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ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
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COLLECTION OF VIEWS AND EXPERIENCES SUBMITTED BY CONTRACTING PARTIES AND OTHER RELEVANT ORGANIZATIONS ON THE IMPLEMENTATION OF ARTICLE 9

This addendum is a collection of the submissions of views and experiences by Contracting Parties and other relevant organizations concerning the implementation of Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture.

All submissions contained in this annex were received by the Secretary of the Treaty **after 31 August 2008**.

The majority of the submissions have been inserted into this annex in the form and language in which they were received. Minor editorial changes include the full rendering of acronyms and the correction of spelling.

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Submissions sent by Contracting Parties

I. AUSTRALIA

The Australian Government cannot provide views or experiences on the development of national measures to address specifically the objectives of Article 9 of the Treaty. The rights of Australian farmers, in the context of the objectives of Article 9, are established under a broad legislative framework that provides a comprehensive set of intellectual, property and legal rights, including common law rights. Specific legislation to protect intellectual - property and plant breeders rights are available for farmers to exploit should they so wish.

However, for an issue related to Farmers rights, the Australian, state, and territory Governments have agreed on nationally consistent framework for the development of legislation to facilitate access to, and benefit sharing of, Australia's native genetic resources. Legislation to give effect to Australia's obligations under the CBD has now been enacted by the Commonwealth and some states. In the case of in situ genetic resources, including botanical resources, the legislation allows for access providers, such as traditional landowners, to negotiate terms for, and receive benefits from, the use of genetic resources found on their land. Where traditional knowledge is used in relation to the access to the resource, the nationally consistent approach recognises the need to ensure the use of traditional knowledge is undertaken with the cooperation and approval of the holders of that knowledge and on mutually agreed terms.

III. CANADA

The Canadian intellectual property regime provides a wide a wide range of options for protection of Traditional Knowledge (TK) including protection of trade secrets. Farmers groups participate in sharing the benefits of the development of new varieties. Through increases in productivity, environmentally friend land management and related practises.

Canadian Farm groups consulted at the National level have the opportunity to raise issues and concerns on PGRFA on a wide range of national consultation(s) processes including in web-based public consultation and variety registration.

Through various acts, legislation and policy initiatives (e.g. Seeds Act and Plant Breeder's Right legislation). Canada has developed a strong and effect seed system to promote the long term sustainability of the agri-food sector.

IV. ITALY

The Istituto Agronomico per l'Oltremare (IAO), technical branch of the Italian Ministry of Foreign Affairs, has finalised a report focusing on sustainable use of plant genetic resources and on the implementation of farmers' rights in Italy. It aims at analysing a number of case studies, ranging from the institutions to the civil society, within the framework of articles 6 and 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). This report will be fully available in English for the Third Meeting of the Governing Body of the Treaty. Italy ratified the ITPGRFA in 2004 by the national law 101 that devolves power to the Regional Governments for the implementation of the Treaty.

With regard to the implementation of article 9 the report shows that farmers' knowledge still exists in Italy, mainly in those marginal areas not yet overwhelmed by agricultural modernization.

Searching for these examples throughout Italy, the report shows how innovation is produced in rural areas mixing past and present, re-using biodiversity for new challenges and needs.

Protecting and promoting traditional knowledge relevant for PGR is a clear objective of the specific rules on agrobiodiversity established by 6 Regional governments and in the National Plan on agrobiodiversity. Through the use of the regional catalogues of local varieties these Regions allow the exchange of seeds among farmers and protect farmers' knowledge in order to avoid misappropriation by third parties. The national law 46/2007 on conservation varieties and its implementing decree, issued in 2008, explicitly allows the use, exchange and sell of conservation varieties by farmers.

V. PAKISTAN

Plant Breeder's Rights Act is under process in Ministry of Food, Agriculture and Livestock for necessary legislation. The same draft includes the Farmer's Rights on PARGA recognizing their contribution in conserving the seeds of important genetic resources.

B. Submissions sent by relevant organizations

I. LA VIA CAMPESINA

For the members of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

The multiplication and the aggravation of the food, economic, energy and climatic crises constrained peasants of all the areas of the world to adapt their farming systems to the acceleration of the changes of their environment. The dynamic conservation and the durable use of cultivated biodiversity, agro systems, social systems and associated peasant knowledge are at the center of this adaptation on which depends the food for future generations.

Biodiversity cannot be preserved and renewed without the recognition of the rights of farmers defined by the ITPGRFA, in particular their rights defined in article 9 to preserve, use, exchange and sell their seeds, to take part in national decisions and to protect their traditional knowledge. However, in spite of many political and scientific declarations on the need to develop on farm conservation, the majority of the signatory countries of the Treaty prohibit the exercise of these collective rights. They replace them with private intellectual property laws on seeds which make it possible for ten multinational seed firms to proclaim ownership over all existing biodiversity. Deprived of their rights, peasants can no longer preserve the hundreds of thousands of varieties which they so patiently selected in order to adapt them to their agro-systems. The multinational firms replace these varieties with a few tens of industrial crops intended to feed the richest populations, their animals or their cars. Non-reproducible and protected by Intellectual Property Rights (IPRs) which prohibit peasants from re-sewing their harvest, these industrial seeds are too expensive for small farmers who can neither repurchase them each year, nor buy the fertilizers and the pesticides essential for their cultivation. They thus destroy food crops, social systems, and the cultural and traditional knowledge of the peasant communities and indigenous peoples.

To concede to farmers only the right to benefit sharing is a decoy used by UPOV who refuses to make origin labeling of utilized resources obligatory for deposit of a COV (certificat d'obtention végétale), and by the patents which camouflaged this information; the illusory right only serves

to make acceptable the negotiation of collective rights of farmers for IPRs, which generate these never shared “advantages”.

To use the money of the fight against hunger to distribute these industrial seeds and fertilizers for free to small farmers, who nourish the poor people of the South, until they give up their local peasant seeds, is to condemn them to disappear as soon as this nondurable support disappears: this aggressive policy is contrary to the protection of the rights of farmers defined in the ITPGRFA.

The “ex-situ” gene banks and cultivated biodiversity are threatened everywhere, including their centers of origin and diversification, by contaminations of patented GMOs, wars and the abandonment of public finances necessary to their conservation, in particular in the countries of the South richest in cultivated biodiversity. To replace them with genetic collections of digitized sequences deprives peasants of the access to the diversity of the reproducible alive seeds of which they will need to feed the humanity of tomorrow. The peasants have to do only with seeds unable to germinate, locked up in an immense safe in the ice and to which they do not have access, nor to their genetic code digitized in the computers. Only the multinationals will be able to seize this treasure to market some standardized plants resulting from patented synthetic genes that their financial power enables them to manufacture.

This is why Via Campesina kindly requests the Governing Body of the Treaty to work on following:

- to make all the signatory countries to apply the rights of the farmers to preserve, to use, exchange and sell their seeds of farm, to protect them from bio-piracy, contamination by patented genes and the aggressive policies which destroy social systems, the agro-systems and the associated traditional knowledge.
- to preserve the germinative capacity and to make available to all peasants from planet the phylogenetic resources taken in their fields and locked up in gene banks,
- to mobilize its financial partners in order to develop vast programs of participative selection in the field and not to distribute non-reproducible industrial seeds or to digitize the collections of the multilateral system,
- to associate with the development its decisions organizations of small farmers gathered within Via Campesina as much as the representatives of industry.

II. THE GLOBAL COMMUNITY BIODIVERSITY DEVELOPMENT AND CONSERVATION NETWORK

Introduction

The Global Community Biodiversity Development and Conservation Network, which is made up of countries in Africa, Asia and Latin America, has been proactive in the national level implementation of numerous programs that promote Farmers’ Rights. In Ethiopia, Lesotho, Malawi, Mali, Sierra Leone and Zimbabwe (CBDC Africa Region members), the Philippines, Laos, Vietnam in Asia and Bolivia and other Latin American countries, the rights of farmers to retain access to genetic resources is now at the heart of the fight against poverty.

This publication reports on the work of the Community Technology Development Trust (CTDT), a Zimbabwean-based civil society organization and the Centre for Environmental Policy and Advocacy (Cepa-Malawi) which are the principal agents in the implementation of Farmers’ Rights in Africa; the Centre for Environmental Policy & Advocacy (CEPA), Assesoria e Servico A Projectos em Agricultura Alternativo (ASPTA), Asociacion Nacional del Agricultores Pequenos (ANAP), Centro de Education y Tecnologia para el Desarrollo del Sur (CETSUR), and Instituto para la Produccion e Investigacion dela Agricultura Tropical (IPIAT), our partners in Latin America; Biodiversity Use and Conservation in Asia Program - Laos PDR (CBDC-BUCAP

Laos); and the Southeast Asia Regional Initiatives for Community Empowerment (SEARICE), a key CBDC global partner working to promote farmers' rights in Asia.

Hopefully, this publication will help to articulate the concerns of farmers in Africa, Asia and Latin America and persuade all sectors to take appropriate practical action to arrest the loss of biodiversity, and promote the recognition, protection and needs of farmers.

Perspectives on Farmers' Rights

Farmers in Africa, Asia and Latin America share the belief that one of their most important entitlements as farmers is the freedom to grow what they think would best meet their needs. A precondition to ensuring this "freedom of choice" is unhampered access to planting materials, and the right to save, re-use, sell, or exchange seeds with other farmers. In fact, the "right to seeds" is traditionally equated in the Philippines with "farmers' rights." In Laos, seeds are regarded as essential to the survival of farmers. Hence, Lao farmers define their rights in the context of seed conservation and rehabilitation, varietal selection and breeding, and seed production and marketing.

At the same time, the farmers in the three regions agreed that the "right to seeds" could not be meaningfully implemented unless the farmer's other entitlements are guaranteed. Hence, the concept of farmers' rights as a "bundle of rights." African farmers felt that access to the following is indispensable to realizing farmers rights: (1) land; (2) credit; (3) irrigation; (4) power supply; (5) transport and communication facilities; among others. They also claimed the right to participate in decision-making at all levels, and demanded that their governments institute laws and policies that promote farmers' rights. Farmers in the Philippines have a broader perspective on what constitutes the farmers' bundle of rights. They have identified 38 "elements of rights," which are laid down in the 2003 Cebu Declaration on Farmers' Rights. Meanwhile, in Latin America, particularly Brazil, the right to seeds is regarded as closely bound up with other rights that bear on access to the resources of biodiversity, including the right to work, the right to security of tenure on land, the right to water, the right to preserve their culture, their ways of life and management practices related to natural ecosystems. Farmers in Chile, Cuba and Venezuela had similar ideas on what constitutes farmers' rights, including the right to water, land, and appropriate technology; access to markets; and guarantees for their social and political freedoms.

Factors that Limit the Promotion of Farmers' Rights

Farmers in Africa have identified a number of institutional, policy and legal gaps that have tended to hinder the promotion of farmers' rights, as follows: (1) Absence of policies and laws that define farmers' rights and mandate their enforcement; (2) Lack of coherence among Government policies and laws related to agro-biodiversity conservation; (3) Lack of clear guidelines on access and benefit sharing; (4) Barriers against farmers' participation in the seed market; and privatization of the seed industry; (5) Inattention to local varieties in agricultural research; and (6) Bias toward hybrid crop varieties vs. traditional/farmers' varieties in agricultural extension, including NGO interventions.

In the Philippines, the difficulties of development organizations in pushing for farmers' rights stem from the same problems that have bedevilled efforts to alleviate poverty in the country, namely: (1) Landlessness/lack of land tenure security, especially among women; (2) Expansion of monocropped agricultural plantations, and its impact on the farm ecology and on human health; (3) Militarization and human rights violation; (4) Inadequate access to support services and information that impact on farming; and (5) Neglect of the agriculture sector in favor of "more profitable" industries, such as mining.

In Brazil, the limits and threats to the free use of seeds originate mostly from the commercial agribusiness sector and the State. These have taken the form of: (1) Plant variety protection legislation; (2) Aggressive promotion of the agribusiness model; and (3) Promotion of technology, such as transgenic organisms, and the use of legal instruments to strengthen

monopoly control of genetic resources.

Summary of Recommendations on Farmers' Rights Issues

Some of the key recommendations for governments are as follows:

Right to seed conservation and rehabilitation: (1) Enact laws that recognize farmers' right to seeds and traditional knowledge in seed resources conservation and development; (2) Continue to provide improved and local varieties/plant genetic materials (PGRs) to sustain farmers' breeding work; (3) Implement incentive schemes, such as tax breaks for farmers engaged in seed conservation and development; (4) Establish genebanks in which farmers' seeds could be stored for the long-term; (5) Build the capacity of agricultural extension workers; or better yet, assign an extension worker to stay full-time with the farmers in the course of the latter's seed conservation and rehabilitation work;

Right to varietal selection and breeding: (1) Simplify the seed registration process; (2) Facilitate the participation of farmers and farmers' groups in developing regulatory measures; and (3) Increase support for seed selection and breeding, particularly by providing the necessary infrastructure/facilities for training, and by putting up seed storage facilities for the use of farmers.

Right to seed production and marketing: (1) Provide the necessary support, such as production capital and inputs; technical assistance; infrastructure, including irrigation and post-harvest facilities; and land that could be used as a communal demonstration farm; (2) Provide marketing support, specifically by deploying its extension workers to help farmers identify and link up with potential markets, and agree on a mutually beneficial pricing policy; and (3) Formulate a National Program on Agrobiodiversity towards encouraging local initiatives that promote free and autonomous use of biodiversity, for example, through the purchase and distribution of local seeds produced by farmers;

Right to protection from the threat of new and emerging technologies: (1) Repeal laws that facilitate the entry of GMO products and enact laws banning the entry and use of GMOs in the country; (2) Create "biomonitoring networks" to monitor and report on transgenic contamination; (3) Provide budget allocations for Sustainable Agriculture and complement related local government initiatives.

Right to land: Enact a genuine agrarian reform law.

Right to water: (1) Repeal laws that promote large-scale mining operations to prevent the contamination of water and the destruction of the watersheds, and thereby ensure local communities' access to safe and sufficient water; (2) Investigate the construction of large but defective dam projects; and (3) Support small water impounding projects (SWIPs) and rehabilitation of watersheds with farmer/community participation.

Rights of women farmers: Enact a Women Empowerment Code for Rural Women.

The full text of this report may be downloaded at:

http://www.searice.org.ph/index.php?option=com_content&view=article&id=95:report-of-cbdc-global&catid=43:farmers-rights-as-a-bundle-of-rights&Itemid=60