

1. Developing countries should, when so required by TRIPS at the end of the transition period, exclude plants from patenting, and set up instead *sui generis* systems tailored to their own needs (i.e., they should *not* accede to UPOV). One of the aspects of this system should be the farmers' rights advocated by the FAO 1983 International Undertaking on Plant Genetic Resources, which protects land races and traditional medicinal plants as intellectual property. Another suggestion for the protection of such species, made by the Crucible Group of experts, is a system of so-called community intellectual property rights.<sup>33</sup> The *sui generis* system, if it does allow protection for genetically-modified plant varieties, should incorporate the highest standards of protection -- in line with the Precautionary Principle -- to ensure that release into the environment of genetically modified plants does not threaten biodiversity.
2. Such a patenting system should not be rushed into. On the contrary, it should be delayed as long as legally possible. Many analysts see, in the recent U.S. patents on plant characteristics, on entire species of transgenic plants, and on human genes, a looming crisis in the patent system. The changes that may result are difficult to predict, and in uncertain situations it is better to keep as many options open as possible.
3. An IP system protecting land races should be supplemented by a developing country government commitment to preserve these varieties, in recognition of the economic value they represent. This would involve, for example, changes to agricultural credit programs which are conditional on the growing of high-yielding modern varieties.
4. Those countries which may have already signed the UPOV Act of 1991 should exercise the option to grant farmers' privilege. That is, farmers should be granted the right to freely save seed for next year's crop, even if grown from protected varieties.
5. Developing countries should exercise the right under TRIPS to exclude animals from patent protection, given the dangers inherent in the release into the environment of GMOs. If adequate precautionary protection is enshrined in the Biosafety Protocol now being negotiated, they might consider allowing patent protection for genetically-modified animals, but might still want to exclude the patenting of human genes for reasons of *ordre public* or morality.
6. Similarly, developing countries should, until adequate measures of precaution have been specified internationally, exclude the patenting of microorganisms on the grounds of protection of the environment or of *ordre public*.
7. Developing countries should establish systems whereby public-spirited individuals or research institutes can make their innovations available to the public, while at the same time protecting them from those who would unscrupulously seek to patent

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<sup>33</sup> The Crucible Group. *op.cit.*, p. 67.