UNDERSTANDING, RESISTING AND ACTING AGAINST BIOPIRACY

A guide on how to act in the face of illegal appropriation of life and traditional knowledge

COLLECTIF POUR UNE ALTERNATIVE A LA BIOPIRATERIE

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BIOPIRACY AND ITS NEGATIVE EFFECTS...

Here we try to explain what biopiracy is and who biopirates, « pirates of living things », are. The following paragraphs attempt to summarise this new form of pillaging biodiversity's wealth.

Biopiracy can be defined as the (mis)appropriation and commercialisation of genetic resources and traditional knowledge of rural and indigenous peoples. It involves making profit from freely available natural products (plants, seeds, leaves etc.), by copying techniques used daily for generations by local peoples in order to feed or take care of themselves. Biopirates are mainly pharmaceutical, cosmetic and agri-food firms. They draw on biodiversity hotspots in order to create supposedly « innovative » products and guarantee their monopoly on them through the patent system.

These products are often to a large extent inspired by techniques and knowledge that have already been known and collectively managed by local communities, sometimes for thousands of years. By copying traditional methods, these firms make considerable savings in their Research and Development activities, as well as ensuring themselves considerable income through an exclusive commercial use of the methods. So we are moving from traditional use, in which the whole community benefits, towards commercial use, generating profit for just the few.

A TEXTBOOK CASE OF THE INNOCENT TOURIST WHO TURNS OUT TO BE AN EVIL BIOPIRATE [1]

Step 1 : bioprospection

Let's take an example of a firm's representative who travels to the Peruvian Amazon. With his rucksack, he could be taken for a simple tourist keen to discover how the local population uses its plants. He asks questions, observes techniques and manages to take back a small sample hidden deep in his bag. This is bioprospection, which is in our example the first step of biopiracy

Step 2 : laboratory processing

The second step involves our tourist-biopirate handing over his observations and specimens to his firm's laboratory. Here the scientists extract the "active principle" (i.e. the gene or molecule possessing therapeutic or cosmetic virtues) from the leaf or seed brought back by their colleague. This work is reinforced by the bio pros-

[1] Cyril Costes « La biopiraterie, les savoirs traditionnels et le droit », *Ikewan n°67*

pector's observations on the specimen's use by rural or indigenous peoples, the custodians of well-developed knowledge on their living environment's biodiversity. This is a very important step, as it is this laboratory investigation that humans make upon Nature that gives the firm the right of ownership over what then becomes considered as human « invention ».

Step 3 : the patent

The third step consists in the recognition of the « novelty » of the invention. Intellectual property rights, which are a Western concept, offer ownership titles if a human being proves his technical skill in creating a product, even if the product is of biological origin. A simple slight modification or laboratory extraction can transform a natural common good into a private good. The awarding of patents awards the right to this property: the firm or person who is inventor" of the medicine or cosmetic product created from genetic resources and associated traditional knowledge thus becomes its official owner.

So a product generating profit has been made from a plant that was formerly freely available in nature and used with respect by local populations for their daily needs. This changeover from common good to private property has been legitimised by simple transformation or extraction in a laboratory. Nature has been absorbed into market mechanisms and henceforth has to fit in to market logic. Natural resources become lucrative, profit-making products with limited access.

> *"The very idea of commercial value being given to the living is a contradiction in itself : how can we give exclusive property rights to products which reproduce for free or that anyone can reproduce with the help of shared collective knowledge ?"* [2] »
>
> Guy Kastler, Smallfarmers' seeds network
> (Réseau Sémences Paysannes)

Common goods and collective goods

Common goods are natural or cultural elements accessible to all people; collective goods are managed by a restricted human group. The air, the oceans, the seeds are common goods; communal land, the knowledge specific to a community are collective goods. Managed at different levels, those goods have features in common: their commodification and financialization puts into question their very existence, causing the transition from collective management, motivated by the response to public interest to private management motivated by the search for profit.

What is a « biological ressource »?

A biological resource is a physical entity (plant, animal, seed etc), but also a set of genetic information that the entity contains and the product of associated knowledge.

BIOPIRACY IS A PHENOMENON AFFECTING ALL OF US

In countries that are « **users** » of biological ressources (principally the U.S.A., Europe and Japon), the demand for "natural" and "organic" cosmetics and pharmaceutical products is soaring. Firms try to

[2] Pierre Johnson, *Biopiraterie, Quelles alternatives au pillage des ressources naturelles et des savoirs ancestraux ?*

meet this demand by drawing on the world's most important biodiversity reserves. Many firms set up « greenwashing » strategies to give themselves the image of a « green » firm in the hope of attracting more customers. Consumers should be on their guard and careful about what they buy, in order not to encourage biopiracy. Some firms are careful and respectful and are a good alternative for the demanding consumer (see p.19).

The multinational firms are also found in these « user countries ». 50% of patents delivered by WIPO (World Intellectual Property Organisation) are for firms from the U.S.A. or Japan.

Marie-Françoise Durand, Philippe Copinschi, Benoit Martin, Patrice Mitrano, Delphine Placidi-Frot, Atlas de la mondialisation. Dossier spécial Russie © Presses de Sciences Po, 2010

❀ The most important biodiversity reserves are to be found in the countries that are « **suppliers** » of genetic resources. The Amazon, South Africa or India, for example, concentrate great environmental wealth. This biodiversity is often accompanied by the presence of indigenous peoples, custodians of biodiversity, with knowledge linked to the use of these resources.

[3] *La propriété intellectuelle contre la biodiversité ?*, CETIM n°35

"The development of industrialised, but biodiversity-poor, countries of the North has been based on the transfer of resources from technologically poor countries that are biodiversity-rich of the South" [3]

Jack Kloppenburg, professor of community and environmental sociology at Winsconsin University

« User » and « supplier » countries – are these 2 groups of States clearly defined?

The terminology of "user" and "supplier" countries is to be found in international conventions on biodiversity.

«Supplier» countries of genetic resources are often seen as emerging or developing countries of the Global South, whilst « user » countries are Western developed countries. However the example of France shows that the situation is not so simple. France is a « user », whose firms capitalise on the emerging biodiversity market, but France is also a « supplier » exposed to biopiracy, in particular in its overseas territories. (see Alexis Toukia's testimony p.8)

For a long time there was no legal framework and thus the appropriation and commercialisation of genetic resources and traditional knowledge of rural and indigenous peoples in biodiversity-rich areas continued without compensation or hindrance, recalling the colonial system.

Since the 1990's somewhat timid international regulations have gradually been set up in reply to this obvious injustice. However, they are not overturning the unequal balance of power between powerful Western multinational companies and local populations who are biodiversity's custodians.

MARKET FORCES VERSUS THE LAWS OF NATURE : ENTANGLED AND INCOHERENT INTERNATIONAL REGULATION CONCERNING BIOPIRACY

BIOPIRACY AT THE CROSSROADS OF A NUMBER OF LAWS AND REGULATIONS…

An overview of the legal labyrinth

Biopiracy can appear to be a complicated issue. It concerns different branches of law – international law, the rights of indigenous peoples, intellectual property rights, and environmental rights. It is to be found in texts and declarations with different legal validities and force. This obvious complexity can put off novices. Let's try and disentangle this legal knot.

There are a number of texts and declarations that can regulate biopiracy. However these texts have very differing aims and sometimes seem to contradict each other.

Commercial and intellectual property law endeavour to guarantee free trade and profit maximisation. Environmental law and laws concerning indigenous peoples' rights seek sustainable and ethical solutions for protecting peoples and biodiversity. These different aims often result in contradictory practical outcomes; commercial objectives within a liberal economy can lead to solutions detrimental to sustainable development and respect of the rights of peoples.

The Convention on Biological Diversity (CBD) and the Nagoya Protocol : two key texts to protecting people from biopiracy

There are two fundamental texts that help protect peoples and biodiversiy from biopirates – the Convention on Biological Diversity which came out of the 1992 Rio Earth Summit and the Nagoya Protocol negotiated in Japan in 2010.

The Convention on Biological Diversity aims to lay down international regulation in order to avoid pillaging of biological diversity in high – biodiversity areas. It laid down two major principles:

Article 8j of the CBD

Article 8j is very important, as it states – without being legally binding - that indigenous peoples must be full actors of negociations on access to resources.

« Each contracting Party shall, as far as possible and as appropriate:
Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.»

Who are the « Indigenous people » we refer to?

We estimate that there are 370 million indigenous peoples, which approximately represents 5 per cent of the world population. These peoples speak more than 5000 languages (almost 75 per cent of the languages supposedly existing in the world). They are present in more than70 countries over the six continents.

The diversity of peoples we gather under the term "Indigenous people" is therefore significant. It is necessary to be aware of this extreme diversity and avoid stigmatization or simplification when highlighting some common features, such as their well-developed skills in preserving biodiversity or their fragile position in the face of increasing commercial exploitation of their territories' resources,. The observations made here should not be understood as strictly applicable to all "indigenous peoples", but rather as bringing out some similar features and issues.

States are sovereign over their resources. In practice, this means that the genetic resources present in a territory are no longer considered common goods but rather the property of the State. Those who wish to benefit from these resources must therefore obtain authorisation from the authorities.

A mechanism of fair and equitable sharing of benefits must be set up. In practice, the firm that will make profits from the genetic resources that they have removed should redistribute part of these benefits by directly returning part of them as a kind of fee (monetary benefit sharing) or by investing in development programmes, such as building health or educational infrastructures (non monetary benefit sharing).

The Nagoya Protocol, which was ratified in 2010, specifies the means by which the CBD can be applied. The main issue is that of Access and Benefit Sharing (ABS). The aim is to better regulate access to genetic resources. States are thus encouraged to set up an agency to which firms and researchers must request operating licenses.

States should also ensure the setting up and running of an equitable mechanism of sharing any benefits arising from the use of resources.

Progress in theory, difficulties in practice

The CBD and the Nagoya Protocol represent significant progress in the protection of biodiversity in the face of biopiracy. However, the question of their concrete application is less clear. These international legal texts do not really indicate the manner in which the States should control access to resources, nor in which way the populations traditionally using the resources can be consulted. The rather vague nature of the texts, as well as the fact that they lack legally binding force, mean that they can work against populations. When there is a lack of precision, firms, helped by their experts, use the regulations to their advantage.

French Guyana : unclear and little-known regulations put populations in danger. Testimony from Alexis Tiouka, in the Guyana Amazonian National Park.

« In Guyana, biopiracy concerns seven indigenous communities, four of which are in the territory of the Guyana Amazonian National Park. A number of research projects have studied traditional pharmacopoeia or the use of plants for cosmetics. Although some researchers make the effort to give something back in return to the communities (for example, by developing fair trade projects), lack of monitoring and regulation means abuses remain undetected and that it is impossible to know if equitable benefit sharing is planned.

In some cases, researchers pay individuals or informants, who are often unemployed, ill-informed and thus ready to accept any payments without being conscious of underlying financial potential. The knowledge that is traded is collective and not individual knowledge. Over and above legislating, it is necessary to train populations on the question of intellectual property.

The Convention on Biological Diversity means progress. Article 8j underlines the fact that signatory states should « respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities […]. » In France, its application is problematic because these communities are not really recognised. However, article 33 of the Orientation Act on overseas territories specifies that the State and local authorities encourage the respect, protection and upholding of indigenous and local communities' knowledge, innovation and practices that are founded upon their traditional ways of life. These texts have not yet been practically applied.

In Guyana, the Amazonian National Park charter ought to take into account the inclusion of communities in decision-making processes concerning access to genetic resources from their territories. It should also ensure that they have given free prior and informed consent and propose binding rules to ensure equitable benefit sharing.»

PATENTS, THE BIOPIRATES' TOOL

Some keys to understanding patents

A patent is the part of intellectual property law designed to protect technological inventions. It guarantees the inventor with a monopoly of the production and sale of the invention, usually for a period of twenty years.

The patent must be filed by an individual (physical or organisation) and the application must fulfil three conditions:

Novelty : that the invention did not exist before and is completely new in space and time

Inventiveness: the procedure must not be evident within the given professional sector. Previous difficulties and failures by specialists in the same area allow Inventiveness to be measured.

A commercial application : the product can be fabricated and commercialised

These three conditions are important because the legality of a patent can only be challenged if one of the conditions is not respected. The conditions are however interpreted differently from one country to another, which makes it difficult to be precise in definitions.

The Convention on Biological diversity (CBD) and The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS): two contradictory legal instruments ?

The CBD, concerning environmental and peoples' rights and TRIPS, concerning commercial rights, have different goals, but become intimately interlinked when it comes to biopiracy. Contradictions therefore appear. The very principles that govern them are in conflict. One of them is based on the free circulation of the goods and services, while the other seeks to control this circulation according to three principles: biodiversity conservation, the sustainable use of biodiversity and benefit-sharing.

There is yet another point of contradiction: patent law does not take into account the geographical origins of biological resources' nor how they are obtained. It does not deal with any knowledge associated to the resource. The three main important elements in the CBD are completely missing in TRIPS. In other words, nothing obliges the patent applicant to act in conformity with the CDB obligations, even when the application concerns genetic material or traditional knowledge.

The States' role differs in the two regulations. In patent law, States cannot request benefits from exploitation of an "invention" which is fully or partially from their territory.

Within the CBD, States are sovereign over their resources and therefore able to request benefit-sharing for benefits made due to the use of their resources. There are many contradictions between the CBD and TRIPS, proving the lack of harmonisation in international regulation on the subject. TRIPS have legal strength giving it the upper hand in case of contradiction, favouring the defense of commercial interests to the expense of the peoples' interests.

Before, patents could only be applied to industrial or technical inventions. But since the 80's, patents can be granted on decoded or modified genes and on active principles. We have gradually expanded the possibilities of patenting whole or just parts of seeds, plants or cells. This is a disturbing trend of the patent system which, made to control industrial production, has been extended to include and privatize the living.

« Patents are given for an invention. And a patent on life necessarily means biopiracy » [4]

Vandana Shiva, Association Navdanya

Patents – an unsuitable and discriminatory Western tool that takes us back to Christopher Columbus's time

The patent system was conceived within a cultural and economic context specific to the Western world. However, today, in particular through the World Intellectual Property Organisation (WIPO), it regulates all activities related to intellectual property. The system is completely unsuitable for governing access to resources in indigenous people's territories. In places where knowledge is transmitted orally, how can one prove prior knowledge?

[4] First international meeting against biopiracy

For example, an Amazonian community uses a plant for its cosmetic properties. Theoretically, it would be impossible to patent the cosmetic applications of this plant, as they are already known, so there is neither invention nor novelty. However, this prior art is, in practice, difficult to prove. If a community doesn't have written records of such use of the plant, then a completely identical use could be considered as « invention » and thus be patented.

> *« We have to lead a combat in systems that aren't adapted to indigenous peoples : legal systems, systems of active principles, systems of genes or whatever, none of which are part of the indigenous world. »* [5]
>
> Patricia Gualinga, representatives of the Kichwa people of Sarayaku

A patent recognises a unique inventor. This is a cultural aberration for many of the local and indigenous communities who collectively share knowledge on genetic resources. Each community regulates collective rights to use. Imposing a patent is just like denying a right that already existed. Such practices recall colonialism.

Patents grow out of a Western worldview and yet are applied universally without taking into account the inconsistencies which appear when it is used in other cultural contexts. What we are looking at is two ways of seeing Research & Development. In Western R&D, laboratory work is essential and written records are made of the discoveries, of an individual or firm's claim to be the inventor. Traditional R&D is the accumulated result of ancestral knowledge and is shared orally and collectively. Only one of these types of R&D is recognised and protected by the patent system.

The result is striking: traditional communities are put in the extremely difficult situation of having to act using conventions that aren't theirs, with very limited means to combat the firms' legal and economic machines. The power relationship between traditional knowledge holders and patent bearers is obviously disproportionate.

What is « traditional knowledge »?

Unesco defines traditional knowledge as « the cumulative and dynamic body of knowledge, know-how and representations possessed by peoples with long histories of interaction with their natural milieu. It is intimately tied to language, social relations, spirituality and worldview, and is generally held collectively »

[5] First international meeting against biopiracy

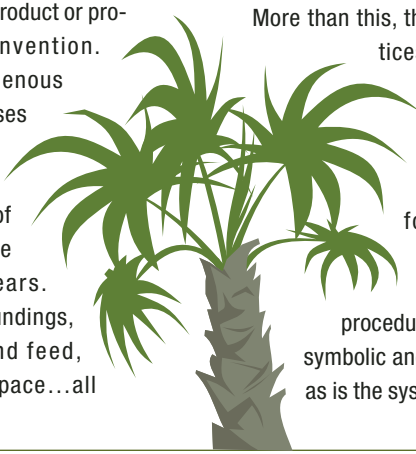
Is biopiracy neo-colonialism ?

« The duty to incorporate savages into Christianity has been replaced by the duty to incorporate local and national economies into the global marketplace, and to incorporate non-Western systems of knowledge into the reductionism of commercialized Western science and technology. […] a more secular version of the same project of colonisation continues through patents and intellectual property rights » For Vandana Shiva, Indian scientist and environmental activist, what we are seeing is « the second Coming of Christopher Colombus ». The patent and intellectual property rights have become a new tool for Western domination: « If you come from a non-Christian culture, you lose all your rights. Five hundred years after Columbus, it is enough to be a non-western culture with a distinctive worldview and diverse knowledge system to lose all claims and rights » Vandana Shiva denounces the complete absence of consideration and taking into account of indigenous knowledge: only scientific work in laboratories is recognised on an international level and other forms of development of knowledge are made totally invisible.

ILLEGITIMATE, ILLEGAL AND HARMFUL ACTS : WHY BIOPIRACY IS A PROBLEM.

TRADING IN TRADITIONAL KNOWLEDGE, CONTEMPT FOR PEOPLES AND DISTURBING THEIR WAY OF LIFE

As we've said, a patented product or process is considered an invention. Putting a patent on indigenous and rural peoples' processes and knowledge on biodiversity amounts to denying important parts of the knowledge they have had for thousands of years. Knowledge of their surroundings, use of plants to heal and feed, proper management of space…all these elements suddenly disappear just because the granting of the patent has denied their existence.



More than this, the patent turns traditional practices into illegal activities. In legal terms, peoples using a patented product or process, even if this use is ancient, are acting illegally. Firms can therefore claim royalties from local peoples who continue traditional use of their resources once the procedure is patented. The injustice, both symbolic and economic, is blatently obvious, as is the system's incoherence..

"Only corporations innovate, only capital innovates… People do not have minds? People do not innovate? And what we call traditional knowledge is actually the collective, cumulative on-going innovation of dynamic cultures, otherwise they would be wiped out… The day they stop innovating, they die… " [6]

Vandana Shiva, Association Navdanya

Patenting applied to biological resources and to traditional knowledge leads to the important question of whether it is legitimate to patent living species. Can we declare monopolies on plants, on animals or even on human elements as we are able to do on a machine? Many civil society organizations sound the alarm to protest on disturbing trends in a system that more and more allows commercialisation of nature.

ILLEGAL PATENTS NOT RESPECTING THE CONVENTION ON BIOLOGICAL DIVERSITY: THIS MEANS BIO-PIRATES ARE OUT-LAWS.

Patents on biological resources and associated traditional knowledge can be contrary to law. We must be able to identify and denounce violations of law, so that biopirates can be fairly punished.

Illegal patents -denial of prior knowledge

If a patent does not respect one of the three criteria for access (novelty, inventiveness and commercial application), it is not legally admissible and must be canceled.

Thus, a patent based on traditional knowledge is illegal, because it does not respect the principle of novelty, nor does it respect the criteria of inventiveness.

Focus on Neem

The Neem case shows how upheavals in ways of life can be caused by acts of biopiracy. Neem is a part of many Indians' daily life. Used as a biopesticide, heating oil or as a skin lotion, its access was free and unrestricted. The patent obtained on Neem by the firm Grace has disrupted access to this essential resource. The access to the plant has been restricted, with significant consequences in terms of price inflation.

Due to a long and intense Indian civil society mobilisation, this illegitimate patent was canceled after about ten years of proceedings. This case remains a testimony highlighting the dangers of biopiracy, which provokes upheaval in ways of life and traditional uses.

[6] First international meeting against biopiracy

Focus on Sacha Inchi

Sacha Inchi is an Amazonian plant which produces almonds that are high in fatty acids (omega 3 and 6). Cultivated and used for more than 3000 years by Peruvian Amazonians, its characteristics interest foods and cosmetic firms in "rich" countries.

In 2006, the French firm Greentech decided to commercialise this promising ingredient. It applied to the INPI (French national institute for industrial property).

The firm considered that it had "created" the idea of using Sacha Inchi oil to make skin and hair creams. This patent deposit did not take account of traditional use of Sacha Indi by many peoples in Amazonia for cosmetic, food and therapeutic uses.

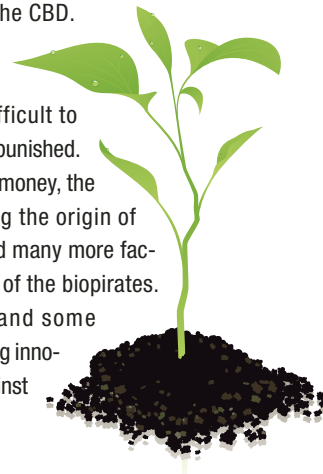
The Peruvian commission against biopiracy, together with the French Biopiracy Collective, obtained the patent's cancellation on the basis of a lack of inventiveness: it was acknowledged that Peruvian peoples knew and used Sacha Inchi for cosmetic purposes. Greentech had not thus invented anything and the patent was therefore illegal.

The person claiming a patent on a plant variety or method did not invent anything, because the practice was known within the traditional societies.

> ***"As indigenous peoples, we say that natural and cultural biodiversity are linked and must be protected in the same way."***
>
> Cordinadora Andina de Organizaciones Indigenas
> (Andean Coordination of Indigenous Organizations)
> propositions for Draft Zero of Rio+20

Disrespect for the CBD, a common practice

When access to resources does not respect principals established by the Convention on the Biological diversity we also call it biopiracy. Prospection without informed prior consent of the peoples living on the territory, or using resources without setting up mechanisms to fairly share benefits are illegal practices. It is the States, rather than peoples that are in charge of applying the CBD. Nonetheless, only a few countries have set up national laws to guarantee respect of the CBD. Even if laws are made, these illegal acts, which are difficult to control, often go unpunished. Institutions' lack of money, the difficulty of proving the origin of those resources and many more factors work in favour of the biopirates. But civil society and some States are developing innovative initiatives against biopiracy.(see p.16)



"Many resources and traditional knowledge of Peruvian indigenous peoples have been and are still used for commercial and industrial aims and, in some cases, are subject to intellectual property rights by firms and institutions from the north. In general, regional and national standards are not respected while doing so."

Manuel Ruiz, Sociedad Peruana
del Derecho Ambiental
(Peruvian society of environmental law)

PEOPLES AND ENVIRONMENT IN DANGER

Biopiracy, a serious threat for ecosystems

Considering nature as a source of profit can have adverse consequences on the environment. Local peoples tend to favour crop diversity, whereas firms often choose to practice monoculture because it is more profitable. This leads to biodiversity reduction and ecosystem disturbances, with consequences for the environmental balance and the way of life of rural or indigenous peoples.

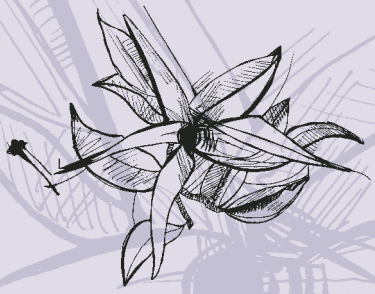
Serious economical and social risks

A traditional medicine shop in South Africa

We can also see biopiracy as the stealing of economic development opportunities. It often occurs that when a firm starts to develop a pill or a cosmetic product based on plants, the peoples living nearby are reduced to doing small jobs, such as picking the raw material. They are only in charge of technical tasks and lose an opportunity to develop their own products or to learn the different steps of production.

Focus on Ylang Ylang

The Comoros Islands in the Indian Ocean near Madagascar, possess an extremely rich biodiversity. Inhabitants are proud of their flora: Ylang Ylang (Flower of flowers) has a unique scent. The Comoros are the essence's first worldwide producers. However, the benefits made by its farming remain low compared to profits made from it abroad.



The Comorian daily newspaper, Albalad, says "Producers and distillers, ill informed on how their activities impact worldwide, supply at low prices and earn a low wage for this perfumed gold which will make a fortune in the world's perfume houses. The system is composed of producers (those who plant and harvest the flowers), distillers (who extract, using archaic techniques, the essential oil) and buyers (local or foreign firms). The market is saturated, as there are few buyer firms and this stops producers from fixing better prices for them; these silent hands work in misery for Ylang Ylang's glory abroad."

The facts are simple: foreign firms' exploitation of biodiversity reduces local producers to merely doing poorly paid manual jobs. They certainly don't see anything of the important profit made, even if they were the ones that harvested the flower. Foreign firms have obviously stolen any development opportunities.

Negotiating profit-sharing can also lead to tensions between communities. If the same plant is used by several communities, it will be difficult to agree on access, and who gets the benefits, including monetary. This brings up many complex questions and can put social cohesion between communities at risk.

"Contractual benefit sharing is not acceptable. It is as if you woke up in the middle of the night to find out that your house had been robbed. On the door step, the thieves encourage you to be glad because they will pay back a part of the profits they will make from your belongings." [7]

Alejandro Argumedo,
Association Andes

[7] *La propriété intellectuelle contre la biodiversité ?*, CETIM n°35

COUNTERING BIOPIRACY: ACTIVISTS' INITIATIVES TO REIN IN THE BIOPIRATES

THE JUDICIAL WAY: CONTESTING ILLEGITIMATE PATENTS

Mobilisations and judicial action, whether national or international, have led to the cancellation of many illegal patents. To denounce those patents, the first step is to point out the illegal elements. In most cases, this means proving the patent is not novel and not inventive, because it is copied from traditional knowledge. An organization (NGO, community' representative etc…) can ask the organism that granted the patent to cancel it...

Cape Pelargonium, a coveted plant…

Focus on Pelargonium

In 2008, the Berne Declaration and the African Centre for Biosafety took legal action against the patents obtained by the German company Schwabe on Pelargonium, a South African geranium used to heal many diseases.

Several elements on those patents were questionable. The non respect of informed prior consent and benefit sharing broke CBD rules. Patent law had also been flouted; it was called an 'invention' by the German firm whereas local communities, particularly the Alice community had been using Pelargonium for years.

There was thus no novelty nor inventiveness. The complaint lodged with the European Patent Office let to its acknowledgement of the lack on inventiveness and it then cancelled the patent..

> ***"We export our natural resources, and what does our country really withdraw from that? The firms do not want to call into question the government system, they just want the benefits of the business [...] But what do we get out of the 55 millions of euro made by the German firm?"*** [8]
>
> Mariam Mayet,
> African Centre for Biosafety

[8] First international meeting against biopiracy

Meeting between representatives of the Alice Community and members of the African Centre for Biosafety.

Extract from legal action made by the African Centre for Biosafety and the Berne Declaration at the European Patent Office.

"The fact that the medical practitioners of Alice community have been using Pelargonium since time immemorial to treat a wide spectrum of viral and bacterial infections and inflammation […]constitutes highly relevant prior art. This traditional knowledge constitutes traditional intellectual property of the Alice community, has been for time immemorial in the South African public domain, and therefore cannot be monopolised by an individual company."

PROVIDER COUNTRIES UNDERTAKE INNOVATIVE INITIATIVES: PERU AND INDIA, PRECURSORS IN THE PROTECTION OF THEIR RESOURCES.

Peru: The authorities have set up a special commission to combat biopiracy.

In 2004, the Peruvian government set up the National Commission against biopiracy whose goal is to protect access to Peruvian biodiversity and indigenous peoples' traditional knowledge. The commission is responsible for making an inventory of biological resources and collective knowledge. It also manages patent requests concerning Peruvian resources and contests patents not respecting the law. The commission works on a daily basis against biopiracy in Peru.

Andrés Valladolid, technical secretary of the commission explains: "Defensive protection of biological resources and traditional knowledge is a very complex task in a country like Peru, given the wealth of biodiversity on our territory. It is nonetheless necessary, because of economical, social and cultural prejudices that can lead to the granting of illegitimate patents in a country like Peru.

The National commission against biopiracy does not oppose use of Peruvian indigenous peoples' biological resources and/or traditional knowledge, as long as it respects the rights of its owners and if benefit sharing measures are set up concerning access and use of resources and knowledge. We sincerely believe we will all be winners if the rights of all involved parties concerning products derived from biological resources and traditional knowledge are respected, including final users."

India: The Traditional Knowledge Digital Library (TKDL): the ambitious Indian project to register traditional knowledge

In 2001, Indian authorities launched a gigantic project to protect traditional knowledge from biopiracy. The goal of the digital library is to identify all traditional use of India's biological resources, sourcing from numerous books in local languages. Plant characteristics, their uses and bibliographical source are identified and translated in five international languages. The goal is to be able to set up an efficient tool to

prove anteriority of traditional knowledge in cases where patents draw on already existent processes. It is very difficult work that has already enabled registration of traditional knowledge of over 200 000 biological resources. This is a promising and innovative initiative that could be an example for other countries prone to biopiracy.

"Traditional knowledge has always been an easily accessible treasure and thus has been susceptible to misappropriation. [...] TKDL thus, acts as a bridge between the traditional knowledge information existing in local languages and the patent examiners at Intellectual Property Offices"

TKDL website

RESPECTFUL FIRMS MAKE GOOD EXAMPLES…

"Aïny Savoir des Peuples" is a firm which sells cosmetic products and founds its action on the respect of peoples and their knowledge. They choose the plants and knowledge they wish to highlight and receive a determined percentage of the turnover made. The knowledge holders are able to take decisions. "The organizations representing the peoples with whom we work must be at the centre of the decision making and control." says Daniel Joutard, founder of "Aïny Savoir des Peuples".

The firm refuses to apply for any patents: "Nowadays, the firms legitimise the filing of patents by arguing the time invested and money spent to justify that patent application. Unfortunately, no one estimates the worth of collective work that has been going on for centuries by the other party, whether public authority or indigenous peoples. In this perspective, the idea of getting a patent and therefore a monopoly uniquely through the juridical system and based on scientific knowledge is completely illegitimate." [9]

NON GOVERNMENTAL ORGANISATIONS SET UP INNOVATIVE PROJECTS

Protecting local communities' traditional knowledge and customary law : Bio-cultural community protocols

[9] First international meeting against biopiracy

The Nagoya protocol, on access and benefit-sharing (ABS) has included the notion of 'Community protocols' to develop fair sharing of benefits brought by biodiversity. The South African NGO Natural Justice, created in 2007 has built upon the inclusion of these terms during the negotiations made in Japan, along with other organisations working on their programme of Bio-cultural community protocols. The main goal of this programme is to effectively implement ABS legislation, within the communities. In order to protect indigenous peoples' rights and traditions, since 2007 Natural Justice has been organising consultations within communities and translating the results into juridical terms in its protocols, which are then delivered to local and national authorities. Those protocols are made by communities in India, Columbia and Africa, allowing them to make a census of their cultural values and customary laws relative to natural resources, as well as to lay out the conditions to regularize their access. This involves a legal training course for the communities, so that they can be aware of the risks, and so that their prior consent is guaranteed in case of bioprospecting. These protocols also allow the users of those resources and knowledge to have a sufficient amount of information to work in agreement with the communities and with their customary and traditional laws.

This guarantees a better equality of opportunities in negotiations and reinforces the benefit-sharing offer. The bio-cultural community programme is a practical tool to combat biopiracy, by involving the concerned communities.

Capacity building in Brazilian communities: the Aldeias Vigilantes project in the State of Acre

In 2005, the Brazilian NGO, Amazonlink, launched a wide-reaching project named Aldeais Vigilantes. This project facilitates better information, awareness and reinforcement of indigenous capacities to protect biological resources and traditional knowledge. Aldeais Vigilantes acts as true preventative measure against biopiracy. The project consists in workgroups facilitated by Amazonlink members for communities' in the north of Brazil. Over several days a programme of discussions and debate, theatre and video focusing on key themes, allow the communities to study issues affecting them. The search for alternatives and the question of community autonomy in decision making are at the heart of these collective reflections.

> *"Over and above simply denouncing biopiracy, we wish to address how we can work to prevent and combat it. This is how the project Aldeias Vigilantes was thought up, with the aim of reinforcing the powers of action of the forest peoples, with the idea that they must be the sovereign holders of their own knowledge and the forest's genetic heritage."* [10]
>
> Michael Schmidlehner, Association Amazonlink.

[10] Video of Aldeias Vigilantes project

ACTORS COMBATING BIOPIRACY AROUND THE WORLD

Mariam Mayet
African Centre for Biosafety – South Africa

"The African Centre for Biosafety (ACB) is a non- profit organisation, based in Johannesburg South Africa. The ACB provides authorative, credible, relevant and current information, research and policy analysis and sharing of best practice on issues pertaining to genetic engineering, corporate concentration and consolidation in the seed sector, biopiracy, agrofuels and generally the Green Revolution push in Africa.

It has a important role in preservation of African biodiversity, traditional knowledge and cultural diversity to prevent threats such as biopiracy.

The ACB, in collaboration with representatives of the Masakhane community, based in Alice in the Eastern Cape, challenged several patents granted to German Phyto medicine company, Schwabe by the European Patent Office. This mobilization has been successful and the patent retired."

www.biosafetyafrica.org.za

François Meienberg
Berne Declaration – Switzerland

"Berne Declaration is a Swiss non-governmental organization with more than 22,000 members. We have been promoting more equitable, sustainable and democratic North-South relations since 1968. To this end, we carry out research, run campaigns to raise public awareness and do advocacy work. We are involved in areas as international trade, financial relations, commodities, health and agriculture, amongst others.

Since 1999 we are engaged in the fight against biopiracy. We have been participating in the international negotiations of the Bonn Guidelines and the Nagoya Protocol. We do advocacy work to promote anti-biopiracy legislation in Switzerland and challenge specific biopiracy cases all over the world.

For example we worked on the case of Pelargonium that South African local communities have been using since time immemorial against bronchitis. Together with the African Center for Biosafety (South Africa) we successfully challenged the patents the German company Schwabe Pharmaceuticals was seeking on the medicinal uses of the plant."

www.evb.ch

Manuel Ruiz
Sociedad Peruana del Derecho Ambiental - Peru

"The Peruvian society of environmental rights is a non-profit making civil society association, founded in 1987. Since then it works on the creation and development of environmental policies and rights. A large part of our work has been the development of policies and legal frameworks whose main goal is to set up principles linked to access to genetic resources and knowledge, taken from the 1992 Convention on biodiversity.

One of its major activities has been helping to build the capacities of the Peruvian National Commission against biopiracy created by Law in 2004. Furthermore, the Andean-Amazonian initiative to prevent biopiracy has carried out important research and studies on biopiracy and has helped other countries in the area working on these themes, via legal and technical assistance."

www.spda.org.pe / www.biopirateria.org

Gino Cocchiaro
Natural Justice – South Africa

"Natural Justice: Lawyers for Communities and the Environment was founded in 2007 to support Indigenous peoples and local communities to claim the rights they are entitled to under International and national law and to advocate for increasingly robust legal protections for these communities.

A major site of struggle for communities has been biopiracy of their genetic resources and associated traditional knowledge. Natural Justice supports communities to establish their ownership of genetic resources and traditional knowledge and to ensure that if these resources are utilised by researchers that communities offered full, prior and informed consent and benefit from the utilisation.

In 2009, Nestle applied for five patents of the southern African plant Rooibos for anti-inflamatory skin

products. The Berne Declaration, a Swiss NGO, discovered this patent application and worked together with Natural Justice to establish that Rooibos could not be patented without the consent of South Africa according to the Convention on Biological Diversity. Natural Justice worked with communities in Southern Africa to document the fact that Rooibos has been used in similar ways to that which Nestle sought a patent for at least hundreds of years. After initially defending itself, Nestle agreed to withdraw the patent applications."

www.naturaljustice.org

Vandana Shiva
Navdanya – India

"Navdanya is a network of seed keepers and organic producers. Navdanya has helped set up 65 community seed banks across the country, trained over 500,000 farmers in seed sovereignty, food sovereignty and sustainable agriculture over the past two decades, and helped set up the largest direct marketing,fair trade organic network in the country.

We have also set up a learning center, Bija Vidyapeeth (School of the Seed) on our biodiversity conservation and organic farm in Doon Valley, Uttarakhand, North India. Navdanya is actively involved in the rejuvenation of indigenous knowledge and culture. It has created awareness on the hazards of genetic engineering, defended people's knowledge from biopiracy and food rights in the face of globalisation and climate change. Navdanya is a women centred movement for the protection of biological and cultural diversity."

www.navdanya.org

Mohamed Said Hassane
Ulanga Ngazidja- The Comoros

"Ulanga Ngazidja is a NGO that takes care of the protection of the Environment, with a nonprofit goal. Its headquarters are situated in Moroni, the capital of the Comoros. It was created in 1991. The organization participates to the safeguard of the environmental wealth of the Comoros Island by making actions in education, awareness and pleadings, but also by the application of a Community supervision mechanism. Thanks to the support of the Collective for an alternative to biopiracy and to the African centre for biosafety, we have created a section dedicated to the fight against biopiracy and for the protection of biodiversity in the Comoros in February, 2012. A team of experts will make this section to take concrete actions in this direction."

Biopirates, « pirates of life », are pillaging a new kind of wealth, that of biodiversity and the knowledge and techniques of rural and indigenous peoples. Biopiracy is the appropriation of plants and seeds from biodiversity – rich countries. It is also the stealing of knowledge about these plants. It is undertaken by pharmaceutical, cosmetics and agro-business firms who obtain patents, having copied the techniques of an Amazonian shaman, an Indian small farmer or a South African healer. Biopiracy raises questions that link into a number of the 21st century's crucial issues. Amongst others, it has been seen a form of neo-colonialism, the commercialisation of life or one of liberalism's most worrying trends.

It is time to act. Around the world initiatives are emerging that refuse biopiracy and encourage projects that are respectful of peoples' rights and those of the environment. This is a collective work prepared along with our international partners. It is a guide containing information helping those who wish to resist this new form of injustice to get actively involved.

COLLECTIF POUR UNE ALTERNATIVE À LA BIOPIRATERIE

The (French) Biopiracy Collective aims to support indigenous peoples in their efforts to defend and enhance their traditional knowledge. It coordinates legal and media actions which:

- oppose the pillaging of traditional knowledge on biodiversity through the patent system
- facilitate the emergence of alternative ways of protecting indigenous peoples' traditional knowledge
- lead to improved recognition of indigenous peoples' rights and knowledge about their natural resources.

The founding members of the collective:

With the support of:

FONDATION un monde par tous

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