



In working group II yesterday afternoon, Brazil took the lead in showing strong support for the statement made by the Indigenous Peoples – (which we have reprinted below) – we sincerely hope that other countries will follow suit and join them, and that the Bureau and the Secretariat will be able to start work on this in the near future.

### **Text of the statement made in WG II**

Numerous member states have expressed support for the full and effective participation of Indigenous Peoples in the dialogue that this working group has been tasked with. For that we thank them. It is the opinion of International Indigenous Forum on Biodiversity that the starting point for achieving this objective is the modification of the procedural aspects of the Ad-Hoc Open-Ended Working Group on Access and Benefit Sharing to be consistent with the procedures agreed to by the Member States for the purpose of deliberations in the *Ad Hoc Inter-Sessional Open-Ended Working Group on Article 8(j) and Related Provisions*.

In particular, we note progressive modifications such as:

- (a) Indigenous Co-chairs – nominated by Indigenous Peoples' caucus;
- (b) Indigenous Peoples representatives informally invited to participate with the Bureau as the Friends of the Chair
- (c) Indigenous Peoples representatives informally invited to be Friends of the Chair in Working Groups, Sub-Working Groups and Drafting Groups;
- (d) Access to administrative support; and
- (e) Amendments to the procedure related to speaking order.

On this particular matter the IIFB have developed draft text for the consideration by the parties which we will make available to the Secretariat and parties for their consideration.

#### ***Proposed DRAFT DECISION ON INDIGENOUS PARTICIPATION***

*Reaffirming* the importance of the full and effective participation of indigenous peoples and local communities in the work of the Ad Hoc Open Ended Working Group on Access and Benefit Sharing and recognising the progressive nature of the working practices of the Ad Hoc Open Ended Working Group on Article 8(j) and related provisions;

*Decides* to support indigenous participation through the adoption of measures, such as: a) providing for timely and appropriate indigenous participation in debates; b) nomination and election of indigenous representatives as Co-Chairs; c) participation as friends of the Chair; d) participation in drafting groups; e) advising the Bureau, and; f) provide the administrative and financial support necessary to facilitate the participation of the International Indigenous Forum on Biodiversity in its advisory role to Parties in meetings of the Ad Hoc Open Ended Working Group on Access and Benefit Sharing.

**Explanatory note:** Regarding the advisory role see decision V/16:

“**Recognizing** the role that the International Indigenous Forum on Biodiversity has played since the third meeting of the Conference of the Parties in addressing the Conference of Parties on the implementation of Article 8(j) and related provisions”

“**Invites** Parties and Governments to support the participation of the International Indigenous Forum on Biodiversity, as well as relevant organizations representing indigenous and local communities, in advising the Conference of Parties on the implementation of Article 8(j) and related provisions.”

# Syngenta to let Mega-Genome Patent Lapse: “Daisy-cutter” Patent Bomb Busted

etc group press release

Following 72 hours of negotiations by e-mail, telephone and in-person, the Swiss GeneGiant Syngenta confirmed to ETC Group last Friday, February 11, that it would allow its multi-genome patent application covering the flowering sequences in at least 40 plant species to lapse at the European Patent Office (EPO), the U.S. Patent and Trademark Office (USPTO) and around the world. Syngenta's announcement follows a month-long campaign launched by ETC Group and supported by farmers' organizations, trade unions and other civil society organizations.

The patent was called the “daisy-cutter” after the world's largest conventional bomb, which has parachuted from US Air Force cargo planes to clear troop-landing sites in Vietnam and during the Gulf and Iraq Wars. The daisy-cutter bomb explodes about three feet above the ground and delivers “shock and awe” by destroying everything living within a radius of 1000 feet. The Swiss company's patent application (WO03000904A2/3) claims, among other things, discovery of the DNA sequence coding for the flowering of the rice crop. Beyond rice however, the company also claims the sequence as it appears in many other major food crops from wheat to bananas.

“Syngenta's application even claimed monopoly over the flowering process in yet-to-be discovered species that use the same sequence,” says Pat Mooney ETC Group's Executive Director. Mooney met with Syngenta in Bern, Switzerland last Thursday and received a telephone call from the company Friday morning confirming it would let the patent application lapse.

Mooney and Andrew Bennett of the Syngenta Foundation debated the patent at a Swissaid Conference on Gene Technologies in the Swiss capital before an audience of 240 government- and civil society- representatives including the Minister of Agriculture of Zambia and a number of other Swiss corporation officials. Hope Shand of ETC Group wrote to Syngenta on January 25th calling upon the company to abandon its patent claims.

The company replied in an e-mail dated February 8th suggesting that the company was not pursuing the patent in developing countries. “However, it was ambiguous about whether or not it would maintain its applications in Europe and the United States,” Mooney said in the debate. Following the public encounter, Mr. Bennett said he would attempt to clarify the situation as soon as possible. The February 11th phone call from Syngenta made clear that the patent application will be allowed to lapse around the world. Subsequently, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) in Geneva also received a letter from the Corporation confirming that the patent application will be allowed to lapse.

***More Mega-genome Patents Pending?*** “We're delighted that the patent is being abandoned,” says Pat Mooney now back in Ottawa, “but we are concerned that there are still other mega-genome patents out there held by this company and others that could pose a major threat to food security. We need a commitment from the Gene Giants that mega-genome claims will be withdrawn everywhere.”

***Systems Failures - WIPO and EPO:*** Prior to the January 10th release of its *Communiqué* ETC Group contacted the EPO, the USPTO and the World Intellectual Property Organization (WIPO) asking their help in rejecting the patent. “We were encouraged that both WIPO and the EPO responded quickly and rather sympathetically to our concerns,” says Kathy Jo Wetter of ETC Group's U.S. office. “On the other hand, we were shocked to find that not only were these

intergovernmental bodies powerless to intervene in a process that would attack world food security, but also that any decisions made by the EPO would not automatically be passed on to the patent offices of those developing countries giving national consideration to Syngenta's application. While we were fairly confident that the EPO would reject the most outlandish aspects of the claims - conferring a monopoly on the flowering mechanism for 40 species - if the EPO rejection was not communicated voluntarily by the company, the other countries in the Patent Cooperation Treaty associated with the EPO would have no way of knowing. It is often the case that patent offices in Africa, Asia and Latin America - not unlike their European and American counterparts - are overstretched by the sheer number and technical complexity of patent claims and sometimes approve patents without close examination. We need to talk to governments at the EPO and WIPO about how to change their monitoring systems," says Wetter.

**Silence of the Lambs - FAO and CGIAR:** ETC Group also wrote, in the first week of January, to the Director-General of FAO and the Chair of the Consultative Group on International Agricultural Research (CGIAR) asking them to intervene against the patent in defense of world food security. "It is shameful that we heard back from the EPO, WIPO and the Company, but neither FAO nor CGIAR has yet to lift a finger to defend the interests of the world's hungry. These organizations need to get their act together."

**The Patent-too-far:** "As much as we welcome Syngenta's offer to let this patent application lapse, we believe the company should now actively withdraw its applications in every jurisdiction to avoid risk and uncertainty. Syngenta must also examine its portfolio of pending patents and withdraw any that have similar mega-genome claims. National patent offices should also act immediately to reject any pending claims of this nature. The bottom line is that this company sought monopoly control over 40 major food crops. Had the patent been granted, the company's control would have been legal and enforceable and would have spelled disaster for world food security. Once a patent is granted it could take more than half the lifetime of the patent to get it rescinded."

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### **BioPiracy takes to the high seas: Craig Venter's Epic Voyage.**

It was Venter and his former company Celera that raced, unsuccessfully, to code the Human Genome and privatise it, before public sector researchers could prevent this. This report describes his latest journey.

It's a story about a biological buccaneer whose exploits could pave the way to removing whole ecosystems of genetic resources from the global commons. His safe passage across the oceans exposes the flaws in the global governance of common property resources and the biological building blocks of our biosphere.

Excerpts from an article in WIRED magazine by James Shreeve are pasted below...

[http://www.wired.com/wired/archive/12.08/venter\\_pr.html](http://www.wired.com/wired/archive/12.08/venter_pr.html)

"The goal is to create the mother of all gene databases," Venter says.

The great majority of Earth's species are bacteria and other microorganisms. They form the bottom of the food chain and orchestrate the cycling of carbon, nitrogen, and other nutrients through the ecosystem.

They are the dark matter of life. They may also hold the key to generating a near-infinite amount of energy, developing powerful pharmaceuticals, and cleaning up the ecological messes our species has made. But we don't really know what they can do, because we don't even know what they are.

Venter wants to change that. He is circling the globe in his luxury yacht the Sorcerer II on an expedition that updates the great scientific voyages of the 18th and 19th centuries, notably Charles Darwin's journey aboard HMS Beagle.

But instead of bagging his finds in bottles and gunnysacks, Venter is capturing their DNA [from marine micro-organisms - especially those that are photosynthetic] on filter paper and shipping it to be sequenced and analyzed at his headquarters in Rockville, Maryland. The hope is to uncover tens or even hundreds of millions of new genes, an immense bolus of information on Earth's biodiversity.

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**ACCESO A LOS RECURSOS DE  
LA BIODIVERSIDAD Y PUEBLOS INDIGENAS**

por Lorenzo Muelas Hurtado *Movimiento Autoridades Indígenas de Colombia*

Para nosotros la biodiversidad no es privatizable, porque la vida no es algo que pueda ser propiedad de nadie, pues sólo nuestros dioses son dueños de ella.

Los técnicos, los científicos del mundo occidental, se inventaron también las palabras "desarrollo sostenible". Pero ni los Estados, ni los legisladores, ni los técnicos, ni los científicos han querido reconocer en la práctica que el verdadero desarrollo sostenible es el que han dado los pueblos indígenas, allá internados en la selva, en la montaña, donde nacen, crecen, se reproducen y mueren. Ellos, viviendo en su habitat, han logrado desarrollarse por miles de años. Esto es lo que para mí significa el nombre de "sostenible". Para nosotros ESE ha sido el verdadero desarrollo sostenible, el cual creo que es totalmente incompatible con el que predica el sistema capitalista, que tiene puestos los ojos en estas comunidades, en esos territorios donde existen estos recursos.

¿Cómo piensa el sistema capitalista el desarrollo sostenible? Dicen que hay que llegar allá a la selva, llegar al mar, o a los grandes ríos, y que los recursos que hay en la naturaleza, ya sean mineros, madereros, hídricos de los mares y los ríos, u otros, hay que explotarlos, hay que extraerlos de manera sostenible. Pero eso ¿qué significa? El caso del oro del río Saldaña en Tolima, Colombia, por ejemplo, saben perfectamente que hay toneladas de oro y de alguna manera quieren sacarlo. Y la consigna que tienen es que hay que sacarlo "sin causar el menor daño". Pero yo estoy preguntando ¿cómo van a hacer eso? Es imposible sacar el oro sin causar daño, es imposible. Solamente con un imán podrán extraerlo sin tocar el suelo, el subsuelo, sin causarle daño a los hídricos. Entonces, a nombre de ese "desarrollo sostenible", están destruyendo todo lo que encuentran a su paso y en particular esos sistemas que sí son realmente sostenibles. Porque el desarrollo sostenible del mundo capitalista es extraer, extraer, extraer, a como de lugar.

Eso es totalmente diferente al desarrollo sostenible que han practicado los pueblos indígenas, que han vivido de lo que la naturaleza produce, acompañando con sus cultivos, buscando siempre un equilibrio, una armonía, pensando en nuestros hijos, en los hijos de nuestros hijos, no queriendo acabar todo sólo los que estamos vivos ahora. Nosotros también sacamos provecho de los recursos, sí, para eso es, para eso es la naturaleza. Para construir una vivienda nos toca necesariamente abrir un espacio, necesariamente debemos talar para el fogón, para la leña, el combustible, necesariamente debemos talar para la construcción de la vivienda, nos toca usar el material para el fogón, para la leña, el combustible, necesariamente nos toca cultivar, porque hacemos parte de ella, de eso hemos vivido, de eso estamos viviendo, y de eso tienen que seguir viviendo nuestras futuras generaciones. Pero no en ese sistema de arrasamiento.

Para nosotros proteger todo esto, hoy estamos confrontando una avalancha de normas internacionales que nos quieren imponer. Todos buscan el acceso a los recursos de la biodiversidad, pero quieren hacerlo de manera "legítima", así que proponen diversos mecanismos para lograrlo: por un lado dicen que se pueden utilizar los sistemas de protección de derechos intelectuales que fueron desarrollados para proteger inventos industriales, etc., como las patentes, pero que si no sirven tal y como están se les pueden hacer unos ajustes para adaptarlos a estas nuevas circunstancias de la protección de los derechos de propiedad sobre la vida. Que si todavía eso no es suficiente, se pueden crear unos instrumentos especiales que complementen los anteriores. Así, nos hablan de la OMC con su GATT, su TRIPS y la opción de desarrollar regímenes sui generis. En el caso de Suramérica nos hablan del Pacto Andino, la Decisión 391 y su opción de un régimen sui generis. Nos presentan el CDB con su pretendido objetivo de proteger la biodiversidad y los pueblos que la han desarrollado, pero que lo que realmente hace es promover también ese acceso a los recursos.