

TRIPS AND HUMAN RIGHTS

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The TRIPS agreement, the focus of simmering discontent in large sections of society across both the developed and developing world, has emerged as the flashpoint of the World Trade Organisation (WTO). There is much that is wrong with the WTO but nothing highlights the inequity and injustice of the global trade regime quite as much as the demand to patent life forms. IPR restrictions on seeds and medicines dictated by the large corporations with interests in biotechnology and pharmaceuticals have come to symbolise all that is rotten with the international trading regime which has moved far away from any concept of free and fair trade. For the poor of the developing world the WTO is increasingly becoming an instrument of repression, pushing the poor into ever deeper poverty.

Now there is talk that the TRIPS in fact violates the human rights of people. The United Nations has taken a strong position. The August 2000, Resolution of the UN Sub-Commission for Protecting Human Rights states that "*actual or potential conflicts exist between the implementation of the TRIPS Agreement and the realisation of economic, social and cultural rights in relation to, inter alia, impediments to the transfer of technology to developing countries, the consequences for the enjoyment of the right to food of plant variety rights and the patenting of genetically modified organisms, 'bio-piracy' and the reduction of communities' (especially indigenous communities) control over their own genetic and natural resources and cultural values, and restrictions on access to patented pharmaceuticals and the implications for the enjoyment of the right to health...*" With that it's official!

There is broad consensus that TRIPS in its present form is unacceptable because it violates the fundamental rights of people. Principally, it goes against all the rights and opportunities that have been granted to local communities in the Convention on Biological Diversity (CBD) and it strikes at their ability to engage in sustainable development in a self reliant way. In short,

- The TRIPS Agreement hinders the preservation of and respect for the knowledge, innovations and practices of indigenous and local communities.
- The TRIPS Agreement hinders access to and the fair and equitable sharing of benefits arising from the utilisation of genetic resources. It enables biopiracy since it does not require disclosure of the source of biological materials which are sought to be patented.
- The TRIPS Agreement creates conditions that will hinder the transfer of technology to developing countries.
- The TRIPS Agreement is likely to be detrimental to the conservation and sustainable use of biological diversity

Members of civil society and concerned citizens from all walks of life are coming together to demand equity and justice from the World Trade Organisation. The specific demand is an overhaul of the chapter on Trade Related Intellectual Property Rights which has provisions that strike at the very heart of the fundamental right of every citizen of the world to have assured access to food, health care and the means to earn a living.

Civil society is seeking changes that will stop the poor in their lands from being marginalised any further. They want modifications in TRIPS that will allow the rural and tribal communities to uphold and exercise their right to food and livelihood. This can be done by making the TRIPS provisions compliant with the Convention on Biological Diversity (CBD). Briefly,

1. The review of Article 27.3(b) must be one of a *substantive* nature, not merely of implementation, as is being mooted. We need to revisit the provisions and correct the fundamental inequities contained in them, not just make a char of which country has implemented what.

2. A clause for Disclosure will have to be introduced in TRIPS. Members should revise Article 27.3 (b) and/or Article 29 of the TRIPS Agreement, so that the source of patented material has to be disclosed. This should prevent biopiracy. The requirements for patent applications should be revised to help prevent misappropriation of knowledge regarding genetic resources and to ensure consistency with access and benefit sharing regimes of the CBD. WTO

3. A substantive review of Article 27.3(b), should be completed and the review seek to harmonise the TRIPS Agreement with the CBD and the International Undertaking on Plant Genetic Resources (IUPGR) where rights of farmers and communities are recognised.

4.*The period for implementation of Article 27.3(b). Should logically be extended till after a substantive review is completed.

5.*The exceptions to patentability under Article 27.3(b) should be expanded. At a minimum, members must have the discretion not to grant plant and animal patents that the current language of Article 27.3(b) allows. The discretion to refuse patents over life is essential to give Members who are also CBD Parties the flexibility they need to experiment with approaches for implementing CBD.

6.* The flexibility that the GATT allowed in defining *sui generis* systems for the protection of new plant varieties should be retained . Members should have the right to determine their own sui generis system. UPOV (Union for the Protection of New Plant Varieties) which is a platform for regulating sui generis systems like Plant Breeders Rights in industrial countries and of which no developing country is a member, is not mentioned in the TRIPS agreement. The current effort to make UPOV the only "effective" sui generis platform acceptable under TRIPS, is unjustified and must be abandoned.

India has already drafted a sui generis legislation called the Plant Variety Protection and Farmers Rights Act. This is not in line with UPOV. Gene Campaign has together with CEAD, drafted an alternative treaty to UPOV called the Convention of Farmers and Breeders (CoFaB). The UNDP Human Development Report has termed CoFaB a far superior option for developing countries than the restrictive UPOV. CoFaB or something similar should form the basis for a sui generis platform for developing countries, not UPOV.

7. A "sustainability review" provided under Article 71.1 of the TRIPS Agreement should be undertaken straightaway to assess the impact of TRIPS on the capacity of developing countries to engage in sustainable growth and development.

8.* A moratorium must be put on unilateral pressure and challenges at the WTO dispute settlement system. WTO Members should agree to a moratorium on any challenges against developing countries until the reviews under Articles 27.3(b) and 71.1 are complete, and any extended transitional periods are over.

9. CBD objectives must be taken into consideration in the WTO dispute settlement process. In the event of a conflict, the TRIPS Agreement must not interfere with a Party's legitimate implementation of its CBD obligations.

10. And finally, the Human Rights concerns that have been raised with respect to TRIPS, should be taken on board. The TRIPS should be modified so that it does not violate the rights of ordinary citizens.