

## Mind the Gaps: Identifying Commonalities and Divergencies between Indigenous Peoples and Farmers Groups

The Programme for Traditional Resource Rights  
Oxford Centre for the Environment, Ethics & Society  
Mansfield College  
University of Oxford  
Oxford OX1 3TF  
United Kingdom  
Tel/fax: +44 (0) 1865-284665  
E-mail: wgtrr.ocees@mansfield.ox.ac.uk

### REVISED STRUCTURE:-

1. Present the CBD and IUPGR terminology and the dangers of such imprecise language
2. Explain who the various constituency groups are (indigenous peoples, farmers, nomads etc.)
3. The implications for policy making
4. How policy makers can apply such awareness in implementing the CBD and IUPGR.

### I.

In the Preamble to the 1992 Convention on Biological Diversity (CBD), Paragraph 10 states that a fundamental requirement for conservation of biological diversity is the:

*in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings.

The CBD uses the phrase, 'indigenous and local communities embodying traditional lifestyles', repeatedly and in paragraph 12 of the Preamble recognises the:

close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.

Whilst the CBD acknowledges the continuing role to be played by 'indigenous and local communities embodying traditional lifestyles' in *in situ* conservation and the maintenance of biological diversity, it does not define who these communities are. Indigenous peoples are in the midst of a continuing struggle to gain acceptance of their unique identities and rights, and farmers (a loose general term) who continue to work the land according to the traditions of their forebears have lost status and knowledge by the commercialisation of land use, especially in regions where the continuing fecundity of the land has been dependent on their skills and knowledge.

Policy-makers need to become more aware that indigenous peoples frequently integrate forest and agricultural management systems so that categories of 'forester', 'hunter and gatherer'<sup>1</sup> and 'farmer' cannot be considered as discrete categories, but represent a continuum of traditional livelihood activities. Therefore, international forums dealing with Farmers' Rights issues being discussed under the auspices of the UN Food and Agriculture Organisation (FAO) are totally relevant to CBD concerns about indigenous and local communities and their relationships with forests.

The FAO concept of Farmers' Rights emerged from two Resolutions negotiated by the Commission on Plant Genetic Resources (CPGR) in the FAO Conferences in 1989 and 1991. Resolution 4/89 recognised 'the contribution farmers have made to the conservation and development of plant genetic resources, which constitute the basis of plant production throughout the world, and which form the basis for Farmers' Rights'. Resolution 5/89 defined Farmers' Rights as:

rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources particularly those in the centres of origin/diversity. Those rights are vested in the international community, as trustees for present and future generations of farmers, and supporting the continuation of their contributions as well as the attainment of overall purposes of the International Undertaking [on Plant Genetic Resources].

The intention of Resolution 5/89 was 'to assist farmers and farming communities, in all regions of the world, but especially in the areas of origin/diversity of plant genetic resources, in the protection and conservation of their plant genetic resources, and of the natural biosphere', and to 'ensure that farmers, farming communities and their countries, receive a just share of the benefits derived from plant genetic resources (which they have developed, maintained and made available).

Resolution 3, *The Interrelationship Between the Convention on Biological Diversity and the Promotion of Sustainable Agriculture*, of the Nairobi Final Act of the Conference for the Adoption of the Agreed Text of the Convention on Biological Diversity, affirmed the IUPGR Resolutions by recognising 'the need to seek solutions to outstanding matters concerning plant genetic resources within the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Sustainable Agriculture, in particular: (a) Access to *ex situ* collections not acquired in accordance with this Convention; and (b) The question of farmers' rights'.<sup>2</sup> Because the third meeting of the Conference of the Parties to the CBD in November 1996 may consider conservation and sustainable use of agricultural biodiversity, it is possible that these two issues will be included in the deliberations there. How they are addressed may well depend on the outcome of the revision of the International Undertaking on Plant Genetic Resources which is undergoing review at present and which will be presented at the FAO 4<sup>th</sup> International Technical Conference on Plant Genetic Resources in Leipzig in June 1996.

---

<sup>1</sup> According to M. Janowski (pers. comm, 12 Feb. 1996): 'groups which are supposedly hunter gatherers may manage wild resources to an appreciable extent, and may have a well-organised system of exploitation of wild plants equivalent to simple horticulture'.

<sup>2</sup> UN Food and Agriculture Organisation (1993) Convention on Biological Diversity and Related Resolutions, Commission on Plant Genetic Resources, fifth session, Rome, 19-23 April 1993 (CPGR/93/Inf.3, March 1993, p.11).

For these people it is necessary that policy makers should be aware of their differing needs and demands so that national and international policies can support them in their demands, and thereby protect their input into maintaining the world's biological and cultural diversity.

To synergise with the CBD, the concept of Farmers' Rights will not only need to be redefined, but renamed. The first step is to widen the scope of 'farmers' beyond its conventional meaning to accommodate the following two realities: (a) that plant genetic resources conserved by farmers include not only field crops, but trees used for poles, firewood or other non-timber forest products, and medicinal and herbal plants; (b) that indigenous peoples and other traditional groups and local communities, such as fisherfolk, hunters, pastoralists, nomads and gatherers, who have traditionally 'nurtured most of the existing biodiversity upon which we depend' (GRAIN 1995) are also included in any benefit sharing and compensation system.<sup>3</sup> *Self definition* by these latter groups, together with *identification of principles* that unite and differentiate them is essential.

## II

Indigenous peoples are struggling to retain their identity and culture against the global trend to homogenisation and uniformity of both nature and culture. Similarly farmers and other groups following traditional lifestyles of self-sufficiency and innovation have had much of their self-sufficiency taken away from them as a result of the Green Revolution, which homogenised agricultural systems and devalued traditional practices. What are the overriding concerns of these groups?

### *WGTRR survey*

In early 1996 the Working Group on Traditional Resource Rights conducted a survey of statements made by indigenous and non-indigenous groups<sup>4</sup> to discover language used in their own statements about themselves which would help to distinguish between the two groups and to compare and contrast their concerns.

From 63 statements made by indigenous peoples – include statements of individual indigenous organisations and those resulting from conferences which purport to represent the views of all indigenous peoples present – demands could be divided into the following groups:

1. *SELF-DETERMINATION* : the right of self-definition; self-government; to make laws; and maintain economic, cultural and social relations across political borders.
2. *TERRITORY*: rights relating to land and resources.
3. *PRIOR INFORMED CONSENT*: respect for Indigenous knowledge; protection of medicinal plants etc.; and the right to determine standards for development.
4. *HUMAN RIGHTS*: freedom from discrimination and oppression; the rule of law; the right to life and liberty.
5. *CULTURAL RIGHTS*: the right to have and express distinct culture; the right to language; access to sacred sites; and to practice religion freely.

---

<sup>3</sup> See Genetic Resources Action International (1995) for an in-depth discussion of this issue.

<sup>4</sup> Survey carried out by the Working Group on Traditional Resource Rights, February 1996.

6. *TREATIES*: treaties made between colonial rulers and Indigenous peoples calling for the recognition of extant treaties, and for the re-negotiation of existing treaties.

Some of these demands cannot be applied to non-indigenous peoples, even if they are members of communities whose lifestyles continue to follow traditional patterns. By defining who is a farmer in this context, and farmers' needs, commonalities between indigenous peoples and farmers can be identified as well as sensitive areas of divergence which need to be protected. For example, the most important demands of Indigenous peoples centre around their distinctness and their rights to self-determination and territory. Farmers groups have no claim to be distinct peoples; their demands for land rights are focused on issues relating to land tenure rather than rights to territory.

While this research aimed to compare the statements of Indigenous and non-Indigenous peoples in an attempt to find similarities or differences between their demands, there was little evidence of statements existing made by non-Indigenous peoples. The reason may be that Indigenous and non-Indigenous peoples are trying to work within different forums and that Indigenous peoples' battle for rights is an international one, represented by international forums. Indigenous peoples are hoping to impact upon governments through national and international spheres. On the other hand, non-Indigenous peoples may be campaigning within the nation state through organisation such as unions. It also should not be discounted that the lack of evidence is because organisations representing non-Indigenous people are reluctant to distribute such information.

## **Indigenous peoples**

### *2.1 Defining Indigenous Peoples*

Indigenous peoples have provided their own definitions of who Indigenous peoples are (Box/Appendix \*). In the Final Statement of the Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights, Suva (Pacific Concerns Resource Centre, 1995) the following ringing declaration was made:

We assert our inherent right to define who we are. We do not approve of any other definition.

Indigenous peoples have been defined in intergovernmental forums, and even in international law. A definition which has gained broad international acceptance is that of the Special Rapporteur of the UN Economic and Social Council Sub-Commission on Prevention of Discrimination and Protection of Minorities (EC/CN.4/Sub.2/1986/7/ Add.4, paras.379-82).

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that have developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

This historical continuity is characterised by:

- (a) occupation of ancestral lands, or at least of part of them;
- (b) common ancestry with the original occupants of these lands;
- (c) culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an Indigenous community, dress, means of livelihood, life-style, etc.);
- (d) language (whether used as the only language, as mother tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
- (e) residence in certain parts of the country, or in certain regions of the world;
- (f) other relevant factors.

The imposition of definitions by others on indigenous peoples is rejected by Erica-Irene Daes of the UN Working Group on Indigenous Populations in her 1995 report for the Subcommission on Prevention of Discrimination and Protection of Minorities (E.-I. Daes, 1995). She believes that justice is best served by allowing the terms of reference of peoples who are indigenous to evolve flexibly over time. Her view is consistent with that of many indigenous peoples who regard self-definition as indigenous as a fundamental right, and feel that an imposed rigorous definition would therefore be an unacceptable imposition.

For Indigenous peoples the use of terms like Indigenous people (without the 's') and the phrase used in Article 8(j) of the Convention on Biological Diversity: 'indigenous and local communities embodying traditional lifestyles', are problematic. This is because whilst 'peoples' have the right to self-determination under international law, 'people' and 'communities' do not. The 's' distinction symbolises land, territorial and collective rights subsumed under the right to self-determination, in addition to the basic human rights to which all individuals are entitled. In contrast, terms like 'people', 'populations', 'communities' and 'minorities' implicitly deny territorial rights.

One of the key rights of Indigenous peoples is the right of self-definition, making external definition less significant. Yet, while a group may claim to be indigenous, there must also be some process of peer acceptance by other indigenous peoples. For example, although the Boers of South Africa are a self-professed indigenous people they have not been recognised as such by their peers. Thus, even if self-definition is a fundamental right, it is not enough. Moreover, some peoples eligible to call themselves indigenous do not do so because they see greater advantage in not being classified as Indigenous. The two groups, Indigenous and non-Indigenous should not be seen as being mutually exclusive: being able to shift identity when advantageous helps to retain autonomy.

## *2.2 Indigenous peoples and the right to self-determination*

What do indigenous peoples mean by the right to self-determination? In the Kari-Oca Declaration, proclaimed at UNCED in 1992, self-determination is understood as:

The right to decide our own forms of government, to use our own laws to raise and educate our children, to our own cultural identity without interference.

The 1993 Mataatua Declaration states that:

Indigenous peoples of the world have the right to self determination: and in exercising that right must be recognized as the exclusive owners of their cultural and intellectual property.

According to the Statement from the conference on Intellectual Property Rights and Biodiversity, organised by the Co-ordinating Body of Indigenous Peoples of the Amazon Basin (COICA) in Bolivia in 1994, self-determination also subsumes rights to intangible cultural, scientific and intellectual resources:

All aspects of the issue of intellectual property (determination of access to natural resources, control of the knowledge or cultural heritage of peoples, control of the use of their resources and regulation of the terms of exploitation) are aspects of self-determination. For Indigenous peoples, accordingly, the ultimate decision on this issue is dependent on self-determination.

The International Labour Organisation Convention 169 (ILO 169), the so-called *Indigenous and Tribal Peoples Convention* (ILO, 1989), is the only international legal agreement specifically for Indigenous peoples. ILO 169 supports the view that Indigenous self-organisation is the starting point for any exercise in self-determination, stating that:

Indigenous peoples shall be able to exercise control over their own economic, social, and cultural development.

According to international law (the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights)<sup>5</sup> *all peoples have the right to self-determination*, and by virtue of that right, may freely determine their political status and pursue their economic, social, and cultural development. Therefore, if Indigenous peoples are accepted as 'peoples' their right to self determination is undeniably a part of international law. This is why they are not demanding the right to self-determination, but recognition of this right.

Indigenous peoples are not seeking privileged treatment from the international community or national governments. Their requirement is that rights taken away from them through an historical process of colonisation and marginalisation be returned. Generally they do not aim to establish an ethnically homogeneous state, but to establish a cultural and political niche within existing frameworks that enables them to exercise their rights to self-determination and self-organisation. In opposition to Indigenous peoples' insistence that they be recognised as 'peoples', some governments consider such recognition undermines sovereignty and therefore deliberately choose to refer to them as 'populations' or 'people'.

### 2.3 *Land, tenure and territory*

The International Work Group for Indigenous Affairs (IWGIA) notes that Indigenous peoples have in common (IWGIA, 1994):

---

<sup>5</sup> Article 1(1) of both these documents states: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

- A cultural aspect of common history, language, or affiliation to an area of land, which causes them to feel a people or nation;
- The notion of common territory;
- Political deprivation from being able to control their own affairs, territory, resources, and prospects for development; exclusion or marginalisation from political decision-making; and non-recognition of their collective and national rights to land, water, and culture by the dominating and governing group(s) of the State.

The concept of territory, and who has control over it, underlies these features making territoriality a vital aspect of a peoples' identity and of their claim to self-determination. As with distinguishing between the implications of using 'people' versus 'peoples', there is a danger that articulating demands using words like 'land' and 'tenure' imply a less all-embracing claim than 'territorial' rights. Tenure implies a right to ownership of the land surface, whereas territorial rights encompass the earth beneath and the sky above (which in economic terms translate into mineral rights, water rights or air space).

[Exclude/update?] Indigenous rights over territories (and lands) have been stated in international law, but again governments incline toward any moves to weaken this right. For example, the amendment by the Brazilian Government of Decree 22/91 on demarcation of Indian territories to allow for legal challenges to demarcations is a weak response to political pressure which undermines the 1988 Constitution.[update this or use another e.g.?] In Brazil 'Decree 1775 has just opened up 344 reserves, or 57% of all Indigenous land, to claims by any person, company or local authority who thinks they may have a case' (Rocha, 1996). This weakening of national law exemplifies the need to be ever-vigilant and justifies Indigenous peoples' fears of losing rights they have won.

[Update?] At present the UN Human Rights Commission is examining the language of the [Draft?] Declaration of the Rights of Indigenous Peoples: the definition of 'territory' they agree on will determine how it will be interpreted in the Declaration. Once again, there is a danger that governments will try to weaken it in order to retain control over resources which they may not be prepared to cede to the inhabitants of that territory whatever their claims.

In Article 13.2, ILO 169 refers to the 'concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use'. ILO 169 also upholds Indigenous peoples' rights to ownership and possession over the lands which they traditionally occupy (Article 14.1). This right extends to nomadic peoples and shifting cultivators. Such rights over 'lands, territories and resources' is even more firmly stated in the Draft Declaration on the Rights of Indigenous Peoples (1993). Part VI, Article 26, recognises the rights of Indigenous peoples to 'own, develop, control and use the lands and territories, including the total environment of the lands, air, water, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used.'

Both collective rights and the inalienability of resources are linked to the necessity of Indigenous peoples securing legal title to their territories, and can be used to strengthen their claim to territory. According to Gray (1994):

Indigenous land rights are based on a people's prior occupation of an area, usually before a state was even formed. In this sense, Indigenous Peoples have a claim to '*eminent domain*'<sup>6</sup>

---

<sup>6</sup> Eminent domain is a principle used by governments to justify expropriation of private property for the public good.

(inalienability) which a state usually considers to be its own exclusive right.... Connected with the concept of inalienability is the collective responsibility which a people has for its territory. This does not mean that individual persons cannot hold lands and resources for their own use, but that personal ownership is based on collective consent. The collective rights to lands and resources of Indigenous Peoples have been acknowledged by many governments of the world in their constitutions and in international provisions.

## **Farmers**

### *Defining Farmers*

If farming is an occupation, like shopkeeper or businessman, then it is a term without boundaries encompassing both those who are engaged in high-profit, high-technology land management and subsistence farmers on lands of marginal fertility. Farmers are part of a continuum of rural societies dependent on and managing their immediate environment (Programme for Traditional Resource Rights, 1996). They are members of the 'local communities' identified in Article 8j of the CBD, and they are the high-tech businessmen dependent on the EC subsidies. In the context of this paper farmers – or alternatively, small farmers or resource-poor farmers (Scoones & Thompson, 1994) – are individuals (frequently women) and family groups, working small land holdings for survival rather than high economic gain. They may not be reliant on a single crop or crop variety for their subsistence, and may be self-sufficient and largely independent of the wider market for their livelihood. They are not necessarily solely engaged in the cultivation of crops, but may also farm livestock, extensively or intensively. In fact they may be as dependent on their livestock as they are on crop cultivation, whilst augmenting their livelihoods by hunting and fishing, and using semi-domesticated species of trees and non-woody plants for fuel, food supplements, medicines and other domestic needs. Above all, they are innovators because they carry out selective breeding of their crops and stock.

### *Farmers' needs*

There are an estimated 1.5 billion peoples in the world reliant on 'resource poor' farming who have contributed greatly to landscape and ecosystem diversity, but politically they are a disadvantaged group. Common needs which link all resource-poor farmers are:

- Control over their produce, e.g. the right to save and exchange seed in accordance with customary practice;
- The right to benefit from others' use of their traditional knowledge and expertise;
- Security of tenure on the lands they farm or occupy.

The self-reliance of farmers was weakened by the Green Revolution. By making them dependent on store-bought seeds whose high yields could only be maintained with applications of store-bought fertilisers and pesticides, the Green Revolution – and commercial monopolies held by seed and chemical companies – curtailed traditional farming practices, particularly in developing countries, and devalued the use of locally-adapted seeds and traditional methods of saving seed, planting and cropping (Cordeiro, 1993, p.166).

[Introduce Farmers' Rights here, the arguments and the latest news: not too long, because it is really farmers' privilege that our farmers are fighting for]

[clarify?] Customary practices such as the saving and exchanging of seed at the farm gate have been further eroded through trade restrictions such as those imposed in the European Union<sup>7</sup>. These are highly regulated and limited (Commandeur *et al*, 1996). By requiring plant varieties to be protected by patents or an alternative (*sui generis*) system, TRIPs (Section 5 *Patents*, Article 27.3.b) fails to recognise farming traditions and puts pressure on countries to adopt controls which restrict the exchange of germplasm and inhibit local innovation. The *sui generis* system called for in TRIPs is implicitly one modelled on the UPOV Conventions (UPOV, 1992) requiring some kind of patent-like protection. As long as only UPOV-type alternatives are envisaged, TRIPs can offer no solution, in fact it will further exacerbate the loss of control that farmers have suffered unless funds are made available to enable farmers themselves to patent their innovations, as Anil Gupta has suggested<sup>8</sup>. If the outcome of the examination of the issue of Farmers' Rights by the Conference of the Parties to the CBD is some form of fund, use of those funds for patenting would strengthen local communities against the power of the transnational companies (TNCs).

In the search for workable solutions to the question of Farmers' Rights recognition of 'community rights' as equal to individual rights is a major platform (GRAIN, 1995). A draft *Farmers' Rights Charter* from India, based on farmers' demands, calls for 'fundamental and inalienable rights' to:

communal ownership of plant genetic diversity and domestic animal breeds.

Other demands in the Charter include:

- full participation in any benefits derived from the improved use of these genetic resources;
- control of access to land, water and genetic resources needed to sustain their livelihoods and provide for universal food security;
- determination of their own diverse production and consumption patterns; and
- rejection of patents on food plants and domestic animal breeds, and of genetically engineered food plants and domestic animal breeds.

At present, through Resolution 3 of the 1992 Conference for the Adoption of the Agreed Text of the CBD and Farmers' Rights, questions of benefit-sharing and protection of knowledge focus on plant genetic resources and their potential in the international commercial market for plant germplasm. It is necessary to extend this protection to include knowledge and 'resources' (a general term to include not only plant genetic resources but livestock and even ecosystems where their structure is the result of human manipulation) under the control of 'farmers' in their wider definition.

---

<sup>7</sup> EU *Regulation on Community Plant Variety Rights*, June 1994 allows farmers' privilege on saving and using seed for some food and fodder crops.

<sup>8</sup> Oxford Centre for the Environment, Ethics & Society, Mansfield College, Oxford, UK, October 1995.

Whilst the CBD supports the maintenance of biological diversity and restated at the Second Conference of the Parties<sup>9</sup> that ‘plant genetic resources for food and agriculture are critical components of biological diversity’, neither the CBD nor FAO Farmers’ Rights are likely to restore to farmers control over their plant germplasm. The CBD does not do so because the Preamble reaffirms that States have sovereign rights over their own biological resources, which effectively places control at government level, and FAO will not because it vests control in the international community as ‘trustees for present and future generations of farmers’ (FAO Resolution 5/89).

This straitjacket for farmers has to be released by extending and expanding the role of resource-poor farmers in such ways that both national and international policy makers have to acknowledge that their vital role in biodiversity conservation cannot continue without their receiving targeted support and freedom of action.

*Areas where sensitivity to differences is required by policy makers*

### *5.2.1 Ownership and related concepts*

In many Indigenous societies, the right to livelihood resources (apart from immediate personal possessions) such as trees, crop species, and medicinal plants, is not usually exclusive. These resources are often shared among individuals and social and corporate groups, each of which may have ‘bundles’ of graded rights to the same resources within a given area. Such rights are considered inalienable; they cannot be transferred, either as a gift or through a commercial transaction. As a general rule, knowledge and resources are communally held and, although some specialised knowledge may be held exclusively by males, females, certain lineage groups, or ritual or society specialists (such as shamans), this does not give that individual or group the right to privatise the communal heritage.

The idea of society being composed of the dead, the living and those yet to be born is central to Indigenous societies for whom the boundary between manifest life and spiritual life is differently defined. Russell Barsh (Barsh,1996) writes of Indigenous peoples’ knowledge as being ‘*operating instructions*’ for the land, given to them from time to time by the Creator and the spirit world, not just through revelations or dreams but frequent contacts with the minds and spirits of animals and plants.’ Knowledge is ‘lent’ or ‘shared’ with outsiders. This knowledge is not the property of an individual, but a responsibility he or she bears under the ‘locally-specific systems of jurisprudence’ pertaining to their society. They cannot therefore enter into arrangements involving their so-called property as defined by the western world without compromising their beliefs and culture.

Notions of ‘property’ in Indigenous societies can vary considerably from western concepts. Frequently ‘ownership’ in the sense of a right that is alienable is not accepted. However, Indigenous societies may be imbued with such notions as custodianship, guardianship and stewardship. Indigenous peoples frequently view themselves as guardians and stewards of nature. Harmony and equilibrium among components of the Cosmos are central concepts in most indigenous cosmologies. However, Indigenous peoples are not satisfied with only the role of ‘custodians’ or ‘stewards’ of biodiversity if the inalienable nature of their relationship to their territory and resources, and their right to use these resources are not recognised.

---

<sup>9</sup> Decision II/16, *Statement to the International Technical Conference on the Conservation and Utilisation of Plant Genetic Resources for Food and Agriculture*, UNEP/CBD/COP/2/19, Jakarta, Indonesia, November 1995.

On the other hand, recognition of ownership is the essential point of farmers' rights over the seeds they have bred. These are their personal property to dispose of as they wish. Their dispute is with seed companies who have taken their property without acknowledgement or reward, and with governments who deny that they have such ownership rights. Their rights have been denied because in the Preamble to the CBD ownership of biological resources is vested in the State, and FAO vests it in the international community as 'trustees' for farmers (Resolution 5/89).

Indigenous peoples have achieved a status where their rights to self-definition and self-determination have been publicised and supported, both in statements published under the aegis of UN agencies such as the United Nations Development Programme, and in international law (in ILO169). Farmers, on the other hand, have no such distinct status. The resource-poor farmers who are largely located in developing countries are still working for their rights mainly through NGOs and local organisations. There is a wide variation in levels of political organisation of farmers' groups between countries, and even between continents, and limited global co-operation at present. The position is changing. There is an overlapping agenda between the two groups, but it needs to be carefully scrutinised to ensure that the demands of one group do not submerge those of the other. When discussing the collaboration of farmers' and Indigenous peoples we need to address the following questions?

### *Self-determination*

Whilst 'peoples' have the right to self determination 'communities' do not. This is why the CBD only mentions 'Indigenous and local communities embodying traditional lifestyles' and is deliberately non-specific in its use of 'Indigenous'. For this reason Indigenous peoples will not willingly accept farmers' adoption of 'a right to self determination' as set out in the draft *Farmers' Rights Charter* from India, or in the 'philosophy of democratic pluralism' (Shiva & Holla, 1996) which recognises:

that diverse communities have diverse interests, and in the shaping of national law and policy they all have legitimate democratic rights of decision making and self determination.

How are these communities to be defined? Whilst the word community may be specific, as in 'a community' meaning a place or grouping of people, or have a wider sense, as in 'the community of Sikhs' it is not self defining. It is absolutely imperative for Indigenous peoples to retain their unique identity and rights by being described as 'peoples', whereas farmers require recognition as an identifiable grouping, which can be accommodated under the CBD definition and thereby accorded the rights and benefits due to them.

### *5.3 Sui generis system or systems*

The TRIPs agreement's option of a *sui generis* system for protecting plant varieties where countries do not wish to apply patent law is often taken up as a solution without recognition that in the context of TRIPs *sui generis* means 'alternative patent-type protection' which is a very limited form of control. If, however, by *sui generis* it is accepted that 'alternative' controls are needed which include other intellectual property rights mechanisms then more general alternatives need to be sought which can be applied by and for communities rather than against communities and are not

limited to patents. This would have to be approached through the World Trade Organisation by lobbying for revision of Part III of Annex 1C of TRIPs.

There was concern at the meetings in early 1996<sup>10</sup> that the CBD should have priority over TRIPs in order to pre-empt the imposition of patents over the more general requirements of the CBD. There was also general agreement at these meetings that at the TRIPs review in 1999 usable alternatives to patents should be presented to national governments and to the WTO's Council for TRIPs for its consideration.

An alternative approach is to work for formulating multiple *sui generis* systems which would enable nations and communities and peoples to provide targetted systems for protection of their particular knowledge and resources. TRIPs would then be one option or requirement within the range.

The Traditional Resource Rights (TRR) approach would enable traditional and Indigenous peoples to build a solid foundation for more equitable systems of protection and benefit sharing (Posey, 1995) expanding the general understanding of Intellectual Property Rights to include 'bundles of rights' already recognised by international legally and non-legally binding agreements. By looking at all aspects of human rights in international and national law TRR has the flexibility to acknowledge individual and communal rights and to advertise a wider interpretation of those rights than the narrowly-defined current intellectual property laws.

TRR is more than a system. It is a framework of principles from which a whole range of *sui generis* systems can be generated. The principles upon which TRR are founded recognise basic human rights, the right to development, rights to environmental integrity, religious freedom, land and territorial rights, the right to privacy, farmers' rights, intellectual property rights, neighbouring rights, cultural rights, cultural heritage recognition, rights of customary law and practice, and the right to prior informed consent and full disclosure. Further principles may be identified as the concept evolves.

Indigenous peoples have an understandable concern that identifying themselves too closely with farmers will jeopardise the advances they have made in terms of international recognition. Given the differences in demands noted above, Indigenous peoples do not wish to see Indigenous rights subsumed under the rights of non-Indigenous groups. Although there are overlaps, the demands of Indigenous peoples are concerned with separate political and ethnic identities from the state within which they live, whereas non-Indigenous demands are not. One of the dangers for Indigenous peoples is that they will be co-opted into farmers movements and have their specific concerns subordinated to the demands of farmers.

---

<sup>10</sup> See footnote 1.

## Appendix: Definitions by Indigenous Peoples

The following example comes from the World Council of Indigenous Peoples:

Indigenous peoples are such population groups who from ancient times have inhabited the lands where we live, who are aware of having a character of our own, with social traditions and means of expression that are linked to the country inherited from our ancestors, with a language of our own, and having certain essential and unique characteristics which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should be thus regarded by others.

ILO 169 states that peoples are considered Indigenous if they are:

- (a) Tribal peoples in countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
- (b) Peoples in countries who are regarded by themselves or others as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain, or wish to retain, some or all of their own social, economic, spiritual, cultural and political characteristics and institutions.

After providing the above definition of Indigenous peoples ILO169 supports the right to self-identification as 'Indigenous' by adding:

Self-identification as Indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this convention apply.

### 4. Wild or managed? Is there such a place as a wilderness?

Archaeological evidence is increasingly showing that the concept of 'wilderness' has been misplaced. Almost all landscapes on Earth have at some time been modified by human intervention, and that intervention has been by the farmers and indigenous peoples who in addition to being cultivators, breeders, herders, hunters, fishers etc., have been landscape managers through their historic role in modifying ecosystems. As such they are critical to the maintenance of biological diversity and the sustainable management of not only cultivated ecosystems, but forests and apparently non-cultivated landscapes. Failure to understand the human-modified nature of 'wild' landscapes devalued the traditional management practices that maximise their use and conservation (Gomez-Pompa and Kaus 1992). Many so-called 'natural' landscapes are in fact '*cultural*' or '*anthropogenic landscapes*', either created by humans or modified by human activity.<sup>11</sup> Indigenous peoples and a growing number of scientists feel that it is no longer acceptable to assume that just because landscapes and species appear to outsiders to be 'natural', they are therefore 'wild'.

---

<sup>11</sup> Cultural landscapes are necessarily of cultural significance, but do not necessarily have to be anthropogenic (human modified). For indigenous peoples, culture and nature are inseparable, so forests are frequently sacred sites whether they are consciously managed or not by local residents.

According to a Resolution from the 1995 Ecopolitics IX Conference in Darwin, Australia (in Posey 1995):

The term 'wilderness' as it is popularly used, and related concepts as 'wild resources', 'wild foods', etc., [are not acceptable]. These terms have connotations of *terra nullius*<sup>12</sup> and, as such, all concerned people and organisations should look for alternative terminology which does not exclude Indigenous history and meaning.

In 1992 the UNESCO World Heritage Convention added a category of 'cultural landscapes' to its list in recognition of 'the complex interrelationships between man and nature in the construction, formation and evolution of landscapes'. It thereby acknowledged human modification of some of the most cherished landscapes in the world:

Cultural landscapes often reflect specific techniques of sustainable land-use considering the characteristics and limits of the natural environment they are established in, and a specific spiritual relation to nature. Protection of cultural landscapes can contribute to modern techniques of sustainable land-use and can maintain or enhance natural values in the landscape. The continued existence of traditional forms of land-use supports biological diversity in many regions of the world. The protection of traditional cultural landscapes is therefore helpful in maintaining biological diversity. (Item 38)

This illustrates an essential point, that it may be impossible to draw a line between wild and cultivated species and landscapes. The colonial countries of the developed world who have driven the industrialisation of agriculture have largely ignored precolonial land management systems and their impact on biological diversity. But archaeological evidence of disappeared settlements, and increasing understanding of ecosystems and vegetation cycles, demonstrate that these systems and their descendants should not be ignored. Use of the terms 'wilderness' and 'wild' are being criticised as inaccurate. For example, a Resolution issued for the 9th Ecopolitics Conference<sup>13</sup> declared:

Noting the changes which have occurred in statements from some conservation agencies, Ecopolitics IX reiterates the inacceptability of the term *wilderness* as it is popularly used, and related concepts such as *wild resources*, *wild foods*, etc. These terms have connotations of *Terra Nullius* and, as such, all concerned people and organisations should look for alternative terminology which does not exclude Indigenous history and meaning.

The Hidden Harvest programme of the International Institute for Environment and Development, which evaluates the 'importance of wild plant and animal resources in agricultural systems and to rural livelihoods' (Guijt *et al*, 1995), has underlined the inappropriateness of the use of 'wild' in the evidence it has found of continuing use of Non-Domesticated Resources (NDR). The value of the programme in publicising and documenting the wide variety of off-farm plant and animal resources used in rural areas should not be ignored. Every day throughout the world not only species are being

---

<sup>12</sup> *Terra Nullius* is a legal doctrine used in the past to justify colonialist land claims to indigenous peoples' territories. In Australia and some other parts of the world, such lands were conveniently assumed by settler populations and their law courts to be uninhabited and unowned prior to their arrival.

<sup>13</sup> Ecopolitics IX: Perspectives On Indigenous Peoples' Management Of Environmental Resources, Northern Territory University, Darwin, Australia, September 1995.

lost but traditional knowledge, and such a programme may help to reinforce the value of local knowledge for future food security. But the programme in its title and description does not acknowledge that the resources are only 'hidden' and 'wild' to outsiders. Those who use these resources know of them. The loss of this knowledge results from external interference and influences and it is these threats that need to be curtailed by placing control in the hands of those who use the resources, the continuum of rural communities which include farmers and Indigenous peoples.

[Link: IPs and farmers are integral part of the land. Almost every habitable part of the world is a human-adapted ecosystem, but it is necessary to be aware of the differences]