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### BIODIVERSITY: TALKING IN CODE (public unawareness...)

A deafening silence greeted the start of the 5th Conference of the Parties of the Convention on Biological Diversity. The press and the public, at least in Kenya and I suspect elsewhere, do not seem able to come to grips with the new word – biodiversity – or the immense potential of the Convention for income-generation, nature conservation, technology transfer or social justice. Inside the beautiful UN compound, delegates talk in code and acronyms, while outside, the press and public remain baffled and the potential unfulfilled.

Some questions arise:

**Is it important to reach the public?** I believe that an informed public is the strongest ally of the Convention. **How can it be done?** Glossy books and websites do not reach most people; an effort must be made to translate both concepts and jargon, in a medium accessible to the public. **Who should do it?** Technocrats and communicators need to join hands, as neither is likely to succeed alone.

**When do we start?** How about tomorrow?

## The relationship of CBD with WTO and FAO: The Way Forward an NGO statement

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OP 5 has been urged to ensure that the fundamental objectives of the CBD are not undermined by the TRIPS Agreement of the WTO. CBD should support fully negotiations of the International Undertaking on Plant Genetic Resources of the FAO and consider them as complementary. These parallel international processes have different implications for access to genetic resources and benefit sharing.

This was the resolution of NGOS viz:

Third World Third World Network, Rural Advancement Foundation International (RAFI), Intermediate Technology Development Group (ITDG), Swedish Society for Nature Conservation (SSNC), Council for Responsible Genetics, SEAICE, Diverse Women for Diversity, ECOROPA, Greenpeace International, CODEFF/Friends of the Earth Chile, and Washington Biotechnology Action Council, Kalpvriksh, India and Resaerch Foundation for Science, Technology and Ecology.

The NGO have made two proposals for these purposes:

First COP 5 should send a strong message to the TRIPS Council of the WTO on the question of intellectual property rights (IPRs) over biological resources. "We believe that IPRs over biological resources and patents on living forms will have serious and adverse implications for access to genetic resources and the equitable sharing of benefits. Indeed, it will undermine the very objectives of the CBD."

The developing countries in the WTO have already made it very their opposition and rejection to the patenting of living forms and their deep concerns over the incompatibility of the TRIPS Agreement with the CBD.

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The NGOs urge COP 5 to strongly support the position adopted by these developing countries. This is particularly important given that the TRIPS Council will be considering the review of Article 27.3 (b) in June. Article 27 (b) requires countries to allow for patenting of certain biological resources.

"We believe that this will be an important opportunity for COP 5 to preserve the objectives of the CBD. In this regard we support the Norwegian proposal for active participation by the CBD in the TRIPS Council considerations."

The Consortium further recommend that COP 5 call on the WTO member countries in the review of Article 27.3 (b) to clarify the following:

One, that plants and animals as well as micro-organisms and all other living organisms and their parts can not be patented and that natural processes that produce plants, animals and other living organisms shall be excluded from patenting; and

Two, that any *sui generis* systems for the protection of plant varieties can provide for the following:

- the protection of the innovations of indigenous and local farming communities in developing countries, consistent with the CBD and the International Undertaking in Plant Genetic Resources;
- the continuation of the traditional farming practices including the right to save, exchange and save seeds, and sell their harvest; and
- prevention of anti-competitive rights or practices which will threaten food sovereignty of people in developing countries, as is permitted by Article 31 of the TRIPS Agreement.

Thirdly, that the implementation deadline for Article 27.3 (b) be extended to take place after the completion of the substantive review of Article 27.3(b).

The NGOs also urged governments impose a moratorium on issuance of IPRs over biological materials or over knowledge on the use of biological materials that may have been

obtained from collections held in international banks or other deposit institutions where such materials are freely available. The IPRs should be cancellation, where previously granted.

The moratorium should also apply where such may have been obtained without the prior informed consent of the country of origin or inconsistently with the provisions of Article 15 of the CBD.

The second proposal relates to the negotiations on the International Undertaking on Plant Genetic Resources in the FAO. The aim of these negotiations is to secure an international undertaking, which is adapted to be in harmony with the CBD. The FAO and the COP decisions have already agreed on the mandate and scope of these negotiations.

However a sharp division has emerged among countries. One group, which is being fully supported by the NGOs, wishes to see farmers and other stake holders have free multilateral rights to access to, and benefit sharing from, genetic resources they have developed and used to maintain food security. The other group supports bilateral arrangements and the encroachment of IPRs into these areas.

Consequently, the Consortium is urging COP 5 to give its support for an International Undertaking, to be brought to the next COP as a legally binding instrument. It is hoped the International Undertaking will ensure:

- Multilateral access to these genetic resources for current and future generations, outlawing intellectual property claims on any of the materials or the genes contained therein, or knowledge in the system;
- Benefits are linked to the end use of resources (their contributions to seeds, breeds and food security) and that the benefits to farmers are commensurate with their historical and present contribution to developing resources underpinning food security; and
- Farmers' rights to save, use, exchange and sell seeds and other propagating material and, in the case of seeds and other materials restricted by national law, the right to sell them in their customary manner and markets.

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## Action Now on Invasive Alien Species: Implement Article 8(h)

By Rich Blaustein, Defenders of Wildlife

Today, the world has a rare opportunity to take necessary measures to address the major cause of species loss worldwide: alien species. In its afternoon session Working Group I of the COP will discuss this urgent problem. Decisive action must be taken now. If COP V is serious about addressing this accelerating cause of biodiversity loss, it must go beyond accepting the commendable guiding principles on alien species put forward at SBSTTA V. Specifically, it can begin the development of a draft Protocol and, importantly, strongly endorse the work of the Global Invasive Species Programme (GISP), providing it with a clear mandate for its second phase.

### Why do we need an Alien Species Protocol?

#### An Alien Species

Protocol to the CBD would provide the global community with an effective response to the trans-boundary problem of alien species by ending the uncoordinated and inadequate policies with which communities and nations deal with this continuous problem. It is a global problem that needs a global response.

A CBD Alien Species Protocol would:

1. End the known fragmentation of policy and legal responses to alien species disasters and irremediable damage.
2. Establish specific legal obligations between Protocol Parties.
3. Boost national capacity building to combat alien species problems.
4. Provide the basis for equitable relations in knowledge, technology, and law relevant to alien species.
5. Provide legal guidance to communities, nations, and regions that are either new to the issue of alien species or bewildered by the problem.
6. Address liability and trade issues.
7. Raise global consciousness of the alien species problem and enhance political will to deal with it.



*water hyacinth on Lake Victoria*

#### Action COP V must take:

- Begin the process for drafting an Alien Species Protocol to the CBD
- Adopt the Interim Guiding Principles on alien species
- Strongly endorse the work of GISP and give it a clear mandate for GISP phase II

some observers argue that the biodiversity degradation caused by alien species is the greatest single threat to global biodiversity. The ways alien species invade and wreak destruction on habitats and other species is insidious and often beyond comprehension. Invasive alien species that are introduced into ecosystems in which they have no natural predators or other biological controls very often: outcompete indigenous species for space, food other resources; predate on indigenous species; and introduce new diseases to which indigenous species lack immune defenses.

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## *Alien Species*

The destruction wreaked by these alien species is massive. Two examples may serve to illustrate here: In New Zealand the Australian Brush tailed possum has caused massive deforestation, while in Africa water hyacinth works its way into water systems, preventing local peoples from using their precious water. These two examples are among numerous others in which alien species invasions have caused severe environmental degradation.

Alien species cause more than just ecological damage. The cost to local farms, villages and nations that are operating corrective programs worldwide runs to billions of dollars. Alien species also enter industrial and commercial processes, causing huge economic losses. In the United States, for example, zebra mussels, an alien species that strangles native mussels and enter commercial and industrial pathways, are estimated to have caused billions of dollars in damage by 2002.

Although the situation is critical, it is not hopeless. Action can be taken, but it must be taken now, and the CBD is the place - the sole place - where it can be taken on a comprehensive global level. In fact the CBD has a responsibility to take such action. Article 8(h) of the CBD text directs parties to "Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species." This is not a mere suggestion; it is the articulation of an obligation, a responsibility that must not be avoided if the world is to truly address the biodiversity crisis. Up till now, CBD Article 8(h) has not been realized, and most often it has been either avoided or ignored.

## **COPV's Responsibility**

The time to deal with the problem of alien species is now. Otherwise the situation will become even more critical. By commencing the process of drafting an Alien Species Protocol at COP V the parties to the CBD will show that they will help the nations throughout the world, rich and poor, in building their capacity to address this serious threat. Genuine support and strong endorsement for GISP, by strengthening the draft decision language on alien species, is also imperative. If these measures are taken, the 5<sup>th</sup> Conference of the Parties will go down in CBD history as the moment when parties began to live up to an obligation they all agreed to – namely Article 8(h) - and acted with foresight and commitment to protecting the world's biodiversity for all peoples.

## **Announcements**

- Birdlife International/Nature Kenya lunchtime side-event on 23 May. BOOK LAUNCH...Lunch and drinks will be provided.
- During the CBD, there will be an NGO coordinating meeting each day at 9 am. in Tent 1.
- NGO representatives wishing to help put ECO together can meet at the Jacaranda Room at Landmark Hotel, at 8:00 p.m. each evening. This venue is also available to NGOs wishing to hold meetings in the evenings to address upcoming COP agenda items.

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