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Press copies of *The Future Control of Food* – gudrun.freese@earthscan.co.uk +44 020 7121 3152
Interviews with Geoff Tansey – geoff@tansey.org.uk or phone Gudrun at +44 020 7121 3152

Corporations control the future of food and farming

Complex global rules undermine biodiversity, food security and developing country needs

Complex global rules on intellectual property – e.g. patents, copyright and plant variety protection – are laying the foundation for a more corporate future control of food and farming and undermining attempts to maintain biodiversity, ensure food security and meet the needs of developing countries, according to a new book published this month.

'The world is engaged in two parallel experiments,' says Geoff Tansey, co-editor of *The Future Control of Food: A Guide to International Negotiations and Rules on Intellectual Property, Biodiversity and Food Security*, published this month by Earthscan. 'One introduces a set of minimum legal standards on intellectual property (IP) for all World Trade Organisation (WTO) members irrespective of circumstances. These standards apply equally to big, more technologically advanced developing countries like India and China as well as to much poorer countries, and even to all of the least-developed countries by 2013. They have introduced IP into food and agriculture for the first time for many countries, partly through the requirements for plant variety protection and patenting of micro-organisms and partly through the rules on patenting themselves. These IP rules in turn, particularly those on patents, are also fuelling the most rapid and biggest ever biological experiment on the planet on the food we eat and raw materials we use, as any living organism of commercial value is being redesigned by private actors for private ends. Moreover, the firms doing this are not subject to equally stringent anti-trust and liability regimes, with the liability and redress part of the Biosafety Protocol to the Convention on Biological Diversity still to be agreed. There is also a failure to build on traditional systems and ecological approaches to biological innovation, which offer alternatives.'

When it comes to lobbying for changes in international rules it is the big corporations and rich world governments rather than poor people and developing country governments that have the biggest bucks and best lawyers. This puts the weaker countries and civil society groups at a major disadvantage in developing rules that are fair for all. It also means food

security takes a back seat with pressures for monopoly control over plants, seeds and genes driving the agenda.

While there has been a global outcry over the effects of the patent regime on access to medicines, leading to changes in the rules at the WTO, much less attention has been paid to the effects of similar rules on access to seeds and food. The various authors show how, over several decades, intellectual property rules have been extended to living things and how these changes have affected global attempts to safeguard natural and agricultural biodiversity, which are both needed for our future food security.

'International negotiations related to food, biodiversity and intellectual property have developed piecemeal in different forums leading to a bewildering environment for those who participate in policy making. This guide was written in response to concerns of developing country negotiators from different ministries dealing with the environment, food and agriculture, trade, development, and intellectual property. The core of the book explains just what lies behind various sets of international negotiations, what the new rules say and what the outstanding issues are.' says Tasmin Rajotte of the Quaker International Affairs Programme in Canada, and co-editor of *The Future Control of Food*.

For links and bibliographic details, see Notes to Editors at end of document.

Chapter summaries: Key facts, issues and quotes

Ch 1 - Introduction – Geoff Tansey

'global corporations…. have a disproportionate impact in shaping the increasingly changing global rules within which different actors in the food system have to operate.' (p6)

'IP rules were introduced into the WTO against the wishes of developing countries and with relatively little involvement of most stakeholders in developed countries. Instead, they were promoted and initially drafted by a small group of transnational actors from four major industries - film, music, software, and pharmaceutical and biotechnology (Drahos, 1995; Drahos with Braithwaite, 2002; Matthews, 2002; Sell 2003). This group saw that in global markets they needed global rules on IP if their business model was to survive and they were to capture the benefits arising from exploitation of new technological opportunities. *The inclusion of IP rules in WTO meant that IP was introduced into agriculture for the first time for many countries,* since the WTO rules require the patenting of micro-organisms and some form of plant variety protection through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).' (p6)

It would be a more accurate reflection of reality if we stopped using the term 'intellectual property rights' and instead talked of 'business monopoly [or exclusionary] privileges'.

Using more accurate language would also avoid any confusion with human rights discussions (see Chapter 7). The language of privilege, even if these privileges are enshrined in law rather than custom, helps make clearer the political and power-based mechanisms that lead to some being privileged over others. They also make clearer their instrumental purpose, which is geared to market-based creative and inventive business operation across a wide range of fields, of which agriculture has become a recent target. (p17)

Ch 2 - Turning plant varieties into intellectual property: the UPOV convention – Graham Dutfield

'several economically valuable crops do not lend themselves to hybridization. For these, breeders needed to find other means to control the use and production of their varieties. This is where lack of IP protection became an issue several decades ago, leading to the development of an international regime designed specifically to protect plant varieties whose seeds could otherwise be easily saved, replanted and sold, namely the UPOV Convention.' [which creates a system of Plant Breeders' Rights, currently the main form of Plant Variety Protection (PVP)] p31

UPOV was created and shaped by plant breeders for plant breeders and they have a strong sense of ownership of the convention. Public interest organizations have had minimal involvement. (p34)

Empirical evidence casts doubt on whether PVP (as well as patents) does much to encourage investment in plant breeding except in just a few commercially important crop species such as wheat and soybean, and ornamentals… Critics also argue that even if breeders did turn to neglected crops, many of the small farmers that grow them would not be better off if their freedom to use saved seed as they wished were diminished. In most developing countries a very large proportion of the farming population consists of small-holders, and for these people saving, selling and exchanging seed is common practice and essential for their survival. (p41)

'The importance of PVP globally, and pressures to introduce the UPOV model into developing countries, stems from the extension of IP requirements into agriculture through the TRIPS Agreement in the WTO' (p47)

Ch 3 – Bringing minimum global intellectual property standards into agriculture: - the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) [at the World Trade Organisation] – Pedro Roffe

Before TRIPS, countries could exclude some industrial or technological sectors from patentability… and also discriminate against the patentability of process and products. The pharmaceutical and food and beverages sectors were one of the most excluded among countries regarding both, products and/or processes. (p51-2)

'Before TRIPS, countries could exclude from patentability any inventions, but according to the new minimum standard of non-discrimination under TRIPS, Members may only exclude from patentability certain inventions, 'necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.' (Article 27.2)

One of the most controversial provisions of the Agreement, and of great importance for agriculture, biodiversity and the future of food, concerns whether or not living organisms are

patentable. Article 27.3(b) states: 'Members may also exclude from patentability: plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.' (p55)

'… issues include the relationship between the TRIPS requirement to have an effective *sui generis* protection system and the UPOV Convention and the relationship between the *sui generis* protection of plant varieties and traditional knowledge and farmers' rights.' (p64)

'The relationship between the provisions of TRIPS and the CBD has given rise to different opinions, ranging from compatibility to inconsistency. The latter has been associated with the possible granting of IPRs, based on or consisting of genetic resources, without observing the prior informed consent and benefit sharing obligations established by the CBD…. The main concern of developing countries is that TRIPS does not require patent applicants whose inventions incorporate or use genetic material or associated knowledge to comply with the obligations under the CBD…. [which] makes access to genetic material subject to prior informed consent of and equitable benefit sharing with the Contracting Party providing the genetic resources. Developing countries have repeatedly voiced concern about possible misappropriation of their genetic resources by developed country patent applicants. (p65) [Biopiracy]

Ch 4 - Promoting and extending the reach of intellectual property – World Intellectual Property Organization (WIPO) – María Julia Oliva

'As the international IP regime expands to include a diversity of multilateral agreements, international organizations, regional conventions and bilateral arrangements, WIPO remains one of its cornerstones…. For a certain time…industrialized countries seeking higher levels of IP protection favoured putting IP discussions into the multilateral trade system to achieve minimum standards enforceable through its dispute settlement system. WIPO, nevertheless, has recently regained its role as the leading organization in multilateral IP norm-setting, with several treaties currently being considered under its auspices. WIPO agreements, moreover, are often incorporated in other norms, as happened with the incorporation of the Paris and Berne Conventions into the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). It is now more and more common for them to be included in regional and bilateral trade agreements. Some of these commit signatories to sign up to future agreements to be concluded at WIPO (chapter 7).

In addition, WIPO is highly influential given the extensive technical assistance it provides or facilitates. The scope of such technical assistance is not limited to WIPO agreements, but extends to all IP concerns and implementation WIPO Member States may request support on. In addition, on the basis of an agreement between WIPO and the WTO, WIPO provides legal and technical assistance to implement the TRIPS Agreement….

Through all these activities, WIPO has a profound impact on IP rules both at the international and national level and thus on how these rules affect the conservation and sustainable use of biodiversity, the promotion of food security, and other international sustainable development objectives. Nevertheless, these links have only recently begun to be considered in WIPO, an organization that has traditionally regarded its objective to be to increase levels of IP protection around the world.... As discussions mount on WIPO reform, biodiversity concerns are at the forefront of some of the central demands for a more development-oriented approach to IP, including:

**rejecting IP provisions and agreements that would limit a country's ability to establish and implement key social, cultural, and environmental policies;
**calling for an international instrument to prevent the misappropriation of traditional knowledge and folklore; and
**demanding all WIPO activities to adequately consider and address their impact on sustainable development.' (p70)

Ch 5 - Safeguarding biodiversity: the Convention on Biological Diversity (CBD) – Susan Bragdon, Kathryn Garforth and John E. Haapala Jr.

Biodiversity encompasses the whole of life on this planet. Today's biodiversity has developed from over 4 billion years of evolution…. Moves to safeguard all aspects of biodiversity do not take place in a vacuum nor are they uninfluenced by social and economic developments. Indeed,…the expansion of intellectual property into the biological sphere, and the reactions to that have overshadowed at times and helped shape the types of international agreements affecting IP and biodiversity. (p82)

'The ability to gain intellectual property protection over genetic resources gave them economic value and resulted in increased political interest at both the national and international levels. Initially, however, this expanding scope of intellectual property protection only addressed one side of the value chain – biotechnology and plant breeding – without speaking to the other side – conservation and traditional development' (p83)

'Access to genetic resources and benefit-sharing [ABS] is intimately connected to agriculture and food issues although most of the CBD negotiators came from Ministries of Environment rather than Ministries of Agriculture. They had little knowledge of the characteristics of genetic resources for food and agriculture and all countries' interdependence on one another for these resources (Bragdon, 2004, 15; chapter 6). For these negotiators, the classic ABS scenario involved scientists searching the rainforest for an organism that may contain the next cure for cancer or AIDS. Yet genetic resources and genetic diversity are also of critical importance in agriculture. '(p90)

'More broadly, these negotiations [now underway on ABS] can be understood as the latest salvo by some developing countries in their attempts to bring balance to the world economic system.' p102

'One development in the evolution of the CBD was the creation of the Cartagena Protocol on Biosafety. The Biosafety Protocol is a subsidiary instrument of the CBD and is also an evolving instrument with important links to food security and intellectual property rights as well as biodiversity. Most fundamentally, the commercial development of genetically modified organisms (GMOs) owes much to the extension of patentability and companies' aggressive enforcement of these patent rights' (p104)

'Biosafety regulation is intended to address concerns about gene flow but as introduced genes continue to spread through the environments where they have been released and also to spread from country to country, the IPRs over these genes give the proprietor companies increasing control over who can grow what where and how. This has potentially serious consequences for farmers, food security and biodiversity but these consequences have, to date, largely remained outside the deliberations under the Protocol.

Neither the Convention nor the Protocol are static instruments. Both are evolving. Furthermore, the way they evolve is not necessarily logical or rational but is highly dependent on politics. It is difficult to capture in writing the importance of the personalities

involved in the negotiations. Meetings led by competent chairs will generally produce better results; when negotiators get along with one another – whether or not their positions on an issue are similar – they will more easily reach a compromise. Personality conflicts and power struggles over process can spell disaster. These are just some of the intangibles that feed into the eventual outcomes of negotiations.' (p114)

Ch 6 - Giving priority to the commons: the International Treaty on Plant Genetic Resources for Food and Agriculture – Michael Halewood and Kent Nnadozie

'The International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty) represents a spirited reaction to the rising tide of measures that extend private or sovereign control over genetic resources, which is inappropriate for food and agriculture. It recognises that access and benefit sharing for agricultural biodiversity must be treated differently from the way it is generally treated under the Convention on Biological Diversity (CBD). The Treaty creates an international genetic resources commons – called the 'multilateral system of access and benefit sharing' -- within which members, in exercise of their sovereignty, provide free (or almost free) access to each others' plant genetic resources for research, breeding, conservation, and training….Access to materials within the commons comes largely without strings attached, and the strings that do exist are there to maintain the spirit of the commons. For example, recipients can not take out intellectual property rights (IPRs) that prohibit others receiving them in the same form from the multilateral system. (p115)

'The negotiations of the Treaty text took six and a half arduous years….The negotiations were long and tough, with highly polarized debates between developed and developing countries.' (p120)

'…nations do not necessarily get what they desire or deserve, but mostly what they negotiate. Treaty-making is not necessarily rational or logical but a largely political process involving impositions, compromises and trade-offs' (Kent Nnadozie, p122)

'The interface between the open, public space of the research commons, and assertions of private control through IPRs or other restrictive approaches which demarcate the boundaries of the 'commons' was, in fact, one of the main preoccupation of the negotiations.' (p136)

Ch 7 The negotiations web: complex connections – Tasmin Rajotte

The diversity of constituencies negotiating and lack of policy coherence at all levels, in addition to forum management strategies used by some countries, has resulted in an array of agreements that can have inconsistent or overlapping objectives (p141)

'Forum proliferation and the increasing complexity of the various international treaties create and contribute to controversies, conflicts, grey areas and other problems.' (p141)

'Powerful countries and interests that are unable to get the level of IP protection they want in one forum shift to other forums to achieve their aims (Vivas, 2003)…. When these countries and industrial groups were no longer able to get what they wanted at the WTO, they shifted back to certain treaties within WIPO (see chapter 4), and started directly pressuring developing countries to raise their IP standards through bilateral and regional trade and investment agreements.'…. In particular, the agreements being negotiated by the US and the EU with developing countries have raised serious concerns among civil society advocates, policy makers and developing country negotiators about a number of so-called 'TRIPS-plus' provisions in these agreements that go beyond countries' obligations under the TRIPS

Agreement. These provisions, they argue, will force ever more onerous IP systems on developing, and developed, countries thereby further limiting their space to implement systems that are supportive of their food security and livelihoods objectives. A number of provisions are of particular relevance for agriculture' (p142):

- Requirements to join UPOV (p142)
- Requirements to introduce patent protection for plants, animals and biotechnological inventions (pp142-3)
- References to contracts (p143)
- Extension of patent protection period (p143)

'Controversies surrounding the role of IP and the misappropriation or 'biopiracy' of genetic resources and associated traditional knowledge (TK) have not only been at the heart of key issues being negotiated in the various multilateral agreements… but in setting the framework from which problems are being addressed' (p146)

'The relationship between the provisions of TRIPS and the CBD has given rise to different opinions, ranging from compatibility to inconsistency.' (p150)

'Part of the problem in all of the various negotiations is that different constituencies have been negotiating them—primarily trade officials at the WTO, patent lawyers at WIPO, environment ministries at the CBD and agricultural ministries at the FAO—often without much domestic coordination. As a result, the same issue is being dealt with differently depending on the negotiating context. It is IP and trade constituents, in particular, that are driving the agenda: defining the strategies, issues and solutions—and thus creating all kinds of implications for the conservation and biodiversity of genetic resources crucial for food and agriculture.' (p158)

Ch 8 Responding to change – Heike Baumüller and Geoff Tansey

'The increasing complexity of rule making and the growing web of agreements requiring follow-up is a problem in itself for civil society and governments. For many poorer countries and groups – from farmers' and peasants' organizations, to small and medium enterprises, to officials and negotiators – their capacity to deal with the global negotiations and rules, or influence them so that they reflect their interests, is very limited.' (p171)

'The corporate sector has seen a remarkable consolidation over the past few years. Just ten multinational companies… are estimated to account for half of the world's commercial seed sales (ETC Group, 2005). This trend is particularly apparent in the agricultural biotechnology sector where six companies – Aventis, Dow, Du Pont, Mitsui, Monsanto and Syngenta – control 98 percent of the global market for patented biotech crops (ActionAid, 2003).

Patents and plant variety protection are widely seen as one of the key driving forces behind this trend.' (p175)

' Conflict over the patent system and its application to living organisms lies at the heart of many concerns about IP in agriculture, which deals with biological systems not mechanical systems for which patents were designed…. For many civil society organizations and academics, the balance between public and private interest has swung too far away from the public to the private in the current global regime.' (p179)

‘Many civil society groups, researchers and foundations are concerned that the extension and strengthening of IPRs could inhibit the use of R&D processes and products, including biotechnological, which would benefit people in developing countries. Another concern is that the current focus on biotechnology, which is partly driven by IP, is skewing the overall research effort away from other approaches to improve farming, especially for poor and marginalized farmers, from better water management to more appropriate equipment to integrated pest management techniques’ (p187)

Ch 9 Postcards from international negotiations – Peter Drahos and Geoff Tansey

‘Competition between industrialized countries underlay pressure for expansion of intellectual property rights (IPRs) into agriculture, with Europe creating plant breeders’ rights and UPOV in response to developments in the US. IPRs were becoming an important element in the industrial model of agricultural production developed in those countries and being exported globally.’ (p197)

‘…in the last decade or so we have moved into a period of history where there are more international fora than ever before to negotiate food, biodiversity and IPRs (TRIPS and the CBD, for example, only came into operation in the first part of the 1990s) and there are more actors, coalitions and networks participating and exercising some kind of influence in those negotiations than ever before.’ (p199)

‘multilateral forums are better for weaker actors… one reason for this is that multilateral fora seem to provide more opportunities for floating points of leverage’ (p202) [these are where weaker states and groups get more than you would expect from the leverage their structrual power due to the institutionalised economic or military power would lead you to expect]

global negotiations… often come down to a contest of principles… reframing a contest of principles is [not] sufficient to win a negotiation, but it matters (p203)

‘The right choice of principles can therefore bring in other networks to increase a point of leverage and perhaps create others. For weaker states the key is to network and then network some more, nationally, regionally and finally globally’ (p205)

Negotiating wins or gains may or may not turn into real gains…. International negotiations are full of examples of where coalitions end up settling on ambiguous language that allows both sides to claim some measure of a negotiating gain…. Before developing countries seek the refuge of compromise or ambiguity they should ask whether in reality they are simply opening the door to defeat. The question they should be asking is which party in the end game will be in the best position to resolve the ambiguity in its favour. (p207-8)

If climate change has taught us anything it is that no amount of political manipulation and investment in technologies of spin will change how physical systems behave. …lawyers who tend to resort to property-based forms of regulation, may not understand the limitations of such models for agricultural biodiversity and innovation because they do not understand how systems of innovation in agriculture work – where, in essence, breeding works best when many people exchange many materials – actually work….There is too much at stake in agricultural biodiversity and biodiversity generally to allow global regulatory standards to rest on legal fictions. (p208)

From ch 10, Box 10.1 by Peter Drahos
‘To manage climate change, states will want faster innovation and diffusion of alternative energy technologies, plants for food and agriculture and technologies for efficient water use.

The patent system in its present form is a risk factor, rather than a tool of risk management, for handling these kinds of large-scale changes and crises. The system has an appalling track record in producing medicines for tropical diseases. Patent specifications, which are meant to disclose the invention, are drafted by patent attorneys in a species of legalese that mocks the values of open science and communication. Patent systems in their present form represent unhealthy concentrations of power and dominance in which networks of big business, patent attorneys and patent offices co-operate to produce an insider governance of the system.' Peter Drahos, p218)

Ch 10 Global rules, local needs – Geoff Tansey

'…higher IP standards as well as complex access and benefit-sharing regimes could disadvantage both smaller countries and firms but also those working in agriculture where informal innovation systems and exchange mechanisms underpin the innovation practices of traditional farming.' (p214)

'We need action based on cooperation and sharing of best practices to deal with the challenges, not competition that pits peoples and societies against each other. For that, on the basis of performance to date, we need to rethink the way we make global rules and the nature of international negotiating processes.' (p214)

'The one vision of the future that is not being facilitated and encouraged by the way IP rules are developing and affecting the direction R&D is the ecological approach – yet that is probably the one with the most certainty of working in the long term…. innovation in food and agriculture does best if it can draw on a rich biodiversity, a biodiversity that depends on fragile variables such as TK [traditional knowledge], local farming systems and free exchange of materials. By building a property rights system that rewards standardization and homogeneity we almost certainly risk affecting those variables that underpin our systems of biodiversity.' (p216)

'It would be ironic – and potentially tragic - if just as other sectors are turning to and seeing the value of open source, informally networked means for innovation (Benkler, 2006), farming and food, which has been based on such systems for millennia, moves in the opposite direction.' (p220)

Notes to Editors

(1) Review Copies

To request review copies and cover images of *The Future Control of Food*, or to interview Geoff Tansey, contact gudrun.freese@earthscan.co.uk • +44 (0)207 121 3152

(2) Book Launch Events/ Panel Discussions / Lectures

Geoff Tansey will speak about the book at all of the following events, at which all are welcome. Please RSVP if specified. Please post these events on your website / in newsletters if appropriate.

Saltaire Bookshop – All welcome
Slow Food West Yorkshire host Geoff Tansey to introduce the book
31st January, evening
The Saltaire Bookshop
217 Bingley Road

Saltaire, West Yorkshire
BD18 4DH
Further details from David Ford
Tel: 01274 589144
http://www.slowfoodwy.org.uk/future_control_of_food.htm

UK Food Group Seminar – All Welcome
"Intellectual Property Rights, Food and Trade Agreements"
February 11 2008, 2:00pm – 5:00pm
Snacks and Drinks from 1:30pm onwards
Development House, 56-64 Leonard Street
London EC2A 4LT
Queries: geraldine@ukfg.org.uk

Institute of Development Studies – All welcome
Thursday 14 February, 17.00
Chichester lecture theatre, University of Sussex campus
'Global Rules, Patent Power and the Future Control of Food'
Speaker: Geoff Tansey, Joseph Rowntree Visionary for a Just and Peaceful World
Directions: http://www.ids.ac.uk/go/about-ids/getting-to-ids
More details: http://www.ids.ac.uk/go/about-ids/events/sussex-development-lectures
Queries: C.Matthews@ids.ac.uk

SOAS Food Studies Centre – All welcome
26th February 2008, 5:30pm
Brunei Gallery Suite
SOAS, University of London
Thornhaugh Street
Russell Square
London WC1H 0XG
United Kingdom
RSVP: soasfoodstudies@soas.ac.uk

Overseas Development Institute – All welcome
A lunchtime meeting is planned for February – date TBC
Panel discussion with Geoff Tansey (author), Duncan Green (Oxfam) and Jim Somberg (New Economics Foundation). Chair: Andrew Shepherd (ODI, Head of Agriculture Research)
RSVP: To be alerted when the date is set, leave your name and email address with meetings@odi.org, with the subject / message 'Send Geoff Tansey date'

(3) How to Reference the Book
Please reference the book as follows:
The Future Control of Food (£19.99) is published by Earthscan. www.earthscan.co.uk
Or link to the book's web page here:
http://shop.earthscan.co.uk/ProductDetails/mcs/productID/776/

(4) Bibliographic Details
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(4) **About the Editors**

Geoff Tansey is a researcher and writer on intellectual property, food and agriculture and a Joseph Rowntree Visionary for a Just and Peaceful World. He is lead author of *The Food System* (1995) and co-editor of *The Meat Business* (1999) and *Negotiating Health* (2005). He helped found and edit the journal *Food Policy* in the mid-1970s, has been a consultant to international agencies, governments and non-government organisations and worked on various agricultural development projects. He is an honorary visiting research fellow in the Department of Peace Studies at Bradford University and visiting fellow at the centre for Rural Economy at the University of Newcastle Upon Tyne. He was senior consultant for the intellectual property and development programmes of the Quaker United Nations Office, Geneva and Quaker International Affairs Programme (QIAP), Ottawa from 1999-2007 and a consultant for DFID for the first phase of the UNCTAD-ICTSD Project on Intellectual Property Rights and Sustainable Development. He is also a member and a director of The Food Ethics Council and a member of the consultative panel of the Sustainable Development Commission.

Tasmin Rajotte has worked in the field of sustainable agriculture, food security and environment for a number of years and is the representative for the Quaker International Affairs Programme (QIAP), Ottawa, Canada.