## Topico 303: BsAs Meeting - Biodiversity

Has the time come to look at the blind alleys into which we have led ourselves ?

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The following paper is directed at members of non-governmental and civil organisations. It aims to analyse some tendencies and effects of the work of NGOs and other social organisations around the problem of intellectual property rights of life forms and knowledge, and in relation to the definition of 'farmers' rights'. The analysis was made with the knowledge that the majority of members of NGOs and social organisations have been battling for many years against different forms of inequality and injustice, with a high level of commitment, honour and perseverance, despite working days which are longer than is strictly healthy, with resources which are less than satisfactory, and with constant pressures to "stop being romantics". Therefore, the following discussion does not at any time question the intentions, but focuses on current and potential results of work being done. And for every certainty or error, the writer assumes her own quota of responsibility!

1. What has been achieved in the fight against Intellectual Property Rights of life forms?

Nothing for which we can feel satisfied nor proud. The GATT agreement remained exactly as the fiercest defenders of intellectual property rights wanted. Developing countries have adopted or are adopting legislation where even more is conceded than demanded by GATT or the free trade agreements. Intellectual property rights on life is accepted in FAO documents and in the Biodiversity Convention. The only international research centre which opposed property on life today proposes a system in which intellectual property rights are an integral part, the Global Plan of Action of Plant Genetic Resources takes intellectual property rights for granted. The only triumph, now at risk, is that of NGOs and European social organisations with the European parliament...

The failures do not necessarily indicate that what we are doing is misguided. Indeed, they could be indicating, more than anything else, that we are confronted by forces so powerful that any triumph will take many years and a lot of work. However, each failure should be critically analysed, and the general outcomes laid bare, so as to use our strengths in the best possible way for future tasks.

Until now, this would not seem to have been our style. In the face of each failure, we have tried to look for the good aspects. When GATT was signed, we were happy that the sui generis system remained, and we centred our hopes on this. When the sui generis system began to change in to another form of UPOV 91 (or into something even worse) we became interested and began to look for solutions in the rules for access. In so far as these rules are becoming a deplorable reality, it is very likely that we will see the emergence of honest and will-intentioned attempts to secure "just contracts". The whole process has been characterised by travelling from forum to forum, from summit to summit, always convinced that the fight at the next international meeting is one we must not miss. When the Rnext fightS has been lost, we have lacked the capacity to look back and analyze why we are continuing to lose ground, but instead we have concertrated afresh on the next opportunity, sayin! g again that we must not miss it..... until we realize we have missed another yet again.

The most serious problem is that this process has been accompanied by an unconscious and progressive abandonment of positions, and a growing confusion in our proposals. In Latin America, the fight against patents became more widespread in 1991 and 1992. At that time there was no doubt that the opposition to intellectual property rights on life forms was total. When intellectual property legislation began to become reality, there was a shift in positions, which, like it or not, no longer focus on total opposition, but on special regimes to exclude indigenous and peasant communities. For the same reason, the present discussion dedicates a large part of its efforts to defining an intellectual property regime which is 'different' to the industrial system.

This declaration...aims to present some fundamental points that we feel should be taken into account by Latin American and Caribbean countries in order to be included in the report on the State of Plant Genetic Resources and the Global Action Plan....

9. Adopt the premise Rfirst the right then the accessS. In order to achieve this, there must be urgent redrafting of current legal instruments concerning Intellectual Property Rights for Genetic Resources, so that the formulation of Collective Intellectual Rights is supported. TRIPs therefore should not be considered as the only

alternative to sui generis systems of intellectual property rights.

Source: Declaration of some civil society organisations from Colombia, for the Latin American and Caribbean meeting on plant genetic resources. Semillas N6, April 1996.

In other words, we have moved from a position of total opposition, to tackling a problem and abiding by the rules of the game as defined by those who created the problem. If such a change of positions were based on an analysis based on why a complete opposition to intellectual property is inadequate, or why a system of 'different' intellectual property is the solution, now it only falls on us to take our respective positions. But this analysis did not take place, at least not by NGOs or civil organisations, and when one specifically asks, it would seem that we all share an equally radical opposition to intellectual property rights on life forms. Given this contradiction, it would appear to be time to look back a little and to ask ourselves again RWhy?S and RWhat we are fighting for?S and, especially, RWhat are we really achieving?S

Why do we oppose intellectual property of life forms?

The most common reasons given, include: Because it attacks beliefs and basic rights such as the sacredness of life, free flow of knowledge, freedom of information, etc

Because it limits or impedes access to and control of fundamental resources for peasant and indigenous communities

Because it destroys local and indigenous systems for knowledge, use and exchange

Because it reinforces commercial and monopolistic exploitation of resources and knowledge cared for by local and indigenous communities

What are we fighting for?

So that and indigenous communities to have free access to and rights over existing resources, whatever their origin

So that these same communities can maintain and reinforce the systems for innovation and creation of knowledge,so as to produce and exchange according to their needs and ojectives, and use resources as they think best

To guarantee that rural communities are the primary beneficiaries of the resources which they have created

To safeguard cultural diversity and world views, not determined by the globalisation of markets

Are we increasing access to or control by rural communities to existing resources?

Possibly yes, but not through our work on intellectual property. We have been unable to stop UPOV and patents, which is a fundamental restriction, although we have not yet felt its effects in Latin America.  
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What is being achieved through access regimes? This seems to be our next focus.

The most developed access regime in this continent, the Andean Pact, does not give improved access; but prevents means of exchange, which until now were totally free (for example, between farmers and national universities); and could mean that farmers are forced to hand over their resources. This regime was developed by the governments in the Pact, so we should not be surprised at the characteristics. However the proposal made by civil organisations in Colombia - (probably the proposal which was developed with the highest level of participation by members of civil organisations, and which possibly will be used as an example in the region)- contains similar or worse limitations, as shown in the following extract:

Art. 50 National authority on access to genetic resources will negotiate, through a special regime, the following requests: requests from local communities, to investigate or make inventories of resources in their territories requests whose specific objective is to carry out research in to resources which are known to have a collective knowledge associated with them.

Art.51. When the general regime is applicable, the contract should contain the following as a minimum: e) Indications of security and guarantees, such as: 1. Agreements of confidentiality, consistent with not divulging to t third parties the aspects of the process.....?

(proposal by Ad-hoc Biodiversity Group of Colombia)

What does this proposal mean? It would seem to indicate that it the communities are left without the capacity to determine for themselves the study of their own resources, or the flow of their own knowledge. Who is going to monitor whether the members of indigenous or peasant communities share a certain knowledge, just because a contract of confidentiality exists? Who will stop them from studying their own resources? Will they be put into prison, or will a fine be imposed if they break the contract or law by doing what they have done for centuries? Will that mean transnationals can, in their turn, refuse to acknowledge contracts?

The self-imposed restrictions and the acceptance of patents were sometimes even made on the basis of decisions by indigenous organisations of recognised strength and authority:

Public, private, national and foreign institutions, universities or researchers, which want to carry out research in our territory must comply with the following requirements:

11. The researcher must obtain consent from the OIA (Indigenous Organisation of Antioquia) and the community to:

11.3 make commercial use of, or seek patents or licences for any material or knowledge

Source: "A decision by indigenous people of Antioquia", in Semillas, No.6, Bogot, Colombia, April 1996

Are these organisations aware that by agreeing to accept patents they will lose control and even their rights to the use of certain resources and knowledge?

Are we making progress in the protection of local and indigenous systems of innovation and creation of knowledge?

Although this has always been the intention, many of the concepts and regulations which are now being developed, seem to do the opposite. We appear to be submerged in a conceptual chaos as we try to develop "indigenous or community equivalents" of the fundamental concepts of the current system of post-industrial property. And thus we talk of "collective intellectual property", or the "just and equitable distribution", without analysing if such concepts are really compatible with non-western systems of knowledge creation.

On repeated occasions, indigenous and peasant organisations which participate in this struggle have made us see that each time we talk of "my", "your" or "our", we are not necessarily talking of property; since in indigenous and peasant societies, (and even in the best of western humanist tradition), your, my and our is also associated with the concept of a gift, which is not adaptable or saleable, cannot be restricted and can certainly not be monopolized.

What difference is there between a gift and property? With the right to enjoy a gift (through ways as varied as use, sharing or reflection) we owe it to ourselves to protect it, strengthen it, ensure its good use when needed, share it and pass it on as an enriched legacy. Rural societies - indigenous or peasant - have understood in some way or other that the weather, soil, water, plants, seeds and the knowledge associated with a gift, such as is the family, community, the capacity to be in contact with God, nature and life are gifts. For indigenous communities, these are sacred gifts, and the most sacred come only to those who have special powers and capacities for communication and sharing. Therefore, whoever does not nurture every one of these lays themselves open to unhappiness and decline.

I wonder if the ground has anything to say? I wonder if the ground is listening to what is said? I wonder if the ground would come alive and what is on it? Though I hear what the ground says. The ground says, it is the Great Spirit that placed me here. The Great Spirit tells me to take care of the Indians, to feed them aright. The Great Spirit appointed the roots to feed the Indians on. The water says the same thing. The Great Spirit directs me. Feed the Indians well. The grass says the same thing. Feed the Indians well. The ground, water and grass say, the Great Spirit has given us names. We have these names and hold these names. The ground says, the Great Spirit has placed me here to produce all that grows on me, trees and fruit. The same way the ground says, it was from me man was made. The Great Spirit, in placing men on the earth, desired them to take good care of the ground and to do each other no harm.

Source: Touch the Earth, Discourse of the Young Chief, leader of the Cayuses of North America, at the time of preferring to hand over these lands to the government of the USA rather than sell them, in 1985.

Concrete expressions of this world view are infinite, but perhaps the most universal is that seeds and knowledge are shared with pride, and are presented as a great honour. This appraisal and form of sharing has been and is a fundamental factor in the flow and creation of knowledge, in the creation, adaptation and dissemination of diversity. It was also a factor of survival and cultural predominance for indigenous cultures.

Why are there so many non-indigenous peasant communities in Latin America, whose knowledge has primarily indigenous roots? Precisely because the indigenous people established exchange systems with them, and the free flow that allowed them to 'absorb' culturally in to Creole communities, even nowadays, despite being subject to violent and constant aggression from white society. 500 years of cultural resistance was possible because the indigenous culture, and the peasant culture derived from it adapted themselves in order to flow and continue and endure ! through each opportunity for freedom which was either left to them or presented itself.

And one of the hardest blows against these cultures - the Green Revolution - was effective because it managed to prevent the flow of local knowledge, as a result of imposed disdain. Thousands of farmers and local innovators, thousands of indigenous elders, shamans and wise people, kept their knowledge secret so that they would not be shamed; it took the Green Revolution little more than one generation for a large part of this knowledge and associated resources, to become weakened and die through lack of use and exchange. Whether the system of reclusiveness is caused by shame, legal threat or some system of property, the end result will always be the same.

There is a second kind of destruction associated with converting a gift into a property, and that is related to value. Conversion to property is a loss of value and sacredness. How would a community or village be affected by seeing its most central values being diminished? Would it still be able to exist with dignity and creativity? Would it be possible to maintain mechanisms for the protection of resources and knowledge if these are converted into merchandise? Whilst we do not have a deeper understanding of the answers to these questions, whatever property mechanism concerning life and knowledge - regardless of how Rcommunity-orientated it is - is at least a case of Russian Roulette. Upon searching for answers we should be aware that in many of the proposals for sui generis systems we have used exactly the same supposition as many representatives from industrialised countries during international negotiations: namely that protecting property rights on biotic resources is equivalent to protecting knowledge and biotic resources. In reality, the former is becoming a powerful weapon in order to destroy the latter.

...it seems that there is a trade-off here which needs to be made clear. Proposals which have been made to introduce sui generis legislation to provide means for the recognition and registration of community rights to traditional knowledge, have the principal intention of protecting indigenous knowledge and biotechnology from being monopolised by commercial interests. A cost may be that they facilitate the

commodification of indigenous knowledge albeit in a less exploitative manner, the social implications could nevertheless be serious and need to be confronted.

Marcus Colchester. RTowards indigenous IPRSS, published in Seedling December 1994.

Finally we should also recognise the fact that, the imposition of property rights systems on life and knowledge in any of its forms, will also affect Western culture which will lose values and fundamental rights, as well as possibilities to create knowledge. Firstly, although often narrow, fragmented and anthropocentric, the sacredness of life has been an essential part of the beliefs and values which give meaning to life, work and struggle for those of us who are not indigenous nor farmers. This is not just something that indigenous communities and farmers aspire to and fight for, neither is it a favour that we are doing them from other levels of realisation and sense of existence. It is a favour that we are all doing for ourselves. Secondly, the basis current of scientific development is created out of explicit supposition (although sometimes fully complied with and respected) that knowledge is a common good created for the common good. More far reaching than the manipulation of science by economic or political interests has been the exchange of experience between scientists has been a basic tool to speed up the creation of knowledge- which is now being lost at an alarming rate.

This concept was behind the principles of education for all, democratic university and national science, for which we worked and fought over decades in Latin America. Despite the narrow concepts of western ideas this last example reminds us that there are western values and rights which are also being violated, and which no-one can force us to renounce, especially if we want western knowledge to overcome its limitations. As many people have already said, peasants and non-peasants, indigenous and non-indigenous, we all have the right to say NO.

4. Another principle is the right to say "NO". Some call it the right to dissent or the right to cultural objection. This is a fundamental right.

Source: Final conclusions of "International Political and Legal Seminar on Access to Genetic Resources and the Protection of Indigenous and Local Rights", Semillas No.7, June 1996

The logical step would be to exercise this right and reject completely intellectual property rights. Why is this not done? Why do we continue

negotiating, seeing if we can limit the damage whilst agreeing to be governed by rules that we know to be very harmful? Have we lost hope? Are we too afraid? Do we feel cornered? Do we know desperately that something must be done, but do not know what? The effects of desperate action are already beginning to be seen, and none of them are positive.

Have we helped to strengthen some guarantee that rural communities will be the first beneficiaries of the resources which they have created?

Again, if we have achieved this it has not been through our work on patents and intellectual property rights. Despite our lobbying and negotiation on patents and cultivation laws, the balance sheet shows the growing imposition of laws and regulations which arrange, facilitate and organise the appropriation of resources, but do not prohibit it. What has been happening around the issues of access regimes and bio-prospecting contracts would seem to indicate that we are embarking on a suicidal route.

Is there any difference between the contract signed by the Awa Federation and the proposal by Pfizer, an Ecuadorian NGO? The contract signed by the Awa Federation is much worse; it gives no guarantees, but obliges the Awa to hand over their knowledge and for the Federation to become a policing force for its own town.

2) The results of research will be kept confidential by all parties, and publications will be postponed until the PDT (Programme of Therapeutic Development of the US National Cancer Institute) has the opportunity to proceed with a patent in the USA on any of the isolated agents.

12) In the event that the agent (patented) is transferred by licence to a pharmaceutical company for production and marketing, the PDT will make the best effort possible to ensure that royalties and other forms of compensation are given to the Awa Federation and to individuals from the country of origin, the amount will be negotiated with the National Cancer Institute in consultation with the organisation of the country of origin.

The role of the Awa Federation will include the following:

2) If the Awa Federation possesses any knowledge on the medicinal uses of some plants by some of the population or a healer, this information will be used to guide collection of such organisms as a priority, wherever possible. Details on the administration methods used by healers will be commensurate with those cases which are suited to appropriate extraction

Source: Contract between the Awa Federation and the National Cancer Institute, signed in 1993 for the collection of plants with anti-cancer and anti-AIDS capacities.

Is it possible to achieve "just and equitable" contracts, which benefit the communities of origin? What does this mean? 10% of the utilities, 50%, 70%, 90%? The transnationals and research institutions are not disposed to giving more than 1 or 2%, so that if one community demands a 20 or 50% share, they will go to another community until they find what they want at a rate which they determine. Contracts are not drawn up the transnationals or certain scientists have taken local laws into consideration, they are being instigated by transnationals because they guarantee local cooperation, thereby increasing efficiency. Let us suppose for a moment that the indigenous people and the peasant communities are sufficiently organised to achieve a high and satisfactory percentage. In exchange for what? The transnationals will not make a contract without the possibility of patent rights or confidentiality clauses. Should we let a community or people resign itself to prohibition ! of sharing of its knowledge with whoever it wishes? Should peasants and indigenous people ask for a contract each time they share something? Will the NGOs set up a service of lawyers to give legal advice to local and indigenous communities on how and when they can or cannot use the resources which they were given, so that there is no infringement of laws or contracts and someone ends up in prison? Should we advise each community never to share any knowledge or resources, in order to maintain the future possibility of signing some bioprospecting contract? Should body searches be imposed on visitors, to ensure that they do not take away any material which is subject to an exclusivity contract? But above all, can local communities benefit from certain resources if they do not have complete freedom to use, expand and develop them?

It could be argued that local communities are also losing control of their resources, and that contracts at least assure them some benefit. But will that end bio-piracy? We can analyse a concrete case. A recent communication from Edward Hammond, at RAFI, informed us that researchers from the University of Colorado have patented a variety of 'quinoa' for specific use in genetic improvement. Let us suppose for a moment that the researchers in question had wanted to avoid bio-piracy, or that the community which handed over the material was very well organised and succeeded in getting a contract where the owners of the patent promise to pay 50% of earnings to those who gave them the material (a percentage much, much higher than any contract signed to date). In this case, the problem of bio-piracy would be "solved" by the researchers. Let us suppose now that other communities (even from other Andean countries), with similar traditional varieties to the one patented, know of it

discover in the future some similar commercial use for the characteristics already patented: if the patent is accepted in their country, they would have to resign themselves to not using it, or to paying royalties to the patent owners, half of which will go to the community or government which signed the contract, which would now be the bio-pirate.

Is there any chance of resistance, by refusing to hand over any resource or knowledge? To make this possible, every farmer or indigenous person would have to become a guard, and many would need to be armed, because extraction cannot be stopped by a simple, well-worded request. What would happen if some farmer decided to hand something over? Does he go to prison, is he exiled, or do we ask WWF to call the army?

None of this is intended to deny the rights of every local community to refuse to share their resources and knowledge. It merely underlines the fact that local control has to be absolute. In the same way that no contract or law should be able to oblige them to hand over what they have helped to nurture or safeguard, no law or contract or circumstance should oblige them to maintain a monopoly over themselves.

The difficulty in which we find ourselves, with regard to bio-piracy, has arisen because the basic problem is not bio-piracy; the deeper problem is essentially about appropriation and monopolization of life and knowledge. One could negotiate contracts with high royalties for those who have handed over resources, but this would not prevent the surge of serious conflicts between rural communities, even across national borders, nor will it prevent the mortal attack on local cultures through the imposition of confidentiality. Knowledge which is not shared or enriched by other shared knowledge, neither grows nor evolves, and finally dies out.

Resources that are not free and widely known, appropriated and explored by a community, lose their value and under conditions of territorial pressure tend to become fragile and endangered. Moreover, contracts are not only incapable of overcoming bio-piracy, but will institutionalise the destruction of the same cultures for whose rights and very survival we claim to be fighting.

However, bio-piracy IS a problem and we must fight it. Bio-piracy is the extraction of exorbitant and monopolistic earnings based on, or at the cost of, local resources and knowledge. It is also the theft and destruction of local resources in order to sell the merchandise, or the forced imposition of a certain supplier. If this is what we are fighting, we should not ignore that the big conglomerates will continue to make such profits while they have a market; and that there will always exist some form of extortion, monopoly and destruction of

resources through ignorance, disinformation, threat, ingenuity, carelessness, good faith, submission or the desperation to survive. The only way to fight the monopolies is to fight mega-markets. This will only happen when we regain the diverse systems of production based on local resources and knowledge, when agriculture stops being a machine consuming inputs, when farmers regain the right to use and develop their own technology, ! when we stop eating the same foodstuffs in Manila, Pittsburg or Concepcion, and when good health does not depend on Monsanto or Ciba-Geigy. And this will also be the only way in which indigenous people and farmers become the first beneficiaries of what their societies have created and can keep creating.

## II What have we achieved on the definition of Farmers' Rights?

The history of Farmers' Rights is about how a promising advance was stopped en-route. No-one from the NGOs and civil organisation denies that the emergence of Farmers' Rights was positive, and that we welcome with hope that finally an international body is beginning to recognise that farmers have created and conserved the agricultural biodiversity from which we all benefit. Simultaneously, there is a very wide consensus that there are still many problems to tackle, especially the lack of real tools for application and the total lack of money for implementation. NGOs then dedicated a large part of their energies into proposing ways for funding and mechanisms to ensure that benefits come to the farmers and do not remain tied up with any national or international bureaucracy. Until now it would seem that there is a clear conviction between NGOs and civil organisations that Farmers' Rights and Intellectual Property Rights are of a similar nature.

Recently it became clear that the isolated compensation of other factors was partly because some sectors sought to compare Farmers' Rights with Intellectual Property Rights thereby perverting the original concept and partly because the mere handing over of money did not solve basic problems. The efforts then focussed on the search for definitions that were wider than Farmers' Rights. The members of Seed Action Network in Europe made a landmark with the first explicit proposal, which then served as a basis for later proposals.

Defining Farmers' rights as an intellectual property right carries several problems. One is that most certainly, such rights will be vested in governments with no guarantees that the farmers will see a direct benefit from and support for their work. Another problem is that it could impose further restrictions on the exchange of genetic resources. Clearly, if the point is to set up a better system of access to and control over genetic resources, it doesn't seem that fighting for further restrictions along counter property lines makes much sense....

Farmers' Rights, in that context, should perhaps be redefined and strengthened to spell out a right to choose a development path and the right to develop capacities to move down that path successfully. In terms of genetic resources, it would mean that it should spell out:

- 1) the human right to choose what kind of seeds to plant, traditional varieties or HYVs, without being forced by guns, price policies or credit schemes;
- 2) the civil/political right to community organization necessary to develop and carry out local genetic resources programmes;
- 3) the social right to technical training in adapted conservation, storage, breeding and seed production techniques;
- 4) the world community right to financial and scientific backing to make all this possible

Source: SAN, Second European Network Meeting, Final Report, 1991

The participants consider that, at least, the following rights for farmers should be recognised by society as a whole, and they understand that the work of NGOs should integrate fully the respect for and promotion of these rights:

- a) The right to choose freely the production system to be used, which implies: \* no discrimination or conditions on the different technological options; \* no policies such as the credit schemes or agro-chemical subsidies which might affect their production or market options.
- b) The right to rely on a productive base, including the right to full control over genetic resources which may be of use, value or interest. This implies the right to control the process of production, selection and improvement of seeds.
- c) The right to maintain or respect own culture and all associated knowledge, including history and traditional knowledge. This implies the right to respect for their culture and tradition, and their own forms of creation and development.
- g) The right to decide freely on the exchange of information and germoplasma.
- h) The right to repatriate of germoplasma, unconditionally and without mediators...

Conclusions of the First LatinAmerican NGO Seminar on Intellectual Property, organised by CLADES-RAFI, Buga, Colombia, 1992

However, something happened along the way which prevented us from converting these proposals into powerful targets or into real, concrete situations. Was it the lack of work on the issue? Was it the incapacity to diffuse the proposals or to build wider support? Was it that we were too occupied in more urgent struggles, such as GATT, UPOV and new national laws on industrial property? Was it that we did not know how to convert general proposals into specific realities? It would be worthwhile to make the effort to understand the causes of our ineffectiveness, because the certain fact is that between 1992 and 1993 we have advanced little in this line.

Unfortunately, political realities never remain static. On the one hand, regional governments have progressively come closer to the concepts of Farmers' Rights and Intellectual Property, up to the point that official documents are characterized by always grouping concepts together.

3. To develop and harmonize national legislation on the subject of plant genetic resources, in particular with relation to accessing to genetic resources, the rights of farmers and their relation with intellectual property rights.

Conclusions of the (Government) Sub-regional Meeting on Plant Genetic Resources for South America (preparatory to the Technical Conference in Leipzig), August 1995.

On the other hand our discussions as NGOs have not stopped drifting towards the same confusion, perhaps due to the fact that the discussion on farmers' rights was mixed with the discussion on a sui generis system, and we gradually arrived - consciously or unconsciously - at trying to convert farmers' rights into part of an alternative to intellectual property rights as defined by GATT.

The right to collective property should lead to a recognition of non-Northern collective intellectual property rights. If defined well, both Farmers' Rights (in the International Undertaking) and the rights of local and indigenous communities (in the CBD, article 8j) could be mechanisms for such rights as they relate to genetic resources and biodiversity. Communal rights would also be a step in the right direction for the definitions of sui generis rights as called for in the GATT/TRIPs agreement

Towards a biodiversity community rights regime, Seedling, October 1995

There are two big problems with this type of proposal. First, the alternative to intellectual property systems is "NO to intellectual property", in the same way that the alternative to slavery is "NO to slavery". The alternative is not a sui generis system, since if we

accept sui generis we must accept that a generic example exists. On the contrary, the expression sui generis has no meaning.

Secondly, the problem with the concept of intellectual property of knowledge and life forms is not whether it comes from the North or South, it is simply the concept in itself, which has never been part of indigenous or peasant systems.

Regrettably, the progressive deflection of discussion towards alternatives or exceptions within the same system has robbed us of precious time to determine what is required, independently of whether or not it fits within a pre-determined definition of regulation. This is especially serious when, for various reasons, we are confronted with the demand to define "now" what Farmers' Rights are

In a hopeful attempt, however, NGOs meeting in Leipzig drafted a resolution about Farmers' Rights which recuperates, reinforces or improves on earlier drafts. Perhaps this was due to the wide variety of participation and the presence of farming organisations in the discussion. The following two directions should be born in mind.

#### In Safe Hands: NGO Resolution on Farmers' Rights

Transnational corporations and the associated globalisation of the economy are destroying the livelihoods of women and men farmers, indigenous peoples and all collective groupings. We need to combine to resist these forces.

Southern countries rich in biodiversity should strengthen their control over their biological and cultural diversity. But even more important, the farming communities and indigenous peoples that have nurtured and developed that diversity should recover the rights over these materials, as a basis for sustaining their livelihoods. NGOs should take a rational stand to push for the definition and implementation of these rights in the national and international fora.

It is important to clearly recognise that Farmers' Rights and the Rights of Indigenous Peoples are of a different nature, and should be complementary and mutually supportive. The UN draft Declaration on the Rights of Indigenous Peoples and the International Labour Organisation's (ILO) Convention 169 should be endorsed and implemented.

The central objective of Farmers' Rights is to ensure control of and access to agricultural biodiversity by local communities, so that they can continue to develop their farming systems further and sustainably. Farmers' Rights as now defined by the FAO do not meet this objective and should be radically broadened and strengthened. Farmers must have the

right to benefit from their biological resources and related knowledge.  
The right to save, exchange and improve seeds is inalienable.

Ownership and innovation at the local level are often of a collective nature. FarmerUs Rights should be based upon this principle, and should protect and promote such collectively held knowledge systems and resources. Collective knowledge is intimately linked to cultural diversity, land and biodiversity and cannot be dissociated from either of these three aspects. Any definition and implementation of FarmersU Rights should take this fully into account. FarmersU Rights are not compatible with IPR systems based on private monopoly control.

A major problem in the development and saving of agricultural biodiversity is the lack of rights to land. FarmersU Rights should include legal recognition of land rights.

As Farmers' Rights are an expression of the contribution of farming communities to their innovative capacity as breeders, users and managers of biodiversity, they should include the right to appropriate and participatory research support. The current agricultural research system has to be restructured in the light of this recognition.

It is of utmost importance that all governments restate their commitment to FarmersU Rights in Leipzig and further develop it as outlined above. Any Plan of Action that does not build on the rights of farming communities to the genetic resources they developed would be ineffective or even counter-productive.

Leipzig 16.06.96

III: And now what?

One would have to be extremely presumptuous or blind towards the complexities of the problem we are facing, to try and propose the way out from a paper such as this. There is much work, discussion and the search for our own targets, awaiting us.

Fortunately, no one has an intellectual monopoly on the options; NGO, farmer, indigenous peoples, university, scientific and governmental sectors in many countries and regions are creatively working on alternatives to the IPR monopoly scheme....

- Research must continue on identifying non-western systems of belonging, development strategies sensitive and coherent with local realities, true biodiversity and associated knowledge management, and on preserving/constructing social structures that lead to indigenous peoples and local community control and empowerment.

GRAIN, UPOV: Getting a free TRIPs ride? Published in Seedling, June 1996

The central proposal of this paper is that we should open a discussion process and re-examine all implications of property rights on life and knowledge, learning from what we have done and about the concrete realities that we can already see in front of us. Within this process it seems important to propose the following points:

1. Let us return to our origins: total opposition to property on life forms and knowledge.
2. Let us be clear about our own targets, especially in relation to Indigenous Rights, Farmers' Rights (defined in a much wider form than given by FAO, as expressed in the NGO resolution on Farmers Rights in Leipzig). The indigenous organisations have advanced much more in these definitions than has been achieved for farmers' rights, very possibly because the farmers have been visibly absent from talks.

The process of clarification and definition of own targets, requires time, as well as a process of deep reflection. Likewise, it is not legitimate to pressurize governments which are meeting next week in Buenos Aires come to a definition of Farmers' Rights. On the contrary, we should insist that they do NOT make any definitions. The participating governments should be pressurized to recognize the right of farmers and indigenous people to define their basic rights, and they should allow time and the necessary conditions so that this definition is developed through participative reflection, without pressure.

Our work as NGOs and social organisations should centre on the fact that for once peasant participation is a reality, and indigenous participation is expanded, turning the NGO resolution at Leipzig on differentiation with complementarity on Indigenous Rights and Farmers' Rights into a reality.

3. Also taking up the Leipzig resolution, as NGOs we cannot separate this work from support and development of sustainable agricultural systems. For the same reason, we should pressurize governments at the next meeting that they must recognize in a more concrete and explicit form, that the protection of agricultural and peasant diversity is fundamental for the protection of biological diversity.

4. We will again take up the right to brandish arguments of culture, ethics and value. If the appropriation of life and knowledge turns our stomachs, because it goes against our basic perceptions, then we have the right to express this, and not to stop until this type of appropriation is not permitted.

5. We should prepare ourselves for a long and complex battle. The meeting of governments in Buenos Aires will probably be as so disillusioning as many others at which we have wanted to apply pressure. If we at least manage to identify our own targets I believe we will have advanced.