

TO: Delegates to COP8 in Curitiba, Brazil March 20–31

FROM: International Ban Terminator Campaign*

RE: The CBD's *de facto* moratorium on Terminator technology is under attack

DATE: 23 February 2006

The multinational seed industry and a handful of OECD states are attempting to undermine the CBD's *de facto* moratorium on GURTs – genetic use restriction technologies. Recommendations from the Working Group on 8(j) to COP8 may open the door to the field-testing and commercialization of genetically modified sterile-seed technology (Terminator Technology or V-GURTs – Varietal Genetic Use Restriction Technology) and allow Terminator's patent-holders to claim tacit approval from the Convention on Biological Diversity.

At the Working Group on Article 8(j), Australia, with support from Canada and New Zealand, insisted on text that recommends a “case-by case risk assessment” of GURTs, opening the door to regulatory approval for field trials and commercial use of the potentially lucrative seed sterilization technology. The three countries were closely supported by one observer, the United States, which also holds patents on Terminator. Together, the four governments and the world's largest seed corporations are playing on confusion over the two distinct forms of GURTs (see Annex page 3).

Monsanto, the world's largest seed corporation, publicly vowed not to use Terminator (V-GURTs) in 1999, but the company now says it “does not rule out the potential development and use of one of these technologies [GURTs] in the future” and “will continue to study the risks and benefits of this technology on a case-by-case basis.” (Monsanto 2005 *Pledge Report*, p.29).

The future of Terminator will likely be determined during COP8. Failure to strengthen the moratorium—without caveats or exceptions—could lead to the commercial introduction of sterile-seed technology before governments meet again at COP9 in 2008.

At COP8, we respectfully request your government to:

- **Re-affirm and strengthen Decision V/5, Section III, especially paragraph 23** (the *de facto* moratorium).
- **Reject the text on “case-by-case risk assessment” of GURTs** (case-by-case reviews are narrowed to technical points, overlooking critical socioeconomic considerations).
- **Recommend that Parties develop national regulations to ensure that Terminator seeds (V-GURTs) are not approved for field-testing or commercial use.**

We hope that the attached annex will assist your government in its deliberations as it prepares for COP8. If we can assist you in any way in this preparatory process, please feel free to be in touch with us by telephone, fax, or email at the address indicated below.

Ten years ago, FAO advised governments that 1.4 billion people depend upon farm-saved seed for their survival. When governments adopted the *de facto* moratorium in 2000, many of those who took the floor described Terminator as a “suicide seed” technology. Today, as some of the world’s largest corporations press for Terminator’s commercialization, we understand that the lives and livelihoods of farmers—and those whom they feed—are at stake. Terminator is, in fact, a “homicide seed” technology.

Yours sincerely,

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On behalf of the Ban Terminator Campaign Committee

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*The International Ban Terminator Campaign was formed in May 2005 by civil society groups and movements in response to the threats posed by Terminator and the new corporate promotion of the technology. The Ban Terminator Campaign seeks to promote government bans on Terminator technology at the national and international levels, and supports the efforts of civil society, farmers, Indigenous peoples and social movements to campaign against it. The Campaign is supported by groups and movements across the world including AS-PTA (Assessoria e Serviços a Projectos em Agricultura Alternativa), ETC Group, GRAIN, Indigenous Peoples Council on Biocolonialism, ITDG (Intermediate Technology Development Group), Pesticide Action Network – Asia and the Pacific, Third World Network, Via Campesina.

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ANNEX: GURTs at COP8

COP8 will consider recommendations on GURTs from two bodies: SBSTTA10 and the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j).

Although both bodies reaffirmed Decision V/5, section III (the *de facto* moratorium), additional recommendations threaten to undermine the CBD's Decision.

The following issues must be addressed at COP8:

1. The *de facto* Moratorium:

In 2000, the CBD adopted Decision V/5 (Agricultural biological diversity) section III, paragraph 23, which recommends that Parties not approve GURTs for field testing or commercial use, thereby establishing a *de facto* moratorium on GURTs.ⁱ Unfortunately, the CBD's Decision is now in jeopardy. Industry and some governments are working to undermine the Decision and win approval for GURTs. Unless governments take action to prohibit GURTs, and V-GURTs (Terminator) in particular, it will be commercialized with devastating consequences for farmers, biodiversity and food security.

Recent developments: Multinational seed corporations are increasing pressure to win acceptance for V-GURTs:

- US-based Delta & Pine Land (D&PL) vows to commercialize V-GURTs and is now growing Terminator plants in greenhouses in the United States.
- Monsanto publicly vowed not to use Terminator in 1999, but the company now says it "does not rule out the potential development and use of one of these technologies in the future" and "will continue to study the risks and benefits of this technology on a case-by-case basis."ⁱⁱ
- On 5 October 2005, D&PL and the USDA won a patent on Terminator at the European Patent Office (EP 775212B).
- On 11 October 2005, D&PL and the USDA won a Canadian patent on Terminator (CA 2196410).
- Syngenta (the world's largest agrochemical company and holder of the most Terminator patents) won a new Terminator patent (US 6,700,039) in March 2004. This, despite Syngenta stating that it will not commercialize V-GURTs.
- Today, the world's three biggest seed enterprises (Monsanto, DuPont, Syngenta) account for 32% of the world's commercial seed sales and one-third of global pesticide sales. Together with Delta & Pine Land, they hold at least 86% of the patents on Terminator technology.

2. It is critical for governments at COP8 to clarify the difference between V-GURTs (genetic seed sterilization) and T-GURTs (genetic trait control).

V-GURT [Variety Genetic-Use Restriction Technology] refers to plants that are genetically modified to render seeds sterile at harvest. V-GURTs are designed to restrict the use of a plant variety by inducing sterility or making the seed non-viable. V-GURTs force farmers to buy seed every time they plant.

T-GURT [Trait Genetic-Use Restriction Technology] refers to the restriction of a specific genetic trait (such as for disease resistance or traits profitable for food processors). A trait is switched on or off with the application of an external chemical inducer that regulates the expression of the transgene. T-GURTs could result in many of the same socio-economic impacts as V-GURTs.

Global consensus on V-GURTs: Terminator or V-GURTs was developed by the multinational seed industry and the United States Department of Agriculture (USDA) to maximize seed industry profits. This predatory strategy—which offers no agronomic benefit whatsoever—has been widely condemned by scientific bodies, international development experts, Indigenous peoples, and farmers’ organizations. The governments of Brazil and India have already enacted national laws to prohibit the introduction of Terminator/V-GURTs technologies. V-GURTs is a dangerous, anti-farmer technology that has the potential to restrict the food producing capacity of farmers. By definition, V-GURTs are designed to restrict the use of, and access to biodiversity. V-GURTs/Terminator is counter to the CBD’s most fundamental principles, and is an egregious violation of public morality.

T-GURTs are also highly controversial. There is concern that genetic trait control technology, now being developed by the world’s largest agrochemical and seed corporations, will oblige farmers to use proprietary chemical inducers to switch genetic traits on or off in crops.

3. GURTS “case-by-case risk assessment” language must be rejected without caveat or exception.

Paragraph 2(b) from the Working Group on 8(j) recommends that COP8:

*b) Promote cooperation and synergies between agencies and experts in order to undertake further research and studies on potential impacts and other aspects of genetic use restriction technologies, including their ecological, socio-economic and cultural impacts on indigenous and local communities, **including on a case-by-case risk assessment** basis with respect to different categories of GURTs technology subject to the precautionary approach; [note: the following footnote was added to the end of this sentence] “and this is meant to be with respect to different variations within different categories of GURTS technology.”(emphasis added)*

“Case-by-case risk assessment” is a term that refers to a science-based approach to regulating genetically modified plants at the national level. “Case by case risk assessment” generally focuses on a narrow, science-based risk assessment that does not consider the potential socio-economic impacts of new technologies. The wording is controversial because it opens the door to regulatory approval, field-testing and commercial use of GURTs, and because the intent of “case by case risk assessment” undermines the CBD’s precautionary approach in Decision V/5, paragraph 23. The goal of the case-by-case approach is to see Terminator crops regulated like any other genetically modified plant.

We note that the language on “case by case risk assessment” was added at the insistence of one Party. The wording remained in brackets during Contact Group negotiations, and was removed after a last minute agreement outside of the negotiating room. Several governments voiced concern about the language and the footnote was inserted in an attempt to assist Parties come to agreement. The footnote text however does not clarify, but confuses the matter.

2. Which CBD bodies should examine GURTs? What should their mandate be?

SBSTTA 10/11, paragraph 3(a) recommends that COP8 “Determine the scope of the mandate of its bodies relating to genetic use restriction technologies;”

GURTs has been on the CBD agenda since 1998. As noted by SBSTTA10, Decision V/5 “already includes a relatively comprehensive approach to the use of genetic use restriction technologies including drawing attention to the precautionary approach.” Numerous studies

have already been conducted by the CBD and FAO. Additionally, many farmers' and Indigenous Peoples' organizations have submitted evaluations of GURTs in response to CBD requests. An Ad Hoc Technical Expert Group examined the potential impacts of GURTs on indigenous peoples and local communities, smallholder farmers and Farmers' Rights. In light of the overwhelmingly negative impacts identified, the AHTEG recommended that Parties and other Governments consider the development of regulatory frameworks not to approve GURTs for field-testing and commercial use.

COP8 must re-affirm and strengthen Decision V/5; no further studies within the CBD bodies are required at this time.

3. COP8 should invite WIPO and the UN Human Rights Commission to undertake studies on GURTs.

The Working Group on 8(j) recommends that COP8 invite WIPO, UNESCO and the UN Commission on Human Rights to undertake further studies on GURTs, within their respective mandates. COP8 should clarify the request to reflect the intentions behind the recommendations, consistent with the mandate of each body. For example:

COP8 invites the World Intellectual Property Organization (WIPO) to prepare two studies that will provide an inventory of patents, patent applications and related patent policies on V-GURTs from 1990-present; and 2) an inventory of patents, patent applications and related patent policies on T-GURTs from 1990-present.

COP8 invites the UN Human Rights Commission to prepare a study on the potential ethical and spiritual consequences of V-GURTs, with special consideration to the impacts on indigenous and local communities, smallholder farmers and Farmers' Rights in the context of the realization of the right to food.

3. V-GURTs do not offer agronomic benefits and will not function as a reliable tool for biocontainment.

At the Working Group on 8(j) some parties stated that GURTs will offer benefits such as increased productivity. There is no basis on which to claim that V-GURTs will increase productivity—it is not supportable. Genetic seed sterilization technology (V-GURTs) is being developed for the purpose of restricting access to seeds and enforcing industry monopoly. Inducible seed sterility offers no agronomic benefits to farmers.

The multinational seed industry and some Parties assert that V-GURTs have the potential to mitigate potential environmental risks by restricting the spread of transgenes from genetically modified crops. In other words, if pollen from Terminator plants contaminates related plants or their wild relatives, the seed that results from cross-pollination would be sterile – they would not germinate. There is no data publicly available on the functioning of V-GURTs in the environment. Some scientists point out that Terminator seeds will not function as a reliable containment mechanism due to the likelihood of system failure—and could introduce new biosafety hazards. Briefings on this subject are provided here:

http://www.banterminator.org/the_issues/biosafety/econexus_submission_v_gurts_terminator_as_a_biological_containment_tool

http://www.banterminator.org/the_issues/biosafety/briefing_terminator_and_genetic_contamination

<http://www.genewatch.org/publications/Briefs/brief33.pdf>

The Ban Terminator Campaign urges governments to protect biodiversity, Farmers' Rights and the livelihoods of millions of smallholder farmers by rejecting case-by-case assessment of V-GURTs, and re-affirming Decision V/5, Section III.

ⁱ Convention on Biological Diversity, Agricultural biological diversity, Decision V/5, section III, paragraph 23: "Recommends that, in the current absence of reliable data on genetic use restriction technologies, without which there is an inadequate basis on which to assess their potential risks, and in accordance with the precautionary approach, products incorporating such technologies should not be approved by Parties for field testing until appropriate scientific data can justify such testing, and for commercial use until appropriate, authorized and strictly controlled scientific assessments with regard to, inter alia, their ecological and socio-economic impacts and any adverse effects for biological diversity, food security and human health have been carried out in a transparent manner and the conditions for their safe and beneficial use validated. In order to enhance the capacity of all countries to address these issues, Parties should widely disseminate information on scientific assessments, including through the clearing-house mechanism, and share their expertise in this regard."

ⁱⁱ Monsanto, *2005 Pledge Report*, Genetic Use Restriction Technology, p. 29. On the Internet: <http://www.monsanto.com/monsanto/content/media/pubs/2005/pledgereport.pdf>