

Farmers' Rights

global contexts, negotiations and strategies

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Since the early 1980s, there has been a series of negotiations on how countries need to promote the conservation and development of plant genetic resources for food and agriculture, and why and how they need to facilitate access to such resources for further breeding and research. Similarly, important decisions on what types of farmers' rights they need to protect for ensuring equity in the use of plant genetic resources for food and agriculture have also been made. In 2001, the International Treaty on Plant Genetic Resources for Food and Agriculture was adopted to ensure that its Parties implement a multilateral system of access and benefit sharing

for 35 food crops and 29 forage plants, and take national measures, among others, to realize farmers' rights. This policy brief highlights the developments in the global negotiations on the conservation, development and use of plant genetic resources for food and agriculture, and the realization of farmers' rights. In the light of a new resolution on farmers' rights, adopted at the Third Session of the Governing Body of the Treaty in June 2009, the brief also suggests some strategies that the Treaty's Contracting Parties—mainly developing and least-developed ones—should pursue for the protection and promotion of farmers' rights at national and global levels.

Global contexts and concerns

Over the past five decades, the use of modern biotechnology in plant variety development, and the application of intellectual property rights (IPRs) for plant variety protection have strongly favoured the corporate seed sector to establish monopolies over seeds. Mainly since 1961, the Convention of the International Union for the Protection of New Varieties of Plants (UPOV) has been largely promoting global cooperation for the strengthening of plant breeders' rights over new seeds. Following the establishment of the World Trade Organization (WTO) in 1995, the multilaterally binding IPR rules of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) have further strengthened the corporate sector to entrench monopolies over the production, reproduction and sale of IPR-protected seeds (Box 1). In addition, "TRIPS-plus" rules, including the obligation to join UPOV, in the North-South bilateral and regional trade agreements and WTO accession packages for new members have also been used to make farmers reliant on IPR-protected seeds.

It is disheartening that a handful of multinational seed companies are transforming farmers from "seed owners" to mere "licensees and consumers" of IPR-protected seeds. In 2006, six multinationals—Monsanto, DuPont, Syngenta, Dow, Aventis and Grupo Pulasar—had owned 74 percent of the patents that were taken on major food crop varieties, including those of rice, wheat, maize and sorghum, and just 4 multinational companies were holding 44 percent of over 9,000 patents that were taken on staple crop varieties.¹ And the trend continues with more concentration and consolidation of companies in the seed as well as agrochemical business (Table 1).

Many African, Asian, the Caribbean and Latin American countries have expressed reservations about these developments. They view that UPOV, TRIPS and "TRIPS-plus" rules are not supportive of farmers' rights. Some of their major concerns relate to the threat of biopiracy, and the restrictions they impose on farmers' rights to, among others, save, use, exchange and sell seeds.

Global negotiations on biodiversity

Mainly since the early 1980s, technology-rich developed countries and biodiversity-rich developing countries have been debating ways to balance the interests of the corporate seed sector and farmers. As a major global initiative to address their interests, the adoption of the Convention on Biological Diversity (CBD) in 1992 could be seen as an important outcome (Box 2).

The Convention has three objectives: conservation of biodiversity and its components, their sustainable use, and sharing of the benefits arising out of the use of genetic resources. The Convention establishes a set of mechanisms and principles for the conservation and sustainable use of biological and genetic resources. According states sovereign rights over their resources and calling for the protection of the rights of local and indigenous communities, the CBD not only obliges states to facilitate access to genetic resources but also to legitimize the equity principles of obtaining "prior informed consent" before accessing genetic resources and "sharing the benefits" derived from such access.

However, given the complexities seen in the global negotiations at that time, the CBD was not the answer to all the concerns that the negotiating countries were raising. Particularly there were still conflicting interests on how to facilitate access to plant genetic resources that are crucial for further research and breeding, and how to recognize farmers' rights. It was for this reason that, when the CBD was under consideration and even after it was adopted, negotiations² within the Food and Agriculture Organization of the United Nations (FAO) continued to focus on outstanding matters, for example:

- how to deal with access to *ex situ* collections not acquired in accordance with the CBD (for example, pre-1992 collections of genetic resources held by international gene banks); and
- how to balance the interests of breeders and farmers so that access to and use of plant genetic resources for food and agriculture were facilitated for global food security.

Box 1: About the UPOV Convention and the TRIPS Agreement

UPOV: UPOV is an intergovernmental organization. The objective of the UPOV Convention is to protect new plant varieties by IPRs, for example, plant breeders' rights. UPOV has 67 members. Most developed countries have joined UPOV as it promotes industrial farming and strengthens private control over the global seed market. However, it is not supportive of developing and least-developed countries where the protection of farmers' rights is a major concern. The UPOV Convention has undergone three revisions since it was signed in 1961. The 1972, 1978 and 1991 amendments to the UPOV Convention have progressively strengthened the protection afforded to plant breeders. UPOV 1991 provides the highest level of protection to breeders, severely diluting "Farmers' Privilege" and restricting farmers' rights to save, reuse, exchange and sell seeds.

WTO/TRIPS: The WTO, with its binding multilateral agreements and decisions, and sanction-based mechanism, is the most powerful international trade body of the present time. So far, 153 countries have become its members. The enforcement of the WTO's TRIPS Agreement has severe implications for farmers' rights. Many developing and least-developed countries argue that TRIPS has created a legal route for inventors to obtain "excessively broad patents" or breeders' rights over new seeds. Such countries have made several submissions to the Council of TRIPS to review TRIPS provisions and make the Agreement compatible with the CBD. More than 80 WTO members have also been calling for the inclusion of a provision—disclosure requirement—in TRIPS so that IPR applicants disclose the origin and source of resources used in inventions, and provide the evidence of benefit sharing.

Adapted from: www.upov.int; www.wto.org; www.sawtee.org



Global negotiations on farmers' rights

In 1983, the International Undertaking on Plant Genetic Resources was adopted at the FAO Conference. Its objectives were to ensure that plant genetic resources would be explored, preserved, evaluated and made available for plant breeding and scientific purposes. The Undertaking was based on the principle that plant genetic resources were a common heritage of humankind and thus were to be preserved, and to be made freely available for use, for the benefit of present and future generations.

However, due to this principle, technology-rich and biodiversity-rich countries entered into conflict. Technology-rich countries wanted the Undertaking to recognize IPRs so that IPR-protected seeds would not become part of the common heritage. On the other hand, biodiversity-rich countries stated that the Undertaking needed to address farmers' rights, including their rights to participate in the sharing of the benefits arising out of the use of genetic resources, and to save, exchange, reuse and sell seeds. Following a series of negotiations on the need to balance the interests of both groups of countries, in 1989, an agreed interpretation of the Undertaking—FAO Resolution 4/89—recognized both plant breeders' rights and farmers' rights by addressing, among others, the following issues.

Exchange of plant genetic resources

It was made clear that states may impose only such minimum restrictions on the free exchange of materials as are necessary for them to conform to their national and international obligations. This meant that states were obliged to facilitate access to plant genetic resources without creating unnecessary obstacles.

Breeders' rights

It was mentioned that plant breeders' rights as provided for under UPOV are not incompatible with the International Undertaking.

Recognition of the concept of farmers' rights

It was highlighted that states adhering to the Undertaking recognize the enormous contribution that farmers of all regions have made to the conservation and development of plant genetic resources, which constitute the basis of plant production throughout the world, and which form the basis for the concept of farmers' rights.

Following this, FAO Resolution 5/89 endorsed the concept of farmers' rights and stated that "farmers' rights mean rights arising from the past, present and future contribution of farmers in conserving, improving and making available plant genetic re-

Table 1: Multinationals' control over global seed and agrochemical markets

Share in seed sales, 2007

	Company	US\$ million	% of global seed market
1	Monsanto (USA)	4,964	23
2	DuPont (USA)	3,300	15
3	Syngenta (Switzerland)	2,018	9
4	Groupe Limagrain (France)	1,226	6
5	Land O' Lakes (USA)	917	4
6	KWS AG (Germany)	702	3
7	Bayer Crop Science (Germany)	524	2
8	Sakata (Japan)	396	<2
9	DLF-Trifolium (Denmark)	391	<2
10	Takii (Japan)	347	<2
	Total	14,785	67

Share in agrochemical sales, 2007

	Company	US\$ million	% of global agro-chemical market
1	Bayer (Germany)	7,458	19
2	Syngenta (Switzerland)	7,285	19
3	BASF (Germany)	4,297	11
4	Dow AgroSciences (USA)	3,779	10
5	Monsanto (USA)	3,599	9
6	DuPont (USA)	2,369	6
7	Makhteshim Agan (Israel)	1,895	5
8	Nufarm (Australia)	1,470	4
9	Sumitomo Chemical (Japan)	1,209	3
10	Arysta Lifescience (Japan)	1,035	3
	Total	34,396	89

Data source: Agro World Crop Protection News, August 2008

sources, particularly those in the centres of origin/diversity. These rights are vested in the International Community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers, and supporting the continuation of their contributions..."

Since such recognition of the concept of farmers' rights provided a counterbalance to breeders' rights, it became a source of intense debate. While the IPR system was clear about how to reward breeders and provide protection to plant varieties, the ways to realize farmers' rights and whether their rights had to be vested in the international community as trustee were still a matter of negotiations.

Negotiations for the ITPGRFA

Since the CBD was not able to address pre-CBD accessions, as well as farmers' rights pertaining to plant genetic resources, a resolution on the interrelationship between the CBD and the promotion of sustainable agriculture was adopted in 1992. And since the International Undertaking on Plant Genetic Resources was not legally binding, the resolution urged the FAO to commence negotiations for a legally binding international regime on the management and use of plant genetic resources for food and agriculture, and in this regard, to also address farmers' rights. After a series of intense negotiations within the FAO, in 2001, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) was adopted (Box 2). This accord, representing a legally binding international commitment to the improvement of the world's key food and feed crops, deals with farmers' rights in the preamble, in a separate chapter and in two other articles. In particular, in its Article 9, the Treaty recognizes the following farmers' rights:

- protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture;

- the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture; and
- the right to save, exchange, reuse and sell farm-saved seeds.

With regard to the implementation of these rights, the Treaty, however, gives the responsibility to national governments. This is one of the weakest aspects of the Treaty as not all Parties have the obligation to implement farmers' rights. The Treaty states, "...in accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights..." Hence, ever since the adoption of the Treaty in 2001 and its entry into force in 2004, the realization of farmers' rights has remained a major issue of concern. The divisions among its Contracting Parties with regard to the interpretation of Article 9 and hence to the implementation of farmers' rights are not near convergence, though some remarkable initiatives have been taken at the Treaty's Governing Body sessions.

ITPGRFA's Governing Body negotiations on farmers' rights

At the First Session of the Governing Body of the Treaty on 12-16 June 2006 in Spain, a group of developing countries and Norway proposed the inclusion of the topic of farmers' rights on the Working Agenda of the Governing Body. Then, at the Second Session of the Governing Body, held from 29 October to 2 November 2007 in Italy, a resolution on farmers' rights was adopted. It is important to note that the initial resolution text, proposed by developing countries (G77 and China), had come under sharp criticism from several industrialized nations, and to finalize the resolution, intense negotiations were conducted in a contact group. Finally, acknowledging that there was uncertainty in many countries as to how farmers' rights can be implemented and that the challenges related to the realization of farmers' rights are likely to vary from country to country, the first resolution on farmers' rights was adopted in which, among others:

Box 2: About the CBD and the ITPGRFA

CBD: Negotiated under the auspices of the United Nations Environment Programme, the CBD was opened for signature on 5 June 1992 at the Rio Earth Summit, and it entered into force on 29 December 1993. The Convention is legally binding for its Contracting Parties. So far, 190 countries and the European Community are its members. The Convention provides a framework for the implementation of access and benefit sharing, and calls for facilitating access to genetic resources, which has to be bilateral, and based on mutually agreed terms between the resource-providing and -receiving countries. In recognition of the sovereign rights of states over their biological and genetic resources, national governments, subject to their national laws, are conferred the authority to determine access to genetic resources, and protect the rights of local and indigenous communities.

ITPGRFA: After more than 15 sessions of the FAO Committee on Genetic Resources and its subsidiary bodies, the ITPGRFA was approved during the FAO Conference in 2001. This legally binding Treaty came into force on 29 June 2004 and 120 countries are its Contracting Parties. The Treaty only covers plant genetic resources for food and agriculture and does not deal with other plant genetic resources. Unlike the CBD, it sets up a multilateral system of access and benefit sharing. The application of the Treaty's multilateral system is limited to 64 plant genetic resources—food and forages—that are fundamental to food security and are either in the public domain or are under the hold of natural and legal persons. The Treaty also deals with farmers' rights pertaining to plant genetic resources for food and agriculture and traditional knowledge, including their rights to save, exchange, reuse and sell farm-saved seeds.

Adapted from: www.cbd.int; www.planttreaty.org; www.sawtee.org

Box 3: Third Session's Resolution on Farmers' Rights



Pratap Shrestha

The Governing Body,

(i) *Recalling* the recognition in the International Treaty of the enormous contribution that local and indigenous communities and farmers of all regions of the world have made, and will continue to make, for the conservation and development of plant genetic resources as the basis of food and agriculture production throughout the world;

(ii) *Recalling* the importance of fully implementing Article 9 of the International Treaty;

(iii) *Recalling* also that according to Article 9 of the International Treaty, the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national Governments and is subject to national law;

(iv) *Acknowledging* that there is uncertainty in many countries as to how Farmers' Rights can be implemented and that the challenges related to the realization of Farmers' Rights are likely to vary from country to country;

(v) *Recognizing* that exchange of experiences and mutual assistance between Contracting Parties can significantly contribute to making progress in the implementation of the provisions on Farmers' Rights in the International Treaty;

(vi) *Recognizing* the contribution the Governing Body may give in support of the implementation of Farmers' Rights;

(vii) *Recalling* Resolution 2/2007 adopted by the Second Session of the Governing Body, in which Contracting Parties and relevant organizations were encouraged to submit their views and experiences on Farmers' Rights as set out in Article 9 of the International Treaty;

(viii) *Recalling* also that the Governing Body through Resolution 2/2007 decided to consider these views and experi-

ences as a basis for an agenda item on its Third Session to promote Farmers' Rights at the national level;

(ix) *Noting* that the number of contributions on views and experiences received by the Secretariat has been limited;

(x) *Based* on the received views and experiences from Contracting Parties and other organizations;

(xi) *Invites* each Contracting Party to consider reviewing and, if necessary, adjusting its national measures affecting the realization of Farmers' Rights as set out in Article 9 of the International Treaty, to protect and promote Farmers' Rights.

(xii) *Encourages* Contracting Parties and other relevant organizations to continue to submit views and experiences on the implementation of Farmers' Rights as set out in Article 9 of the International Treaty, involving, as appropriate, farmers' organizations and other stakeholders;

(xiii) *Requests* the Secretariat to convene regional workshops on Farmers' Rights, subject to the agreed priorities of the Programme of Work and Budget and to the availability of financial resources, aiming at discussing national experiences on the implementation of Farmers' Rights as set out in Article 9 of the International Treaty, involving, as appropriate, farmers' organizations and other stakeholders;

(xiv) *Requests* the Secretariat to collect the views and experiences submitted by Contracting Parties and other relevant organizations, and the reports of the regional workshops as a basis for an agenda item for consideration by the Governing Body at its Fourth Session, and to disseminate relevant information through the website of the International Treaty, where appropriate; and

(xv) *Appreciates* the involvement of farmers' organizations in its further work, as appropriate, according to the Rules of Procedure established by the Governing Body.

Source: www.planttreaty.org

- Contracting Parties and other relevant organizations were encouraged to submit views and experiences on the implementation of farmers' rights, involving, as appropriate, farmers' organizations and other stakeholders.
- The Secretariat of the Governing Body was requested to collect these views and experiences as a basis for an agenda item for consideration by the Governing Body at its Third Session to promote the realization of farmers' rights at the national level.

As a result, in the Third Session of the Governing Body, held on 1-5 June 2009 in Tunisia, farmers' rights was again a major issue for discussion. Although the number of submissions of the views and experiences on farmers' rights was limited, Brazil, on behalf of Africa, Latin America and the Caribbean, proposed a new resolution on farmers' rights. The resolution called upon the Governing Body to consider ways to support national efforts on farmers' rights. However, Canada criticized this idea and, together with Australia, stressed that as per the Treaty, the responsibility for realizing farmers' rights rests with national governments.

Similarly, there was an intense debate on another submission made by Brazil and other developing countries. These countries demanded that the Governing Body invite the Contracting Parties to review, and as appropriate, adjust seed regulations with a view to protecting farmers' rights to save, use, exchange and sell farm-saved seeds. This position had its origins in the fact that together with or even in the absence of IPR laws, in many developing and least-developed countries, seed regulations have severely restricted farmers' rights, including their rights to save, exchange, reuse and sell seeds. However, due to the political economy factors, Canada and a few other Parties such as the European Union (EU) and Saudi Arabia expressed their reservations. While Saudi Arabia wondered how the Governing Body could ask countries to change their national seed laws, the EU and Canada suggested some changes in the proposed text. At the end of the negotiations, the consensus among the Parties was finally reached on the following text: "The Governing Body invites each Contracting Party to consider reviewing, and, if necessary, adjusting its national measures affecting the realization of Farmers' Rights as set out in Article 9 of the International Treaty, to protect and promote Farmers' Rights".

It is important to note that despite the deletion of "seed regulations", the inclusion of which was a major demand made by developing countries, the above text—contained in paragraph XI of the Third Session's resolution on farmers' rights—is not weak (Box 3). The inclusion of "national measures" in the text of the new resolu-

tion still provides an opportunity for all Parties to review, and as appropriate, adjust national measures—including seed regulations. In addition, the Parties of the Treaty, including developing and least-developed ones, can also capitalize on other decisions made in the Third Session's resolution for working out strategies needed to realize farmers' rights (Box 3).

Future strategies

The ITPGRFA does not compel all Parties to implement farmers' rights. Moreover, as seen in the global negotiations, there are some Parties that do not want other Parties to implement farmers' rights. Hence, the interests of Parties willing to protect farmers' rights are at stake. But it is crucial to realize that important resolutions on farmers' rights have already been adopted to help countries address their national interests. In this regard, capitalizing on the new resolution adopted at the Third Session of the Treaty's Governing Body, developing and least-developed countries can work out the following strategies to protect the rights of their farmers, and to enable them to benefit from future breeding and research in agriculture.

- Review national measures, including seed regulations; assess their effectiveness in promoting farmers' rights; and make sure to adjust them for the realization of farmers' rights.
- Generate views and experiences on farmers' rights; and share them with stakeholders (including media), other countries, and the Treaty's Secretariat and the Governing Body for required actions at local, national and global levels.
- Work with relevant actors and agencies, including farmers and their organizations, to organize local and national workshops on farmers' rights; and support the Secretariat of the Treaty to effectively convene regional workshops that aim to discuss national experiences on the implementation of farmers' rights.

Developing and least-developed countries must realize that these strategic initiatives are the goals of the new resolution on farmers' rights, and their outcomes could form a basis for an agenda item of the Fourth Session, to be held in Indonesia in 2011. ■

Notes

¹ Drawn from www.aphd.or.th.

² For details of the negotiations on biodiversity, farmers' rights and the Third Session, see www.planttreaty.org, www.cbd.int, www.fao.org, www.farmersrights.org, and www.iisd.ca.

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