

TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS: WTO THREAT TO INDIGENOUS PEOPLES

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THE IMPOSITION OF WESTERN LEGAL REGIMES is one of the root causes of the many problems indigenous peoples have faced over their histories. These legal regimes either totally negate customary laws or accommodate only those aspects that reinforce them. The Trade-Related Aspects of Intellectual Property Rights (TRIPs) is the latest example of this imposition.

The TRIPs agreement covers seven areas of intellectual property rights (IPR): copyrights, trademarks, geographical indication, industrial designs, lay-out designs of integrated circuits, and trade secrets. The most controversial and complex of these is the patent system. The TRIPs agreement aims to harmonize IPR protection on a global scale, which means that all members of the World Trade Organization (WTO) should have similar IPR regimes by the year 2005. This harmonization agenda poses problems for indigenous peoples and developing countries, where the majority of their populations still have a long way to go before they can reach a decent level of development. Since transnational corporations mostly own the trademarks, patents, etc., the harmonization of IPRs is to their advantage.

The harmonization of intellectual property rights laws to ensure that these are consistent with TRIPs could be disastrous for indigenous peoples. It is similar to how national laws and policies on land, forests, governance, etc. were imposed on indigenous peoples without any consideration whatsoever on customary laws in these same areas. In this case, however, it is an international body, the WTO, which is acting like national governments. In this case diverse laws and policies regarding IPR protection have to be recast in the mold of TRIPs.

The key impact that TRIPs has on indigenous peoples is that it denigrates, undermines, and discriminates against indigenous ways of thinking and behaving. Intellectual property rights are monopoly rights given to individuals or legal persons (such as transnational corporations) who can prove that the inventions or innovations they made are novel, involved an innovative step and are capable of industrial application. Indigenous knowledge and cultural heritage are usually collectively evolved and owned. If indigenous peoples have to use western IPRs to protect their own knowledge and innovations, they will have to identify individual inventors. This will push scrupulous indigenous individuals to claim ownership over potentially profitable indigenous knowledge which will cause the further disintegration of communal values and practices. It can also cause infighting between indigenous communities over who has ownership over a particular knowledge or innovation.

The concept of exclusive ownership and alienability which is inherent in TRIPs will have to be internalized and imbibed by indigenous peoples even if it goes against their usual practice of making available such knowledge for the common good. The identity and survival of indigenous peoples as distinct peoples depends to a large extent on the age-old practice of common sharing of some resources, knowledge and skills which are not alienable. With TRIPs, indigenous peoples will now have to think of how their knowledge will be protected against so-called "biopirates." Sharing of knowledge becomes a dangerous proposition because it might be appropriated by those who have the capacity to use the system to claim exclusive ownership over such knowledge and commercialize it.

Pharmaceutical and agribusiness transnational corporations are now more aggressive in their bid to have access and control over indigenous knowledge and genetic resources that can bring them huge profits. Various bilateral agreements are forged between corporations with some national governments, some indigenous peoples' communities and organizations, and non-governmental organizations. In many cases, indigenous peoples who entered into such agreements are now finding out that they got the raw deal. This is to be expected, however, because indigenous peoples are pushed to play in a game in which the rules are defined by the opponents.

The remaining diverse worldviews, cultural and intellectual heritage, customary laws and bio-genetic resources which provide the basis for indigenous peoples to assert their rights to self-determination, are further undermined by TRIPs. It limits the options available to indigenous peoples on how to ensure that the knowledge and resources evolved collectively by them will remain in their control and primarily for their use. It undermines the ethics and practice of sharing and collective ownership because what underpins TRIPs is privatization and commercialization of knowledge. The worst aspect of TRIPs is the way in which it forces governments to allow for the patenting of lifeforms. The road to the ultimate commercialization of life has been opened with TRIPs.

The challenge for indigenous peoples is to assert and develop further their own means of protecting their knowledge, practices and innovations so that they can continue using these for their own benefit and for others. They have to be careful not to fall into the trap of assimilating imposed western norms which are not consistent and which undermine their identities as distinct indigenous peoples. Thus, they should play active roles in influencing the development of national laws which are being crafted to conform with the TRIPs requirements. They should fight against the patenting of lifeforms. In the review of the TRIPs agreement, indigenous peoples should be able to formulate their positions and present these to governments and the WTO. ▲