

FARMERS' Rights

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IN THE CONTEXT OF GLOBALISATION AND WTO

'Disclosure' as a positive obligation

Disclosure requirement, among others, obliges the patent applicant to comply with the access and benefit sharing legislation of the host country.

The most controversial provision in Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is the one relating to patenting of life forms. While this provision is a boon for biotech and agro-chemical companies of the North, it has opened the floodgate for the piracy of genetic resources and misappropriation of associated traditional knowledge (TK) from the South. In fact, it has provided a legal cover to the bio-pirates. The gene-rich developing countries could not even take shelter under Convention on Biological Diversity (CBD), since it lacks legal measures against non-compliance unlike TRIPS in the World Trade Organisation (WTO) system. This has led to a wide debate over the issue of TRIPS and CBD during WTO negotiations.

The debate got a constructive shape when pressures from the gene-rich developing countries culminated in explicit recognition of iniquitous nature of TRIPS in the Doha Development Agenda. Ministers instructed the TRIPS Council to examine, *inter alia*, the relationship between TRIPS and CBD, the protection of TK and folklore, and other developments. However, till date, the council has failed to persuade members, resulting into more heated discussions over the issue of the reconciliation of TRIPS and CBD.

Among many conflicts, most pertinent one is that CBD calls for benefit sharing between commercial users of



genetic resources and associated TK, and donors of such resources, whereas TRIPS negates such a mechanism by providing exclusive rights to the patent holder. As if injustice inherent in the patent system was not enough, developed countries are also ready to flout the basis tenets of patent (novelty, inventive step and commercial application) in order to appease their vested interests.

For example, the United States Patent and Trademark Office (USPTO) granted US Patent 5,401,504 on 28 March 1995 on the Use of Turmeric in Wound Healing to University of Mississippi Medical Center. Whereas it is a common knowledge in most South Asian countries that turmeric has numerous properties, including wound healing. While granting patent, either the USPTO did not examine whether such knowledge was pre-existing or the researchers misled the USPTO arguing they fulfilled all the patent criteria. The twin major criteria of novelty and inventive steps

were, in fact, not fulfilled.

Fortunately, the patent was later challenged by the Center for Scientific and Industrial Research (CSIR) – an Indian government undertaking – and subsequently the patent was revoked. What was spine chilling was the very idea that an exclusive right to sell and use turmeric for the purpose of wound healing, as claimed in the patent, was granted to the University. Had the patent not been challenged, the University would have been able to license the patent to a company, which, in turn, would have charged a royalty to the inhabitants of South Asia for having used wound healing property of turmeric. This is not the only example; patents granted on specific properties of neem, bitter gourd, eggplant, grape etc. are a few other examples.

To control bio-piracy, many developing countries are demanding "disclosure requirement" as a positive obligation on the patent applicants, making it mandatory to disclose the source and/or country of origin of genetic resources and associated TK.

This requirement ensures that the patent applicant will comply with the access and benefit sharing legislation of the host country. It would also enable patent offices to be more vigilant while examining patent applications. Moreover, it would serve as a critical tool for gene-rich countries to track down applications based on genetic resources and related TK, and enable adequate challenges to specious patents. ♦

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Interfacing breeders' rights with farmers' rights

Despite farmers' rights being incorporated into PVP laws in many countries, their protection in law remains weak.

Rajeswari Kanniah

The concept of farmers' rights was first proposed in the International Undertaking on Plant Genetic Resources in 1983. It was a response to the inequity in the distribution of benefits between farmers as donors of plant genetic resources (PGRs) and commercial breeders, who are conferred intellectual property rights (IPRs) on new plant varieties that ultimately rely on such PGRs. There was no system to compensate or provide incentives to the farmers as the providers of the PGRs.

This initial formulation did not create a right nor propose a mechanism for the recognition and reward of traditional farmers. Convention on Biological Diversity (CBD, 1992) and International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA, 2001) advanced the concept. Several model laws have since been proposed such as The African Model Legislation proposed by Organisation for African Unity; and The Convention of Farmers and Breeders proposed by Gene Campaign.

Despite farmers' rights being enacted into plant variety protection laws in many countries, their protection in law remains weak. The laws did not begin as attempts to define and provide for farmers' rights but as regimes to confer plant breeders' rights (PBRs) as required by Trade Related Aspects of Intellectual Property Rights (TRIPS). Farmers' rights are defined only by way of exception to PBRs, whereas there are certain essential principles that should be integrated for the recognition of farmers' rights. The following details some of these principles:

Rights over traditional varieties

Farmers must have rights as breeders over their traditional varieties, landraces and over new plant varieties



ies derived from their traditional varieties. These rights are not consonant on formal registration and are applicable in accordance with customary practices and traditions of the respective farming communities. Farmers must also have the right to save, reuse, sell and exchange propagating material of traditional varieties and landraces.

Rights over protected varieties

Farmers must have the right to save, reuse, sell and exchange propagating material of protected varieties in the following situations: where they are not sold as protected varieties or for commercial purposes; when they are primarily subsistence or small farmers (on the basis of volume of output, farm size, species of plant variety, etc) who customarily reuse seeds because they lack access to or financial resources to purchase new seeds every growing season; and where exchanges and sales of seeds take place within the same community or with neighbours and between farming communities.

Prior informed consent

Commercial breeders, who use traditional varieties to develop new plant varieties, must obtain the prior in-

formed consent (PIC) of farmers. Commercial breeders, who apply for the registration of PBRs over their new varieties, must reveal the source of the genetic material used for the creation of the new variety. Where the source is from traditional varieties, they must show proof that PIC has been obtained from the owners of the traditional varieties and benefit sharing rules have been complied with.

Benefit sharing

Farmers must be adequately compensated where traditional varieties or knowledge have been used in the development of new varieties. Mechanisms for such benefit sharing must be established by the state to ensure that appropriate systems are in place to identify the rightful owners of genetic material and the benefits are equitably shared among them. The state must provide for an equitable system where ownership cannot be attributed to individual or collective farmers. This calls for arrangements that permit the proceeds to be pooled into a central fund and applied for conservation/development activities.

Limitations to commercial PBRs

Farmers' rights need to be categorically protected in statutes that provide for PBRs. The relevant statutes have to make clear that the rights of commercial plant breeders do not supersede the rights of farmers where: such rights will infringe upon the traditional practices and rights of farmers; biodiversity and food security may be affected; and based on the precautionary principle, the variety may pose a possible hazard to the human, animal or plant life or health, or contaminate the crops of traditional farmers.

The statutes must also explicitly provide that the rights granted to commercial plant breeders do not preclude the rights of farmers and researchers to use protected varieties for: private and non-commercial purposes; research and experimentation on a non-commercial basis; and teaching purposes. ♦

Ms Kanniah is Acting Regional Director at Consumers International, Kuala Lumpur

Contradictory draft PVP laws The case of Bangladesh

There are two different sets of draft PVP laws in Bangladesh and their provisions contradict with each other in many cases.

Syeda Rizwana Hasan and Taslima Islam

The role of agriculture in Bangladesh is not limited to its contribution (27 percent to 30 percent) to gross domestic product. It is also the principal source of employment (65 percent labour force) and foreign exchange earnings (32 percent). Biodiversity is important for the basic survival needs of the people. The country is home to 5,000 angiosperm species and several subspecies, of which 160 species are used as crops.

Bangladesh is a party to Convention on Biological Diversity (CBD). The country has also signed onto International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and is a World Trade Organisation (WTO) member. The domestic preparation to comply with these is underway. The draft laws on biodiversity protection and plant variety protection (PVP) are pending for approval.

Two different committees constituted by the Ministry of Agriculture prepared these drafts. While the first Committee submitted two separate but inter-linked drafts on Biodiversity and Community Knowledge Protection Act and Plant Varieties Act of Bangladesh in 1998, the second Committee submitted another draft on PVP in 2003 (*See the box*).

The first two drafts were prepared prior to the introduction of ITPGRFA and hence do not mention the obligation under the said Treaty. However, desperate attempt to match with the obligations of CBD is noted. On the other hand, the 2003 PVP draft emphasises on the obligation of Trade Related Aspects of Intellectual Property Rights (TRIPS) that, under the present arrangement, will become effective since January 2006.

The draft Biodiversity Act reaffirms sovereign right of the state over natural and biological resources and the authority of the national govern-

Status of PVP Law

There are two different sets of draft PVP laws in Bangladesh – the 1998 version and the 2003 version. The 1998 version is more farmer-friendly. Under this draft, protection to be accorded shall mean defined and specific commercial privileges, whether explicitly mentioned or not, approved and granted to an innovator by the National Biodiversity Authority.

Such protection shall not constitute any generalised intellectual property right and may vary on the basis of nature of innovation. It is only when communities recognise an independent human agency over and above the social process and the innovation serves definite and useful needs of the people that protection may be accorded. A breeder may claim commercial privilege over hybrid only if the parents are available in Bangladesh as community variety in the public domain. Such protection shall in no way affect the rights of the farmers to have unencumbered access to biological and genetic resources and traditional knowledge; and collect, conserve and use such resources. The draft clearly distinguishes between local/wide-spread/common plant variety and new plant variety. This draft shall protect the latter variety for commercial privilege and award while the former are protected under the draft Biodiversity Protection Act.

However, the 2003 PVP draft is more rigid and does not contain vital issues like protection of biodiversity, introducing biodiversity register and so on. It fails to address the issue of assertion of ownership and negates the scope of ABS and PIC.

ments to determine access to such resources. It also reaffirms Article 8 of the CBD that seeks to promote wider application of innovation of the local and indigenous community with their approval and benefit sharing.

The draft recognises the global tendency towards affirmation of intellectual property right over biological diversity, the related products and processes and declares it imperative for Bangladesh to protect its own resources against such backdrop. The draft prohibits all forms of monopolisation of biological and genetic resources and related knowledge and culture.

The 1998 PVP draft regulates the commercial transaction of plant varieties including new plant varieties. Its provisions are to be interpreted in the context of the draft Biodiversity Act. In contrast with the 1998 PVP draft that referred to the obligation under CBD, the 2003 PVP draft seeks to fulfill the obligation under Article 27.3 (b) of TRIPS.

Other than TRIPS, the draft, in dealing with eligibility for applying for protection, also refers to ITPGRFA. Thus it can be said that the earlier (that refers to CBD) and latest (that refers to TRIPS and ITPGRFA) versions of the draft laws are not based on the same premises to the extent the treaties differ. The 2003 PVP draft has not addressed the complexity of issues like access and benefit sharing (ABS) and prior informed consent (PIC). Instead by not referring to the draft Biodiversity Act, the 2003 PVP draft has left these issues unapprised. Although the applicant for a New Plant Variety Protection must show that he/she has permission of the community in using their variety or knowledge and append an appropriate arrangement for ABS, the mechanism is not prescribed as done in the draft Biodiversity Act.

Yet, none of these laws have guaranteed farmers' right to participate in decision making. Therefore, the proposed laws on biodiversity and PVP should not merely introduce farmer-friendly ABS and PIC mechanisms but should also ensure a definite role of farmers in decision making. ♦

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Priorities for farmers' rights in India

Whether or not the existing policy and legal frameworks are sufficient to protect farmers' rights relating to ABS and PIC should be a matter of intense debate.

Mita Dutta

In India, nearly 60 percent of the total population is involved in agriculture, which constitutes 25 percent of gross domestic product. The country is also a rich repository of natural resources, including agro and forest biodiversity.

Various parts of the country like the Western-Ghats and the North Eastern Hilly area have a number of wild varieties of crops and plants as well as animal species. It is mostly the rural farming community, which has been using, nurturing and preserving these varieties. The vast amount of traditional knowledge, skills and technologies (TKST) possessed by the community has played a significant role in developing these varieties. However, such TKST are shared only within the community. Not all the biological resources and TKST associated with them have been documented. Due to these, on one hand, there is a threat of the loss of biodiversity and extinction of TKST, on the other, no legal action can be taken in the case of piracy of such resources and TKST.

Piracy of biological resources and associated TKST is already a major concern in India. The outsiders (companies) from other countries have an increasing tendency to hold patent rights on the country's resources and also use the TKST possessed by the community. It is unfair that the outsiders use them commercially without sharing the benefits and that too without prior informed consent (PIC) of the community. Such a tendency has also excluded farmers from the decision making process.

India is a contracting state of Convention on Biological Diversity (CBD) and has ratified International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). The country is also a member of the World Trade Organisation (WTO), which obliges members to comply with the provisions of Trade Related Aspects of Intellectual Property Rights (TRIPS). These international instruments do

Status of PVP Law

India introduced PPVFR Act, 2001 as part of its TRIPS commitment to devise a *sui generis* PVP law. It may be for the first time in the legislative history of India that farmers' rights have been recognised in the law itself. Balancing the rights of breeders and the rights of farmers, the Act deals with three aspects of farmers' rights:

- Farmers' rights to save, exchange and sell (except branded) seeds;
- Benefit sharing based on compensation and operating through a mechanism where communities/farmers can make claims for compensation; and
- Farmers must be able to register their varieties in the similar fashion as breeders.

The National Gene Fund is to cater to the benefit sharing expenditure or to support the conservation and sustainable use of genetic resources. However, the Act is not clear about how the fund is going to be used. Another distinct feature is that the authorisation to sell and market an essentially derived variety from farmers' variety should not be given to the breeders without PIC from the farmers.

After the enactment of this Act, in 2002, the Government of India decided to join Union for the Protection of New Varieties of Plants (UPOV) 1978. Accession to UPOV demands that India should have a pro-breeder and pro-patent plant varieties protection scheme. Non-governmental organisations (NGOs) from various corner of the country are opposing this move. Gene Campaign, a Delhi-based NGO, has filed a public interest litigation at the Delhi High Court to ensure that this decision does not dilute the provisions of the PPVFR Act.

largely concern with the above mentioned issues relating to farmers' rights. Under each of these instruments, national governments are responsible for implementing the policy and legal measures at the domestic level. Under CBD, India enacted Biodiversity Act (BDA) in 2002. Similarly, as required by TRIPS, the country enacted Protection of Plant Variety and Farmers' Rights (PPVFR) Act in 2001 (See the box).

BDA ensures equitable benefit sharing for the commercial use of natural resources and protects the interest of farming communities, including indigenous communities like *vaids*, *hakims* etc. Ensuring farmers' participation in the decision making process, the Act provisions for The Biodiversity Management Committee at the *Panchayat* level, with representation from farming/tribal communities. The Committee is responsible for monitoring the biodiversity of the territory. PPVFR recognises farmers as conservators, breeders and cultivators, and has provisioned for the constitution of a Gene Fund, which would facilitate the access and benefit sharing (ABS) mechanism.

However, there is no comprehensive policy in India on PIC and ABS. But at present, there are some important policies like Agriculture Policy, Seed Policy and Environment Policy that deal with biodiversity conservation and PIC and ABS.

It is, therefore, important for all the stakeholders, including the government, to discuss the strengths and weaknesses of these policies and laws. Whether or not the existing policy and legal frameworks are sufficient to protect farmers' rights relating to ABS and PIC should be at the centre of debate? If they are not sufficient, the government should take initiatives for amending them. ♦

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Options to protect farmers' rights in Nepal

The inclusion of farmers in the decision making process is important and the government must incorporate a provision for the same in the law itself.

Puspa Sharma

Nepal's economy is agriculture based. About 83 percent of its total household is engaged in agriculture and the sector contributes 39 percent to the national gross domestic product. Also, the country is rich in biodiversity and has a vast reservoir of agro-genetic resources. Farmers' contribution in the conservation, improvement and management of such resources is tremendous.

Convention on Biological Diversity (CBD) has stipulated that the contribution of farmers in conserving, improving and making available these genetic resources be the basis for their rights. Although it took some time for Nepal, concerns have been shown in recent time at the national level that farmers' rights relating to genetic resources and traditional knowledge should be protected. Consequently, the issues of prior informed consent (PIC) and access and benefit sharing (ABS) have gained wider recognition, which is also evident from the government's efforts to prepare the policy and law on ABS and related laws, e.g., Draft Bill on Access to Genetic Resources and Benefit Sharing, 2002, Draft Policy on Access to Genetic Resources and Benefit Sharing, 2002, and Draft Bill on Plant Variety Protection and Farmers' Rights, 2004. But unfortunately, all of these policies and laws are still in the draft form and none of them have strongly provisioned for the farmers' participation in the decision making process.

These policies and laws have been prepared in compliance with different international conventions and treaties that deal with the issues of biodiversity, genetic resources and farmers' rights. CBD is one of them. The convention has clearly stated that access to genetic resources should be subject to PIC of the contracting party providing such resources and it also mandates the states to have a national legislation as per which the benefits arising out of the utilisation of those

Status of PVP Law

Following its membership in the World Trade Organisation (WTO), Nepal prepared the Draft Plant Variety and Farmers' Rights Bill in 2004 to comply with TRIPS. The bill has recognised the past, present and future contributions of farmers and has given them the right to save, exchange, reuse and sell their seed. The bill has also given the right to farmers to use protected new varieties without any claim from the breeders, if such varieties are used merely for subsistence.

Apart from these, the bill has also made a provision of compensation to farmers in case they do not get the harvest as declared or are not provided all required information well in advance.

Despite these pro-farmer provisions, the bill is not without flaws. Regarding access to genetic resources owned by farmers, the bill has only mentioned about taking 'prior consent' of farmers, not the 'prior informed consent'. The exclusion of the word 'informed' may result in a mere formality of taking consent of farmers without informing them about the pros and cons of such access. The issue of PIC has also not been addressed in the case of the use of traditional knowledge of the farming communities.

Similarly, while conferring the rights to farmers on ABS, the bill has mentioned only about the common and traditional knowledge of farmers, whereas it should have been common and traditional knowledge, skills and practices. The biggest flaw in the bill is that the bill has not mentioned anywhere in the text the right of farmers to participate in the decision making process. The inclusion of farmers in the decision making process is important and the government must ensure it while enacting the law.

resources should take place. Nepal signed and ratified this convention in 1992 and almost after 10 years, in 2002, prepared Draft Bill on Access to Genetic Resources and Benefit Sharing and Draft Policy on Access to Genetic Resources and Benefit Sharing in order to fulfill its obligations under Articles 15(7) and 16 (3) of the convention. These drafts include the modalities of ABS (both in monetary and non-monetary terms) and PIC, which might have been prepared by following the Bonn Guidelines. But the non-representation of farmers and any civil society groups in the "National Genetic Resources Conservation Authority" that it has envisaged to form is the most obvious lacuna in these drafts.

Similarly, to comply with TRIPS, Nepal has prepared the Draft Bill on Plant Variety Protection and Farmers' Rights as the *sui generis* system. This draft has tried to strike a balance between the rights of farmers and the breeders of plant varieties but lacks the provision of farmers' participation in the decision making process. Besides, in some provisions of farmers' rights, the bill is not very clear and there are rooms to argue that they would operate in against of farmers' interests in the future (*See the box*).

The objectives of International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) are the conservation and sustainable use of PGRFA and the fair and equitable sharing of benefits derived from their use, in harmony with CBD, for sustainable agriculture and food security. Nepal has not yet signed the treaty but reportedly, the country is ready to ratify the treaty.

Indeed, Nepal has many options to protect farmers' rights in relation to PIC and ABS. The challenge lies in managing these international instruments and implementing them through domestic policies and laws. ♦

Mr Sharma is Programme Officer at Pro Public, Kathmandu

Genetic engineering vs farmers' rights

The case of Pakistan

Genetic engineering is not without problems; it affects farmers' rights in many ways.

Mehnaz Ajmal Paracha

Agriculture is the main source of livelihood for a majority of farmers in Pakistan. The agricultural sector contributes around 26 percent to the national gross domestic product. Besides, the country covers various ecological and climatic zones and is rich with bio-wealth.

Modern technologies, such as genetic engineering are widely considered to be effective means for producing more food – a global concern for food security in the future. However, genetic engineering is not without problems; it has been criticised for its negative economic, social and environmental consequences.

In recent years, due to these technologies, access to genetic resources and traditional knowledge, prior informed consent (PIC) and sharing of (commercial) benefits arising from their use have become a matter of intense debate. It must be noted that access and benefit sharing (ABS) and PIC affect all dimensions of sustainable development and to a great extent the livelihood patterns of farmers. The global spread of these technologies has fuelled worldwide competition between farmers, also endangering the existence and the marketability of locally adapted, site-specific land use systems (crops, animals, microorganisms).

Farmers in Pakistan have been making tremendous economic contributions to the agricultural and healthcare markets. Farmers collect, keep, store, conserve and sow seeds for use by peasant societies. In the rural areas, farmers as a whole are the primary food producers, food gatherers, and food processors. Farmers, especially women farmers, by nature, are involved in the selection, conservation, and management of biodiversity ranging from food crops to medicinal plants, and they should have the right

to get benefit from their resources.

Unfortunately, the policies and laws at the national level to ensure “farmers’ rights” are lacking. On the other hand, to guarantee increased corporate returns and private profit, companies are seeking intellectual property protection (IPP) in agriculture through legally enforceable plant breeders’ rights (PBRs) and patents.

Pakistan, as a signatory to many international instruments that have significant bearing on farmers’ rights, is trying to look at the ways and modalities to incorporate the concerns of farmers into national policies and laws. Such instruments include The Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on Biological Diversity (CBD); International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA); and Trade Related Aspects of Intellectual Property Rights (TRIPS). These instruments are critical for safeguarding farmers’ rights as they widely deal with PIC and ABS. However, there are also threats associated with them, which, in turn, can affect the livelihood of farmers. The government should, therefore, deal with these instruments very seriously and seek ways to capitalise on them so that farmers’ rights are protected.

To this end, the government is already in the process of finding a legal space for PIC and ABS through the Biodiversity Action Plan. Other steps taken by the government are the drafting of Plant Breeders’ Rights Bill (*see box*) and Access and Community Rights Law.

However, these laws would not work alone to protect farmers’ rights. Documentation and registration of biological resources and traditional

Status of PVP Law

As required by TRIPS, Pakistan has opted for the *sui generis* option to protect plant varieties. A government committee with representatives from the ministries of commerce, agriculture and industries prepared a draft Plant Breeders’ Bill in 1999. However, in the process of drafting the bill, the farming communities were not consulted, and the draft had been kept secret from the people. In March 2001, civil society and farmers protested and showed their concerns, which resulted into a consultative meeting with stakeholders. The stakeholders then identified that the draft law is not farmer-friendly. They demanded that the government should interpret the *sui generis* system in light of CBD, which deals with the rights of local communities on genetic resources and biodiversity.

The government showed a defensive position by stating that the law will not affect farmers’ rights since few of farmers’ concerns have been incorporated in the draft bill. The draft bill was then forwarded to the provincial governments for ratification, but still the controversy lies in it. Three of the provinces, i.e., Punjab, Baluchistan and North West Frontier Province (NWFP) had adopted/ratified the bill till October 2004. The Punjab Government is forcing Federal Government to urgently approve PVP law in order to improve the enabling environment for private and public sector innovation. The constitutional requirement – the “approval from two provinces” – is completed and now the bill has to appear in the cabinet and then in the parliament for debate.

knowledge should be done. The government can establish a digital library and a databank for this purpose. The government must be able to link its micro and macro policies and laws giving priority to the issues of PIC and ABS. ♦

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Regulation of access to genetic resources

The case of Sri Lanka

Sri Lanka does not have any laws, which grant access to genetic resources subject to mutually agreed terms and PIC.

Avanthi Weerasinghe

For centuries Sri Lanka has been known as an agricultural country. In recent years, agriculture has accounted for about 20 percent of the country's gross domestic product. The country is also rich in agrobiodiversity.

The farming practiced over thousands of years has resulted in a rich array of cultivated plants. The continuous selection of plant varieties by farmers over centuries with special traits, which suit different uses and different agro-climatic conditions, and the availability of a wide range of agro-ecological conditions have led to the creation of a high wealth of agrobiodiversity. However, due to the globalisation process, not only biodiversity but also the livelihood patterns of farmers are at stake.

Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement obliges members to grant patent protection to microorganisms and non-biological and microbiological processes; and provide protection for plant varieties, either by patent, an effective *sui generis* system or a combination thereof. However, Sri Lanka has been pressurised to draft its PVP law in line with Union for the Protection of New Varieties of Plants (UPOV) 1991, which ignores farmers' rights relating to seed; traditional knowledge; access and benefit sharing (ABS) and prior informed consent (PIC); and participation in decision making. Much concern has, therefore, been on developing such a PVP law that protects these farmers' rights.

Convention on Biological Diversity (CBD) and International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) are the two instruments that address issues relating to farmers' rights such as bio-piracy, patenting of biological resources, ABS and PIC. Sri Lanka ratified CBD on 23 March 1995. Further as a World Trade

Organisation (WTO) member, Sri Lanka is obliged to implement TRIPS. However, the country is yet to ratify ITPGRFA. Sri Lanka passed its new Intellectual Property Act No. 36 of 2003 to comply with TRIPS. This law does not have a direct bearing on biodiversity and farmers' rights as it does not allow patenting of plants. However, the Intellectual Property Rights Office and the Department of Agriculture have drafted a PVP law, which could adversely affect biodiversity and farmers' rights (*See the box*).

Sri Lanka does not have any laws, which grant access to genetic resources subject to mutually agreed terms and PIC. However, the country has drafted a law, which aims at conservation of genetic resources, regulation and facilitation of access to genetic resources, and establishment of a benefit sharing mechanism. However, the above draft was not enacted due to the strong opposition from the civil society. The civil society objected to this draft for two reasons.

First, the draft law deals with genetic resources only as opposed to biological resources, which cover a broader spectrum. CBD too deals only with ABS of genetic resources. According to Article 2 of CBD, genetic resources are defined as genetic materials of actual and potential value, which tacitly excludes all biological resources from the scope of ABS. It is submitted that it is difficult, in practice, to segregate genetic material from biological resources in which it is found in providing access. This could result in the recipient automatically gaining access to a large amount of biological material along with the genetic material, which would not be regulated under the ABS regime. Second, the draft has provided for the establishment of an Inter Agency Committee to decide on the PIC for the pur-

Status of PVP Law

Sri Lanka has prepared a Draft Bill on New Plant Varieties 2001, which is based on UPOV 1991. The draft does not protect the rights of farmers to crop wild relatives, traditional crop varieties, or newly developed crop varieties already in the public domain. There are no provisions to get just compensation in cases where one or more of these are used to make a variety by a private breeder, which would be covered by plant breeders' rights (PBRs). The draft law would prevent farmers from saving, exchanging and selling seeds of varieties protected by PBR laws. Further, the draft has not provided any rights to the farmers, who are the custodians of the traditional varieties. The provision on "essentially derived varieties" is capable of preventing both the local farmers and public breeders, namely the Department of Agriculture from using patented varieties for breeding purposes, which could adversely affect the food security of the country in the context of the overdependence of the farmers on the varieties improved by the Department of Agriculture.

This draft law has not yet been enacted due to strong opposition from the civil society. It is quite praiseworthy that the Department of Agriculture has agreed that this draft is mostly a copy of UPOV and certain modifications have to be done to it in order to protect the interests of the farmers.

pose of granting access to genetic resources. This committee comprises of government officials and two members of the non-governmental community, who will be appointed by the Minister. This could give leeway for corrupt officials to give PIC on behalf of the holders of genetic resources and traditional knowledge.

Given these facts, it remains to be seen whether or not Sri Lanka will be able to capitalise on CBD, ITPGRFA and flexibilities contained in TRIPS. Particularly, in the context of TRIPS, the country needs to be cautious. ♦

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Need Assessment Workshops on Farmers' Rights in India and Nepal

After the completion of the three year regional programme titled *Securing Farmers' Rights to Livelihood in the Hindu-Kush Himalaya Region (FRP Phase I)* in July 2004, SAWTEE together with its partners in Bangladesh, India, Nepal, Pakistan and Sri Lanka initiated the second phase of this programme (FRP Phase II) for another three year.

FRP Phase II seeks to protect farmers' rights, with its focus on mountain areas of five South Asian countries, namely Bangladesh, India, Nepal, Pakistan and Sri Lanka. The project would address farmers' rights issues relating to genetic resources in the context of globalisation and the World Trade Organisation (WTO). The farmers' rights issues identified under this project are access and



benefit sharing (ABS), prior informed consent (PIC) and farmers' participation in the decision making process. Advocacy, research, sensitisation, capacity building, information dissemination, and networking and alliance building are the major activities under the project.

Under the same project, SAWTEE's partners in India and Nepal – Consumer Unity & Trust Society (CUTS), Kolkatta, India and Forum for Protection of Public Interest (PRO PUBLIC) – organised the need assessment workshops in their

respective countries.

These workshops were organised to consult with the stakeholders, including farmers and their groups, government authorities, civil society groups, and experts, and discuss the intervention strategies that need to be designed for the successful implementation of the project at the national level in respective countries. A wide and in-depth discussion with the stakeholders ultimately helped SAWTEE and its partners to plan their future strategies for the rest three year period of the project. Besides, the workshops also helped to network with these stakeholders and build alliances with the like minded organisations.

While farmers' rights experts discussed the policy concerns with papers on different pertinent issues, the representatives from grassroots organisations voiced the real concerns farmers at the rural areas are facing.

It was disheartening to note that in both the countries, farmers are little (or not in fact) aware of the policy issues relating to ABS and PIC. In both the workshops, the participants, therefore, recommended SAWTEE and its partners to also pay attention to the needs of the farmers at the grassroots level.

While CUTS organised the workshop in Kolkatta from 3-4 June 2005, Pro Public organised it in Kathmandu from 3-4 May 2005. Under the same project, SAWTEE's partners in Bangladesh, Pakistan and Sri Lanka shall also organise similar type of need assessment workshops in their respective countries. ♦

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About FRANK

Farmers' Rights Advocacy Network (FRANK) was launched at Cancun, Mexico in September 2003 during the fifth Ministerial Conference of the World Trade Organisation (WTO). A group of international civil society organisations, namely SAWTEE, Gene Campaign, ActionAid, and Consumers International sponsored the initiative at a panel discussion on The TRIPS Review: A Roadmap for Protecting Farmers' Rights, which was organised on 11 September 2003.



FRANK Secretariat

Launched in December 1994 at Nagarkot, Nepal by a consortium of South Asian NGOs, South Asia Watch on Trade, Economics & Environment (SAWTEE) is a regional network that operates through its secretariat in Kathmandu and 11 member institutions from five South Asian countries, namely Bangladesh, India, Nepal, Pakistan and Sri Lanka.



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