



*The voice of the civil society community in  
the international environmental conventions*

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## “Strong Nature”?

*Christine von Weizsäcker, Ecoropa*

It is with pleasure that NGOs supplied buttons to delegates.

Delegates receiving “STRONG NATURE” buttons [should] [shall] put them:

- Option 1:** visibly, including on the outside of the lapels of their jackets, sweaters, conference badge cords, bags, as appropriate;
- Option 2:** out of sight, including close to their hearts at the inside of the lapels of their jackets, sweaters, in pockets, bags, as appropriate;
- Option 3:** a combination thereof.

The concept of the STRONG NATURE buttons includes the following elements:

- (i) Strong nature of the Protocol on ABS, legally binding and with strict and effective compliance.
- (ii) Strong nature of the negotiators with dedication, focus and stamina to achieve it.
- (iii) Strong nature around us, supported by building the third pillar of the CBD.

One delegation, however, due to the specific conditions of their legislation, policies, and measures, put the concept of the button and much of the related text into brackets.

Were we too optimistic when not also ordering a few “WEAK NATURE” buttons?

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*Eco looks forward to seeing you at the 9<sup>th</sup> WG on ABS*

# Agricultural Biodiversity essential for Feeding the World

*Patrick Mulvany, Practical Action*

As ABS closes in Montreal so attention returns to Rome for the start of the uplifting People's Food Sovereignty Forum. It will be followed by the World Summit for Food Security – a mass wake for the more than one billion people who, without access to food, go to bed hungry and do not benefit from the fruits of agricultural biodiversity.

A few weeks ago Rome was also the focus. ABS was at the centre of the 12<sup>th</sup> session of the CGRFA (Commission on Genetic Resources for Food and Agriculture). This followed the empty hurrah of the so-called High Level Expert Forum on how to feed the world in 2050, which came to no consensus, and the successful 35<sup>th</sup> meeting of FAO Committee on World Food Security that decided on a radical reform process for stronger international governance of food and agriculture under their leadership.

ABS for agricultural biodiversity is a subject that needs as careful handling as does the sub-set of agricultural biodiversity within broader biodiversity policy. The handling of the latter by FAO was agreed in Nairobi Final Act) in 1992, which led ultimately to the International Seed Treaty (IT PGRFA). In CGRFA 12 a Resolution was adopted that, between the lines, demands the same treatment for ABS i.e. ABS of agricultural biodiversity should be handled by the FAO Commission (CGRFA).

CSOs, though fewer in number than previous sessions were active throughout the week. In addition to the ABS issue, we highlighted four others that we collectively presented in the final plenary. These reflect the passionately felt views of millions of small-scale food providers worldwide. We said that we expect the Commission to take these issues seriously to heart in its future meetings

a) The central role of women and men small-scale farmers, pastoralists, fishers, Indigenous Peoples and local communities in *in situ* conservation, and managing diversity on-farm in pastoral grazing lands and in local aquatic and forest environments, is critical for securing food supplies in a changing climate. We call for their decisive participation and inclusion in decision making processes of the Commission, its committees and work programmes regarding agricultural biodiversity, especially genetic resources for food and agriculture.

b) Agricultural biodiversity is enhanced by ecological production systems and damaged by industrial crop, livestock and fisheries production. We therefore urge the

Commission in its future work to build upon the findings of the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD), approved by 58 countries, which found it necessary to radically change production systems towards locally-managed biodiverse, [agro]ecological systems in order secure future food supplies in an equitable and sustainable way.

c) Communities of small-scale farmers, pastoralists, fishers and other small-scale food providers, do not look at biodiversity in fragmented components or sectors (like the Multi Year Programme of Work (MYPOW) does), but at the synergy of each component in dynamic, changing systems. Thus conservation and sustainable use should not just be limited to component-specific actions but should look at conserving (and protecting) these dynamic systems, including social processes of exchanges within cultural norms. These systems are undermined by laws, policies, contracts and technologies that restrict access to and control over the agricultural biodiversity they need. Therefore we urge the Commission to include consideration of these issues in the MYPOW.

d) For small-scale farmers, pastoralists, fishers and other small-scale food providers, biodiversity is not only described at genetic, species and ecosystem levels but also includes social, cultural, economic and political dimensions, which affect their lives. In recognition of this, we urge the Secretariat to facilitate the preparation of a state of the world report by these small-scale food providers themselves, in which they can describe the state of their systems for the conservation, sustainable use, development and management of agricultural biodiversity. This would be an essential contribution to your proposed State of the World's Biodiversity for Food and Agriculture.

The Peoples Food Sovereignty Forum will address some of these issues and take them forward. The FAO World Summit on Food Security, co-opted by a minority of countries to promote their interests, will not... In the run up to COP 10, it will be Civil Society that will have to make the links and challenge the destructive, dominant paradigm that destroys biodiversity, livelihoods and communities. And champion the central role of agricultural biodiversity, managed by small-scale food providers, in feeding the world.

## On Intellectual Property:

"We ... need to get the intellectual property (IP) debate right. The world does not need IP: it needs a kind of intellectual integrity. We need to get back to celebrating innovation by communities, innovation as a collective social act, innovation where human beings work together towards a common goal, for the benefit of society, not for the purpose of profit. We need to re-evaluate the relationship between innovation and society and determine whether the social contract that was drawn up in Vienna when the IP system began almost 125 years ago needs to be written. Because it is crazy; it is out of control. It is no longer IP, it is a kleptomonopoly. The rules of the game, once so clear and so strict, that were designed for dealing with microphones and sewing machines, are now grappling with the products, the processes, and even the formulae of life, and that cannot be allowed" -- Pat Mooney, 1996, in *The Life Industry: biodiversity, people and profits*

# Intellectual Property Rights in the Regime – The Hot Potato

*François Meienberg, Berne Declaration*

During past sessions of working- and expert groups, the issue of intellectual property rights (IPR) has always been one of the most challenging and contradictory, and therefore often avoided. One example was the technical expert group on compliance, where after a long debate, it was agreed to delete the whole paragraph on IPRs. This approach will not be suitable for the final negotiations. We have to handle the hot potato and eat it too!

There will be two chapters in the new protocol where IPRs will play an important role: access and compliance.

## ***Patents on genetic resources contradict facilitated access***

Most discussions under the Convention on Biological Diversity (CBD) on access to genetic resources - sometimes qualified as "appropriate" or "facilitated" access - focus on the first access to genetic resources in the country of origin. But in most cases there will be a chain of users, meaning a series of accesses. If there will be something like a "facilitated access" this has to be valid for all accesses, even after the genetic resource has left the country. It is a matter of fact that patents on genetic resources necessarily restrict continued access to them, as a patent holder has the explicit right to deny further access and use.

Therefore it is crucial to incorporate the solution of this problem into a future protocol. An example how this could be done is found in Art. 12.3. (d) of the International Treaty on Plant Genetic Resources for Food and Agriculture:

"Recipients shall not claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received from the Multilateral System"

The ABS working group must elaborate a related article to be part of the new protocol. The wording of such an article should avoid the ambiguity of Art. 12.3 (d) of the International Treaty. Particularly the term "in the form received" should not be used. It has to be stated clearly that no IPRs restricting access shall be granted for the original organism and its isolated components as well as for derived organisms and modified genetic material. If not, the whole CBD will lose its balance, forcing countries of origin to provide facilitated access but giving users patent rights that could prevent any further access for twenty years.

## ***Intellectual property rights – A crucial checkpoint***

Intellectual property rights (IPR) will also play an important role in the compliance aspects of the protocol. There is already specific wording under "Disclosure

requirements" and "Identification of check points" in the text under negotiation.

Some may argue that disclosure of compliance during the application procedure for IPR will not make sense, if a new protocol were to prohibit any intellectual property rights that limit the facilitated access to genetic resources (see above). This is not true as many patented inventions are based on genetic resources but do not contain the genetic material any longer (e.g. a new drug).

The discussion on this issue is not new and the opposition of many developed countries and industry against such disclosure requirements is well known – although it is still hard to understand. Why is there a problem to disclose something you already have to comply with? Or in other words: Why should we allow patents or plant variety protection certificates which are in contradiction to international law?

In the financial sector, Switzerland has played a similar role as many patent offices in relation to ABS. For many years Swiss Banks have been a safe haven for those evading taxes, just as patent offices have paved the way for the commercialization of biopirated genetic resources. But times are changing. Switzerland has been under tremendous pressure from other OECD Countries to disclose the bank accounts of tax evaders, and Switzerland is giving in, step by step. And increased pressure will be placed on patent offices supporting biopirates breaking the ABS laws of other countries. And sooner or later they will have to step in and ask for the disclosure of origin and the compliance with foreign laws or the protocol. It is hard to argue that there should be disclosure if there is a problem with (tax-) laws of developed countries, but denying this disclosure if there is a problem with (ABS-) laws from developing countries.

There is another kind of one-sided view related to this question. Several developed countries say that questions related to IPR should not be discussed under the CBD, but at the World Intellectual Property Organization (WIPO). But exactly the same countries were at the centre of negotiations when IPRs were integrated into the World Trade Organization (WTO) within the TRIPS agreement. And the same countries are always integrating chapters about IPRs in their Free Trade Agreements. There is clearly a double standard here: when it is in the interest of strengthening their IPRs (and that of companies in it) northern countries insist on it being in the agreement, but when it is against their interests they disagree and say it should be negotiated elsewhere.

*(This article is re-printed from [square brackets]. Check it out: <http://www.cbd.int/doc/newsletters/square-brackets/square-brackets-2009-11.html>)*

# Odds n' Ends

## Is the following a Radical NGO-Statement on non-coerced Prior Informed Consent?

*“The Voluntary Consent of the human subject is absolutely essential.*

*This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the subject matter involved, as to enable him to make an understanding and enlightened decision...*

*The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages ... It is a personal duty and responsibility which may not be delegated to another with impunity.”*

No, it is the first of the 10 Principles of the Nuremberg Code, 1947, included in the Judgement against the War Criminals of the Nazi-Regime in Germany. ("Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10", Vol. 2, pp. 181-182. Washington, D.C.: U.S. Government)

Do not tell us that Free, Prior and Informed Consent is a legal concept that is too new to be included into the Protocol on ABS – 60 years, that is two generations later!

*Christine von Weizsäcker, Ecoropa*

## Lessons from Gold Mining for Access to Green Gold

The benefits from Gold Mining did not accrue automatically, or easily, or fairly to neither the original owners of the land, on which the gold was found, or to the people working in the mines. A lot of profit went to investors, and to intermediaries like traders and manufacturers of jewellery. There definitely was no “fair and equitable sharing of benefits.”

The benefits from access to Green Gold will also not automatically, easily or fairly go to the countries of origin and/or the indigenous peoples and local communities on whose lands and waters this gold is found. Nor to the traditional knowledge, innovations and practices which increase the value of that gold. A lot of profit will go to investors, intermediaries and industrial users. Fair and

equitable sharing of benefits will need better efforts this time.

Moreover: Gold is not needed for life and livelihoods. Biodiversity is. The stake is higher. The Protocol on ABS had better really perform.

*Christine von Weizsäcker, Ecoropa*

## Report from Barcelona

Copenhagen is already shaping up to be a huge disappointment for Indigenous Peoples, let alone Mother Earth. In a press statement released in Barcelona, Indigenous Peoples said that they were profoundly disappointed at the lack of political will. They called on Parties to conclude climate change negotiations in Copenhagen with a legally binding agreement. The statement called for:

1. A legally binding outcome in the form of an amendment to the Kyoto Protocol for the further commitment period 2013-2020.
2. A binding aggregate emissions reduction target for developed countries (Annex 1) of 49% below 1990 levels by 2020 and at least 95% by 2050.
3. Recognition that international human rights standards serve as a guide to tackle climate change, underscoring the fundamental, moral and legal obligations to protect and promote the full enjoyment of our human rights including our rights to lands, territories and resources, right to subsistence, food sovereignty, right of traditional knowledge and free, prior and informed consent, among others, as enshrined in the UN Declaration on the Rights of Indigenous Peoples.
4. The full and effective participation of indigenous peoples in all climate change related processes at the global, national and local levels.
5. Ensure the direct financing to and by indigenous peoples and local communities for adaptation and mitigation measures.
6. Establishment of an Expert Group on Indigenous Peoples and Climate Change under the Conference of Parties (COP) of the UNFCCC, and under the Meeting of Parties (MOP) of the Kyoto Protocol, with indigenous expert members and the full and effective participation of indigenous peoples.

*Read Mr. Fiu Elisera's full account at <http://www.cbdalliance.org/climate>*