



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



E

Views, Experiences and Best Practices on the Implementation of Farmers' Rights Submitted by Contracting Parties and Relevant Organizations

Note by the Secretary

This document presents the views, experiences and best practices on the implementation of Farmers' Rights, as set up in Article 9 of the International Treaty submitted by LI-BIRD on 11 October 2012.

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.

RELEVANT ORGANIZATIONS

LI-BIRD

Summary

LI-BIRD in collaboration with other national stakeholders assessed the appropriateness of policy and legal instruments, identify and strengthen institutional arrangement, strengthen multi-stakeholder arrangement and support innovative practices serving as basis for implementing Farmers' Rights and ABS in Nepal. LI-BIRD simultaneously empowered the right holders and duty bearers to strengthen right duty relation on GR and ATK. LI-BIRD took community based biodiversity management (CBM) framework and tested its relevancy for ensuring Farmers' Rights and implementing ABS mechanism through ground demonstration and validation. We followed evidence based advocacy and multi-stakeholder consultation strategies for improvements in national policies and laws related to agriculture biodiversity and seed in Nepal. We were able to build the national stakeholder agreement on National policy framework for ensuring Farmers' Rights in Nepal through different policy tools for local varieties, farmer bred varieties and IPR protected varieties. LI-BIRD is able to validate CBM framework for putting Farmers' Rights in practice and implementing ABS in Nepal and able to draw policy recommendation for establishing mechanism to implement ABS and ensure Farmers' Rights.

LI-BIRD is a part of review team to revise most of the national policy and legal documents through multi-stakeholder and multidisciplinary working groups, lead by concerned government authority and drafted amendments for most of the related policies and laws like seed policies, seed laws and regulations and agro-biodiversity policy of Nepal, refining the contradictory provisions and adding new tools. LI-BIRD established biodiversity conservation and development committees (BCDC) as an appropriate community level institution to organize custodian farmers to manage community level functions related to Farmers' Rights. In the process, the farmers and farming communities were empowered to understand the issues of ABS and Farmers' Rights. This structure has been strengthened to advocate for their rights on GR and ATK by them. We were also able to establish multi-stakeholder agreements on the modality and framework of implementing Farmers' Rights in Nepal. Similarly, there was validation and promotion of innovative practices of in-situ biodiversity management like community biodiversity registers, community seed banks, biodiversity fairs, approach of value addition and marketing of local genetic resources, participatory plant breeding and grass-root breeding, participatory varietal selection and CBM fund management in community and policy level through the initiation of LI-BIRD.

Access and benefit sharing and Farmers' Rights

Nepal acted promptly to sign the CBD on 12 June 1992 and subsequently ratified on 15 September 1993 and became Party to it on 21 February 1994. However, the action of Nepal Government to fulfil its commitments remained very slow. The Ministry of Forest and Soil Conservation (MFSC), the focal ministry for CBD, formulated a National Biodiversity Strategy (NBS) in 2002. MFSC produced the first draft of Access to Genetic Resources and

Benefit Sharing (AGRBS) Bill in 2002. The AGRBS Bill went through a series of review and revision and finally submitted for approval from the Constituent Assembly of Nepal in 2007. However, the approval process has not moved ahead due to current political context as well as due to a strong reservation and protest from the civil society organization, particularly indigenous peoples' organizations. This is largely because the process of drafting of bill was not very transparent and inclusive, and contained many contentious issues, particularly in benefit sharing.

The Bill needs critical review and should address shortcomings and resolve contentious issues, particularly with focus on the following:

- Provide legal provisions for access to and benefit sharing from the use of traditional knowledge associated with genetic resources and materials;
- Replace public hearing mode of obtaining PIC to more institutionalized form of PIC granted directly by concerned person, organization or organization of local community;
- Involvement of concerned person, organization or organization of local community in signing agreement for ABS, currently done by Council alone;
- Complete review of benefit sharing system;
- Consider for special ABS provisions for PGRFA in light of ITPGRFA commitments; and
- Establishment of Biodiversity Trust Fund as provisioned in NBS 2002 instead of NGRCC Fund and used solely for the purpose of conservation and sustainable use of GRs.

Regarding national legislation required to implement Treaty provisions, except for legal provisions to protect Farmers' Rights included in the Plant Variety Protection and Farmers' Rights (PVP&FR) Bill drafted as IPR law to comply with TRIPS commitment, a number of systematic initiatives are yet to be initiated. Law Associates Nepal (LAN) had proposed a Draft Bill on "Access to Genetic Resources for Food and Agriculture under Multilateral System 2006" in 2006 prepared under the Genetic Resources Policy Initiatives (GRPI) Nepal but it never entered into formal consideration by MoAC. Recently, MoAC has signed a project with Biodiversity International to review and formulate appropriate policy, laws and administrative mechanisms to implement the Treaty in Nepal and LI-BIRD and NARC is also a member of this project. This project is going to address the following actions:

- Identify PGRFA listed in Annex 1 that are under the management and control of the Nepal Government and in public domain (as specified in IT Article 11.2);
- Formulate national legislation for access to PGRFA found in *in-situ* condition, including identifying which PGRFA are in *in-situ* condition (as stipulated in IT Article 12.3h);
- Identify mechanisms – both legal and incentives for natural and legal individuals to voluntarily include their PGRFA in the MLS;
- Identify national institutions with authority to grant access to PGRFA in the MLS;
- Formulate national legislation to facilitate and regulate ABS for PGRFA; and
- Review PVP&FR for its adequateness in protecting Farmers' Rights (as stipulated in IT Article 9) and expedite for its early approval.

Nepal is yet to formulate policy and law to implement provisions of ILO Convention 169. However, the indigenous people (locally called *Adibasi* and *Janjati*) are closely following the policy and law being formulated to protect, conserve and use natural resources, including genetic resources and materials and associated traditional knowledge, and strongly lobbying to protect their right on these resources. The Nepal Federation of Indigenous Nationalities (NEFIN), organization of these people has already started to take local action to prevent access without their consent and permission. They have also been challenging the existing legal provisions that conflict with Convention as such conflicting national legal provisions become null and void as per the Nepal Treaty Act 1990 (Lama, 2008). It is, therefore, very important these people and farming communities are involved in formulation of relevant policies and laws.

Exploration, conservation, distribution and exchange of Germplasm

The issue of ownership on these genetic materials collected from the farmers' fields is emerging policy issues. Until now, these materials have been exchanged with international gene banks and researches on the basis of standard material transfer agreement, assuming them as the property of state. Without institutional arrangements at the national and local level, and identifying both the concerned government and community institutions, it will be complicated to maintain or enhance access to plant genetic resources and benefit sharing (Gautam, 2008). Strong and useful local institutions like Biodiversity Conservation and Development Committees (BCDCs) and Community Seed Banks (CSB) have been emerged in Nepal. After establishment of Gene Bank, CSBs in Nepal are asking for their share of credit by proper linkage and coordination of gene bank and CSBs in material transfer. In principle, the linkage looks noble to provide the benefits to the communities by linking with ex-situ conservation to in-situ conservation. But, the mode of linkage has not been developed strong research base and stakeholder agreement is needed to foster in situ and ex situ linkage.

Recently, LI-BIRD in collaboration with Oxfam, USC Canada Asia and Bioersivity Nepal organized a first national level workshop on Community seed bank from 14 to 15 June 2012 with the aim to explore *ex situ* and *in situ* links and related policy issues; identify challenges and opportunities of community seed banks, and to promote future collaboration and networking among relevant organizations in Nepal.

MODELS FOR ABS AND PRIOR INFORMED CONSENT (PIC)

In Nepal, considering the concerns of the ethnic groups and endogenous people; a balanced model having provisions that MTA signed by national authority based on PIC granted by communities looks feasible. Hence, a mechanism to improve these limitations was designed by a LI-BIRD project after consultations with policy experts and farming communities. The alternative mechanism consists of a form for providing PIC to the national bio-prospectors or national biodiversity authority by the representatives of custodian communities. The form can also serve as the localized access contract for the in-country bio-prospectors. The form consists of checklists of important provisions necessary for discussion

and to be understood before providing PIC, commitments from parties and terms and conditions if any.

One of the inherent problems with the PIC mechanism is to identify the representative of the custodian communities. For that, LI-BIRD has tested different institutions ranging from VDC level Biodiversity Conservation and Development Committees (BCDCs), Community Seed Banks (CSB) and even the farmers' groups and other community based organizations. The piloting was started by distributing the forms to more than 25 BCDCs and more than 10 CSBs in Nepal. Till date, only two CSBs has been successful to take the commitments of the receivers (inside Nepal) while taking access to the genetic resources from them. CSB Kachorwa did two "access contracts" in pilot basis, to provide the access of 5 local land races to National Rice Research Center (NRRC). In the context that, there is no obligatory national legal backings these glimpses of successes are also meaningful and worth pursuing for wider replications.

Although there is a need of wider replications and research to validate this process, the mechanism provides a worth persuing possibility of finding easy, less time taking, cost effective and respecting community rights compared to provision of "public hearing".

Farmers network in agricultural biodiversity

At national level, there are other initiatives on developing ABS legislation (draft) and Plant Variety Protection and Farmers' Rights legislation (draft). These drafts are important to fill the policy and legal gaps to protect the rights of farmers and local communities on genetic resources, rights of breeders on newly developed varieties, and types of benefit sharing. Looking at the trend of biodiversity loss, there is an urgent need to enact ABS law.

An analysis also indicated that one of clear gap in these policies and laws is that none of them imagined any local institutions with mandate of biodiversity management. This is likely to produce conflicting interests over the management and ownership of genetic resources and associated traditional knowledge resulting into complexities of access to genetic resources and sharing of benefits.

Farmers' Network which was established on 2010 as a coordinating network of Biodiversity Conservation and Development Committees (BCDC) have organized a day meeting with Natural Resource Committee of constituent Assembly at Kathmandu on 2011 November 3. In that meeting Constituent Assembly member and Chair of Natural Resource Sub-Committee with other 9 honourable committee members, politicians, LI-BIRD representatives and farmers participated. During that meeting, the organizational structure of BCDC along with its scope at national level was discussed and emphasized. Along with that the group also discussed on new ABS and Farmers' Right draft bill to put Farmers' Right issue on new constituency.