

SEMINAR REPORT
'ACCESS TO GENETIC RESOURCES'

29-30 May 2003

Capacity Centre, CET
Yumbel, 8th Region, Chile

Thursday, 29 May 2003

1. INTRODUCTION

- 1.1 The seminar on *Access to Genetic Resources* was held at the Training Centre of the Education and Technology Centre (Centro de Educación y Tecnología, CET) in Yumbel, Chile, on 29-30 May 2003.
- 1.2 The seminar was attended by 59 participants, including representatives from rural organisations, local, regional and national governmental departments, non-governmental organisations, researchers and academics, as well as indigenous groups and a group of 'seed guardians'. Annex 2 of this report contains the full list of participants.
- 1.3 The seminar was organised by the Chilean *Fundación Sociedades Sustentables* (Sustainable Societies Foundation, FSS) and the Foundation for International Environmental Law and Development (FIELD), in collaboration with the *Centro de Educación y Tecnología* (Education and Technology Centre, CET) of Yumbel. The seminar had the support of the Local Council of Yumbel; the regional authorities of the Bio Bio region; the Regional Agriculture Secretariat (SEREMI) of Chile's 8th Region; the Association of Local Councils for Local Economic Development (AMDEL); Chile's *Comisión Nacional del Medio Ambiente* (National Environmental Commission) (CONAMA); the National Forestry Corporation CONAF 8th Region; the National Commission for Indigenous Development (CONADI); and CODEFF Concepción.

2. OPENING OF THE SEMINAR

- 2.1 The seminar was officially opened by the Major of Yumbel, Mr Raúl Betancour Ayala, who welcomed the participants and thanked the CET, the FSS and FIELD for organising it. The Major expressed his gratitude to the donor which provided the funds for the organisation of the seminar: the 'Darwin Initiative for the Survival of Species' of the UK Department for Environment, Food and Rural Affairs (DEFRA) and the *Departamento de Investigación y Desarrollo* (Department of Research and Development), as well to the supporters and organisers of the event.

Welcome and introduction to the seminar

2.2 The director of the Sustainable Societies Foundation, Dr Maria Isabel Manzur, introduced her organisation and explained the objectives and activities of the project 'Access to genetic resources, benefit sharing and traditional knowledge in Chile', funded by the Darwin Initiative, and undertaken in partnership with FIELD, as well as the specific seminar objectives. She also explained the different phases of the project and the relevance of the seminar to achieving the project objectives. The co-ordinator of the project at FIELD, Ms Carolina Lasén Diaz, Staff Lawyer in FIELD's Biodiversity and Marine Resources Programme, thanked the hosts and organisers, CET Yumbel and FSS, for their hard work in organising the event, and welcomed all participants.

2.3 Mr Agustín Infante, director of CET Yumbel, introduced the seminar agenda and the last minute changes added to it, and the documentation that had been distributed to the participants. Mr Infante was also the moderator of the whole seminar. The seminar agenda is included as Annex 1 to this report.

3. INTRODUCTION TO ACCESS TO GENETIC RESOURCES

3.1 Dr. Manzur (FSS) introduced the main concepts and terminology in the area of access to genetic resources, both in relation to biodiversity and to intellectual property rights. After the presentation, a brief exchange with participants highlighted the need to build capacity to innovate and research on genetic resources in Chile. The issue of applying patents to biological products was also discussed among seminar participants.

3.2 Carolina Lasén (FIELD) summarised the international legislative and policy framework on access to genetic resources, benefit sharing and protection of traditional knowledge in the framework of the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Ms Lasén's presentation also covered the relationship between intellectual property rights and access to genetic resources.

4. LEGAL ASPECTS OF ACCESS TO GENETIC RESOURCES

4.1 Chilean lawyer and collaborator in the FSS/FIELD project, Mr Luis Flores, explained Chile's specific circumstances in relation to the international framework previously presented. Mr Flores focused his presentation around three possible approaches for the regulation of access to genetic resources: a legal approach; a contractual approach; and an administrative approach. He also addressed the possible contents of an access regulation in Chile, including its objectives, scope and interested parties as well as their relationship to Chile's private property system which includes biological

resources. Mr Flores also raised the question of who should be in charge of a regime on access to genetic resources and benefit sharing in Chile.

- 4.2 The debate that followed included the issue of the ideological opposition between the CBD and the protective Chilean legislative system in relation to private property over natural resources. In this context, the current process to reform the Constitution of the Republic was also mentioned as a possible opportunity to address that issue.
- 4.3 The Head of the Agricultural Studies and Policies Unit (ODEPA) of Chile's Ministry of Agriculture, Mr Hugo Martínez, presented 'The conservation and use of native genetic resources in Chile: Elements for a policy formulation'. Mr Martínez explained the proposals of the Ministry of Agriculture regarding the conservation of genetic resources, the promotion of their use and the need to regulate this activity. He explained that these proposals led to the development of a draft bill covering genetic resources by the Ministry of Agriculture (native terrestrial genetic resources), as access to genetic resources has been included as one of the Ministry's national priorities for the period 2000-2010. The main objectives of the draft bill are to capture the economic value of those genetic resources by facilitating access to them and allowing a fair and equitable sharing of the benefits derived from their utilization.

5. BIOPROSPECTING IN CHILE

- 5.1 Dr Manzur took the floor again to present the main results of the research and field work undertaken to gather information on the access policies and experiences of a number of public and private institutions and organisations. Dr Manzur explained the variety and high rate of endemism of Chile's biodiversity and presented a summary of the main access or bioprospecting contracts in which Chilean institutions have been involved. She further added the results of her research on foreign patents held over products based on Chile's endemic genetic resources.

6. THE EXPERIENCE OF RURAL COMMUNITIES IN BIODIVERSITY PROTECTION

- 6.1 Mr Carlos Venegas, of Chiloé Island's CET, talked about his experience and work on community participation and conservation of genetic resources in the island of Chiloé, which focuses on the conservation of original varieties of potatoe as Chiloé is a centre of origin. Mr Venegas highlighted the work of rural communities, particularly women, in the recovery of native varieties and the knowledge of their use. He stressed the lack of information and education on this issue by the general public and technical experts alike.

- 6.2 After the presentations, participants engaged in a debate on all the issues raised in relation to access to Chilean genetic resources. Participants discussed a wide variety of issues such as how to achieve a fair and equitable sharing of benefits; the need to raise public awareness; the implications of the Free Trade Agreement between Chile and the US; the concern about the current loss of genetic capital; the need to valorise and research to know more about Chile's genetic resources; and the need to prioritise the country's research on resources that are disappearing.
- 6.3 At the end of the first day of the seminar, a group of local 'seed guardians' (*cuidadoras de semillas*) who were participating in the seminar, conducted an exchange of seed to show the important work that they do. This event helped local and national authorities to understand traditional knowledge, stressing the need to value it and to find adequate means of protecting it.

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- 6.4 Due to the short time available at the end of day 1, it was decided to postpone the presentation of Mr Agustin Infante, director of CET Yumbel, on the activities of his organisation regarding the recovery of germplasm and the work of the 'seed guardians'. Mr Infante talked about the establishment of a network of seed carers' across regions and towns in rural areas. He also mentioned exchanges of seeds ceremonies, agricultural fairs and their role in maintaining and increasing the biodiversity in rural Chile. Following this presentation, a video of the TV programme '*Tierra Adentro*' was shown to seminar participants, featuring the work of local 'seed guardians'.

7. SUMMARY OF DAY 1 AND PLENARY DEBATE

- 7.1 Dr Manzur summarised the main concepts discussed on the previous day and highlighted the need to legislate on access to genetic resources. She stressed that the decision-making process should be participatory so that authorities and civil society can work together in shaping a new law that includes the interests of local communities in relation to control over natural resources, farming practices and traditional knowledge. Dr Manzur stressed the importance of finding out the opinions of civil society on any future legislation on access to genetic resources through the seminar working groups.
- 7.2 Representatives of national authorities called for interested organisations to make this issue a priority and that they should request and put pressure on public institutions to move this process forward and advance the policy discussions on access to genetic resources. Other issues of interest for seminar participants included the opportunity to receive benefits derived from the use of traditional knowledge associated with biodiversity; the necessary respect of folklore as science; and the parallel debate in the country on the

issue of biosafety, which should be linked to the one on access to genetic resources. In addition, other issues raised during the debate were the need to define the country's values and principles that should guide its policy on access to genetic resources, benefit sharing and the protection of traditional knowledge.

8. METHODOLOGY AND WORKING GROUP ALLOCATION

8.1 CET Yumbel's Director, Mr Agustín Infante, presented the methodology of the two working group sessions. The working groups were formed grouping the different stakeholders at the seminar so we could have specific recommendations from each of the sectors represented to then input into the national seminar to be held in Santiago in early November 2003. Five working groups were therefore established: (1) researchers and academics; (2) development and environmental organisations; (3) rural organisations; (4) 'seed guardians'; and (5) authorities.

8.2 The five working groups met in two sessions to discuss how each of them is affected by the loss of genetic resources and their lack of valorisation, and the lack of regulation on access and benefit sharing. The second session focused on the development of proposals in relation to the concerns raised in the first working group session. The list of questions to guide the working group discussions is included as Annex 3 to this report.

9. CONCLUSIONS OF THE FIRST WORKING GROUP SESSION

The main conclusions reached by each of the five working groups after their first session are listed below:

9.1 Researchers and academics:

- There is a lack of knowledge and dissemination of information about genetic resources, which is connected to a lack of public awareness of the importance of these resources.
- There is a lack of public support for research and we are losing genetic resources as we are entering into agreements without benefit sharing provisions.
- We must protect our native and non-native genetic resources and legally safeguard the genetic information of the biological resource associated to its specific environment. Copies of the genetic resources should be kept in their country of origin.
- Research institutions do not consider the traditional knowledge associated with biological resources.
- There is no consideration of possible intellectual property rights by the country's research institutions.

9.2 Development and environmental organisations:

- Genetic material is being lost as a result of economic and technological pressures. This leads to both biodiversity and cultural losses and a decrease in the quality of life, as well as to a greater dependency on trade. These losses are irreparable.
- A decrease in the access to local resources creates dependency. There is an economic background as big corporations benefit from biodiversity through patents.
- The lack of legislation makes us lose the opportunity of receiving benefits from local genetic resources. In the future access should be free.
- There is a lack of information, organisation and participation. If public participation is limited the system could get even more distorted. Regulation can be detrimental if it is aimed at the interests of big companies.
- There is a lack of research on local genetic resources.
- It could happen that a community practice or tradition is patented and they would have to pay to access it.
- There are two contrasting ideological positions: (i) support patents, protect traditional knowledge and the country's genetic resources, or (ii) follow a broader approach of safeguarding life and access for all to the benefits of biotechnology.

9.3 Rural organisations:

- Organisations working on the ground lack information on the loss of genetic heritage. Local farmers and rural communities need to be informed of the importance of this issue. The lack of motivation of these communities is closely related to the lack of information.
- There is a lack of legislation at the national level and also a lack of alternative proposals from rural communities and organisations. The State has given little information as there has been little concern about this, but rural organisations are going to demand and support the regulation of access to genetic resources.
- These issues affect us as they relate to our national identity and heritage.
- The regulation of patents must take place at the country level and the State must protect that issue.
- Biopiracy implies the loss of resources that return to the country with value added but which were inaccessible to us.

9.4 'Seed guardians'

- There is a lack of information and education about genetic resources in rural and Mapuche communities, where migration to urban areas is a reality.

- Development implies the devaluation of natural medicine and family crops.
- Trans-national corporations put an end to native plants and water resources. There is a process of land degradation due to pine plantations and soil acidity, which makes other uses difficult.
- The loss of resources triggers ethical, social and economic damage, patents over natural resources and the lack of access.
- The lack of regulation on access to genetic resources is linked to the lack of information about how this affects rural communities as they ignore what is being lost as well as the possible use that could be given to certain local resources.
- The use of traditional knowledge to develop patentable inventions affects rural communities at economic, social and cultural/ethical levels.
- There is a lack of information and knowledge about intellectual property rights and the lack of benefit sharing from access to genetic resources, in addition to the lack of domestic legislation on this issue.

9.5 Authorities:

- Authorities are affected by those issues that affect citizens.
- The government responds to concrete demands and must look after the public good.
- The issue discussed here is a concern of the nation that must be addressed as it is creating economic, biological, cultural, scientific and environmental losses, and public policies are not giving an adequate response to those losses as there is no common government vision on this issue.
- To achieve a sustainable approach, government needs to develop legislation, actions and instruments to address local demands. On this issue, demands come from abroad due to global pressure and international obligations, while there are specific needs and trends at the local level. It is difficult to connect these two levels: the local with the global one.
- The analysis of the situation leads to a disparity between the vision among government institutions and between local communities and national government.
- It is necessary to inform, educate and promote what we have and to communicate better. This awareness must connect public institutions with communities.
- There is a need to value genetic resources and associated traditional knowledge, to promote them and foster transparency over the benefits that can be obtained.

9.6 Before the second working group session, Carolina Lasén Díaz (FIELD) presented a summary of the conclusions reached by the working groups, highlighting their similarities and common elements. The answer to the

question: ‘how do the issues raised in this seminar affect us?’ has three elements:

- Losses: biological; economic; cultural; social; ethical; of national identity and heritage; of sovereignty; scientific; and environmental.
- Lack: of information; awareness; dissemination (in all sectors). There is a lack of concern for the implications related to intellectual property rights; a lack of regulation and alternative proposals; a lack of valorisation of genetic resources and associated traditional knowledge; a lack of research and knowledge about existing resources and their traditional use. There is a lack of a common government vision on this issue.
- It is necessary to make international demands compatible with the local ones in order to create a national position on the issue of access to genetic resources, benefit sharing, the protection of traditional knowledge, patents and other intellectual property rights.

10. PROPOSALS AND RECOMMENDATIONS ARISING FROM THE SECOND WORKING GROUP SESSION

10.1 This session focused on the development of proposals to address the problems identified in the first working group session. As mentioned above, the questions distributed to seminar participants to guide their discussions are attached to this report as Annex 3. The conclusions and recommendations of each of the five working groups are listed below:

10.2 Researchers and academics

- In the area of education and public awareness:
 - Train teachers and organise workshops for rural communities.
 - Disseminate the research results.
 - Use all media (radio, local press, etc.)
 - Disseminate information about seed exchanges and rural fairs, stressing the importance of the work of the ‘seed guardians’.
 - Increase the awareness of government authorities through their participation in meetings such as this one.
- In the area of research:
 - Need to recover and value rural knowledge.
 - Need to undertake research on local plant genetic resources.

- Need to make alliances with ecologically aware scientist groups, local government and individuals involved in organic agriculture (producer groups, private companies, etc.).
 - Need to recover the resources threatened with extinction.
 - Work in a multi-disciplinary way together with local farmers, researchers, authorities, lawyers, etc.
- In the area of legislation:
 - It is necessary to discuss 'yes' or 'no' to patents.
 - Protect unique resources through alliances that allow products, but not genes, to be taken out of the country.
 - Access contracts should include clauses that allow access to those resources for local research (in situ).
 - Pass legislation to protect native and non-native (i.e. naturalised) resources in Chile.

10.3 Development and environmental organisations

- Legislation is needed to protect our own resources in a flexible way that is good both nationally and internationally. It is also necessary to negotiate agreements with external organisations.
- We must make the most of the capacity and knowledge of industrialised countries to create alliances among similar organisations.
- Benefits derived from local genetic resources must be promoted, either monetary or non-monetary.
- These issues must be disseminated at all levels and using all available media, placing a particular emphasis on education.
- Public participation must be promoted, as well as the establishment of national and international networks. Organisational development must be improved for those working on the ground by using the strengths of more experienced organisations. The organisation of public participation must be improved.
- An alternative model that includes social and environmental elements must be put forward.
- Other necessary actions are: to limit the use of hybrid and transgenic seeds; to promote the use of local seeds and associated traditional knowledge; to raise awareness about local resources; and to develop projects on the conservation of local varieties.

10.4 Rural organisations

- The current neo-liberal approach is questioned as it does not give solutions to indigenous problems in Chile.
- In relation to who should give access to genetic resources, this should be done through a mixed commission that allows community

participation in the research over their natural resources and in educational tasks.

- As to benefit sharing, these benefits must reach the communities and be allocated through specially created local organisations.
- The global vision of nature held by Mapuche people makes it necessary that they participate in the decision-making related to their resources. Mapuche institutions and organisations must be responsible for granting access and entitled to receive the related benefits.
- The compensation for communities could include duty benefits, preferential prices, denominations of origin, improved information, etc. but this would imply the acceptance of the current model and market rules.

10.5 'Seed guardians'

- Access must be granted by an institution which is involved with the specific resource, together with government. This institution must have the knowledge, valorisation and traditional use of the resource, while government has a support capacity.
- The main elements to decide whether or not to grant access must be: the limitations of the resource use (e.g. sub-products); its promotion; benefits; guarantees; whether it would imply the extinction of the resource; advice to determine its use; and a temporal limitation (also in the sense of availability for local use).
- The government should participate and provide legal and financial support in the field of training, exchange, monetary benefits and percentages, in line with the benefits obtained, as well as technology transfer.
- Regarding possible benefits derived from access, these should reach both the organisations involved and the government. Traditional knowledge must be protected and the government should support the gathering of information and capacity building. On the other hand, the possibility to refuse an offer must be granted in case it is not considered acceptable.
- How to protect traditional knowledge is an open question...

10.6 Government authorities

- Ideally, the decision to grant access should be taken by a public-private mixed commission but the legal competence would rest with the Ministry of Agriculture in relation to all terrestrial resources, or the Under-Secretariat of Fishing, for marine resources.
- Local and indigenous communities should participate in the decision-making process on access to genetic resources. There should be two levels of decision-making by the mixed commission: the operational one and the final decision.

- The main elements to take into account in the access determination should be:
 - The background information of each application (the objective and whether there is traditional knowledge involved); and
 - The criteria for decision-making: the conservation status of the particular species or ecosystem; the acceptance of conditions that benefit local communities and local development; and the cultural value as an important factor.
- As far as benefit sharing is concerned, certain capacity to negotiate is needed (scientific, socio-economic, legal and cultural knowledge) as well as the awareness of the value of the resource that is being negotiated, all reasons why a multi-disciplinary team is needed.
- The beneficiaries of access must be the communities that have looked after the resource, the State, scientists and universities, and the applicant, be it a Chilean or foreign entity. Both parties to the contract benefit from access.
- The types of benefits would be :
 - Training and exchanges
 - Technology transfer
 - Joint research
 - Funding for in situ and ex situ conservation, for research and for local development
 - Donations (including of the final product developed)
 - The Bonn Guidelines should be consulted
- The issue of the sharing of benefits was not resolved by the working group

11. CLOSING OF THE SEMINAR

11.1 The organisers of the seminar thanked the participants for their hard work and dedication over the duration of the seminar. It was explained that the report of the seminar will be sent to all participants and the outcomes of their discussions will be an important input to the national seminar to be held in Santiago in late October/early November 2003. All participants to the seminar in Yumbel were invited to the national seminar and invitations will be sent once the dates and venue are fixed.

11.2 Dr. Manzur (FSS), Carolina Lasén (FIELD) and Agustin Infante (CET Yumbel) thanked the donor and supporters of this seminar.

11.3 The Major of Yumbel, Mr. Raúl Betancur, formally closed the seminar at 6 pm on Friday 30 May 2003.

AGENDA

Seminar

“ACCES TO GENETIC RESOURCES”

Yumbel, 29- 30 May 2003

Thursday 29 May

- | | |
|----------------|---|
| 14:00 - 14:30 | Registration |
| 14:30 - 15:00 | Welcome and Introduction to the seminar |
| 15:00 - 15:30 | Introduction to Access to Genetic Resources María Isabel Manzur, Fundación Sociedades Sustentables |
| 15:30- 16:00 | International Framework on Access to Genetic Resources and Benefit Sharing Carolina Lasén, FIELD |
| 16:00 - 16:30 | Legal Aspects of Access to Genetic Resources in Chile Luis Flores, Fundación Sociedades Sustentables |
| 16:30 - 16:45 | Coffee break |
| 16:45 - 17:05 | Draft Bill on Access Hugo Martínez, ODEPA |
| 17:05 – 17:35 | Bioprospecting in Chile María Isabel Manzur, Fundación Sociedades Sustentables |
| 17:35 - 18:20 | The Experience of Rural Communities in Biodiversity Protection Agustín Infante, CET Yumbel Carlos Venegas, CET Chiloé 'Seed Guardian' |
| 18:20 - 18:140 | Plenary discussion |
| 18:40 - 19:00 | Seed Exchange |
| 19:00 | End of the first day |

Friday 30 May

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| 9:00 - 9:15 | Summary of Day 1 and Introduction of the working group sessions María Isabel Manzur, Fundación Sociedades Sustentables |
| 9:15 - 10:00 | Methodology and Group Allocation Agustín Infante, CET Yumbel |
| 10:00 -11:20 | Working Groups session 1 |
| 11:20 – 11:30 | Coffee Break |
| 11:30 -12:30 | Plenary - Report back from the Working Groups |
| 12:30 -13:00 | Conclusions |
| 13:00 -14:30 | Lunch |
| 14:30 –14:45 | Introduction to the second session |
| 14:45 – 16:05 | Working Groups Session 2 |
| 16:05 – 16:15 | Coffee break |
| 16:15 -17:15 | Plenary - Report back from the Working Groups |
| 17:15 -17:45 | Conclusions and Recommendations |
| 18:00 | Closing |

ANNEX 2

Participants List
Seminar "Access to Genetic Resources"
Yumbel, Chile, 29-30 May 2003

| | |
|---|---|
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GUIDING QUESTIONS FOR THE DISCUSSIONS OF THE WORKING GROUPS

SESSION 1

How do the following affect us?

Genetic resources loss and lack of valorisation

'Biopiracy'

The lack of regulation on access to genetic resources and benefit sharing

Use of traditional knowledge to develop innovations that can be then patented

Intellectual property rights over Chilean resources or innovations over the country's resources.

SESSION 2

What do we propose to solve the problem?

1) Access to genetic resources

- Who should grant access to Chile's genetic resources?
- How should local and indigenous communities be involved in the access process?
- What should be the main elements to be considered when deciding whether or not to grant access?

2) Benefit sharing

- What capacity is needed to negotiate the terms and conditions of an access and benefit sharing agreement?
- Who should be the beneficiaries of access?
- What type of benefits should be included or considered in those access agreements or contracts?
- How should the benefits be shared at the national and/or local level?
Should there be limits to the use that can be made of those benefits?

3) Protection of traditional knowledge

- How should traditional knowledge be protected? Should it be subject to commercialisation? In which case or under which conditions?
- How should the rights of communities to the customary use of resources be protected? Should there be any type of communal property regime over genetic resources and associated knowledge?