

25th May 2002

Professor Emil Salim
Chairman WSSD
PrepCom IV
Bali, Indonesia

Comments on Chairman's Paper, unedited version, May 9th

Dear Professor Salim,

It is with great concern that we send you our comments on the new Chairman's Paper as negotiations begin in Bali, Indonesia. Friends of the Earth International, as the largest network of grassroots environmental organisations worldwide, very much supported you during PrepCom III and joined the call for you to receive a clear mandate to "clean up" the negotiating text before PrepCom IV. We hoped that, as a result, the Johannesburg process might finally adequately respond to the General Assembly's call to deliver a far-reaching, time-bound action program for Johannesburg.

The new text, in our view, fails to deliver on this mandate.

We recognise that you have been constrained by a lack of vision and dearth of far-reaching initiatives from member states in the negotiations to date. IN our view, the new text simply reflects rather than challenges this lack of vision and commitment. It consequently forms a weak basis for the last negotiation round.

Delivering an agenda for meaningful change in Johannesburg will now be difficult. Negotiations in Bali must not be allowed to get bogged down in details, but must insert the necessary vision and meaningful, resourced actions. Bali is crucial, as you yourself have emphasized. Bali must therefore deliver a real sea-change in commitment.

We are particularly concerned that the fundamental concerns of many on neoliberal economic globalisation - voiced throughout the Johannesburg process so far – have not been addressed. In our letter to you of March 14th 2002, we voiced a concern that "the WSSD's agenda is being hijacked by those wishing to promote the WTO's trade agenda". The present text is evidence of just that.

We are concerned that the Johannesburg Summit, rather than delivering a clear political statement that trade must be subservient to sustainable development concerns, will deliver the opposite.

If governments want to disabuse civil society of this notion in Bali, they must delete all references to the outcomes of the Doha Ministerial, Instead, they must include in the Heads of State Declaration and Johannesburg Programme of Action, a clear statement affirming the authority and autonomy of multilateral environmental agreements (1). Otherwise, we must conclude that governments are determined to sacrifice sustainable development on the altar of a neoliberal trade agenda, to which opposition is increasing globally. Friends of the Earth International still calls for a comprehensive review of the social and environmental impacts of the trade liberalisation steps taken, which have been “too fast and too extensive” according to UNEP Executive Director Klaus Töpfer.

Friends of the Earth International is also deeply disappointed with the way that corporate accountability and liability issues are being addressed in the current text. We believe that whether or not voluntary initiatives play a role, they cannot credibly be presented as an alternative to internationally agreed binding rules of accountability. Nor can they credibly be presented as a coherent framework for ensuring business stops undermining sustainable development. Nor are they relevant instruments for securing rights for citizens and communities to hold corporations threatening their sustainable livelihoods to account. We therefore continue to demand that a process of negotiation is set into place at Johannesburg for a binding global corporate accountability instrument.

If governments fail to deliver this essential platform for sustainability, Friends of the Earth International (and many other civil society groups) will find it difficult to affirm the Johannesburg Summit results. Insufficient corporate control is one of the obstacles to implementation and a key reason why unsustainable development has continued in the last decade! Specific language on corporate accountability has been weakened during the negotiations. Given the groundswell of support for binding corporate accountability by almost all stakeholders demonstrated throughout the preparatory process, this will be seen by the global public as a major failing from governments.

Friends of the Earth International was surprised to see that the outcomes of COP 6 of the Convention of Biological Diversity have so far not been included in the text. We demand that this omission is rectified at PrepCom 4 as a matter of priority. We are also very concerned that the issue of biosafety is not addressed in the negotiations. Instead, it is suggested that biotechnologies are part of the sustainable development solution. We strongly disagree with this assessment.

Friends of the Earth International welcomes the clear reaffirmation of the 1992 agreements and the Millennium Declaration that has been included in the Introduction. However, in Rio, Northern countries promised to reduce the negative impacts they have through over-consumption on the developing world. This promise has been broken. There is little in the current paper on

consumption and production patterns that inspires confidence in Northern countries' commitment to addressing this failure. Friends of the Earth International therefore urgently repeats its call that the Global North's ecological debt to the Global South should finally be recognized in Johannesburg and meaningful steps be taken to address this injustice (2).

Friends of the Earth International supports the call made by many NGOs to make access to sustainable renewable energy for the 2 billion people globally without electricity supply a reality within 10 years. We also call on governments to achieve entry into force of the Kyoto Protocol by the Earth Summit.

Along with other NGOs, Friends of the Earth International remains concerned about the elevation of partnership agreements to such a significant 'outcome' of the Summit. Our fear that these "Type 2 outcomes" will result in the "privatisation and implementation" has, if anything, been confirmed by the discussions on these partnerships since PrepCom 3. Instead of complementing the Summit's other results, they threaten to mask the failure of governments to agree meaningful action. Arguments to the contrary remain implausible as long as the Johannesburg Plan of Action remains as weak and insufficient as it is currently. Friends of the Earth International reaffirms its intention to judge the outcome of the Johannesburg Summit solely on the merits of the the Type 1 results. We also reconfirm our strongest opposition to any process that could result in a further increase of corporate influence over the United Nations. The responsibility of agreeing and delivering on global social and environmental rules must remain with governments.

As an appendix we have added specific comments and textual suggestions on various paragraphs focussing on changing consumption and production patterns, trade and globalisation, corporate accountability, climate and biodiversity.

We thank you for your attention and remain in the hope that you will succeed in rescuing the Johannesburg process in Bali. If your aim remains an action program that delivers meaningful change and includes time-bound commitments with resources attached, you can count on our support. But the stakes are high. If Bali fails, Johannesburg will likely fail, and governments will face significant global outrage.

Yours sincerely,

Daniel Mittler
Earth Summit Coordinator
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Notes

- (1) An NGO statement demanding that the autonomy and authority of MEAs is to be recognized and that MEAs are not to be subordinated to WTO rules was initiated by Friends of the Earth International and has been signed by more than 150 groups from more than 40 countries. The statement and list of signatories is at <http://www.rio-plus-10.org/en/positions/35.php> .
- (2) Further details on Friends of the Earth International's ecological debt campaign are at <http://www.foei.org/ecodebt/index.html> .

Appendix: Comments on specific paragraphs and issue areas

Changing unsustainable production and consumption

Friends of the Earth International welcomes that changing unsustainable production and consumption patterns is still highlighted as an overarching objective. We call for the recognition of the ecological debt by the Global North to be included in the text.

However, some specific paragraphs call into question whether the overarching objective is really to be adhered to. For example, the previous call to achieve a factor four increase in energy efficiency is no longer part of the text. We call for this paragraph to be reinstated and supplemented with a paragraph on the necessary sufficiency revolution.

13a We support the mention of the “polluter pays” principle. However, the phrasing “adopt and implement policies and measures aimed at promoting sustainable patterns of production and consumption...without distorting international trade and investment” in our view implies that trade and investment takes priority over changing unsustainable patterns of consumption and production and the polluter pays principle. A similar conditionality is mentioned in **14c**. We urge the deletion of ‘without distorting’. Further we would like to see a stronger commitment spelled out in the paragraph to the polluter-pays principle.

Trade and Globalisation

Friends of the Earth International welcomes the recognition in **4** that “As a result of globalization, external factors have become critical in determining the success or failure of developing countries in their national efforts.”

We are concerned that old **4f** is no longer part of the negotiation text. It read: “Increase food availability in areas where it is produced, thus reducing transport costs and excessive dependence on international markets”. This paragraph should be reinstated.

7b and **7f** raise important issues about access of the poor to land, water and agricultural resources. We feel the language on land tenure reform should be strengthened but support that these paragraphs stay in the text.

9c We question what facilitating further development of natural gas pipelines will do to eradicate poverty. This paragraph is open to different interpretations and therefore needs to be clarified.

10 While much of paragraph 10 is welcome in terms of supporting small business, we note that where large scale industry is concerned the text refers to providing assistance (sub paragraph **a**). In contrast, micro, small and medium sized enterprises are just to be ‘promoted’. We believe this imbalance could lead to the opposite of supporting SMEs. Therefore we would like to see a recognition, and assistance for supporting local economies as a priority.

18 Fails to address the link between international trade and transport (food miles etc.). This should be rectified as the increase in the volume of international trade in recent decades is one of the reasons why global emissions from the transport sector continue to rise.

42 We strongly object to the following sentence having been removed: "However, there are increasing concerns that globalization has led to the marginalisation of a number of developing countries and increased instability in the international economic and financial system." We demand that this paragraph is reinstated and the link between globalisation and unsustainable use of natural resources is also made explicit in this sentence.

42a This paragraph is too vague and general to be useful.

42d This sub-paragraph adds a caveat to the precautionary approach of the Rio Declaration. This is not consistent with the commitment in paragraph 1 reaffirming the principles. However, we welcome a specific reaffirmation of the precautionary approach.

42k The use of the words public/private seems a very blatant attempt to drive forward a particular approach. These words could simply be deleted and the paragraph would make much more sense. As it is, it seems that any initiatives that are not public/private partnerships would be excluded, which we object to.

62 We want this paragraph to be retained as it calls for a reduction of capital flight, which in our view would help to provide much needed economic stability.

67a Although we support the use of multilateral measures wherever possible we draw to your attention this extract from "Sale of the Century?", our statement for the Doha Ministerial in November 2001. Governments should: "...Agree not to use trade rules to challenge laws designed to promote and protect development, the environment and health...Put in place a moratorium on the use of trade dispute mechanisms (including that within the WTO). International trade dispute settlement bodies must recognise the existence and give a presumption of validity to the precautionary principle, to local and national laws, and to international treaties and laws relating to the environment, human rights, health, and labour standards and may only find a violation if the challenged law clearly serves no legitimate purpose other than discriminating against imported products."

69 should only stay in the text if a full and independent review of the impacts of trade rules on the environment is also committed to.

Corporate Accountability

15 While we welcome attention to the issue, we strongly believe this paragraph to be deficient. We believe the World's governments must do more than just 'enhance' corporate environmental, social responsibility and accountability. Instead this must be 'secured'. It will simply not be possible to deliver sustainable development unless corporations act responsibly. At present the paragraph implicitly accepts irresponsibility as the norm. One key mechanism for changing this is through securing proper accountability for corporations. This needs to be

spelled out in the paragraph as securing legal rights for citizens, duties for corporations and improved practices. We believe this section should see a firm commitment to delivering accountability and liability of corporations as a route for ensuring their responsibility.

15 a refers to 'bearing in mind' principle 11 of the Rio Declaration. Paragraph **1** of the Chairman's text includes a reaffirmation to the Declaration. Therefore this sub paragraph must avoid vague language such as 'bearing in mind' and must instead say 'consistent with'.

15b We believe this subparagraph to be terribly deficient. It will not be possible to secure sustainable development unless corporations are accountable to those they affect through their operations. 'Dialogue' must not be 'encouraged', it must be established as a principle for multinationals' behaviour. Furthermore, communities need rights for pre-consultation, over their common resources and of veto.

15c This sub paragraph fails to establish a key principle – that all government institutions (such as Export Credit Agencies) must develop Sustainable Development criteria for investment and export credit. This should be an explicit commitment.

16c We believe this subparagraph should say 'ensure' rather than 'promote'.

23f We believe this sub paragraph should not set such a high priority on public-private partnerships. However we do agree accountability of public and private institutions and companies in the water sector is essential. We believe, however, governments should agree to establish mechanisms for securing this, not just facilitating it.

38e We believe this subparagraph is too vague and general to serve any useful purpose. It needs to be precise in its meaning to make any sense to readers and policy-makers. It does not even appear to refer to tourism – the subject of the paragraph.

40c We welcome attention to the issue of illegal logging. We believe a framework is needed for regional action to stamp out the illegal trade and replace it with community-led sustainable forestry. In particular we believe OECD governments should commit to consumer controls on illegally-sourced wood fibre material.

41a This sub paragraph does not appear to make any useful solid commitments. The mining sector has been subject to acute criticism which has not diminished in the last ten years. Corporations have been able to continue profiting despite their social and environmental impact because they are not sufficiently accountable to the people affected by their practices. We believe special attention is needed to devise global rules for corporations to ensure their accountability and that this needs to be on the terms of the wider community, not just at the whim of the industry.

42I As with our earlier comments on paragraph 15, we are disappointed that governments have left the issue of corporate accountability to the whim of corporations. We believe:

- Governments must commit to devising mechanisms to secure corporate accountability, liability and responsibility.

- This should explicitly incorporate foreign direct liability and rights for affected citizens and communities to challenge corporations in home or host country courts.
- Corporations should be allocated duties with respect to social, environmental and human rights matters. These need to apply directly and indirectly in law.
- Corporate practices must be improved.

This needs to be established through an international framework mechanism, as corporations are multi-national and governments will be reluctant individually to act. Therefore we also believe 'promote' is insufficiently robust language.

FoEI would object to formalising the Global Compact, which we believe is inappropriate. If Type 2 initiatives such as the Compact are to be taken forward, then they should not be formalised in Type 1 texts in this way.

VIII Africa

51f FoEI is concerned that this sub paragraph puts an emphasis on governments in Africa attracting the mining industry through deregulation and making their regulatory framework a mechanism for attracting investment. We believe the emphasis should be on enhancing the rights of affected populations and on necessary controls of this currently extremely damaging sector.

62 We believe this paragraph once again solely prioritises government action to encourage investment from the private sector through improving governance. We believe the private sector too must be subject to improved governance in the interests of governments and citizens.

Climate

9 This paragraph needs to be changed to allow all 2 billion people currently without access to energy to have sustainable renewable energy delivered to them within 10 years. All references to advanced fossil fuels as well as oil and gas pipelines must be removed as a matter of urgency. These technologies are not part of the solution to dangerous climate change.

17 We once again call for the removal of all references to advanced fossil fuels and oil and natural gas pipelines.

33 We strongly urge that the bracketed text remains and also call for entry into force of the Kyoto Protocol as soon as possible, ideally by the time of the Johannesburg Summit.

Biosafety/Biotechnology

39j We urge the deletion of this paragraph as it stresses only the benefits of biotechnology and fails to address the risks. We deplore the lack of reference to biosafety in the whole paper and urge that this omission is rectified.

Biological Diversity /Incorporating Text from CBD COP 6

The texts on biological diversity and forests fail to incorporate the results of the 6th Conference of the parties of the Biodiversity Convention, which adopted, amongst others, a comprehensive work program on forests. As a minimum, the following paragraphs of the The Hague Ministerial Declaration should be incorporated in the text:

3. "Recognizing that biodiversity underpins sustainable development in many ways; poverty eradication, food security, provision of freshwater, soil conservation and human health all depend directly upon maintaining and using the world's biological diversity and therefore sustainable development cannot be achieved without the sustainable use of biological diversity.

7. We, in particular, reconfirm our commitment to treat the conservation and sustainable use of biological diversity, as well as the equitable sharing of benefits arising out of the use of genetic resources as essential tools to achieving sustainable development and poverty eradication. We urge the promotion of synergies between the CBD and related conventions and the exchange of experiences and lessons learned between countries and regions and all relevant stakeholders.

10. We resolve to develop together with the UN Forum on Forests and strive to broaden this to the UN Convention to Combat Desertification and the UN FCCC a common work program on forest biological diversity, to be presented at the next meeting of the Conference of the Parties to the CBD.

11. We call upon the WSSD to:

...c. recognize the strong links between biodiversity and other policy fields in terms of policy development and implementation and in particular promote:....

...

- the integration of biodiversity objectives into social and economic environmental policies, programs and actions, in particular when addressing the interface of sustainable development with trade and financial agreements.

- synergy and mutual supportiveness between the CBD and international trade-related agreements and policies with a view to attaining the

objectives of sustainable development and to urge clarification of the relationship between the CBD and trade-related agreements in a more concrete manner....

...

f. urge developed countries that have not done so to make concrete efforts towards reaching the target of 0.7% of Gross National Products as ODA to developing countries and 0.15 to 0.20 per cent of GNP to least developed countries and to achieve a significant replenishment of the Global Environmental Facility as well as to mainstream biodiversity in their ODA-policies.

...

h. Encourage and enable all stakeholders to contribute to the implementation of the objectives of the CBD and recognize in particular the specific role of women and indigenous and local communities in conserving and using biodiversity in a sustainable way. In particular it is important to recognize the rights of indigenous and local communities and incorporate their unique knowledge and methodologies in implementing sustainable development.

...

i. Urge governments to improve accountability with respect to their international obligations through the development and enforcement of monitoring and compliance regimes."

Issues of implementations

59 We welcome the commitment to new resources to deliver Agenda 21. But we need clear confirmation of this extra money really being made available as otherwise the promise may be broken again, as it was after Rio.

60 We welcome the commitment to concrete efforts to reach the 0.7% target, but again expect to see more serious signs of implementation by governments (going beyond commitments made at Monterrey!). The 0,7% target was already promised 30 years ago. Within the next ten years, it must finally be delivered.

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