

Briefing, 16 Sept 2002

Government commissioned report recommends exempting the world's crops from Patents



The international development organisation ITDG¹ welcomes the findings of the government commissioned report on Intellectual Property Rights (IPRs), that "*IPRs do not help to reduce poverty*" but regrets the report's analysis did not lead to stronger recommendations.

The logical outcome of the analysis in the report is a call for a radical overhaul of the global intellectual property system in order to exempt from its rules intellectual property used by poor countries and poor people, especially if the intellectual property and associated resources originate in poor communities, e.g. the genetic resources of the world's crops and livestock.

- ITDG recognises that genetic resources for food and agriculture have been developed by farmers, herders and fishing communities over millennia through the free exchange of these resources and using their traditional knowledge. These resources are the basis for life on earth – food and livelihood security and environmental integrity. They also form the main resource for the genetic engineering and plant breeding industries that, because of the global Intellectual Property Rights (IPR) system have invested in the manipulation and utilisation of, and trade in, these resources.
- It is therefore important for human survival that care is taken in providing a different technical, regulatory and legal framework for their conservation and sustainable use, that is competent to protect these resources from industrial appropriation and facilitate their continued exchange and use to enhance food and livelihood security.
- Countries and communities need to be able to exercise their rights in many intergovernmental forums to exclude these resources from appropriation through the global IPR system.

The Commission's report goes part way in recognising these fundamentals. It concludes that for poor people and poor communities the existing system does not reduce poverty but the Commission does not then recommend removal of all genetic resources for food and agriculture from control through the global IPR system.

ITDG therefore urges the UK government to:

- review the report's analysis and strengthen its recommendations
- call for a substantive review of the Article 27.3(b) of the WTO agreement on TRIPs (Trade Related aspects of Intellectual Property Rights) to exclude genetic resources for food and agriculture from patentability and encourage governments to exempt the world's crops, livestock and microorganisms from intellectual property rights
- promote early ratification of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), as called for in the report, and insist that the Governing Body of the Treaty does not permit Intellectual Property Rights on these genetic resources, as well as requiring governments to implement Farmers' Rights
- facilitate inclusion, in decision making on IPRs, of poor farmers, communities and indigenous peoples, whose intellectual property and traditional knowledge is in contention, through work at local and national levels and with UN agencies including CBD, FAO, UNCTAD, UNESCO and WHO. The absence of their voices weakens the report of the Commission
- redeploy agricultural research and development funding from agricultural technologies protected by Intellectual Property Rights, especially genetic engineering technologies, to those which sustain agricultural biodiversity and agroecosystems developed and controlled by poor people for their food and livelihood security.

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"We expect the Secretary of State to welcome this report that has such strong messages concerning the eradication of poverty," said Patrick Mulvany, ITDG's food security policy adviser. "We hope she will take on board the report's analysis and call for a radical review of the WTO/TRIPs agreement with respect to genetic resources."

He added. "We have argued for many years in the context of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture and the implementation of Farmers' Rights, that IPRs restrict innovation, development, conservation and use of these resources. It is heartening to see that this eminent Commission endorses these views. The report also gives added weight for the need to redirect aid policy towards support for poor people's development and use of genetic resources for food and livelihood security and away from genetic engineering protected by IPRs."

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He is in Geneva for the launch of the report.

Notes:

1. The report of the Commission on Intellectual Property Rights "*Integrating Intellectual Property Rights and Development Policy*" is being launched today in Geneva by the Rt Hon Clare Short, UK Secretary of State for Development. Full report available at < www.iprcommission.org >
2. The origin of this Commission is in the Development White Paper: "...to look at the ways that intellectual property rules need to develop in the future in order to take greater account of the interests of developing countries and poor people." (White Paper: "Eliminating World Poverty: Making Globalisation Work for the Poor" published in December 2000. Paragraph 149).
3. WTO / TRIPs Article 27.3(b) deals with exemptions of plants and animals from patents but requires Plant Variety Protection by patents or other *sui generis* means and patents on micro-organisms. The Commission recommends: "The continuing review of Article 27.3(b) of TRIPs should also preserve the right of countries not to grant patents for plants and animals, including genes and genetically modified plants and animals, as well as to develop *sui generis* regimes for the protection of plant varieties that suit their agricultural systems... [Developing Countries] should adopt a restrictive definition of the term "microorganism." "
4. ITDG argues that all genetic resources for food and agriculture (GRFA) should be exempt from intellectual property rights, being the heritage of humankind and the product of multiple communities across countries and continents. These genetic resources important for food security and local sustainable livelihoods, include domesticated plants and animals and their 'wild' relatives in terrestrial and aquatic environments, as well as associated species that support production, e.g. pollinators, predators, soil biota, aquatic organisms. They include many microorganisms.
5. The FAO International Treaty on Plant Genetic Resources for Food and Agriculture was agreed at the FAO Conference in Nov 2001. It has been signed by 58 countries and the European Union, 8 countries have ratified, including India and Canada. 40 ratifications are needed for it to come into force. The Treaty does not allow IPRs on the genetic resources of most of the world's key crops and forages that provide more than 80% of global food supplies. It recognises Farmers Rights, albeit at national level, to: (a) [the] protection of traditional knowledge relevant to plant genetic resources for food and agriculture; (b) the right to equitably participate in sharing benefits arising from the utilisation of plant genetic resources for food and agriculture; and (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture."