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and

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Submission to the National Human Rights Consultation

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Gene Ethics

Our Vision

Gene Ethics envisages a safer, more equitable and more sustainable GM-free society.

Our Mission

Gene Ethics is a non-profit educational network of citizens and kindred groups. We want the precautionary principle, scientific evidence and the law rigorously applied to all proposed uses of genetic manipulation (GM) technologies and their products. Gene Ethics generates and distributes accurate information and analysis on the ethical, environmental, social and economic impacts of GM. Our education programs critically assess GM for the public, policy-makers and interest groups.

Introduction

'Living in a pollution-free world is a basic human right'
United Nations Human Rights Committee 2001

Our submission asserts everyone's human right to live in a safe and pollution-free environment. Also essential is the right of open access to comprehensive information, to enable everyone to protect their rights to life and health. Our submission will explore some evidence linking new technologies and their products with short and long term exposure to various kinds of pollution and other hazards. We will also review human rights policy, including limited requirements for robust safety and public health research and for access to its results, that would warn the public, regulators and governments of actual and impending danger. We advocate the application of the precautionary principle (not the much weaker precautionary approach) to all new technological innovations and their products.

We also asserts the existence of rights to guarantee safe technologies and technological products, safe and clean environments and unhindered access to full information on the new products of technological innovation These include, for instance, Genetically Manipulated Organisms, nanomaterials and other hazardous substances, materials and equipment that emit ionizing and electromagnetic radiation, and synthetic chemicals. Australia's human rights framework should ensure that rights are protected and precaution exercised throughout the whole lifecycle of new technical innovations and their products.

Our submission will discuss some aspects of the three questions set out in the discussion paper:

- Which human rights (and responsibilities) should be protected and promoted?
- Are these human rights now sufficiently protected and promoted?
- How could Australia better protect and promote human rights?

Which human rights and responsibilities should be protected and promoted?

All established human rights should be protected and promoted by Australia. United Nations General Assembly Resolution 60/251 that established the UN Human Rights Council confirms this by enunciating the following principles:

- "Respect human rights and fundamental freedoms for all, without distinction of any kind" and
- "Reaffirming further that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis."
- "Emphasising the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status."

Are human rights sufficiently protected and promoted?

Human rights are not sufficiently protected and promoted, in Australia or the Asia Pacific. The Asia-Pacific remains the only region of the world without a regional human rights mechanism.

How could Australia better protect and promote human rights?

We recommend Australia fulfill our international obligations to respect all human rights without distinction, including by promotion of a regional human rights mechanism for the Asia-Pacific and by domestic legislation including an Australian bill of rights.

We consider that Australia should in particular fulfill our obligations to respect peoples' Economic, Social and Cultural Rights enshrined in the International Covenant on Economic, Social and Cultural Rights including the human right to food and the human right to health, as well as the right not to be deprived of the means of subsistence enshrined in Article 1, (noting in particular the recommendations of the UN Committee on Economic, Social and Cultural Rights regarding the promotion of GM seeds).

Submission

Precautionary principle

Modern technologies and their products deliver some benefits but they always also adversely affect society, public health and the environment. More effective constraints on the creation and deployment of harmful technologies and their products are necessary to prevent harm. A human rights approach is needed to assist in minimizing the harmful impacts of technologies and their products. Some people argue that technologies and their products are neutral but this merely disguises the fact that many are inherently hazardous, defective or open to misuse. Classic cases abound: Hiroshima, Chernobyl and Bhopal; thalidomide, viox and asbestos; agent orange, depleted uranium, cluster bombs; heavy metals, lead in petrol, thalates in toys; mobile phones and phone towers, nanomaterials, Genetically Manipulated Organisms (GMOs) and their GM products.

The international regulatory system for multilateral environmental agreements is based on the precautionary principle, articulated in Article 15 of the Rio Declaration on Environment and Development. [3] The principle means that where there may be a threat of serious or irreversible harm, that a lack of full scientific certainty will not be used to prevent governments from taking appropriate cost-effective precautionary action. The international regulatory system for GM - the Cartagena Protocol on Biosafety - and the United Nations Convention on Biological Diversity, are based on the precautionary principle. The precautionary principle enshrines the responsibilities of governments to protect the rights of people from harm by scientific and technological innovations and their products.

Application of the precautionary principle and respect for people's right to full information through comprehensive and truthful labeling may have averted the deaths and injury of thousands in the following case. In 1989, batches of L-tryptophan, a dietary supplement, made by the Japanese chemical company Showa Denko using GM microbes, immediately killed 37 Americans and afflicted more than 5,000 others with a new blood and central nervous system disorder - eosinophilia myalgia syndrome (EMS). Showa Denko paid over \$2 billion to EMS victims but that does not absolve the company or the regulatory authorities. These days there appears to be a corporate culture of factoring the potential cost of payouts for the impacts of new technologies and products into the cost of the product.

Similarly, the Tufts University (Boston) clinical feeding trials of GM golden rice (supposed to express beta carotene, the precursor to Vitamin A) using human subjects (including children already suffering Vitamin A deficiency disease) breach the Nuremberg Code of Ethics promulgated at the end of the Second World War to prevent any repetition of the human experiments conducted by Nazi scientists. More than 30 senior scientists and academics have signed an open letter to Professor Robert Russell at Tufts, condemning the researchers for conducting the trials. The GM rice (variety GR2) appears to be an experimental collection of transgenic events, still confined to the laboratory, with basic molecular genetics, biological and biochemical properties uncharacterised, not pre-clinically tested on animals, nor subject to any safety assessment. <http://www.i-sis.org.uk/SPUCTGM.php>

Right to pollution-free environment

Evidence shows that GM contamination poses an irreversible threat to biodiversity. GM alters living organisms and biodiversity in irreversible ways, and DNA recombined in a new host cannot be recalled once the organism containing it is generally released into the environment. Living organisms can move and replicate.

The science of molecular biology is still relatively new so little is known about how genes naturally interact with each other and the environment or how transgenic changes will affect ecosystems. Genetic contamination is different from chemical pollution as DNA resides in living organisms with the capability to reproduce and multiply. Even small GM contamination has the potential to become widely spread and an ineradicable problem. Biodiversity is the sum of life on Earth and represents our life support system. Thus, humans, society and governments have the responsibility to ensure that ecosystems are protected and preserved intact for future generations and that threats to human health are prevented where possible.

There are well-documented examples of GM impacts on natural biodiversity even though only four broad-acre crops - soy, corn, canola and cotton - with two traits - herbicide tolerance and Bt insect toxins - are commercially grown. Over 90% of all GM crops are grown in just five countries in North and South America. For instance, foreign genes from GM corn are now widely distributed in vitally important landraces of corn in key centres of origin for the genetic diversity of corn in Mexico, despite Mexico's ban on the growing and importing GM corn. [1]

Similarly, Hawaiian papaya are contaminated with foreign genes from GM papaya. The farming of GM papaya requires purchase of the seed under contract from the university, where a video on buffer zones must be viewed. These measures aim to prevent GM pollen escaping. But unlabelled GM papaya sold in the markets is the main source of contamination. Each GM papaya sold and eaten contains 100-500 GM seeds that enter the environment. Many germinate and grow. Organic farmers have found GM contamination on their farms and certified organic papaya can no longer be grown, resulting in market loss and removal of GM contaminated papaya trees. Japan now requires papaya to be tested and certified as non-GM. Toi Lahti lost a seed line he had been developing for 17 years to GM contamination.

GM transformations rely on the creation of new, invasive and more mobile genetic elements. They never existed before in nature and the potential for these elements to move between species by Horizontal Gene Transfer means that new and more virulent diseases and contamination are also possible.

Right to candid, honest and complete information

Public health and safety, environmental protection and shopper choice are best served by openness, transparency and full democratic accountability in public decision making on science, technology and their products, including GMOs. As with chemicals and drugs, information on GMOs and their products is often restricted in Australia and internationally by claims of commercial confidentiality.

Over 90% of Australians want foods and organisms produced using GMOs and their products to be comprehensively labeled under the Australian Food Standard. However, Standard 1.5.2 See: <http://www.foodstandards.gov.au/thecode/foodstandardscode/> enables Food Standards Australia NZ (FSANZ) to make spurious assumptions to exempt most products of GM from labeling. FSANZ uses the concept of 'substantial equivalence' to decide, on the basis of limited chemical analysis, that GM foods are as safe as their conventional analogues. The parameters of the 'equivalence' are nowhere specified. For instance, FSANZ assumes that as a result of refining processes all vegetable oils, starches and sugars are free of DNA and protein and need not be labeled as such. But the absence of DNA and protein may not be the threshold issue as people with peanut allergies are also allergic to peanut oil. Further, people with brazil nut allergies, experimentally exposed to soybeans containing a GM brazil nut gene also experienced an allergic reaction.

Australia has not signed or ratified the Cartagena Biosafety Protocol, which codifies the rules for safe international transport, handling and use of GMOs. This ignores our obligations to promote and adopt the protocols negotiated under the Convention on Biological Diversity, as we are a party. One hundred and fifty six countries have signed or ratified the Protocol, which also includes provisions on public participation in decision-making and on raising public awareness of the dangers of GM and for protecting developing countries from the dumping of GMOs that have not been thoroughly assessed and approved. Australia should sign and ratify the Cartagena Protocol in fulfillment of our obligations as a Party to the CBD and in defence of the rights of people everywhere.

Economic, Social and Cultural Rights

Article 27.3b of the WTO TRIPS agreement allows for the patenting of life forms and processes. The granting of such patents gives monopoly control over life forms to the patent owner for 20 years, but in practice many patents are extended in perpetuity by other commercial arrangements. Global civil society has always strongly protested and resisted the hijacking of the global biological commons.

Article 25 of the UN's International Covenant on Economic, Social and Cultural Rights (CESCR) says:

“Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.”

In 2008 the CESCR also recommended that the Indian government not promote patented GM seeds to poor farmers, as this was a factor increasing the number of farmer suicides, particularly among cotton farmers - over 200,000 in the previous decade.

“29. The Committee is deeply concerned that the extreme hardship being experienced by farmers has led to an increasing incidence of suicides by farmers over the past

decade. The Committee is particularly concerned that the extreme poverty among small-hold farmers ... has been exacerbated by the introduction of genetically modified seeds by multinational corporations and the ensuing escalation of prices of seeds, fertilisers and pesticides, particularly in the cotton industry.”

CESCR recommended that the Indian government provide to farmers generic seed which could be legally saved and shared. CESCR also urged the Indian government to review the Seed Bill 2004 in light of its obligations to ensure the rights of their citizens to food and to reduce farmer dependency on multinational corporations.

“69. The Committee urges the State party ... to enable farmers to purchase generic seeds which they are able to re-use, with a view to eliminating their dependency on multinational corporations. The Committee also recommends the State party to review the Seed Bill (2004) in light of its obligations under the Covenant and draw the attention of the State party to paragraph 19 of the Committee's General Comment No.12 on the right to adequate food (1999).” - UN Committee on Economic, Social and Cultural Rights.

Article 11 of the International Covenant on Economic, Social and Cultural Rights also says:

“1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

Right to food

The UNCESCR decision on the Indian government’s responsibilities also recommended a review of their obligations to guarantee the right to food. Granting monopoly control over seeds, genetic resources and the global food supply to profit-driven multinational corporations will not contribute to global food security. The global food supply and food price crises has worsened, with food riots in more than 30 countries. Millions more people now suffer from hunger and malnutrition, with food priced beyond people’s capacity to pay, principally as a result of speculation and price manipulations.

Trade policies have put the global food supply under the control of mercenary agribusiness. Six large companies control most of the world seed supply - the same six agrochemical companies that own most GMOs - Monsanto, Syngenta, Bayer, Du Pont, Dow Chemical and BASF.

National governments, including Australia, have an obligation to guarantee the human right to food under Article 11 of the International Covenant on Economic, Social and Cultural Rights and Governments have an obligation under Article 1 to guard against the destruction of people's means of subsistence.

The International Covenant on Civil & Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), say:

"1.2 All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

The Consultation should seek ways to encourage the government to make provision for this right to be observed in Australia. At least ten years ago, CSIRO Division of Land and Water warned that within 25 to 30 years Australia may be unable to feed its population, given the environmental and social processes even then degrading and controlling the nations agricultural capacity.

Farmers' rights

For millennia, human beings have saved, shared and freely exchanged seed and animals. But this freedom has been severely curtailed due to patents on living organisms, which have never been legally challenged or tested since being first granted in the 1970s. The world trade system and individual trade agreements have limited the free exchange of seed for replanting. The 'farmers right' – the common practice of Australian farmers and growers around the world – was first discouraged and then criminalized. In the interests of the adaptation of seeds to local conditions in this era of climate change seed saving is becoming a necessity rather than a choice. One size does not fit all in the biological realm.

Farmer's rights have been the subject of the UN FAO International Treaty on Plant Genetic Resources in Food and Agriculture. Article 9 of the treaty recognizes the enormous contribution farmers have made to the development and maintenance of agricultural biodiversity and contains provisions meant to ensure governments protect farmers' rights. Parties to the International Treaty on Plant Genetic Resources for Food and Agriculture have been working to protect and promote farmers rights in accordance with Article 9 of the treaty. At the most recent meeting of the Treaty, just concluded, Parties to the Treaty including Australia agreed to:

"Encourage member countries to review all measures affecting Farmers' Rights and remove any barriers preventing farmers from saving, exchanging or selling seed;"

This should apply as much to Australian farmers as any others, yet the Australian government and agribusiness are using patent and plant breeders 'rights' laws to lock growers and gardeners into varieties that can't be saved, exchanged or sold. In particular, Monsanto's 2008 Roundup Ready Canola Grower License and Stewardship Agreement, terms and conditions, only allows growers:

1.1 To use Roundup Ready canola solely for planting a single commercial crop and only during the 2008 calendar year and not to save any crop produced from Roundup Ready canola for planting in any subsequent year.

1.2 Not to: (i) plant any seeds produced from Roundup Ready canola without Monsanto's prior written consent: (ii) supply seed produced from Roundup Ready canola to any other person or entity (other than to a Monsanto licensed seed company) for planting, or (iii) transfer any seed containing Monsanto Technologies to any other person or entity for planting.

Farmers rights must also include rights to land and accountability for human rights violations perpetrated against peasants as farmers around the world who pushed off their lands, often violently, by the expansion of industrial agribusiness, for example in the GM soybean industry in Argentina, Brazil, Paraguay and Bolivia.

Monsanto's contracts for the supply of GM canola in Australia also require growers to accept restrictions on the use and disposition of land:

1.9 To accept and continue the obligations of this Agreement on any new land purchased or leased by Grower that has Roundup Ready canola planted on it by a previous owner or possessor of the land; and to notify in writing purchasers or leases of land owned by Grower that has Roundup Ready canola planted on it that Roundup Ready canola is subject to this Agreement and they must have or obtain their own Roundup Ready canola Grower License and Stewardship Agreement.

In a wider context, the Third World Network notes:

“The expansion of soybean monoculture threatens the ecological integrity and food sovereignty of countries as well as the rights of indigenous and rural communities. This industrial agricultural model violates economic, social, cultural and environmental rights and, as it expands, its destructive methods of operation degrade the environment through deforestation, soil erosion and contamination of water bodies and push farmers out of their lands, resulting in rural migration and further impoverishment of rural populations. The soy agro-industry is actually expanding and becoming stronger through the growing markets for processed foods, industrial livestock and the production of biodiesel demanded by the North. More mobilisations of rural movements can be expected, as the ‘grassroots’ oppose the advance of biofuel agribusiness and GM technology. Industrial farming threatens biodiversity and native seed varieties, violating the rights of consumers and small farmers by contaminating conventional and organic crops.”

Australia should be encouraged to strengthen its support for regional human rights and the rights of farmers, as similar dynamics in Asia are destabilising societies and security in Asia and the Pacific. The same destructive processes that diminish rights elsewhere are also at work in Australia.

This Human Rights Consultation should seek ways to protect the rights of family farmers here and in our region. We ask the consultation to recommend the restoration of the ‘farmers right’ to save and exchange seed, in particular by the government implementing commitments given at the UN FAO Treaty on Plant Genetic Resources meeting, not to impose restrictions on farmers saving, sharing and exchanging seed and to implement Article 9 commitments for the protection and promotion of farmers' rights.

Gene Use Restriction Technologies (Terminator seeds)

Parties to the Convention on Biological Diversity decided on a de facto moratorium on the commercial release of Genetic Use Restriction Technologies (GURTS) also known as “Terminator Technologies”. These technologies, in combination with the patent system, are designed to enforce monopoly control over genetic resources. Australia has continually sought to undermine the moratorium on GURTS during international negotiations and the Office of Gene Technology Regulator has said it would accept applications for organisms containing GURTS.

We ask the National Human Rights Consultation to recommend to government that it support the de facto moratorium on Genetic Use Restriction Technologies as they may compromise world food security and violate the rights of growers to save and exchange seed for replanting. Also, to recommend that Australian legislation prohibit the commercial use of GMOs containing GURTS.

Right to health

The debate over who owns life or if life can indeed be patented has important implications for the human right to health. Allowing patents of genetic information, for instance on BRCA1 & 2 genes that appear to predispose some women to breast cancer, may unduly restrict important breast cancer research or the screening of women.

Article 12 International Covenant on Economic, Social and Cultural Rights asserts:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Another case in point is the patenting and control of those regions of the human genome previously labeled ‘junk’ DNA that are now known to be important in organism functioning.

We ask the Consultation to recommend that the government revoke its recognition of Intellectual Property Rights in relation to living organisms. They are discoveries not inventions and do not meet the three core criteria for the issuing of other patents – novelty/invention, utility/especially commercial use, and replicability by an expert in the art.

GM in food aid, human rights of malnourished and starving people

GM foods are particularly problematic in the international food aid system, where malnourished people are already immuno-compromised. GMOs are in food aid, including in Zambia in 2002. The Zambian government refused to accept GM food aid from the World

Food Program, citing concerns over health and safety, the economics of trade with Europe and potential contamination of the Zambian environment if the grain was unprocessed and could be planted. GMOs unauthorized for human consumption in first world countries have been detected in food aid.

Human rights standards which forbid non-consensual scientific experimentation on human beings need to be strengthened, including by GM companies and governments promoting GM.

African governments (except South Africa) supported our concerns with the following statement from all the African delegates to FAO negotiations on the International Undertaking for Plant Genetic Resources, June 1998. Their statement: Let nature's harvest continue, says:

"During the past few weeks European citizens have been exposed to an aggressive publicity campaign in major European newspapers trying to convince the reader that the world needs genetic engineering to feed the hungry. Organised and financed by Monsanto, one of the world's biggest chemical companies, and titled 'Let the harvest begin', this campaign gives a totally distorted and misleading picture of the potential of genetic engineering to feed developing countries. We, ... strongly object that the image of the poor and hungry from our countries is being used by giant multinational corporations to push a technology that is neither safe, environmentally friendly, nor economically beneficial to us."

We ask the Consultation to recommend that Australia strongly support the Cartagena Biosafety Protocol, including the liability provisions now being negotiated. Australia can do this most effectively by signing and ratifying the protocol as soon as possible.

Indigenous rights to sovereignty over genetic resources

Indigenous peoples organizations strongly protest the expropriation of their sovereign genetic resources and traditional knowledge by governments, scientists and corporations who are bio-prospecting and bio-pirating genes and associated traditional knowledge. Experiments on indigenous people's genetic material and its patenting without their prior informed consent by the Human genome Diversity Project and others has been documented.

Aroha Mead, Senior Lecturer at Victoria University, Wellington, New Zealand, and co-editor of the book, *Pacific Genes and Life Patents* says:

"Researchers are harvesting and patenting the Pacific region's genetic resources by simply gathering and taking ownership over almost everything in their path. An absence of regulation and widespread naiveté regarding the latest genetic technologies and intellectual patent law has made the region a major target for commercial 'gene' hunters or bio-prospectors. Patents are not a tool of humanitarian research. They are a tool of commerce and exclusive property rights and serve to give signals to others "stay away, they're mine. I own them." [2]

The Convention on Biological Diversity arose out of concerns over this kind of misuse of biodiversity and traditional knowledge. However, indigenous peoples also regard the CBD as facilitating and legitimising bio-piracy on behalf of plundering governments and corporations.

The Final Report Permanent Sovereignty of Indigenous Peoples over their Natural Resources (Special Rapporteur, Madame Erica Irene A. Daes), E/CN.4/Sub.2/2004/30, para 39, July 13, 2004 says indigenous peoples' natural resources can include air, coastal seas, and sea ice as well as timber, minerals, oil and gas, genetic resources, and all other material resources pertaining to indigenous lands and territories. And:

47. This authority or “sovereignty” is said to be “permanent” because it is intended to refer to an inalienable human right of indigenous peoples. As discussed earlier, this right arises out of the right of self-determination, the right to own property, the right to exist as a people, and the right to be free from discrimination, among other rights, all of which are inalienable. The word “permanent” is also intended to emphasize particularly that indigenous peoples are not to be deprived of their resources as a consequence of unequal or oppressive arrangements, contracts or concessions, especially those that are characterized by fraud, duress, unfair bargaining conditions, lack of mutual understanding, and the like. This is not to say that the indigenous people that own the resources can never sell or dispose of them. Rather it is to say that the indigenous peoples have the permanent right to own and control their resources so long as they wish, free from economic, legal, and political oppression or unfairness of any kind, including the often unequal and unjust conditions of the private marketplace.”

We ask the consultation to recommend that these rights be observed in relation to mining, bio-prospecting and other resource depleting activities on the Australian continent and in the region.

Right to sovereignty over traditional knowledge

Article 8(j) of the Convention on Biological Diversity concerns Parties' obligations regarding traditional knowledge associated with genetic resources, often held by indigenous peoples or local communities. Indigenous peoples organizations and civil society have pointed out that international agreements including the CBD regime on Access and Benefit Sharing (ABS) must be consistent with international human rights law, and that therefore state sovereignty, including over traditional knowledge and traditional knowledge associated with genetic resources, is limited by the Charter of the United Nations and human rights law.

According to the Special Rapporteur on Human Rights, indigenous peoples and local communities maintain a right to permanent sovereignty over their traditional knowledge and genetic resources which cannot be alienated by states or corporations via any unfair international agreements. Indigenous peoples organizations and civil society have therefore found the existing intellectual property regime, based solely on patents and limited to commercialization, deficient for protection of their rights to traditional knowledge and genetic resources which have intrinsic value. This is much larger and broader than commercial value alone and it may be threatened by commercialisation. The UN Human Rights Special Rapporteur has determined that indigenous peoples have an inalienable right to permanent sovereignty over natural resources occurring in their territories, including genetic resources, cultural heritage and traditional knowledge.

The Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples (UN Human Rights Special Rapporteur Erica-Irene Daes) observes:

“Heritage can never be alienated, surrendered or sold, except for conditional use” (Erica Irene Daes, Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples, E/CN/Sub.2/28 (28 July 1993) 9, para. 31) and:

“It is clear that existing forms of legal protection of cultural and intellectual property, such as copyright and patent, are not only inadequate for the protection of indigenous peoples’ heritage but inherently unsuitable. Existing legal measures provide protection of limited duration, but are designed to promote the dissemination and use of ideas through licensing and sale. Subjecting indigenous peoples to such a legal scheme would have the same effect on their identities, as the individualization of land ownership in many countries, has had on their territories - that is fragmentation into pieces, until nothing remains.” (Erica Irene Daes, Protection of the Heritage of Indigenous Peoples (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Chairperson of the Working Group of Indigenous Populations), United Nations, New York/Geneva (1997) 4)

Again, we ask the consultation to apply these insights in their recommendations concerning indigenous Australians and other peoples living in the Asia Pacific region.

UN Framework Convention on Climate Change

Agreements for climate change mitigation and adaptation negotiated by Parties to the UNFCCC must uphold human rights, be consistent with international human rights law and the Charter of the United Nations. The UNFCCC does not adequately consider human rights. Proposals for carbon markets, including REDD (Reduced Emissions from Deforestation and Land Degradation) under UNFCCC include buying and selling forests and forest carbon. These activities must uphold human rights, including people’s rights to forests and the UN Declaration on the Rights of Indigenous Peoples, which Australia has signed.

Monoculture tree plantations, including genetically manipulated trees, must not be considered as forests by Parties to UNFCCC. They are monoculture tree plantations that may lead to further unchecked deforestation. Several cases of states forcibly and violently evicting local communities from forests sold for carbon trading schemes, including violations of their human rights, have already been documented, for instance, in Uganda [3] Indonesia [4] and Peru.

The Consultation should recommend that any international agreements or national legislation to mitigate climate change must contain strong human rights provisions and be consistent with human rights law. Similarly, the current international land-grab to meet biofuel targets should not infringe human rights.

The report, Impact of Climate Change Mitigation Measures on Indigenous Peoples and on their Territories and Lands, UN ECOSOC E/C.19/2008/10 [3] found in relation to: The Benet of Mount Elgon, Uganda that:

46. A signed agreement between the Forest Absorbing Carbon Dioxide Emission Foundation (FACE) of the Netherlands and the Uganda Wildlife Authority (UWA) in 1994 permitted the foundation to plant trees on the 25,000 hectares of Mount Elgon National Park of Uganda. The objective of the project was to create a plantation of eucalyptus trees which would store carbon, to offset the emissions generated by the Energy Utility companies in the Netherlands. Another Dutch company called

GreenSeat also sells sequestered carbon from Mt. Elgon to people wanting to offset the emissions caused by their airplane flights.

48. After the declaration of Mount Elgon as a national park in 1993, the UWA violently forced the residents of Mount Elgon to leave the area and move to caves and mosques in neighboring villages. Park rangers killed more than 50 people in 2004. In addition, the project took away what little income the people had from their lands and crops. The villagers are not allowed to graze their cows and goats in the area or to obtain food or important traditional materials from the forest.

49. The Benet took the government to court in August 2003 to reclaim their land rights. In October 2005, Justice J.B. Katutsi ruled that the Benet people “are historical and indigenous inhabitants of the said areas which were declared a Wildlife Protected Area or National Park.” He ruled that an area of the National Park be de-gazetted and that the Benet be allowed to live on their land and continue farming it.

50. When this story was exposed, the UWA-FACE organization, GreenSeat, and other institutions engaged with the project, such as the Forest Stewardship Council, the Société Générale de Surveillance (SGS) and the clients of GreenSeat (including members of the Dutch Parliament, WWF Netherlands, Amnesty International and Body Shop) rationalized their own actions, claimed ignorance or denied any responsibility.

We ask the Consultation to recommend measures that would prevent similar violations of human rights occurring within Australia and our region.

Recommendations

We ask the Consultation to recommend that Australian governments:

- protect and promote all human rights and responsibilities to meet pro-actively and robustly fulfill our international commitments and recognize that all human rights are indivisible, interdependent and mutually reinforcing under international law
- uphold, recognize and respect the human right to health
- uphold, recognize and respect the human right to food
- uphold, recognize and respect the right to live in a pollution-free environment
- uphold the International Covenant on Economic, Social and Cultural Rights, including the right for people not to be deprived of their means of subsistence contained in Article 1,
- uphold the rights of farmers, including to share, sell, save and exchange seed and implement Australia's commitments as a Party to the UN FAO Treaty on Plant Genetic Resources, to protect and promote farmers rights
- uphold the CBD's de facto moratorium on Gene Use Restriction Technologies, also known as "Terminator seeds"
- uphold the human right of local communities to sovereignty over traditional knowledge and genetic resources, including indigenous peoples rights to permanent sovereignty over their traditional knowledge and genetic resources
- ensure that the international patent system, including Article 27.3b of the WTO TRIPS agreement not take precedence over human rights, that the Charter of the United Nations take precedence and that patents on life be prohibited as contrary to human rights
- ensure that all climate mitigation measures and agreements on combating climate change entered into or developed, including carbon markets, contain provisions which are fully consistent with international human rights law, including the UN Declaration on the Rights of Indigenous Peoples
- uphold the precautionary principle contained in Article 15 of the Rio Declaration of Environment and Development
- guarantee the right to free public access to all information on proposed releases of GM organisms into the Australian environment
- prohibit any proposals to make such releases in Australia and our region

We ask the Consultation to also recommend at least three areas of work that will help to ensure that human rights in Australia are protected. They are:

1. **Legislation:** a national Human Rights Bill should be developed for passage through the Commonwealth parliament. It should satisfy our international obligations and also protect the human rights identified as having community support during this consultation process. The law should guarantee the right to healthy environments, the right to protection from untried, uninvited and unsafe technological innovations and their products, and the right to access full data and information about these matters. The law would enshrine the obligation of all institutions and individuals to respect the human rights of others.

2. **Scrutiny of future legislation and policy:** All future Bills and policies would be assessed using an agreed set of human rights principles, as set out in the human rights laws. Formal processes that guaranteed the participation of the interested public would also be mandated when assessing the human rights implications of new policy and legislative proposals. The

Human Rights Commission would also have a key role in critiquing proposed legislation and policy for its conformity with human rights and the precautionary principle.

3. Public awareness-raising, capacity-building & participation: all our social institutions should be mobilised to help foster a culture of respect for human rights and responsibilities. Public participation should be enhanced through community and school activities to raise awareness of human rights issues and obligations.

Conclusions

The damaging impact of unsafe new technologies and their products, their short and long term impacts on human health and the environment, and the systematic withholding of information about these dangers from the general and interested publics, constitute a denial of basic human rights. People are constantly injured, maimed and poisoned by unsafe and polluting new technologies and their products. Future generations will also be negatively impacted.

The UNHRC has acknowledged that *'living in a pollution-free world is a basic human right'* and note that *"the fundamental right to life is threatened by exposures to toxic chemicals, hazardous wastes, and contaminated drinking water."* The internationally recognised rights of everyone to health and life are profoundly compromised here in Australia.

To defend their rights, Australians need the right to freely access all the information necessary to protect themselves and future generations from the damaging impacts of new technologies and their products. Australia's regulatory laws provide broad exemptions for poorly defined commercial information which unfairly imposes significant limitations on community access to full and comprehensive information that would protect their human rights from technological assault.

These restrictions thwart Australian civil society's efforts to adequately ensure the protection of everyone's human rights, particularly those of children as defined in the *Convention on the Rights of the Child*. The discussion paper acknowledges that Australia's human rights obligations largely derive, from international treaties to which Australia is a party. The Convention on the Rights of the Child unambiguously set out a child's right to health, food and clean water, *"taking into consideration the dangers and risks of environmental pollution."*

Our submission shows that these rights are inadequately protected in Australia. A stronger, more just and proactive system for their protection is needed. Australians are entitled to a human rights framework that protects everyone from the damage done by unsafe new technologies and their products, from their short and long term impacts on human health and the environment, and from the systematic denial of access to information about these dangers to the general and interested publics. Failure to deliver these entitlements constitutes a denial of human rights.

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