

6-22-2006

# Epistemicide: Under CAFTA, Indigenous Heritage Becomes First-world Intellectual Property

Mike Leffert

Follow this and additional works at: <https://digitalrepository.unm.edu/noticen>

---

## Recommended Citation

Leffert, Mike. "Epistemicide: Under CAFTA, Indigenous Heritage Becomes First-world Intellectual Property." (2006).  
<https://digitalrepository.unm.edu/noticen/9424>

This Article is brought to you for free and open access by the Latin America Digital Beat (LADB) at UNM Digital Repository. It has been accepted for inclusion in NotiCen by an authorized administrator of UNM Digital Repository. For more information, please contact [amywinter@unm.edu](mailto:amywinter@unm.edu).

## **Epistemicide: Under CAFTA, Indigenous Heritage Becomes First-world Intellectual Property**

*by Mike Leffert*

*Category/Department: Central America*

*Published: 2006-06-22*

Indigenous communities and environmentalists call it biopiracy; international pharmaceutical companies and academic researchers call it bioprospecting. Whatever one chooses to call it, the Central America Free Trade Agreement (CAFTA) has opened the door to foreign ownership of the right to exploit the region's abundant and diverse tropical flora. Under the intellectual-property provisions of CAFTA, the US has forced legislation in member countries that potentially legalizes patenting the biological resources of the region to the benefit of pharmaceutical and agroindustrial companies.

These institutions can now bioprospect, seeking plants with properties previously unknown to them, and then legally claim ownership of the processes to which they are put. These rights completely ignore the prior use of these plants by local and indigenous communities, which may have been using them for centuries and consider them part of their heritage.

This arrangement is not unlike the Spanish crown, and later the white criollos who succeeded it, taking lands from the ancestors of these same people. The practice by which these researchers and companies arrogate the biodiversity of underdeveloped countries to themselves, as well as the knowledge of its use, has come to be called biopiracy. It goes on under a virtual blackout by the media and is publicized almost exclusively only by some scientists and environmental organizations. This arrangement puts those vulnerable to dispossession of their ancestral knowledge at a distinct disadvantage when it comes to protecting their rights.

The director of the Oficina Tecnica de Biodiversidad of the Consejo Nacional de Areas Protegidas (CONAP) in Guatemala, Fernando Garcia Barrios, explained, "The institutions of government in Central America do not create the administrative and legal mechanisms for their genetic resources and associated traditional knowledge." What is needed, he says, is a "common, coordinated regional regimen that supports regional and national initiatives" on questions of intellectual property and access to these resources and knowledge bases.

In Guatemala, for instance, there is no clear codification of environmental crime, such as patenting these resources without consulting the affected local communities. Panama passed a Law of Protection of the Spiritual and Traditional Medicine Knowledge in 2002, but even there, said Kuna biologist Heraclio Herrera, the law has significant loopholes and does not provide rules against biopiracy.

Panama's General Environmental Law requires previous consent of indigenous communities for bioprospecting, but, said Hererra, "the investigators have avoided the consultative process by going directly to a person in the community possessing knowledge of traditional medicine and buying information."

## Seeing the world with market eyes

Part of the problem in dealing with the question of prospecting versus piracy is the vast difference in perspective between the competing forces. Researchers from the University of Utah, for instance, seem to ignore the relationship between the environment and the people who live in it, and instead put forward the notion that "misty-eyed idealism alone will not save Earth's dwindling tropical rain forests. But a five-year, US\$3 million study in Panama indicates rain forests can be protected if the pharmaceutical industry establishes Third World laboratories and hires local researchers to look for new medicines extracted from plants that evolved defenses against insects."

The idea behind this market-driven approach to conservation is that, if only these people were aware of the economic value of the environment and were given jobs exploiting that value, they would take better care of a goose that lays golden eggs. Tom Kursar led the study that came to these conclusions and said in 2003, "Until now, efforts to find drugs in the rain forest haven't really led to rain-forest conservation, but we have developed a novel approach that provides a direct link between looking for drugs and promoting conservation and economic development in biodiversity-rich countries." The US\$3 million came to the Utah researchers through the Smithsonian Tropical Research Institute in Balboa, Panama. The source of the money was the US National Institutes of Health, the National Science Foundation, and the US Department of Agriculture.

The researchers pointed out that worldwide investment in research and development has been estimated as high as US\$47 billion annually (2003), and "about one-third of that is spent on research that could be carried out in developing countries." These research activities could include extraction of chemicals from rain-forest plants, synthetic production of the chemicals for use as medicines, lab testing, and testing in animals. There was no mention of testing in humans, but this, too, has been known to be a profitable business in the Third World.

After five years, the study employed a number of workers, several of whom obtained university degrees in the process, and obtained provisional patents for three alkaloids extracted from local plants. The chemicals isolated were active against the parasite that causes leishmaniasis. The study ignored the issue of biopiracy.

But a commentary accompanying it by Jeffrey McNealey, chief scientist of the World Conservation Union (IUCN), did note that a drug company made hundreds of millions of dollars from a cancer drug developed from Madagascar's rosy periwinkle, while the country got nothing. McNealey noted the need to incorporate recognition of the value of traditional medical knowledge and compensation for the input of ancestral knowledge to drug discovery. "Through measures like these, charges of biopiracy could well fade away and be replaced by a new era of international cooperation," he said. But McNealey did not factor in the influence of trade agreements, and, three years on, CAFTA has eliminated the legal basis of this kind of cooperation.

Nicaragua has responded with a Law of Environmental Crime that defines extraction of resources as a crime, which comes into effect in June 2006. Julio Sanchez, coordinator of the Humboldt Center's Biodiversity Program, said that this and other laws regulating access to these resources could

challenge the intellectual-property clauses of CAFTA, "preventing the potential effects of CAFTA." But this remains uncertain at best.

Under the terms of the treaty, the US can decertify any CAFTA member that attempts to legislate away the odious aspects of the agreement. This is a one-way street. CAFTA can pre-empt any Central American national legislation.

Costa Rica has already sold the farm

Costa Rica has not yet ratified CAFTA. Newly inaugurated President Oscar Arias is committed to ratification, but Universidad Nacional de Costa Rica professor emerita Silvia Rodriguez warned, "Upon ratifying the treaty, the communities of Costa Rica will perhaps soon find out that the statutes of the law of biodiversity are condemned to become 'a restriction of market access.'" Costa Rica has already given away much of its botanical patrimony.

In 1991, the pharmaceutical company Merck contracted with the Instituto Nacional de Biodiversidad (INBIO). For the price of US\$1 million plus about US\$135,000, the company bought the rights to some 500,000 species and microorganisms in the country's national parks. The contract, which has been renewed three times, gives Merck patent rights to any medicine or product developed from any substance discovered. This situation clearly highlights issues of sovereignty and, for the indigenous communities, stacks the cards against indigenous ideas that diverge from property relations as understood by the dominant cultures.

But ethnobiologists recognize that there is more at stake and that there is a clear correlation between biodiversity and ethnic and cultural diversity. Italian anthropologist Luisa Maffi studied the extinction of indigenous languages and said that ethnic diversity is threatened by the same global forces that attack biodiversity.

Political scientist and international trade expert Corinna Milborn expands this idea in saying that the appropriation of Latin America's biological treasure through patents rips the indigenous cultures, because "the conquest of the elemental components of nature, their appropriation and commercial exploitation by corporations of the Western world diametrically opposes the understanding of nature, property, and the wisdom of these peoples." It is, in a word, epistemicide.

Sporadic attempts to defend against this encroachment had some limited success in the region before CAFTA. In 2003, a group of professors and students of the Facultad de Agronomia at the Universidad de San Carlos (USAC) in Guatemala rejected a relationship with the University of Chicago somewhat like the Panama arrangement because it lacked provisions for indigenous consultation on plans to go bioprospecting in their localities. "The project was rejected because the university wanted the right of intellectual property and we would have had to pay for the information," said USAC agronomist Walter Garcia. But now, said Garcia, some 15 professors are linked to transnationals, including Monsanto, Syngenta, and Cristiani Burkard, seeking to start bioprospecting projects in Guatemala.

Local communities in Guatemala, like their African counterparts, have been burned by these deals already. A plant known in Quiche as *cardo santo* has been patented for cancer treatment. Elsewhere in the country, natural medicines have been appropriated for tuberculosis and for malaria. In the Merck deal in Costa Rica, the regions where the company has patent rights to everything alive is also home to eight indigenous cultures whose people were never consulted, nor were they party to the negotiations, nor considered as beneficiaries. However, several indigenous families were displaced from project areas. In this case, the contract served to further divide indigenous people from the dominant classes within their country, favoring First World norms.

The director of INBIO, Ana Sittenfeld, argues that deals like this are a boon to poor countries, because they allow for transfers of biotechnology in return for access to natural resources. "Bioprospecting permits countries in development to use their own biological resources and compete with industrialized countries," she says. A little help from the South The disconnect between the dominant Western understanding of biodiversity and that of the indigenous is sufficiently wide, even though the indigenous have their defenders within the ruling paradigm, to cast some doubt that a just resolution will emerge with one side holding all the cards.

On the world stage, Brazil, Peru, and India have gone to the World Trade Organization (WTO) with a demand that inventors seeking patents reveal the origin of the genetic resources they utilize, to prevent the theft of traditional knowledge. The US opposed the demand, saying such a rule would be inoperable and unnecessary and would retard or halt patent approval for the cultivation of plants or the medicines, cosmetics, chemicals, and foods that come from them. The opposition pits the US, Europe, Japan, and Australia against China, Cuba, Venezuela, Thailand, Tanzania, India, and Peru and threatens to make already tense WTO negotiations even more so.

On April 20, a meeting of notable personalities headed by President Hugo Chavez of Venezuela took place in Parana, Brazil. The occasion was the drawing up of a document called *En Defensa de la Naturaleza y la Diversidad Biologica y Cultural Manifiesto de las Americas*. The convocation was the initiative of Brazil's *Movimento dos Trabalhadores Rurais Sem Terra* (MST), famously long in the business of advocating for campesino rights, and *La Via Campesina*, the international peasant movement that coordinates small and medium-sized producers, rural women, indigenous communities, and migrant agricultural workers. It coordinates organizations of these communities in 56 countries of Asia, Africa, Europe, and the Americas.

The manifesto brings these communities to center stage in what has traditionally been a disagreement within the confines of the dominant culture and its institutions. With this document they speak globally for themselves, not as outsiders and victims, but as holders of new powers, in the Americas anyway, where they have begun to take state governments by democratic means. The manifesto focuses on rejection of an economic system dominant in the world, "which for centuries has proposed to exploit in an unlimited way all the ecosystems and natural resources. This strategy brought economic growth and what was called 'development' for some nations and privileged consumption and social well-being to a very small part of humanity."

After a synopsis of the consequences for the majority of the peoples of the Americas of that model, the manifesto enumerates seven points to which it will strive:

Conservation of biological and cultural diversity.

Articulation of policies to guarantee the sustainability of ecosystems and the provision of potable water, food, medicines, wood products, fibers, regulation of climate, flood prevention, and health.

Opposition to the introduction of exotic species, monoculture, and other agroindustrial techniques that produce strong social impacts on the peoples who live in these areas; (that) produce profit, dollars, pulp, coal, dirty water, and leave behind degradation and poverty.

Rejection of transgenic organisms released into the environment, be they in agriculture, plantations, cattle-raising, or any other cultivation, especially that of genetically modified trees, for their potential to contaminate other native species and have multiple impact on insects, wildlife, indigenous communities, fishing, campesinos, and other local communities.

Rejection of Terminator seeds, or suicide seeds, because they attack the life cycle and only benefit the multinational corporations that control them and create dependency upon them.

Rejection of trade agreements with the US, whether bilateral or in the form of a Free Trade Area of the Americas (FTAA), as well as foreign-investment-guarantee agreements and accords made at WTO summits without popular participation.

Support for agricultural diversification brought about through the centuries by local peoples and communities. Recognition of the necessity of preserving campesino rights to ensure continued diversity of seed stocks and food security. The first of 32 signatures on the document was that of Venezuela's Hugo Chavez, followed by the governor of Parana, Roberto Requiao, Argentine Nobel Peace Prize winner Adolfo Perez Esquivel, and Uruguayan writer/historian Eduardo Galeano. Among the twenty-six remaining signers, from the Central America-Caribbean region were the mayor of San Salvador, Violeta Menjivar; Camille Chalmers of the Campana Jubileu Sur of Haiti; Doris Gutierrez, Honduran congressional deputy; ex-Sandinista Comandante Monica Batoldano; Ernesto Cardenal, Nicaraguran poet, priest, and ex-minister of education; poet Giaconda Belli of Nicaragua; Raul Suarez, a deputy in the Cuban Asamblea del Poder Popular and Baptist minister.

It would appear from these recent developments that, although at the level of electoral politics Central America remains firmly in the US camp on the left-right dipole, CAFTA is shifting the conversation to a split between bio- and cultural diversity versus neoliberalism and globalization and bringing renewed vigor with greater international organization to the popular sectors.

-- End --