



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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**SUBMISSIONS SENT BY CONTRACTING PARTIES, OTHER  
GOVERNMENTS, AND RELEVANT INSTITUTIONS AND  
ORGANIZATIONS ON THE IMPLEMENTATION OF ARTICLE 6**

*Note by the Secretary*

*This document presents the submission on how to improve sustainable use of plant genetic resources for food and agriculture, including on sectoral policies and best practices for sustainable agriculture, submitted by GREEN Foundation on 10 February 2013.*

*The submission is presented in the form and language in which it was received. Minor editorial changes include the full rendering of acronyms and the correction of spelling.*

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## **OTHER GOVERNMENTS, AND RELEVANT INSTITUTIONS AND ORGANIZATIONS**

### **GREEN Foundation**

Farmers' Rights: a top-down or bottom-up approach?

Plant genetic diversity is crucial to the future of food security and the diverse genetic resources that provide the insurance against pest and diseases and the changing climatic conditions. Such diversity plays an important role for the millions of small and marginal farmers who depend upon small scale farming for their livelihoods.

The diversity of domesticated land races is disappearing at an alarming rate all over the world. This apart, the interest in the commercial use of genetic resources has increased in line with the new interest in biotechnology, along with intellectual property rights (IPRs) and new seed regulations initiated at the national level. Ever since the negotiations of the World Trade Organization (WTO) and trade-related IPRs were agreed upon by the contracting parties, a situation of an anti-commons with multiple actors excluding each other from the right of access to plant genetic resources has emerged. Unfortunately, this is not seen as a threat to conservation and sustainable use of this resource seriously impacting food security and the outlook for combating poverty in the world.

In order to stall this negative trend, the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) was initiated in the year 2001. The realization of Farmers' Rights is the corner stone of the Plant Treaty. Farmers' Rights are basically about enabling farmers to maintain and develop crop genetic resources as they have done since the dawn of agriculture. The ITPGRFA was adopted by 120 contracting parties and entered in to force in 2004. The objectives of the ITPGRFA are the conservation and sustainable use of crop genetic resources, and the fair and equitable sharing of the benefits arising from their use for sustainable agriculture and food security.

The concept of Farmers' Rights was addressed for the first time in FAO at a working group in 1986. Farmers' Rights became one of the most contested issues. In the negotiations most developing countries as well as some industrialized countries like Norway advocated comprehensive and internationally binding recognition of farmer varieties whereas countries like the US and Australia did not support the stand. In 1999 the heated debates resulted in a compromise in the form of the ITPGRFA's provisions on Farmers' Rights.

The two articles of the Treaty that have an important bearing on Farmers' Rights are Article 9 and Article 6.

Article 9 has the following provisions on Farmers' Rights:

9.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all the regions of the world, particularly those in centers of origin and crop diversity, have made.

9.2 The Contracting Parties agree that the responsibility for realizing Farmers'

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Rights as they relate to Plant Genetic Resources for Food and Agriculture (PGRFA) rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate and subject to its national legislation, take measures for food and agriculture:

b) The right to equitably participate in sharing benefits arising from the utilization of plant genetic resources or food and agriculture.

c) The right to participate in decision-making at the national level, on matters related to the conservation and sustainable use of plant genetic resources.

9.3 Nothing in the article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm saved seed/propagating material, subject to national law and as appropriate.

Article 6 states that Contracting Parties shall develop and maintain appropriate policy and legal measures that promote sustainable use of crop genetic resources. On sustainable use of PGRFA, the ITPGRFA emphasizes that the Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of PGRFA.

a) Pursuing fair agricultural policies that promote, as appropriate, the development and maintenance of diverse farming system that enhance the sustainable use of agricultural and biological diversity and other natural resources.

b) Strengthening research which enhances and conserves biological diversity by maximizing intra and inter-species variation for the benefit of farmers, especially those who generate and use their own varieties and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and pests.

c) Promoting, as appropriate, plant breeding efforts which, with the participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties particularly adapted to social, economic and ecological conditions including marginal areas.

d) Broadening the genetic base of crops and increasing the range of genetic diversity available to farmers.

e) Promoting, as appropriate, the expanded use of local and locally adapted crop varieties and underutilized species.

f) Supporting, as appropriate, the wider use of diverse varieties and species in on farm management, conservation and sustainable use of crops, and creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion and promote increased world food production compatible with sustainable development; and

g) Reviewing and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution.

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India has the distinction of having contributed to the debate on Farmers' Rights. With the Protection of Plant Varieties and Farmers' Rights Act (PPVFRA) that was passed in 2001, India has in principle granted Farmers' Rights by protecting both breeders and farmers. (Bala Ravi S.) It is a known fact that the act originally emerged as a response to the seed industry's demand for breeder's rights, and the provision on Farmers' Rights was added due to pressures from non-governmental organizations.

Until the time this act was passed the system of free exchange and common heritage was prevalent. Farmers were free to save, use, sell and exchange seeds. It has been acclaimed that the PPVFRA act together with the breeder's rights has recognized the rights of the farmers and is acclaimed as a success by many stakeholders. Despite the fact that many who constitute the stakeholders are not even aware of the bill but the PPVFRA act of India is recognized as a far-reaching law in terms of Farmers' Rights in the world.

#### *Plant Variety Protection in the Indian Law*

The articulation of Farmers' Rights and protection of traditional knowledge in the Indian legislation is a case in point to illustrate that it is spread over a number of national laws. With the PPVFRA 2001, Biological Diversity Act 2002, the patent amendment and the pending seed bill of 2004. The intention of particularly the PPVFRA was to reflect Farmers' Rights as stated in the ITPGRFA. Article 39 of the legislation states that farmers who have bred or developed a new crop variety shall be entitled to the same plant breeder rights to which breeders themselves are entitled. According to the Indian government it is a national response to the sui generis provision of the TRIPS to protect the plant varieties. From a review of literature on the PVP law one finds that the PVP law how good it appears, only privatizes the planting material. For a group of farmers who toil to get a farmer variety PVP certificate, there is no clarity on how counter claims on the same variety from another farmers is going to be dealt with. This raises the question how appropriate the PVP system is in the Indian context?

Also more PVP certificates being issued only means more breeders having control over plants and seedling material, which hitherto was freely available to the farmers. In the light of more patent like rights and more patents themselves what is the role of PVP? Any attempt to equate Farmers' Rights under the law to be treated as plant breeders will not be resolving the fundamental issues. Some of the problems anticipated include taking ownership over traditionally bred varieties and thereby creating a situation where a farmer in Chatisgarh would be competing with his counterpart in Andhra Pradesh. The act does not offer solutions towards conflicting claims by farmers from different parts of the country. (Shalini Bhutani and Kanchi Koli).

With respect to the impact of international legislations the Indian PVP law is greatly influenced by the UPOV (Union for the protection of new varieties of plants). UPOV 91 is designed to protect products of modern biotechnology and essentially derived crop varieties. The key criteria of UPOV followed by laws means that the plant variety must be novel, distinct, unique and stable (DUS criteria). These criteria contradict the needs of farmers involved in farming, especially organic farming. Uniform is the opposite of diverse. Varieties that are able to adapt to different conditions are not stable. Novelty and distinctness apply to varieties that are stable and uniform.

The Indian PPVFRA has adopted the provisions of the CBD relating to benefit

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sharing, without a proper instrument to implement it. Given the vague system of registration and benefit sharing in the law and the inability of farmers to apply for registration, it seems far-fetched that Farmers' Rights are going to be protected. (Sahai 2001)

Farmer varieties are usually developed as a collective and spread over large geographical regions and often the same variety is found in several villages and sometimes, even across national borders of neighboring countries with similar agro ecological regions.

Considering the fact that farming community in India is the largest seed producer, weak Farmers' Rights in the legislation will allow seed corporations and modern varieties to dominate the seed market at the cost of marginalizing farmer varieties.

The national biodiversity authority recognizes the rights of the communities over traditional knowledge. Traditional knowledge is dynamic and changes over time. Traditional knowledge associated with biological diversity and agricultural diversity has to be treated with an understanding that they are two sides of a coin. The PPVFRA has also announced the "plant genome savior community recognition Award" to recognize the contribution of rural and tribal communities to genetic resource conservation and enhancement. The campaign for community control over genetic resources has pointed out that the law actually threatens to alienate farmers from their crops by granting IPR over plants to few individuals or corporations. The Act makes it clear that the reward is for only those farmer varieties that have some "economic value" for breeders and that have been used as base material or donor crop for further development by breeders. In other words the rewards to farmers are from money got from the privatization of farmers' genetic material. It is essential to remember that farmers do not simply save genes when they select and develop a variety, on the other hand they sustain a way of life and a culture.

To even label them merely "genome saviors" is to reduce the holistic nature of what farmers do, to a phrase they would neither understand nor appreciate. Seeds and plants are not "genomes" to farmers, but they are life, livelihoods, and the very basis of a sustainable life. The campaign further stresses the fact that an act like this which claims to be recognizing the contribution of farmers and tribal communities are actually stripping the poor of their collective rights over resources and paving the way for further marginalization. (Farmers Alert <http://www.ddsindia.com/www/farmersalert.htm>)

The tightening of the PVP system will have a large impact of farmers' seed practices, particularly farmers' access to seeds. The seed bill of 2004 now 2010 was formulated with the intent of regulating the seed quality. It focuses on private participation in seed production and distribution achieved through a system of compulsory licensing. The seed bill has been critiqued to have taken away the little benefits offered by the PVP law. (ITPGRFA Bali Indonesia, 2011)

In the light of legislations that are having a far reaching impact on farmer saved seeds a set of measures are called for to address the compatibility of seed laws and plant variety protection to take into account communities' needs. Literature abounds on the topic to recommend reinforcing the traditional sharing system with a system of peer production and distribution of germplasm as an alternative way to develop crop varieties

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and dynamically sustain genetic diversity.

The debate around the Act has highlighted the fact that it has been defined by national level decision-makers without taking into account the regional and local level perspectives. It has been pointed out by those who have studied the history and evolution of the law that the focus has been on asserting and assigning ownership rights, than on utilizing traditional knowledge and genetic resources for the benefit of the farmers. (GRAIN 2004) There is a clear disconnect between what the ITPGRFA aims to ensure as Farmers' Rights through Articles 6 and 9.

Yet another observation is the lack of co-ordination between various laws and bodies that has posed a problem in realizing Farmers' Rights. The different acts, like the Biodiversity Act, patent act, the pending seed bill, look at only one aspect and the overall agricultural development in the country is not taken into account. The act that has been passed even before the ITPGRFA came into force, does not engage itself with the provisions of the different articles meant to ensure Farmers' Rights. Also, some studies of the PPVFR have concluded that the ownership based approach have not provided the significant economic returns. There are glaring examples of farmers like Farmer Dadaji Khobragade from Maharashtra who has been struggling for the last 30 odd years in developing varieties like the HMT and has not been successful in registering his variety with the PPVFR authority (Lyla Bavadam 2011). For a farmer who has toiled for several years and has developed unique varieties that have been grown on almost one lakh acres in five states and in several districts of Chattisgarh, still lives in poverty. According to a report in "Front Line", farmer Ghobarghade has touched the lives of about two lakh people and his humanitarian outlook to freely share his seed with other farmers is commendable. Various researches have stressed the fact that it might be more beneficial for developing countries to employ Farmers' Rights as a tool to demand more access to public services and goods, rather than to work for an extension of IPR protection to cover farmer varieties.

Various alternatives have been contemplated to protect the plant genetic resources and examples have been drawn from the open source software to biology and other initiatives such as the community intellectual Rights.

Achieving repossession, manifested as seed sovereignty, will not be easy. What is required is simultaneous and linked development of concepts and applications among farmers, plant scientists, seed vendors, public institutions and civil society advocacy groups in the face of corporate and state opposition. Considering the collective nature of plant genetic resource management stewardship by farmers is suggested in such a way that it accepts personal contribution to a common good and a form of ownership derived from that contribution. Very close to the collective innovation and ownership is the open source, which can be compared to Linux or Wikipedia. (Srinivas Ravi)

Open source prevents and opposes the logic of monopoly right by making the source code made available for others. Using licenses to create viral effect, open source enables user innovation as the user has the right to modify, redistribute, change and customize and offer it under the General Public License. The GPL is a legally tested license. It can be used by farmers to safeguard their varieties. It can be used by organic farmers to develop new varieties.

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“A prominent exemplar of this approach is the General Public License (GPL) developed by Richard Stallman and promulgated by the Free Software Foundation. Software released under the GPL is copyrighted and made freely available through a license that permits modification and distribution as long as the modified software is distributed under the same GPL license through which the source code was originally obtained. That is, source code and any modifications must be freely accessible to others (hence “open source”) as long as they in turn agree to the provisions of the GPL. It has been noted that the “viral” effect of the GPL enforces continued sharing as the program is disseminated. Just as importantly, the GPL also prevents appropriation by companies that would make modifications for proprietary purposes since any software building on the licensed code is required to be openly accessible. Thus, software developed under the GPL is released not into an open access commons, but into a “protected commons” populated by those who agree to share. (Kloppenber)

Open source can be seen in the broader context as an alternative paradigm for innovation and a new way to approach the intellectual property issue.

A number of nations, including Brazil, India, and the Philippines have passed or are considering laws that purport to provide a framework for “collective IPRs”, but farmers and indigenous peoples have so far lacked the political power to make them substantially functional. Although over the past fifteen years a wide variety of proposals have been made for legal recognition of “traditional resources rights” and “community-based” or “informal” innovation, the proposed rights regime in defense of indigenous people’s local knowledge systems is yet to be realized.

Other alternatives include elaborating the work done hitherto on community intellectual rights drawn from the acts drafted by Philippines and India. Community seed banks (CSB) have been considered a viable way of farmers accessing their seeds. It is learnt from various experiences that support mechanisms need to be put in place to protect the CSB that were seen as a need-based solution and this system which was adopted to broaden the genetic base and revive an informal seed supply system to the farming community (Krystyna Swiderska 2006).

The establishment of community seed banks has spread on-farm conservation and encouraged the formation of farmers’ networks, thereby creating a farmers forum for exchange of crop varieties (Development fund Norway 2011). Community seed banks are the only solution to securing bio-resources, providing food and seed security to the larger section of the poor and marginal farmers. Mechanisms for legal protection to the farmer-saved seeds are not yet in place and there is scope for exploring the same.

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