

NGO statement on an International ABS regime

I speak on behalf of the undersigned NGOs present at this meeting.¹ We support the statement of the International Indigenous Forum on Biodiversity (IIFB) and congratulate the indigenous peoples on their achievements in securing the UN Declaration on the Rights of Indigenous Peoples. The principles contained in this declaration must serve as the starting point for the ABS deliberations and as minimal standards for a legally binding regime that prevents biopiracy and secures the rights of indigenous peoples and local communities over their territories, genetic resources and traditional knowledge. We also support the demand of IIFB to their full participation in these negotiations. The documents of this meeting clearly show that current regulations and practices in place have not been able to stop biopiracy. Especially user countries have failed to implement the relevant provisions of the CBD.

The international regime should, *inter alia*:

- protect the inalienable rights of indigenous peoples and local communities;
- guarantee free and prior informed consent of indigenous peoples, local communities and countries of origin;
- establish the right to deny access to genetic resources and traditional knowledge;
- define conditions and processes that guarantee truly fair and equitable sharing of the benefits arising from any access;
- require a new free and prior informed consent when the use or user of the genetic resource or traditional knowledge changes;
- ensure participation of all rightholders in order to prevent ABS-agreements from causing conflicts between communities sharing same genetic resources and traditional knowledge;
- establish a multilateral mechanism for benefit sharing of genetic resources and traditional knowledge originating in more than one country or outside national territories such as the High Seas or Antarctica;
- ensure that legal systems in user countries guarantee that users comply with PIC and MAT;
- ensure that legal systems in user countries enable countries and rightholders providing genetic resources and traditional knowledge to enforce their rights in user countries;
- ensure that subsequent to the negotiated access the genetic resources and traditional knowledge can be kept free of intellectual property rights that restrict further access, thus preventing patenting life forms;
- contribute to the conservation and sustainable use of biodiversity.

A certificate of compliance will be an important tool to ensure compliance with, *inter alia*, PIC, MAT and national ABS legislation. It secures transparency concerning the origin of the genetic resource, the traditional knowledge and the negotiated restrictions of use. We welcome the report of the meeting of the group of technical experts in this respect. Such a certificate can only be effective if it is compulsory and supported by respective provisions in IPR-laws and market approval concerning genetic resources, derivatives and the associated traditional knowledge.

The ecological debt of mainly industrialized countries should be recognized. Biopiracy contributed to this debt and is still a major problem. To compensate for this ecological debt, industrialized countries should provide sufficient funding and other support to enable developing countries to conserve and sustainably use their biodiversity.

Today's ECO

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**ECO and the CBD
Alliance thank
Swedbio, CIDA, and
Hivos/ Oxfam Novib
Biodiversity Fund for
their on-going support!**

¹ supported by: African Center for Biosafety (South Africa), Berne Declaration (Switzerland), Church Development Service (Germany), Ecoropa, Edmonds Institute (USA), Forum on Environment & Development (Germany), Global Forest Coalition, Global Justice Ecology Project (USA), Misereor (Germany), Research & Action in Natural Wealth Administration (India), Sobre Vivencia (Paraguay), Third Network Network (Malaysia), Worldwide Fund for Nature

How do you demonstrate that you're not a biopirate?

In January, 2006 the Edmonds Institute and the African Centre for Biosafety released "Out of Africa" - a report documenting cases of "suspicious acquisition" of biodiversity and traditional knowledge by numerous companies and researchers. Among the cases was one concerning Sanofi-Aventis and a plant collected in Gabon. A writer working Sanofi-Aventis eventually interviewed Beth Burrows, director of the Edmonds Institute. Below, find a copy of the original "case" from "Out of Africa" and what was printed by Sanofi-Aventis in their Sustainable Development report of 2006. Following the report is Burrows's comment on what the company said.

Excerpt from 'Out of Africa' (2006):

Medicinal Plants -- Out of Gabon and Nigeria (and possibly other places)

European-based multinational Sanofi-Aventis has patented the pharmaceutical use of extracts from *Uvaria klaineri*, an African plant. Sanofi-Aventis says that the plant was collected in the Gamba region of Gabon and that plant extracts can be used to fight tumors. Sanofi-Aventis' patent application was initially made in Europe and has issued in the United States as US patent 6,579,903. Applications have also been made in Japan (2002547918), Canada (2430466 A1), Taiwan (TW593306), and Argentina (AR035512 A1). Many members of the *Uvaria* genus have documented traditional uses in Africa, in countries as diverse as The Gambia, Sierra Leone, Ethiopia, Tanzania, and Congo (DR). The Sanofi-Aventis patent does not say how the company obtained the plant, although it does reveal that it has determined how to synthesize the compounds, making further *U. klaineri* collection unnecessary.

For more information, please consult: Edmonds Institute. Biodiversity Mystery Theater: The Case of the African Tumor Fighter, URL: <http://www.edmonds-institute.org/mystery.html>

Potential contact for more information: Dr. Gérard Le Fur Vice President Science & Medical Affairs Sanofi-Aventis 174, av. de France 75013 Paris France Tel: +33 1 53 77 40 00 (switchboard)

Response from Sanofi Aventis (2006):

Editors note: The following is verbatim (except for two footnotes relating to the CBD and to the "Out of Africa" report) from Sanofi Aventis Sustainable Development Report (SDR), 2006 of Sanofi Aventis, page 24:

THE EDMONDS INSTITUTE REPORT

In 2006, a report published by the Edmonds Institute (United States) reviewed some 40 cases of suspected biopiracy in the pharmaceutical industry. One of them concerns a drug registered by sanofi aventis that contains a compound synthesized from a plant used in traditional African medicine in several countries.

Information from sanofi-aventis [sic]

Concerning the compound registered by sanofi-aventis and mentioned in this report, the Group has provided the following information: [from] Gerhard Seibert, Department of Chemical Sciences

Was the plant extracted or purchased? Is there any sort of agreement covering the plant?

A sample of the plant was collected by our partner, ProNatura, a French-Brazilian NGO.

We paid to acquire the sample, and we signed an agreement with them in which we provide for the sharing of any profits, present and future, in accordance with the Convention on Biological Diversity (CBD). We informed ProNatura of our plans to file a patent application, and ProNatura presented the applications to the government of Gabon.

Is one of the extracted compounds contained in a medicine that is marketed or marketable?

The compounds that are mentioned are simple kinase inhibitors. No compound has been subject to any development, and we have not synthesized derivatives. There is currently no active research program concerning those compounds, and the chances of obtaining a marketed compound are practically non-existent.

When natural substances are used, what measures are taken by the Group to verify their origin and traceability?

Data concerning samples of plant extracts are stored in our database, INDERNAS. If compounds are identified during any type of research activity, we can go all the way back to the source of the plant.

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Comments from the Edmonds Institute

In addition, the Group interviewed a representative of the Edmonds Institute in order to better grasp stakeholders' expectations, in terms of both practices and transparency.

BETH BURROWS, President and Director of the Edmonds Institute:

"I can only speak for myself and the Institute. Of course, the more pertinent views on these matters - indeed, the only views to be considered in access and benefit sharing negotiations - are those of the people involved, particularly those whose biodiversity or traditional knowledge is the subject of interest by others. That being understood, let me suggest that to avoid even the appearance of biopiracy, all companies and researchers - not only pharmaceutical companies - should make sure that they have the clear prior informed consent of any community whose biodiversity or traditional knowledge they seek. Companies covetous of other people's biota and knowledge should apply the highest standards of law and decency in their dealings. In countries without clear regulation, or where national or regional governments infringe or deny indigenous and/or community rights, companies and researchers will have to approach both local communities and national governments to negotiate access and benefit sharing and obtain prior informed consent. Where that is not possible, companies and researchers may have to forego the research or the biota of desire.

Implementation of just and equitable principles of prior informed consent requires those involved to understand the local rules and contexts, train their R&D teams and academic partners accordingly, raise company decision-maker awareness, and accept the fact that occasionally access will be denied. To ensure company and researcher accountability, evidence of prior informed consent and benefit sharing agreements should be published, in each and every case. While such a procedure may seem burdensome in the short run, given potential benefit sharing costs and potentially protracted and time consuming negotiations, still the effort will be worth it. Ethical ways of proceeding always seem burdensome in the beginning and always prove worthwhile in the long run."

Comment from Beth Burrows, after reading the (above) article:

The company article does not clarify the legalities of access. Indeed, the definition of biopiracy that is offered does not recognize that illegal, i.e., unconsented, access would also constitute biopiracy. It is not clear what contracts ProNature had with Gabon and whether it was Gabon or ProNatura that received payment from and had a contract with Sanofil-Aventis. It is not clear what relationship ProNatura had with Gabon and what were the arrangements between them concerning bioprospecting. It is also not clear whether the company synthesized the simple kinase inhibitor and conducted subsequent research on the synthetic version. Further, it is not clear whether Gabon has access to the data that resides in the Sanofil-Aventis database about its plant. The whole transaction, to the extent it has been described in the article, would seem to argue against the use of NGO middlemen in bioprospecting or in biocollecting and to argue for direct negotiations between companies and the communities and country involved. In short, the article, whether it was meant to be or not, is a clarion call for complete transparency. It is surprising that the company saw the Edmonds Institute as a "stakeholder". Apparently the company confused those who take an interest - e.g., the Edmonds Institute - with those who have an interest - e.g., the peoples of Gabon.]

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Notes about the above

Notice of Potential Conflict of Interest: Burrows, director of the Edmonds Institute, is quoted in a Sanofi Aventis article. The article examines a case that was made public in two publications of the Edmonds Institute, one of which was edited by Burrows, "Biodiversity Mystery Theater: The Case of the African Tumor Fighter" and "Out of Africa: Mysteries of Access and Benefit Sharing" (page 34). Both publications are available online at <http://www.edmonds-institute.org>.

Notice of Potential Copyright Problems: Burrows signed an agreement with Sanofi Aventis, giving over intellectual property rights to the interview their representative did with her. The interview appears in a 2006 Sustainable Development Report that does not seem to have been copyrighted by Sanofi-Aventis. Nevertheless, should readers wish to quote any of the below article, we suggest they contact Sanofi-Aventis for permission. Note: The entire SDR booklet can be found online at http://sustainabledevelopment.sanofi-aventis.com/pdf/sanofi_rdd2006_en.pdf:

ECO NOTES

Paraguay: "La increíble y triste historia de la cándida Stevia y su aldea desalmada": parafraseando a García Márquez

Miguel Lovera

El Kaa he'e, conocido también por el nombre de Stevia, por miles de años viene sirviendo a la gente del Paraguay y el mundo. Sus propiedades edulcorantes (así como otra decena de otras propiedades) han sido descubiertas por nuestros ancestros guaraníes. La Stevia no ocasionó ningún incendio, como el que le endilgara a la Eréndira de la novela de García Márquez su abuela desalmada, pero los capos de esta aldea la prostituyen y venden, como a Eréndira, sin retribuirle nada a sus verdaderos descubridores

Los más altos funcionarios del gobierno del país se regocijan con la complacencia de sus cofrades piratas. Por ejemplo, cuando se le consulto al ministro de Industria y Comercio Ibáñez sobre las 20 o más patentes que la Coca Cola y la Cargill obtuvieron sobre el Kaa he'e, declaró su alegría por la posibilidad de que la empresa ahora utilice, en exclusivo beneficio propio, la planta sagrada de los guaraníes, sin pagarles a éstos ni un céntimo por el uso de su descubrimiento botánico y farmacológico. En un caso análogo, el del árbol del nim (NEEM para los anglófilos), el Gobierno de la India, pese a las ataduras emanadas de su condición país miembro de la Organización Mundial del Comercio (OMC), a las que está sujeto, hizo (y hasta ahora hace) lo que puede para que las patentes sobre creaciones, inventos y material genético indio

sean respetados, sea quien fuere el pirata. Así, en mayo de 2000, una coalición de organizaciones no gubernamentales, científicos, parlamentarios europeos (Verdes Belgas) e hindúes, lograron que la Oficina de Patentes Europea revocara la patente reclamada por la W R Grace, una empresa estadounidense con un frondoso prontuario en los anales de la biopiratería. La lección: la verdad triunfa si se la busca.

Nuestro país esta en manos de piratas locales, y los piratas globales lo saben. Por eso hacen lo que hacen con nosotros.

A nuestro país lo acusan de "piratear" por valor de cientos de millones de Dólares anuales en concepto de electrónica, cosméticos, cigarrillos y licores, fabricados en la China y en las trastiendas de Ciudad del Este.

Esta piratería es ilegal en nuestro país, pero está protegida por el gobierno del Partido Colorado, del que es uno de sus pilares primordiales.

A países como Estados Unidos, los acusamos de piratear por valor de miles de millones de Dólares. Solo en concepto de semillas robadas a los pueblos indígenas, desde los mismos EE.UU. pasando por el resto de América y hasta la India y la China, equivale a unos 3.800 millones de Dólares[1]. El de los fármacos derivados de los descubrimientos realizados por aborígenes de todo el mundo, que abarcan como mínimo el 70% de toda la farmacopea actual, alcanza unos 415.000 millones de Dólares[2].

Nuestro gobierno debería, como dirían los más encumbrados filósofos del coloradismo, que viene

engendrando portentos intelectuales desde el poder que ostenta desde hace unos 60 años, "rascarse las vestiduras" o rasgárselas y actuar enérgicamente en contra del escamoteo de nuestra soberanía y dejar de "buscarle el pelo al gato", aunque éste tenga cinco patas. No hacerlo así, constituye delito de alta traición.

[1] United States Department of Agriculture / Foreign Agriculture Service

[2] ETC Group, *Communiqué* 91, Nov/Dec 2005. Oligopoly, Inc. 2005. [Grupo ETC](#)

International Regime not initiated by Indigenous Peoples

Sandy Gauntlett, PIPEC

The proposed international regime on access and benefit sharing is not something that has been initiated at Indigenous Peoples' request. Neither is it something that we can agree to until we know what it looks like and have had time to go back to our communities and ensure that adequate consultation and capacity building occurs. In particular for Maori (Aotearoa/New Zealand) who are at this very moment undergoing the debate over a national bioprospecting regime, and awaiting the outcome of the most significant Waitangi claim in our history this is a dangerous precedent to set. There needs to be a clear reminder to the Parties that this is not a process of our choosing and it needs our approval before it can be implemented on our lands and territories.

HAVE AN ECO ARTICLE?

Submit via email to jdempsey@interchange.ubc.ca or in person to Le'a Kanehe.

SIDE EVENT TODAY!

"The Problem with Theft: Candid Conversation about Biopiracy"

Co-sponsored by African Centre for Biosafety, Edmonds Institute, and Third World Network

Tuesday, October 9 at lunchtime - about 1:15 - 2:45 p.m.

A light lunch will be served along with news of recent cases of "problematic acquisition".

Room 7A, level 3