

## **ActionAid comments on the UK Government Response to the Report of the Commission on Intellectual Property Rights**

ActionAid<sup>1</sup> is pleased that the UK Government has acknowledged that patents on plants and crops may not be appropriate for developing countries and poor farmers. The UK Government in its response to the Report of the Commission on Intellectual Property Rights on the 7<sup>th</sup> of May, 2003, acknowledged that Intellectual property rules are best left to the discretion of the national governments as far as possible. It is now important that the Government follows through the Commission findings and its own response to translate the words into action.

### **Patents on plants, microbiological processes and micro-organisms**

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) at the World Trade Organisation (WTO) requires countries to provide patent protection for microbiological and non-biological processes as well as micro-organisms. The UK Government response agrees with this analysis stating that though countries must provide for patent protection on micro-biological and non-biological processes they are free not to grant patents on plants and animals, including GM crops. Furthermore, the Government is in favour of developing countries defining 'micro-organisms' nationally, thus providing them with flexibility in limiting the definition of micro-organisms to what is acceptable nationally.

ActionAid believes that there should be no patents on genetic resources for food and agriculture as per the demand of the African Group<sup>2</sup> of countries at the WTO. Both the Commission and the UK Government response fall short of ActionAid's demands, though we are pleased that they do clarify and limit patents to 'microbiological and non biological processes' and to 'micro-organisms' and not the resultant product, in this case the plant.

### ***Sui generis* option**

TRIPS Agreement also states that countries are free to protect plant varieties either through patents or through a *sui generis* option. The UK Government agrees with the Commission that a *sui generis* option is important and 'may well be a more suitable option' for developing countries and that it is best to maintain the existing flexibility in the TRIPS Agreement in this regard.

ActionAid is pleased with the UK Government's response and believes that countries should be free to define and develop their own *sui generis* laws that effectively protect community and farmers rights without being pressurised into adopting UPOV 1991 as the effective *sui generis* system.

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<sup>1</sup> ActionAid has been campaigning on food patents both in the UK and internationally for over 4 years

<sup>2</sup> clarify that plants and animals as well as microorganisms; non-biological and microbiological processes should be exempt from patentability

### **Farmers' and Researchers Privilege/Rights**

The UK Government also agrees that farmers and researchers privileges should be protected, especially Farmers' Rights to save and sell seed both for protected as well as patented varieties.

ActionAid agrees with this finding and the Government response and strongly believes that Farmers' Rights to save, use, exchange and sell farm saved seed and other propagating material should be protected in all intellectual property regimes.

### **Disclosure**

More broadly in the report, the Government has chosen to highlight areas that resonate with its own policies and don't affect UK domestic law directly. For example in Chapter 4 it states 'the Government agrees that it would be beneficial if all countries adopted a disclosure requirement in their legislation.'

ActionAid would like to see the Government take the leadership in translating this into UK law without waiting for the issue to be resolved at the TRIPS level, where discussions are deadlocked on several key issues including disclosure of the source of origin.

### **General IP Policy**

The Government states that 'there remains room for differing interpretations of the evidence marshalled by the Commission...on historical experience of developed countries with IP.' It states that 'it does not logically follow that, because now-developed countries used IP selectively in the past, this would be most appropriate for developing countries today.' It is puzzling that the UK Government is stating that developing countries should not follow the path used by the now-developed countries but rather they emulate developed countries recent agricultural innovation and protection models.

ActionAid believes that the crucial issue here is for developing countries not to be denied the policy space that developed countries had to tailor their IP policies to suit their level of development.

### **IPRs and innovation**

The UK Government claims that 'Intellectual property rights play an important role in the area of genetic resources and agriculture as a stimulus to research and innovation.' However, the Commission report as well as other research including ActionAid's own research on plant breeders' rights in the UK and US, has highlighted that there is no clear link between Plant Breeders Rights (PBRs) and innovation, competition and investment, with some evidence of link between PBRs and monopolies.<sup>3</sup>

The Government also fails to recognise that though IPRs might have a role to play in encouraging 'formal' innovation in the agriculture sector (though even that is

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<sup>3</sup> ActionAid, March 2000. 'Intellectual Property Rights and Agriculture: An Analysis of the Economic Impact of Plant Breeders' Rights'. Dwijen Rangnekar, Research Associate, School of Economics, Kingston University, UK.

doubtful), they disregard and often erode the informal knowledge and innovation systems practised by millions of small farmers around the world.

### **Public Sector and small farmer-focussed research**

ActionAid calls on the UK Government to ensure a central role for agricultural research by the public sector and small farmer groups. Public sector investment in research and development has been the basis of ensuring continued food security by breeding good quality seeds for poor farmers in developing countries. In a recent study, the authoritative Washington based research group IFPRI notes that public sector investment into agricultural R&D was one of the top three factors lifting millions out of poverty in India and China.

### **International Treaty on Plant Genetic Resources of the FAO**

We welcome the announcement by the UK Government ratifying the International Treaty on Plant Genetic Resources and encouraging other countries to do the same.

### **Possibility of Radical Overhaul of TRIPS**

It is unclear whether the Government is prepared to consider solutions which might go beyond TRIPS and might require a radical overhaul of the TRIPS Agreement (or even the possibility of taking TRIPS out of the WTO). Currently the UK Government is not in the favour of substantively reforming TRIPS, as it believes that the issues could be resolved within the TRIPS framework. In fact the terms of reference of the Commission were also limited to finding solutions within the existing framework, thus precluding the possibility of any discussions of substantively reforming TRIPS.

### **Followup**

Finally, ActionAid calls on the UK government to follow through its interest in commissioning the report by taking the recommendations forward, and to take the lead in making the necessary changes in the Global patent rules and WTO TRIPS Council to ensure that Farmers' Rights are protected, and that developing countries are free to exclude plants and crops from patentability. The UK Government also needs to ensure that the Commission recommendations are widely disseminated to developing country governments to ensure that they are confident to make use of the flexibility provided by the TRIPS Council without fear of reprisal by donors or their trade partners or corporations.

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