

SEMINAR REPORT
“ACCESS TO GENETIC RESOURCES”
4-6 November 2003
Diego Portales Convention Centre
Santiago, Chile

Tuesday, 4 November 2003

1. INTRODUCTION

- 1.1 The seminar on *Access to Genetic Resources* was held at the Diego Portales Convention Centre in Santiago, Chile, on 4-6 November 2003.
- 1.2 The seminar was attended by 94 participants, including national and regional authorities, researchers, academics, representatives from botanical gardens, non-governmental organisations, private sector, as well as lawyers and a group of “seed guardians”. Annex 2 to 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). The seminar had the support of Chile’s *Comisión Nacional del Medio Ambiente* (National Environmental Commission, CONAMA); the *Oficina de Estudios y Políticas Agrarias* (Agriculture Studies and Policies Office, ODEPA); and the *Centro de Educación y Tecnología* (Education and Technology Centre, CET).

Opening

- 1.4 Mr Agustín Infante, director of CET Yumbel (Chile’s 8th Region), presented the seminar objectives and the presenters, and moderated the debates. Mr. Infante had also carried out these functions during the regional seminar celebrated in Yumbel on 29-30 May 2003.
- 1.5 The seminar was officially opened by Ms Sara Larraín, President of FSS and the Director of the *Programa Chile Sustentable* (Sustainable Chile Programme). She welcomed the seminar participants and international experts. Ms Larraín expressed her gratitude to the project funder behind the organisation of the seminar: the “Darwin Initiative for the Survival of Species” of the UK’s Department for Environment, Food and Rural Affairs (DEFRA).

Welcome and introduction to the seminar

- 1.6 The director of FIELD's Biodiversity and Marine Resources Programme, Ms Carolina Lasén Diaz, welcomed the participants and introduced her organisation. She explained the objectives and activities of the project the seminar is part of: 'Access to genetic resources, benefit sharing and traditional knowledge in Chile', as well as the specific objectives of the Santiago seminar.
- 1.7 Mr Infante introduced the seminar agenda and the documents that had been distributed to the participants. The seminar agenda is included as Annex 1 to this report.

2. INTRODUCTION TO ACCESS TO GENETIC RESOURCES

- 2.1 Dr María Isabel Manzur (FSS) introduced the main concepts and terminology in the area of access to genetic resources, both regarding biodiversity and intellectual property rights. After her presentation, participants engaged in a brief debate about potential conflicts between the Convention on Biological Diversity (CBD) and the World Trade Organisation (WTO). Participants stressed the lack of co-ordination among both agreements that were negotiated in the early 90s.

3. ACCESS TO GENETIC RESOURCES: INTERNATIONAL FRAMEWORK AND EXPERIENCES IN OTHER COUNTRIES

- 3.1 Carolina Lasén (FIELD) summarised the international legislative and policy framework on access to genetic resources and benefit sharing in the framework of the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Her presentation also covered some examples of Latin-American regulations related to access to genetic resources.
- 3.2 Mr Manuel Ruiz (Peruvian Society of Environmental Law) explained the Peruvian experience on access to genetic resources among the *Comunidad Andina* (Andean Community), highlighting the positive aspects of the regulation and the problems of its implementation. Mr Ruiz indicated that the Andean regulation will be reviewed in the next months based on the experience of its implementation and recent developments in international law, such as the ITPGRFA from the Food and Agriculture Organization (FAO). His presentation was followed by a brief debate which included the following issues: the basis of the legislative review's proposal; the relation between the Andean Community's access regulation and the protection of traditional knowledge; and the relation between WTO and Decision 391 on a common regime for access to genetic resources in the Andean Community.
- 3.3 Furthermore, Dr Silvia Rodriguez presented the procedure, achievements and challenges related to access to biochemical and genetic resources in Costa Rican legislation. Dr. Rodríguez also explained the accomplishments and problems related

to Costa Rica's Biodiversity Law and the recent Access Norms, which are pending publication to enter into force. The debate that followed addressed the issue of the role of the *Comisión Nacional de Gestión de la Biodiversidad* (National Commission for Biodiversity Management, CONAGEBIO), as well as the experience of Costa Rica's regulation of access genetic resources and benefit sharing. The debate following Dr Rodríguez's presentation focused on the Peruvian and Costa Rican experiences of access to genetic resources, which are the oldest regulations in the region. Seminar participants discussed whether Chile should follow the Costa Rican or the Andean Community's models, given the decrease in bioprospecting projects and related benefits to local communities that these countries have encountered.

3.4 The researcher from University of California (Davis, USA), Mr Santiago Carrizosa, took the floor to present a comparative analysis of access regulations and policies regarding access to genetic resources in Pacific Rim countries. Amongst the more than 40 countries that were studied, 24% have access regulations, 50% are currently working to develop access policies or regulations, and 22% lack any procedures on this matter. This University of California's research project has analysed the development as well as the content of the national policies and regulation for access to genetic resources in Pacific Rim countries.

3.5 At the end of the first day of the seminar the organisers invited all seminar participants, presenters and experts to a welcome cocktail.

Wednesday, 5 November 2003

4. LEGAL ASPECTS OF ACCESS TO GENETIC RESOURCES IN CHILE

4.1 Chilean lawyer and collaborator in the FSS/FIELD project, Mr Luis Flores, explained Chile's situation regarding access to genetic resources, focusing his presentation in the value of the genetic resources transferred; the private property system applicable to genetic resources in Chile; and the fair and equitable sharing of the benefits derived from the access to these resources. Although there is no regulation on these matters in Chile, Mr Flores explained a series of national initiatives on this issue that took place in the 1990s. In this sense, he explained the need to work in a practical level due to existing competences and instruments that might be used to make progress in the regulation of access to genetic resources. He also mentioned the need of a greater political will to move this issue forward in Chile.

4.2 The Head of ODEPA at Chile's Ministry of Agriculture, Mr Hugo Martínez, presented on 'The conservation and use of native genetic resources in Chile: The Ministry of Agriculture's work plan'. 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 the genetic resources within the scope of the Ministry of Agriculture (i.e. native terrestrial genetic resources), as

access to genetic resources is one of the Ministry's national priorities for the period 2000-2010.

- 4.3 Mr Martinez explained that the main objectives of the draft bill are to capture the economic value of Chile's native terrestrial genetic resources by facilitating access to them and allowing a fair and equitable sharing of the benefits derived from their utilisation. The different types of benefits considered in the draft law are the following: financial; scientific knowledge; technology transfer; training; and institutional strengthening. Mr Martínez explained that the objectives related to benefit sharing include biodiversity conservation and monetary benefits to local communities. He also said that the details of this legislation will be developed in a specific regulation after the approbation of the draft bill.
- 4.4 A brief debate followed his presentation, where some participants voiced their opinion against the draft bill due to the obligation to recognise foreign patents in Chile through the recently signed Free Trade Agreement between Chile and the US. Other views against the draft bill related to private property issues, as the draft bill does not clarify whether the Ministry of Agriculture would be the authority responsible for signing the access contracts and for establishing the conditions governing the use of the resources. Other issues that were debated were possible agreements with private institutions; the traceability of Chilean resources after they leave the country; bioprospecting conditions; the possibility to refuse access due to inappropriate environmental conditions; and the role of communities in the decision-making process in relation to access to genetic resources.
- 4.5 Dr Manzur (FSS) presented the main results of the research and field work undertaken to gather information on the country's access policies and experiences from a number of public and private institutions and organisations in Chile. Dr Manzur also 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 own research on foreign patents held over products based on Chile's endemic genetic resources and examples of traditional knowledge protection in the country.
- 4.6 A debate followed on Dr Manzur's presentation, raising issues such as the possibility of establishing voluntary guidelines for institutions involved in this field as a way to move forward; the need for information and training for private and public institutions; the control of outgoing biological resources through existing legislation (CITES); the special case of the vicuña as the only Chilean controlled specie; and the use of these control instruments to cover genetic resources.
- 4.7 Dr Alberto Cubillos, of the Faculty of Agricultural and Forestry Sciences at the Iberoamerican University of Sciences and Technology, presented a 'systemic vision' of genetic resources, focusing on the social, cultural and economic needs that are addressed by plant genetic resources. Dr Cubillos also explained the relationship between biotechnology, gene techniques and gene technology, regarding the research

and protection of genetic resources. He concluded that a State policy for genetic resources should consider that wider perspective if it is to succeed in the conservation and utilisation of these resources.

4.8 Dr Gloria Montenegro, of the Catholic University of Chile, presented a summary of her project, explaining the benefits obtained and the lack of new drugs or biopesticides that could be subject to patenting. Two issues that were highlighted were the need to patent Chilean resources in Chile, and the lack of funding for projects related to research, training and public awareness.

4.9 The debate that followed include the scope of the Ministry of Agriculture and the need to consider this matter in the development of further regulations under the draft bill; the need to clarify the differences between genetic and biological resources and its distinct regulation in comparative law; patents as instruments for enforcement; the role of farmers and communities in these issues; and the need to recognise the value of genetic resources and related knowledge.

4.10 Mr Pedro León, from the National Institute for Agricultural Innovation (INIA), presented the INIA's experience with two access contracts. One of these contracts was with Kew's Botanic Garden (UK) and framed in the context of a scientific project related to endemic and vulnerable Chilean species from the country's desert region. Mr León explained the following characteristics of the access contract: access was given only for research purposes; the transfer of Chilean resources to third parties required INIA's previous authorisation (as national curator of these resources); the benefit sharing arrangements were with the Chilean government and not with INIA. Finally, he outlined the main institutional lessons learned from the experience of this contract: the regulatory gaps; the need for strategies and transparent procedures; and the need to develop capacities to make agreements and learn from practical experience.

4.11 Related issues that were raised by the participants after Mr Leon's presentation included: the need to require INIA's prior authorisation before transferring resources to third parties; the need to gain experience through concrete cases (taking account of the principles of CBD and the fact that US is not a Party); the need to develop Chile's genetic resources and to protect native varieties; and the need to urge public institutions to regulate access and promote research in Chile. Other issues discussed were the lack of access to genetic resources conserved by Chilean institutions; the lack of funds and the need to address financial issues in Chile's National Biodiversity Strategy; and the need to consider the international context related to the interdependence of resources among countries (i.e. the 'give to receive' principle).

5. THE PROTECTION OF TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY RIGHTS

Mr Marco Arellano, of the Ministry of Economy (MINECON), presented the regulatory framework for industrial property and its relationship with traditional knowledge as an 'economic good'. Mr Arellano, a lawyer in charge of the Ministry's international issues, stressed the ownership problems related to this knowledge and its links with inventions that might be subject to be patented. He also explained how industrial property tools could be used for the protection of traditional knowledge.

Participants discussed a variety of issues such as how to protect traditional knowledge against patents; the need to deliver benefits to indigenous communities; the rights and ownership that Chile's Indigenous Law bestows on local and indigenous communities; and the need to protect traditional knowledge and genetic resources to avoid the unfair appropriation of them.

Dr Silvia Rodríguez explained the situation in Costa Rica, where indigenous peoples own their traditional knowledge, and not the government. She further explained that Costa Rican indigenous peoples do not consider themselves represented by their government at international fora. Therefore, Dr Rodríguez concluded that Costa Rican indigenous peoples want to take an active and direct role in international meetings and negotiations.

6. BIODIVERSITY PROTECTION EXPERIENCES BY RURAL COMMUNITIES

6.1. The director of CET Yumbel, Mr Agustín Infante, presented 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 guardians across Chile's regions and towns in rural areas. He also mentioned ongoing activities such as exchanges of seeds ceremonies and agricultural fairs, and their role in maintaining and improving biodiversity in rural Chile. Mr Infante explained that as a result of these activities more than 180 species of 81 varieties have been recovered. Seminar participants considered these experiences of *in situ* conservation to be very valuable and questioned the reasons for the loss of varieties, which are as varied as: climate change, market changes, pollution, erosion, loss of traditions, etc.

6.2 Mr Carlos Venegas, of CET-Chiloé, talked about his experience and work on community participation and conservation of genetic resources in the island of Chiloé, focusing on the conservation of original varieties of potato as Chiloé is a centre of origin. The more than a thousand pre-Hispanic varieties have been reduced to around 200-250, with 90% of the varieties grown in the island come from abroad. Mr Venegas highlighted the work of rural communities, particularly women, in the recovery of native varieties and knowledge about their use. He stressed the lack of information and awareness on this issue by both the general public and technical experts. Mr Venegas explained that the work undertaken by local farmers to conserve, improve and protect these varieties, and their complex and broad knowledge is not recognised. CET-Chiloé is working with the island's farmers to identify and recover those varieties that have good market potential. As a result of this work, an access and

collection system has been agreed with the communities that promotes the protection of biodiversity. The Biodiversity Fair held in Chiloé and co-organised by the Castro town authorities and CET-Chiloé contributed to the creation of a local market for native varieties.

6.3 Seminar participants raised questions regarding farmers as beneficiaries, and on the ownership of rights and resources whose objective is not only the sale but also the conservation of diversity, the maintenance of cultural heritage, and food safety. Other questions were related to the need to educate the consumers, the complexity of the national market and the problematic issue of the export of native varieties.

6.4 At the end of the second day of the seminar, Mrs Camila Montesinos of CET South, read a joint declaration in representation of three organisations: CET-South, GRAIN and ANAMURI. She presented the position of these institutions against biopiracy, bioprospection, intellectual property over life and knowledge, and benefit sharing associated to private property. Mrs Montesinos pointed out that intellectual property laws and other forms of privatisation have been give priority over access regulations, which have not stopped the misappropriation and exploitation of indigenous peoples by States, but only increased the unfairness of conditions. Local peoples are losing their right to freely use, exchange and share the knowledge that they have received. Access regimes give States, and not local peoples, the right to decide over biodiversity. As a result, these peoples lose their sovereign right to decide and refuse access, and share according to their own rules. Finally, she highlighted the position of the joint declaration on genetically modified organisms and the need to have a GM-free continent, the urgent need to work for the protection of seeds as collective heritage to benefit humankind.

7 SUMMARY OF THE YUMBEL SEMINAR

7.1 Dr. Isabel Manzur (FSS) presented the report and summary of the main conclusions of a seminar on access to genetic resources held in Yumbel, 8th Region, in May 2003. After distributing copies of the seminar's report, Dr. Manzur explained that the seminar was attended by 59 participants from rural and development organisations, central and regional authorities, researchers and academics, representatives from indigenous groups and environmental NGOs, as well as by seeds guardians of the region.

7.2 Participants at the Yumbel seminar had been asked to address the question 'how do issues related to access to genetic resources affect me?' who identified the following elements: (a) Losses: biological; economic; cultural; social; ethical; of national identity and heritage; of sovereignty; scientific; and environmental; (b) Lacks: of public information, awareness and dissemination (in all sectors); a lack of concern for the implications of intellectual property rights; a lack of public organisation and participation; 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; and a lack of a common government vision on this issue.

7.3 A key conclusion reached by participants at the Yumbel seminar was ‘the need to make international demands compatible with local ones in order to create a national position on the issue of access to genetic resources, benefits sharing, the protection of traditional knowledge, patents and other intellectual property rights’. Seminar participants had also made a series of proposals and recommendations in the following matters: dissemination and education; research; legislation; conservation of genetic resources; authorities and main elements upon which the access authorisation should be based; protection of traditional knowledge and the sharing benefits. The complete list of recommendations from the Yumbel seminar is attached to this report as Annex 4.

8. WORKING GROUP SESSION

8.1. The organisers presented the methodology of the working group session, explaining to participants that the questions that had been distributed were just some guidance for the debate. After that clarification, two working groups were formed. The list of questions to guide the working group discussions is included as Annex 3 to this report.

9. CONCLUSIONS OF THE WORKING GROUPS

9.1. One of the working groups decided not to use the indicative list of questions distributed as it did not question the option to regulate access to genetic resources. The group discusses the general basis of a framework on this issue and reached the following conclusions:

- The need to differentiate and define the concepts of biological and genetic resources and derivatives. In this sense, there is a lack of clarity on these concepts, which are subject to interpretation.
- The need to have a public debate related to access to genetic resources, traditional knowledge and intellectual property rights providing enough information and debate so that the national position on this issue is reached on a participatory and informed manner.
- The need to legislate to ban patents on biological and genetic resources, as well as traditional knowledge. What can be subject to patents need to be clarified.
- An obligation to register all contracts that involve genetic resources should be established. This information must be publicly accessible.
- There is a lack of clarity regarding the implications of different intellectual property rights. A public and informed debate should be conducted regarding

patents, plant varieties protection, trademarks, etc to explore all options in an informed way.

9.2 The second working group followed the list of questions distributed, although they did not have enough time to answer them all. The conclusions of this group were as follows:

- The development of a legal regime on access to genetic resources in Chile should be taken forward in the framework of the CBD.
- Access to genetic resources should be regulated, not necessarily through a law but through norms consistent with the CBD. There are good examples that could be followed.
- It is important to recognise the different roles and responsibilities of institutions. This need was already identified in 1993 and 1995. A co-ordinating agency, such as a commission, should be established to represent all stakeholders and regulate access to genetic resources. The actions of this commission should be framed in the context of the National Biodiversity Strategy.
- The capacity to negotiate is a very important issue, as it is the enforcement of access rules, and the recognition of institutional capacities.
- There is a lack of information at all levels: local communities, universities, and researchers, among others, as a horizontal problem that affects all.
- Benefits should not necessarily reach individuals but as funds that are distributed in a transparent way.

9.3 There was a plenary debate after the presentations of the working groups. The main issues discussed included:

- The principles of a national access policy should include the consideration of genetic resources as a component of food safety to raise political attention to this matter.
- Intellectual property is only recognised for the use of the genes, but not for the genes themselves. In this sense, patents have become the centre of the debate while there is a lack of information on this issue and so a public debate must take place.
- Besides the social and economic development of Chile's genetic resources, it is necessary to recognise the cultural component of the traditional knowledge associated to those resources. The opinion of local communities is important.

- Due to the complexity and technicality of these issues, it is difficult to open a wide debate. On the other hand, it was considered that such a debate needs to be reflexive and informed so the media (radio, local press, etc.) need to get involved.
- It is necessary to create commissions for the negotiation of access to genetic resources that include local communities, civil society, institutions, etc. So decisions are taken in a participatory way. It is not a fair that a single institution or authority decides.
- In order to not duplicate roles and responsibilities, a commission with broad competences should be established, including access, conservation and use of the genetic resources. When specific roles and competences are allocated to institutions, they must be respected.
- The allocation of resources is a problem as there are no financial resources available. The debate and regulatory process must be linked to the necessary financial resources.
- Efficient and transparent funds must be established for the sharing of the benefits derived from access to genetic resources.
- A National Biodiversity Strategy is needed as a general framework for access to genetic resources. Practical tools are needed to reach a solution on this issue. A strategy is needed, as well as the setting of priorities, evaluating all the positions.
- Internal strategies are needed to keep the resources in the Chile. This is highly important and a problem that access regulations themselves do not solve. Parallel strategies are needed to make the use of the resources abroad more difficult.
- Policies should recognise the value of native and agricultural diversity, and promote its recovery as well as education and awareness through projects such as those developed by CET-South. Society must be protected through information, which is closely linked to valorisation of the resources. A process involving information, learning and debate is needed.
- The recent Decree 286, of the Ministry of Health, replaces a previous one that prohibited the use of traditional herbs. The new Decree establishes a list of medicinal varieties, recognising the traditional use of these herbs. This legal initiative has therefore the potential to protect traditional knowledge.

9.4 There was an agreement among the participants of the working group sessions, on the need to take advantage of meetings such as this to create a communication and action networks, and explore the option of establishing an electronic network to circulate information among those interested in these issues.

10. CLOSING OF THE SEMINAR

- 10.1 The organisers of the seminar thanked the participants for their attendance and dedication over the duration of the seminar. It was explained that the report of the seminar would be sent to all participants by the end of November 2003. It was further explained that this project and the result of the two seminars would be presented at a side-event during the Second Meeting of the Ad Hoc Open-ended Working Group on Access to Genetic Resources and Benefit Sharing, to be held on 3rd December 2003 in Montreal, Canada.
- 10.2 The organisers also informed the participants about the final activities of this project: the drafts of the four research reports produced in the framework of this project will be available on-line at <http://www.field.org.uk> for consultation and comments from 17 November 2003 to 31 December 2003. The final version of the reports will be available in March 2004. The project conclusion, together with the conclusions reached by participants in the two seminars held in Yumbel and Santiago, will be presented to the Chilean authorities in April 2004.
- 10.3 Dr. Manzur (FSS) and Carolina Lasén (FIELD) thanked funders and participants for their support and participation in this seminar, and formally closed it at 1 pm on Thursday 6 November 2003.
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PROGRAMME

Seminar

“ACCES TO GENETIC RESOURCES”

Santiago, 4-6 Novembre 2003

Conventions Centres, Diego Portales Building

Tuesday 4 Novembre - Room 8

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|-------------------|--|
| 14:00 - 14:30 | Registration |
| 14:30 - 14:45 | Welcome and Introduction |
| Session 1: | Access to Genetic Resources: International framework and experiences from other countries |
| 14:45 - 15:15 | Introduction to Access to Genetic Resources
María Isabel Manzur, Fundación Sociedades Sustentables |
| 15:15- 16:00 | International Legislation and Comparative Law Examples,
Carolina Lasén, FIELD |
| 16:00 - 16:15 | Coffee |
| 16:15 - 16:55 | Access Experiences in Peru and the Andean Region
Manuel Ruíz, Peruvian Society of Environmental Law |
| 16:55 - 17:35 | Process, Results and Challenges for the Regulation of
Access to Biochemical and Genetic Resources in Costa Rica
Silvia Rodríguez |
| 17:35 - 18:15 | Access to Genetic Resources and Benefit Sharing:
Comparative Analysis of the Regulations in Pacific Rim
Countries. |

Santiago Carrizosa, University of California, Davis

18:15 - 18:45 Debate

18:45 Closing of the first day

Salón Blanco

18:45 - 19:30 Welcome Cocktail

Wednesday 5 November - Room 8

9:00 - 9:40 Access Legislation in Chile
Luis Flores, Fundación Sociedades Sustentables

9:40 - 10:10 The Genetic Resources Policy of the Ministry of Agriculture
Hugo Martínez, ODEPA

10:10 - 10:55 Experiences of Access in Chile
María Isabel Manzur, Fundación Sociedades Sustentables

10:55 - 11:10 Coffee

11:10 - 11:40 INIA's Programme on Plant Genetic Resources and Access
Experiences. Pedro León, INIA

11:40 - 12:00 ICBG Project
Gloria Montenegro, Pontificia Universidad Católica de Chile

12:00 - 12:15 Debate

Session 2: Protection of Traditional Knowledge and Intellectual Property Rights

12:15 - 12:45 Programme for the Conservation of Plant Genetic Resources
in Chile. Alberto Cubillos, Universidad Iberoamericana

12:45 - 13:30 International Regime on the Protection of Traditional
Knowledge and Intellectual Property Rights
Carolina Lasén, FIELD

13:30 - 13:45 Debate

13:45 - 15:00 Lunch

15:00 - 15:30	National Legislation on Industrial Property Marco Arellano, Ministry of Economy
15:30 - 16:00	Experiences on Protection of Traditional Knowledge Agustín Infante, Carlos Venegas, CET
16:00 - 16:15	Coffee
16:15 - 16:45	Intellectual Property Rights and Local Rights Camila Montecinos, CET-South
16:45 - 17:00	Debate
17:00	Closing of the second day

Thursday 6 November – Room 9

Session 3: Workshop - Proposals for the regulation of access to genetic resources, equitable sharing of benefits and the protection of traditional knowledge in Chile

9:00 - 9:30	Presentation of the Report of the Regional Seminar on Access to Genetic Resources held in Yumbel
9:30 - 11:30	Working Groups session
11:30 - 13:30	Debate in Plenary and Conclusions
13:30	Closing

ANNEX 2

**LIST OF PARTICIPANTS
SEMINAR “ACCESS TO GENETIC RESOURCES”
Santiago, 4- 6 November 2003**

* Participants in the workshop of 6 November
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QUESTIONS FOR THE WORKING GROUPS

A. GENERAL FRAMEWORK FOR AN ACCESS POLICY IN CHILE:

1) What should be the main objectives and principles of a policy on access to genetic resources in Chile?

B. THE INSTRUMENTS OF THAT NATIONAL POLICY: TOWARDS AN ACCESS REGULATION IN CHILE:

2) What would be the most convenient way of regulating access to genetic resources in Chile?

3) What should be the process to develop such a regulation? Who should be responsible to do so? What should be the competent authorities or institutions on this issue?

C. THE CONDITIONS FOR ACCESS:

4) What should be the main elements to take into account when deciding whether or not access should be granted? Should there be a set of 'minimum conditions' for granting access? or should negotiating parties be absolutely free to decide?

D. FAIR AND EQUITABLE SHARING OF BENEFITS:

5) What type of benefits should Chile get in exchange of access?

6) How should those benefits be distributed at the national and/or local level? Should the use that can be made of those benefits be limited?

7) Who should benefit from access?

8) What capacity is needed to negotiate the conditions of an access and benefit-sharing agreement?

E. TRADITIONAL KNOWLEDGE:

9) How should the rights of indigenous and local communities over their genetic resources and traditional knowledge be regulated?

10) How should indigenous and local communities be involved in the access process?

ANNEX 4

SEMINAR REPORT
'ACCESS TO GENETIC RESOURCES'
29-30 May 2003
Capacity Centre, CET
Yumbel, 8th Region, Chile

Thursday, 29 May 2003

1. INTRODUCTION

- 3.6 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.
- 3.7 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.
- 3.8 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.

4. OPENING OF THE SEMINAR

- 4.1 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

- 4.2 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.
- 4.3 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.

5. INTRODUCTION TO ACCESS TO GENETIC RESOURCES

- 5.1 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.
- 5.2 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.

Friday, 30 May 2003

- 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.

PROGRAMME

Seminar

“ACCESS 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

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

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?