Farmers' Rights: Vision and Realization

Report of Farmers' Consultation Processes in Africa, Asia and Latin America

CBDC

Prepared by

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For the

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FARMERS' RIGHTS: Vision and Realization

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Acronyms and Abbreviations

ABS	Access and benefit sharing
ARBs	Agrarian Reform Beneficiaries
AREX	Agricultural Research and Extension Services
ASSMAG	Association of Smallholder Seed Marketing Action Group
BSAP	Biodiversity Strategy and Action Plan
CAMPFIRE	Communal Areas Management Programme for Indigenous Resources
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
CBDC–BUCAP	Community Biodiversity Development and Conservation–Biodiversity Use and Conservation in Asia Programme
CBD	Convention on Biological Diversity
CBOs	Community Based Organizations
CLOA	Certificate of Land Ownership Award
CSO	Civil Society Organization
COP	Conference of the Parties
CTDT	Community Technology Development Trust
CEPA	Centre for Environmental Policy and Advocacy
DA	Department of Agriculture
DAR	Department of Agrarian Reform
DARS	Department of Agriculture Research Services
DUS	Distinctiveness, Uniformity and Stability
EAD	Environmental Affairs Department
EMA	Environmental Management Act
FAO	Food and Agriculture Organisation of the United Nations
FFS	Farmers' Field School
FRs	Farmers' Rights
FUM	Farmers' Union of Malawi
GoM	Government of Malawi
GMOs	Genetically Modified Organisms
HRCP	Hybrid Rice Commercialization Program

IPRs	Intellectual Property Rights
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
IUPGRFA	International Undertaking on Plant Genetic Resources for Food and Agriculture
LAD	Land Acquisition and Distribution
MAT	Mutually Agreed Terms
MEAs	Multilateral Environment Agreements
MTA	Multilateral Transfer Agreement
NCA	National Competent Authority
NASFAM	National Smallholder Farmers Association of Malawi
NEP	National Environmental Policy
NGO	Non Governmental Organization
OAU	Organization of African Unity
PGRFA	Plant Genetic Resources for Food and Agriculture
PIC	Prior Informed Consent
PVP	Plant Variety Protection
SABSP	Southern African Biodiversity Support Programme
SADC	Southern African Development Community
SEARICE	Southeast Asia Regional Initiatives for Community Empowerment
SPS	Sanitary and Phytosanitary Measures Committee
TBNRM	Transboundary Natural Resource Management
TBT	Technical Barriers to Trade Committee
TFCA	Transfrontier Conservation Area
TK	Traditional Knowledge
TRIPS	Trade-Related Intellectual Property Rights Agreement
UPOV	Union for the Protection of New Varieties of Plants
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Discussions and debates on Farmers' Rights have been central at numerous international forums and gatherings since the 1980s when the United Nations adopted the Declaration of the right to development, including the right of people to full and complete access to their plant genetic resources (PGRs). International conventions and instruments that have dealt with this issue include the Convention on Biological Diversity (CBD), the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the World Trade Organization (WTO) and the Organisation of African Unity (OAU, now the African Union AU) Model Law.

These international agreements have come about after years of deliberation and study on the importance of Farmers' Rights to food security, conservation of agro-biodiversity, traditional knowledge systems and the development of appropriate technologies. Experts drawn from various backgrounds have come to realize the role of farmers all over the world in safeguarding the plant genetic material found in food plants in use today. They now acknowledge that farmers have, over the years and across countries, sown and harvested, saved, exchanged, and planted seed, and in so doing, have created an unimaginable pool of plants and, using their knowledge and skills, ensured that people all over the world have food on their tables.

Yet, in rich industrialized countries, the commercialization of plant breeding and propagation has brought huge rewards to large conglomerates while the contribution of millions of farmers in developing countries towards the conservation of food plant diversity and global food security has gone unrecognized and unrewarded.

It is against this background—and after years of ardent and rigorous discussions—that members of the Food and Agriculture Organisation of the United Nations (FAO) adopted the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Among other issues that it covered, this Treaty established what have come to be known as Farmers' Rights. The International Treaty is the first legally binding international agreement that explicitly recognizes Farmers' Rights to help make it possible for farmers to continue with their work of safeguarding and enhancing agro-biodiversity. This International Treaty came into effect on July 29, 2004.

The Community Biodiversity Development and Conservation Network (CBDC Network) is considered as the first network to advocate the central role of farmers in on-farm conservation and sustainable use of PGRs. The Network is composed of organizations working with farmers from 21 countries in Africa, Latin America and Southeast Asia. For the past 10 years, CBDC concentrated on field level interventions to advance on-farm conservation and sustainable use of genetic resources by looking at ecosystems and indigenous cosmology (in Latin America); farmers' seed systems (in Africa); and farmers' on-farm conservation techniques and role in plant breeding (in Southeast Asia). These concrete field experiences have lent credibility to the Network to articulate its position on issues bearing on Farmers' Rights.

In 2007, selected CBDC Network members in Zimbabwe (Community Technology Development Trust [CTDT]), Malawi (Centre for Environmental Policy and Advocacy [Cepa-

Malawi]), Brasil (Assesoria e Servico A Projectos em Agricultura Alternativo [ASPTA]), Cuba (Associasion Nacional del Agricultores Pequenos [ANAP]), Venezuela (Instituto para la Produccion e Investigacion dela Agricultura Tropical [IPIAT]), Chile (Centro de Education y Technologia para el Desarollo del Sur [CETSUR]), Lao PDR (CBDC–BUCAP Laos) and the Philippines (Southeast Asia Regional Initiatives for Community Empowerment [SEARICE]) undertook research, consultations and discussions with farmers and other stakeholders to capture farmers' perspectives on the realization of Farmers' Rights in these countries. The result was presented at the 2nd Governing Body Meeting of the ITPGRFA held in Rome in 2007. This report of those parallel efforts is being submitted by the CBDC Network to the ITPGRFA Secretariat as a response to the call for experiences and perspectives on the implementation of Farmers' Rights, which is one of the agenda items for the 3rd Governing Body meeting of the ITPGRFA.

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.

ANDREW MUSHITA
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Harare, Zimbabwe
March 2009

Summary of Recommendations on Farmers' Rights

The experiences of farmers in Asia, Africa and Latin America provide important points for understanding the subject matter of farmers' rights, types of rights, rights holders, and appropriate measures for protecting and promoting these rights. They also offer lessons from initial efforts at realizing these rights, and warn against certain tendencies which might prove counterproductive in the wake of new and emerging technologies.

Various measures to protect and promote farmers' rights are proposed in this publication. Assisting farmers in in-situ conservation and farmer breeding, and providing incentives for such activities are among the central components in this regard. The availability of a rich diversity of seeds and propagating material is the basis of farmers' rights, as well as of agriculture and food security.

This report also indicates that in the context of conservation, access to technologies and training is of central importance to strengthening the rights of farmers. The establishment of community genebanks is suggested as a further means towards realizing farmers' rights, to complement and support in-situ management of crop genetic resources. It is furthermore recommended that farmers should have the capacity and opportunity to influence future breeding efforts as a component of farmers' rights.

Another central component highlighted in this publication are issues related to farmers' free choice of, and access to, genetic resources for food and agriculture, together with the freedom to share and sell harvested produce, and to improve cultivars. These are basic customary rights, and important preconditions for the continued safeguarding of agricultural biodiversity and farmer innovations.

Some of the key recommendations from the experiences in Asia, Africa and Latin America include:

1. Right to seed conservation and rehabilitation

Recommendations to governments:

- Enact laws that recognize farmers' right to seeds & traditional knowledge in seed resources conservation and development;
- Continue to provide improved and local varieties/plant genetic materials (PGRs) to sustain farmers' breeding work;
- Stabilize the price of grains to guarantee a fair price for agricultural products;
- Provide land for seed conservation and varietal rehabilitation;
- Implement incentive schemes, such as tax breaks for farmers engaged in seed conservation and development;
- Refurbish existing irrigation facilities, and maintain these in good working condition;
- Establish genebanks in which farmers' seeds could be stored for the long-term;
- 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;
- Provide access to credit on easy terms to farmers;
- Support the rehabilitation of communities affected by natural disasters;

- Ensure that local communities are protected from contamination by terminator technologies;
- Institute policies that promote secure land tenure, provide access to rural credit under reasonable conditions and maintain accessible extension services to smallholder farmers;
- Enact laws that recognize, protect and enhance farmers' participation in the seed industry;
- Promote pro-diversity labeling and public education campaigns that encourage local consumers to patronize local products;
- Encourage viable partnerships that promote the transfer of skills and knowledge or the equitable sharing of benefits; and
- Encourage cooperative research between farmers and public/private breeders and provide incentives to the private sector to encourage them to invest in local products.

Proposed local/farmer action:

- Continue varietal selection and breeding of traditional and improved varieties, as well as seed conservation and rehabilitation, even after the CBDC–BUCAP ends;
- Sustain networking among farmers to exchange planting materials and information;
- Continue to develop varieties that could be stored in government established genebanks; and
- Provide labor as counterpart for the maintenance of irrigation facilities.

2. Right to varietal selection and breeding

Recommendations to governments:

- Simplify the seed registration process;
- Give farmer-breeders credit for their work by naming the seeds after their developers;
- Hold yearly contests to recognize the work of the best-performing farmer-breeders;
- Facilitate the participation of farmers and farmers' groups in setting prices and developing regulatory measures;
- 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; and
- Promote linkages among networks of community seed banks and support festivals and fairs for the exchange of local seeds.

Proposed local/farmer action:

- Lobby the government for a more simplified seed registration process;
- Organize a savings group, using the CBDC-BUCAP funds as initial capital;
- Promote farmers' rights through lobbying national farmers' organizations to include farmers' right as part of their agenda;
- Participate in ongoing debates on the implications of legislation on seeds and seedlings to family farming; and

- Expand and intensify ongoing campaigns on farmers' rights issues.

3. Right to seed production and marketing

Recommendations to governments:

- 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;
- 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;
- Reward the exemplary work of farmer-breeders by issuing certificates of recognition;
- Formulate a National Program on Agro-biodiversity 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; and
- Encourage participatory research for the development of production systems using different local seeds.

Proposed local/farmer action:

- Set up demonstration farms/plots for the benefit of other farmers;
- Organize a savings group to assist farmers in funding their seed production needs;
- Set up a seed buying/collection station in different areas;
- Strengthen linkages between social movements and organizations to lobby against laws that deny farmers the right to produce, exchange and market their seeds;
- Create mechanisms to prevent the appropriation and misuse of local varieties by researchers and/or companies.

4. Right to protection from the threat of new and emerging technologies

Recommendations to governments:

- Prioritize technology that is appropriate for rural people;
- Recognize the contribution of farmers as farmer-scientists and local experts in sustainable agriculture extension systems; allocate funds to promote programs and initiatives on appropriate technology;
- Ban terminator technology;
- Consult farmers before introducing any new technology;
- Protect local seed houses from GMO contamination; and
- Create "biomonitoring networks" to monitor and report on transgenic contamination.

Recommendations to researchers:

- Consult farmers and develop technologies that address farmers' needs;
- Improve the local varieties; and
- Conserve and rehabilitate local varieties.

Proposed local/farmer action:

- With the assistance of government and development agencies, conduct surveys and educate farmers about new technologies and their threats to agrobiodiversity.
- Remain vigilant and report to local farmer community groups any new technology being introduced;
- Continue varietal selection and breeding of traditional and improved varieties, as well as seed conservation and rehabilitation;
- Sustain networking among farmers to exchange planting materials and information;
- Continue to develop varieties that could be stored in community seed banks;
- Undertake campaigns against HYVs/GMOs;
- Continue breeding/research efforts;
- Engage LGUs to formulate a Sustainable Agriculture (SA) Code and organize SA fairs.

5. Right to market organic products

Recommendations to governments:

- Repeal laws that facilitate the entry of GMO products and enact laws banning the entry and use of GMOs in the country;
- Provide budget allocations for Sustainable Agriculture and complement related LGU initiatives;
- Subsidize the certification of organic products of small farmer groups.

6. Right to land

Recommendation to governments:

- Enact a genuine agrarian reform law.

Proposed local action:

- Lobby with local legislative bodies to pass resolutions calling on national lawmakers to enact a genuine agrarian and fishery/aquatic reform law;
- Advocate for the adoption of the "land to the tiller" principle in land reform laws.

7. Right to water

Recommendations to governments:

- 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;
- Investigate the construction of large but defective dam projects;
- Support small water impounding projects (SWIPs) and rehabilitation of watersheds with farmer/community participation.

8. Rights of women farmers

Recommendation to governments:

- Enact a Women Empowerment Code for rural women.

Africa

Malawi

During consultations held in Malawi, most of the breeders disputed the need to grant rights to farmers. They argued that only breeders have a claim to varieties they have developed, even if these are no more than improvements on local land races, to which farmers have rights.

In fact, researchers use the term "local land race" in place of "local or indigenous variety" as a none-too-subtle way of suggesting that these varieties had predated farmers' experimentation with plant breeding. This also explains why researchers or breeders do not bother to obtain Prior Informed Consent (PIC) before they commence breeding programs using local land races and hybrid varieties. Furthermore, it reflects a misunderstanding of the concept that traditional varieties are a common heritage to which Intellectual Property Rights[1] (IPR) do not apply.

A woman farmer displaying local seed)

In all districts visited during the consultations, farmers had difficulty defining farmers' rights but one woman farmer[2] came up with this definition which seemed to be generally acceptable: "farmers need to be allowed to plant what they feel will satisfy their needs, and not to be forced to choose certain varieties". She further illustrated her definition by indicating that currently, agricultural extension staff and promotions being run on both state and private radio stations all advise farmers to use hybrid seeds. Most of the stakeholders, including farmers, technical and local political leaders, do not understand the importance of agro-biodiversity conservation, in general, and farmers' rights, in particular.

[1] The rights granted by a state authority for certain products of intellectual effort and ingenuity.

[2] This definition was given by Ms. Ngwenyama of Manyenje Village, Neno district in southern Malawi.

Zimbabwe

Consultations in Zimbabwe were conducted in the districts of Chiredzi, Tsholotsholo and UMP. Farmers in Chiredzi District viewed farmers' rights as consisting of access to the following: (1) land, including dryland and irrigable land; (2) opportunities for training; (3) communication facilities; (4) markets; (5) transport networks; (6) credit facilities; (7) irrigation facilities; and (8) power supply; ownership of seeds; participation in decision-making at all levels; the right to store and exchange seeds; and laws and policies that promote farmers' rights.

In Tsholotsholo District, farmers' rights were defined as the right to use, exchange and sell farm saved seeds. Farmers' rights include the use and protection of traditional knowledge, and the right to conserve seeds for future use and for improvements on participatory plant breeding. They also entail participation in decision-making in issues related to the use and conservation of seed materials.

A farmer in UMP district, Zimbabwe, explains how the community uses the community seed bank

In UMP District, farmers' rights were considered as inherent to farmers yet guaranteed by legislation. Farmers' rights should involve the whole community, i.e, village assembly; village development committee; ward assembly; ward development committee (E.H.T, AREX, Justice, Police, Registrar General's Office); committee of council; farmers' unions; provincial committee; national committee (cabinet). Farmers' rights include access to land, water, inputs, draught power, productivity-enhancing technology, and relevant information; the right to choose varieties that are well adapted to local conditions; farmers' right to sell their produce; linkages with international markets; incentives and subsidies; the right to participate in decision-making; and food security.

Asia

Lao PDR

Few Lao farmers are aware of the concept of farmers' rights, even if they have unknowingly been practicing it. Thus, it was difficult to discuss farmers' rights with them. Thus, at the **Lao PDR Farmers' Policy and Technical Conference on Plant Genetic Resources** held in October 2007, the farmers were encouraged to talk about their involvement in CBDC–BUCAP activities, and thereafter to identify their needs in regard to PGRs. They went on to describe how they felt about the importance of seeds, as follows:

- Seeds are essential to life: a basic need without which they cannot plant and will have no food to eat;
- Farming is the only work they have and without seeds they cannot farm;
- Seeds selection and breeding activities are important because farmers are able to develop varieties that are high-yielding, are resistant to the harsh environmental conditions of their farms, and which are as good or better than their aromatic varieties;
- Breeding activities allow farmers to have access to many other varieties, from which they could develop new ones which are acceptable to the markets and thus earn them more money; and
- In general, farmers are always happy to have new varieties of seeds and want to share these with other farmers (although there are some who are reluctant to participate in seed exchanges).

> For Lao farmers, seeds are essential to life: a basic need without which they cannot plant and will have no food to eat.

Both farmers and extension agents at that Conference identified what constitutes farmers' rights in the context of seed conservation and rehabilitation, varietal selection and breeding, and seed production and marketing, as follows:

1. Seed conservation and rehabilitation

- Capacity to produce grains for consumption and seeds for planting;
- Option to sell the grains they produce;
- Right to share and exchange seeds with other farmers;
- Right to land;
- Right to irrigation facilities;
- Access to agricultural inputs and other services (seeds, fertilizers, equipment, low interest credit, etc.);
- Access to training and technical information to develop their capacities;
- Right to supportive government policies (e.g., provision of land for field trials, tax exemption on lands used for field trials); and
- Right to conserve varieties for socio-cultural practices.

2. Seed production and marketing

- ❖ Right to engage in seed selection and to conserve/improve local varieties (manifested in seed exchanges among farmers);
- ❖ Right to put up seed multiplication areas, which includes the right of farmers to group themselves for collective production of seeds;
- ❖ Access to budget/resources like marketing information, technical information, seed registration (to include training and technical assistance on seed production and related support facilities); and
- ❖ Participation in setting the price of seeds.

3. Varietal selection and breeding

- ❖ Protection of farmers' seeds (registration/copyright protection) since farmers consider seeds as essential to life;
- ❖ Farmers' participation in pricing (appropriate pricing of seeds when marketed); and
- ❖ Right to adopt or reject a variety being introduced to them.

Philippines

Farmers' rights in the Philippines have traditionally been equated with the farmer's "right to seeds." However, farmers and development organizations, primarily SEARICE, have realized that the right to seeds could not be meaningfully implemented unless the farmer's other entitlements are guaranteed.

Farmer representatives at a **National Forum on Farmers' Rights**, organized by SEARICE on 4–6 September 2007, identified 10 categories of rights that make up farmers' rights, as follows:

1. Right to seeds;
2. Right to land;
3. Right to water;
4. Rights of women farmers;
5. Right to opportunities and information in regard to marketing organic products;
6. Right to appropriate technology;
7. Right to a healthy environment (air, land, and water);
8. Right to participate in governance processes;
9. Right to support services (e.g., access to information, irrigation facilities, post-harvest facilities, credit, social security services, and healthcare); and
10. Right to life (i.e., protection against human rights violations).

These component rights are further fleshed out in the **Cebu Universal Declaration on Farmers' Rights**—a statement defining the farmer's "bundle of rights"—which was drafted following a SEARICE organized meeting in Cebu on 26 February 2003. The Cebu Declaration identified 38 "elements of rights" *(See Annex D),* including the right to land, to organize, to participate in policy-making processes related to agriculture, and the right

to food, among others, which must be enforced simultaneously and at multiple levels—household, community, and national levels.

The following presents the expanded "bundle of rights" of which farmers' rights consist, incorporating the rights categories identified at the National Forum and the 38 elements/components of rights listed in the Cebu Declaration:

1. Access to complete information on activities and results of research

- Right to support services;
- Right to access the best available and appropriate farming practices and technologies;
- Right to take part in government programs; and
- Right to access information/to be informed of market data and agricultural policies of government.

2. Farmer participation in seed policy development

- Right to be consulted and to participate in governmental decision-making in regard to laws related to farmers, e.g., determining farm-gate prices, government support prices, and in the formulation of trade policies, including importation;
- Right to be heard and be given attention regarding ecological matters and those with adverse health impacts i.e. mining cement projects, genetically modified organisms (GMOs);
- Right to active participation in decision-making processes of government;
- Right to redress of grievances;
- Right to be recognized as the country's primary food producers and thus, as vital to achieving food self-sufficiency and sovereignty; and
- Right to genuine participation at all levels of policy- and decision-making regarding agriculture and farmers' welfare.

3. Recognition of farmer initiatives/farmer-developed varieties

- Right to undertake initiatives in order to help others;
- Right to use, share, exchange, sell and develop genetic resources;
- Right to collective ownership of seeds (right to own way of life);
- Right to be supported by government regarding technologies generated/invented by farmers in the countryside;
- Right to redress of grievances;
- Right to be recognized as the country's primary food producers and thus, as vital to achieving food self-sufficiency and sovereignty; and
- Right to equitably benefit from the country's genetic resources.

4. Secure access to and control of seeds

- Right to use, share, exchange, sell and develop genetic resources;
- Right to collective ownership of seeds (right to own way of life);
- Right to be supported by government regarding technologies generated/invented by farmers in the countryside;

- Right to be recognized as the country's primary food producers and thus, as vital to achieving food self-sufficiency and sovereignty; and
- Right to equitably benefit from the country's genetic resources.

5. Right to land

- Right to peaceful life, old age and security, and other support services;
- Right to a decent and peaceful life;
- Right to land and other farm equipment to make the land productive;
- Right to land tenure security;
- Right to peace and order;
- Right to access information/to be informed of market data and agricultural policies of government; and
- Right to redress of grievances.

6. Right to water

- Right to a peaceful life, old age and security, and other support services;
- Right to irrigation and equitable distribution of irrigation water;
- Right to a subsidy (50%–50%) for farming practices;
- Right to support services; and
- Right to be consulted and to participate in governmental decision making on laws related to farmers, in determining farm-gate prices, government support prices and in the formulation of trade policies including importation.

7. Rights of women farmers

- Right to self-determination, and to make decisions on matters that will affect her;
- Right to undertake initiatives in order to help others;
- Right to land tenure security;
- Right to access affordable health services;
- Right to oppose laws, policies and programs that will negatively affect the livelihood of farmers;
- Right to be consulted and to participate in governmental decision-making in regard to laws related to farmers, in determining farm-gate prices, government support prices, and in the formulation of trade policies, including importation;
- Equal rights for women, youth and other farmers in political, social, cultural and economic spheres;
- Right to be heard and be given attention regarding ecological matters and those that have adverse health impacts i.e. mining cement projects, GMOs; and
- Right to genuine participation at all levels of policy- and decision-making regarding agriculture and farmers' welfare.

8. Right to market organic products

- Right to good all-weather roads and bridges;
- Right to just prices for agricultural produce;
- Right to be supported by government regarding the technologies generated/invented by farmers in the countryside;

- Right to access information/be informed of market data and agricultural policies of government;
- Right to full government support at all levels of production and marketing;
- Right to be recognized as the country's primary food producers, and thus, as vital to achieving food self-sufficiency and sovereignty; and
- Right to equitably benefit from the country's genetic resources.

9. Right to appropriate technology

- Right to support services;
- Right to access the best available and appropriate farming practices and technologies;
- Right to be consulted and to participate in governmental decision-making in regard to laws related to farmers, in determining farm-gate prices, government support prices, and in the formulation of trade policies, including importation;
- Right to protect and preserve traditional farming knowledge and systems;
- Right to take part in government programs;
- Right to be heard and be given attention regarding ecological matters and those that have adverse health impacts i.e. mining cement projects, GMOs;
- Right to be supported by government regarding technologies generated/invented by farmers in the countryside;
- Right to access information/to be informed of market data and agricultural policies of government; and
- Right to active participation in decision-making processes of government.

10. Right to a healthy environment (air, land, water)

- Right to access quality, adequate, safe and sufficient foods for the family;
- Right to be heard and be given attention regarding ecological matters and those that have adverse health impacts i.e. mining cement projects, GMOs;
- Right to protect the environment; and
- Right to active participation in decision-making processes of government.

11. Right to Participate in Governance

- Right to oppose laws, policies and programs that will negatively affect the livelihood of farmers;
- Right to be consulted and to participate in governmental decision-making in regard to laws related to farmers, in determining farm-gate prices, government support prices, and in the formulation of trade policies, including importation;
- Right to take part in government programs;
- Right to be heard and be given attention regarding ecological matters and those that have adverse health impacts i.e. mining cement projects, GMOs;
- Right to active participation in decision-making processes of government; and
- Right to genuine participation in all levels of policy- and decision-making regarding agriculture and farmers' welfare.

12. Right to Access to Information

- Right to be consulted and to participate in governmental decision-making on laws related to farmers, in determining farm-gate prices, government support prices and in the formulation of trade policies, including importation;
- Right to be heard and be given attention regarding ecological matters and those having adverse health impacts i.e. mining cement projects, GMOs; and
- Right to access information/to be informed of market data and agricultural policies of government.

13. Right to Support Services [access to irrigation, post-harvest facilities, credit]

- Right to a peaceful life, old age and security and other support services;
- Right to irrigation and equitable distribution of irrigation water;
- Right to land and other farm equipment to make the land productive;
- Right to good all-weather roads and bridges;
- Right to own appropriate post-harvest facilities;
- Right to a subsidy (50%-50%) for farming practices;
- Right to support services;
- Right to access the best available and appropriate farming practices;
- Right to active participation and decision making processes of government; and
- Right to access farm credit at affordable interest rates (comprehensive farm credit policy).

14. Right to Support Services [access to social security services and health care]

- Right to peaceful life, old age and security and other support services;
- Right to support services; and
- Right to access affordable health services.

15. Exercise of Human Rights

- Right to self-determination, to make decisions on matters that will affect him/her;
- Right to peaceful life, old age and security and other support services;
- Right to decent and peaceful living;
- Right to peace and order; and
- Right to redress of grievances.

Latin America

Brazil

In Brazil, farmers' rights refer to the entitlements of peasants, agrarian reform beneficiaries, and indigenous populations, in regard to biodiversity resources, in general, and to seeds, in particular.

While the concept of farmers' rights is not usually taken up in debates at the grassroots level, it is nonetheless clear among grassroots organizations that seeds are simultaneously a material and economic resource and a cultural asset that is part of the patrimony of farming peoples and thus, a condition of their existence. This understanding of seeds as a cultural good highlights the inextricable relationship between grassroots knowledge and biodiversity resources.

Furthermore, in discussions among farmers' organizations, it was apparent that the right to seeds is regarded as closely bound up with other rights that bear on access to biodiversity resources, including the right to work; the right to security of tenure on land; the right to water; and the community's right to preserve their culture, way of life and management practices related to natural ecosystems. Following this integrative perspective of farmers' rights, other rights are considered as equally indispensable, such as women's access to material and socio-cultural goods and recognition for their work and innovative capacity; the right to food of sufficient quantity and quality, respecting local communities' cultural needs and preferences, and food free of pesticides and transgenic organisms.

In relation to access to and use of seeds, in particular, the organized grassroots movement was unanimous in saying that "to produce, sell and exchange their seeds is a right of the farmer." They also believe that the State, through legal mechanisms and appropriate public policies, should promote such rights by, among others, supplying the public institutional markets with food supplied mainly by family owned farms, and ensuring the participation of rural family farmers in defining, developing and implementing policies for sustainable rural development.

Chile

In a workshop participated in by 17 farmers and representing six sub-territories, the following aspects of farmers' rights were identified:

1. Right to continue being a peasant farmer
   This refers to farmers' right to produce what is necessary for their subsistence, and to be recognized as a "farmer," including their interests and problems.

2. Rights of female and male peasant farmers
   Men and women have particular roles in farming. Recognizing this, practices that discriminate against either gender in their farm-related work must be recognized

"Seeds are simultaneously a material and economic resource and a cultural asset that is part of the patrimony of farming peoples and thus, a condition of their existence."

and rooted out. At the same time, it is important to maximize the particular skills and talents of men and women farmers.

3. Right to maintain their seeds

Farmers should have the right to decide which type of crops they wish to grow, and therefore they should have access to the appropriate seeds. Currently, planting decisions are strongly determined by the markets, resulting in the loss of local seeds.

4. Right to land and water

The right to land implies security of tenure: freedom from the risk of being forced to give up farming to work in the cities; of being forced to sell their land because they could not run it viably; and of being evicted from the land to make way for forestry activities, for example.

In relation to water, there is a need to improve the canals and the wells.

5. Right to appropriate technology

Farmers require improvements in food production. The importance of services delivered by the State is recognized, even when they claim that this is a right that all farmers are entitled to. Furthermore, it is necessary to design new technologies that do not require expensive and toxic inputs that endanger human health and the environment.

6. Right to have their own markets

Food fairs represent a significant opportunity for farmers to market their products without the need for middlemen.

7. Right to information

Farmers currently lack access to information, especially State policies, that affects them.

8. Right to organize

There is need to build the capacity of farmers' organizations, and to identify the reasons why many of them cannot be sustained.

Cuba

Cuban farmers perceive their rights as the same as those of any Cuban citizen: the right to defend their Revolution, and the right to be free and to decide their own destiny. This

basic right of Cubans implies that other rights are guaranteed, such as the right of association; the right to maintain their cultural identity; the right to use and conserve the country's natural resources; and the wherewithal to develop their farms, such as access to land, credit, and agricultural insurance. Cuban farmers also claim the right to lead their organizations and to be represented in government institutions.

Venezuela

In consultations on **"Biodiversity and the Rights of Peasant Farmers"** held in Venezuela, 200 participants representing grassroots organizations formulated the "Vision of the Peasant Farmers of Venezuela," which encapsulates their concept of farmers' rights, as follows:

1. Right to water

- Communities have the right to participate in the process of designing rural and urban aqueducts;
- Water service must be public, sufficient and of potable quality;
- The State, together with grassroots organizations and peasant families, will integrate agro-ecology policies in the management of watersheds and effluents; and
- Farmers and communities have the right to protect and defend their water sources from the effects of mega development projects undertaken by either the government or multinational corporations.

2. Right to land

- Recognition of the legitimacy and legality of land tenure based on the traditional and cultural work of peasant families in the conservation of local biodiversity;
- Right to family, collective and communal ownership of land;
- Abolition of the classification of "idle land" in the case of forestry and wildlife areas being protected by farmers; and
- Right to establish an agro-ecological legal framework aimed at promoting agro-ecological production units.

3. Right to seeds

- Right of farmers to conserve, save and use traditional seeds;
- Recognition of the cultural importance of seeds to farmers and indigenous peoples;
- Use of fallow land to maintain the embryo of seeds;
- Recognition of the value of peasants' knowledge in conserving and keeping traditional and local seeds;
- Recognition of the contribution of farmers who are located in remote areas towards the conservation and maintenance of local seeds; and
- Sovereignty of peasant and indigenous communities, as expressed by assigning a value to their seeds, through participatory methodologies, and farmer-to-farmer exchanges and research.

4. Right to culture

- Recognition of the intellectual property and traditions of peasants;
- Recognition of the historical resistance of peasants and indigenous peoples against the negative impacts of the agricultural models of the Green Revolution; and
- Recognition of the peasant cultural diversity as a social practice in the conservation and maintenance of biodiversity.

5. Political rights

- Recognition of the agro-food sovereignty of peoples from an agro-ecological perspective;
- Freedom from political or market pressures, and protection for the autonomy and interests of peasant families and communities; and
- Right of peasant and indigenous social movements and their grassroots organizations to supervise and manage agro-biodiversity resources, without outside interference.

6. Farmers' right to market their produce

- Right of farmers to sell their produce directly to consumers;
- Design and application of clear and precise public policies that are grounded on agro-ecology as a strategy for biodiversity conservation and preservation; and
- Right of farmers to receive agricultural insurance from the State.

7. Right to technology

- Right to use and enjoy alternative and appropriate technologies that contribute to the improvement of the quality of life of difficult-to-access communities and with minimum impact on biodiversity; and
- Right to be recognized for research that promotes biodiversity conservation.

8. Right to education

- Right of the peasant family to teach their children how to take care of their animals, water and biodiversity in general;
- Right to community education which imparts knowledge and skills in local biodiversity conservation;
- Use of the peasant "huerta" (family plots) to educate children about local biodiversity; and
- Right to implement programs on rural education, according to the social and environmental realities.

9. Right to social security

- Right of farmers to be included by the State in the Social Security and the Agrarian Pension Systems;
- Right of the rural communities to have public services adjusted to their cultural and environmental realities; and
- Right of the peasant family to be protected against political terrorism, drug trafficking, and organized crime.

Africa

Malawi

Malawi has ratified the Convention on Biodiversity (CBD), the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). These three instruments are the responsibility of different government departments with often diverging interests and priorities. The CBD is implemented by the Environmental Affairs Department (EAD), which has developed the National Strategy on Sustainable Development (2004), the Biodiversity Strategy and Action Plan (2006), the National Environmental Policy (revised 2004) and the Environmental Management Act, 1996 (under revision). These address biodiversity and agro-biodiversity in general and specifically call for protection of farmers' rights.

The Ministry of Agriculture implements the ITPGRFA and is therefore responsible for farmers' rights issues. There is no legislation dealing with either plant breeders' rights or farmers' rights. A Plant Breeders' Rights Bill remains in draft form and has been for five years or so. With technical and financial support from the Centre for Environmental Policy and Advocacy (CEPA), the Department of Agriculture Research Services (DARS) undertook a review of the draft bill and a stakeholder consultation which resulted in the incorporation of farmers' rights. A new draft was developed, entitled Plant Variety Protection (PVP) Bill, 2006. However after internal consultations within the Ministry of Agriculture, the DARS removed the farmers' rights chapter from the PVP Bill and incorporated it into a revised Environmental Management Act (EMA). This resulted in greater confusion about the implementation of farmers' rights and signaled the level of commitment to farmers' rights within the Ministry of Agriculture. CEPA will continue to lobby the Ministry to ensure that farmers' rights are recognized at the official level. A subsequent stakeholder consultation has however recommended that farmers' rights be brought back into the PVP Bill.

The Ministry of Trade and Industry is responsible for the implementation of the TRIPS Agreement. To date, no significant steps have been taken to revise the intellectual property legislation, such as the Patents Act, the Copyright Act, the Trademarks Act, among others, which are old pieces of legislation mostly enacted during the colonial period. Malawi is however involved in trade negotiations with, among others, the European Union (EU), for the signing of Economic Partnership Agreements. These affect agriculture products and therefore farmers' rights; hence the need for the country to be clear about its policy direction in these discussions.

The most important pieces of legislation that have a bearing on the conservation and utilization of plant genetic resources (PGRs) include the Seed Act, 1988, as amended in 1996; the Plant Protection Act, 1969; and the Patents Act, 1959. The Seed Act provides the regulatory framework for the production, sale, import and export of seeds, as well as standards for seeds germination. The Plant Protection Act, on the other hand, is intended to eradicate plant pests and diseases and to prevent the introduction of such pests and diseases. Both Acts seek to provide a conducive environment for the conservation of PGRs by ensuring that appropriate standards are adopted for the production, sale or

import and export of seeds; that the people responsible for these tasks are competent; and that PGRs are protected against harmful pests and diseases.

Maize plants at Chitedze Research Station outside Lilongwe city, where emphasis is on hybrid and improved varieties

The thrust of the legislation however is to encourage conventional science: hence seed producers and sellers must be registered and comply with certain formalities before they can participate in the seed business. The process therefore leaves out small-scale subsistence farmers that do not have the requisite infrastructure facilities. Further, the small-scale farmers rely on incremental local knowledge passed from generation to generation that can easily be considered as part of the "public domain," and therefore not patentable under the Patents Act. On the other hand, large-scale commercial seed companies have the necessary technology and information to make inventions patentable under current legislation, even though such inventions may have arisen from prior knowledge acquired from local communities. No mechanisms exist to protect local knowledge or indeed recognize its contribution to the conservation and sustainable utilization of biodiversity. Some of these commercial seed companies have benefited from publicly funded research and breeding programs which produced improved maize varieties. The National Seed Company, which used to be wholly owned by the Government, was sold to a commercial company, and with the sale the improved maize varieties, such as MH17, 18 and others, became the property of the company without any benefit accruing to the Government. Since these varieties were not protected under any legislation, it is difficult to trace their original materials and to claim benefits from their continued use.

Zimbabwe

The use of cultivable land in Zimbabwe for commercial agriculture has been a widespread practice in the country even before its independence in 1984. This has resulted in the clearing of large tracts of land for cash crop production and the displacement of small-scale subsistence agriculture in which most of the country's farmers were engaged.

Then as now, agriculture policy and legislation in Zimbabwe promotes the propagation of commercial agriculture. Indigenous values, knowledge and practices, especially farmers' rights, were not reflected in colonial and post-colonial government policies and legal frameworks. The importance of growing traditional food crops received scant attention and farmers who used crops such as millet and sorghum, for example, did not benefit from financial and research services. It is within this context that one must view Zimbabwe's current legislative framework for intellectual property rights (IPRs), especially as it impacts on farmers' rights.

Patents Act (Chapter 26:03)

Two systems govern ownership and access to genetic and biochemical resources: on one hand, unimproved genetic materials (i.e., wild species and traditional variations of crops and plants) are regarded as belonging to no single person or entity. On the other hand, IPR regimes, including patents, plant breeders' rights and trade secrets, establish ownership over new varieties of plants and animals developed by commercial breeders and over chemicals isolated and developed by pharmaceutical firms. There is therefore some controversy about the applicability of property rights to natural biodiversity and to information about its potential use. It is uncertain whether IPRs could be extended to wild genetic and biochemical resources and whether such rights would hurt or help the objective of promoting food security.

Plant Breeders Rights Act

The 2001 amendment (No. 11) to the Plant Breeders' Rights Act (Chapter18:16) allows the smallholder farmer to: (1) retain products of their harvest for replanting; and (2) exchange with any other farmer any prescribed plant which he has grown or reproduced on his land; and any seeds from a plant referred to in number (1).

However, the law still does not provide for a mechanism to ensure that communities that have maintained the varieties over a long period of time could be collectively rewarded. Such a mechanism would necessitate the registration of communities as collective owners of plant varieties.

Seeds Act

The Seeds Act (Chapter19:13) regulates the production of high-quality seed by seed houses for both the domestic and export markets. This is achieved through the registration of sellers of seed and seed testing laboratories; the regulation of seed exports and imports; and the testing, certification and inspection of seeds. Although on the one hand, this law has served the interests of large-scale commercial farming, on the other hand, it has created problems for the smallholder farming sector. It requires the registration of seed growers and inspectors--the attendant fees for which smallholder farmers could not afford. Compulsory certification has, however, been lifted and smallholder farmers can now produce and sell seed of prescribed crops as standard grade seed. The advantages of allowing smallholder farmers to produce such seed are twofold: first, seed prices

are likely to decrease as standard grade seed is cheaper to produce than certified seed. Second, it allows smallholder farmers and other indigenous operators to go into the seed production business. It does not sanction the sale of open-pollinated maize varieties as these do not meet the criteria of distinctiveness, uniformity and stability. However, this requirement was relaxed in 2001 and farmers can now access open-pollinated maize varieties. Seed of such varieties is cheaper and its progeny can be retained for planting in the next season unlike that of hybrids.

A farmer in UMP district, Zimbabwe, showing the list of farmers and hybrid maize varieties grown in the area

National Biotechnology Authority Act

The main argument being put forward by industries engaged in genetic engineering in food and agriculture is that genetically modified organisms (GMOs) would best ensure food security in the 21st century. They argue that GM crops will have a strategic role in promoting sustainable farming by increasing yields and hence reducing the need to expand crop areas into forest and marginal areas as well as reducing the use of herbicides and pesticides. However, these arguments are misleading and false. Considerable pressure is being brought to bear on African governments to allow GM crops into African agriculture. These pressures come mainly in the form of providing GMOs in food aid and privatization of agricultural research and development. During the 2002/2003 food crisis, for instance, Zimbabwe and other countries in the Southern African Development Community (SADC) were inundated with GM maize.

The introduction and use (experimental or commercial) of GMOs in Zimbabwe is regulated by the National Biotechnology Authority of Zimbabwe, which was established through the National Biotechnology Authority Act (Chapter14:31) (No. 3 of 2006).

Thus, Zimbabwe has an explicit policy on biotechnology. The National Biotechnology Authority of Zimbabwe licences laboratories that meet the stringent requirements to import or work on GMOs in the country. They also supervise any work on GMOs that is conducted in Zimbabwe. Experimental work on GMOs to date includes crops such as maize and cotton.

Zimbabwe is also a signatory to the Cartegena Protocol on Biosafety (Biosafety Protocol), which allows countries to apply the precautionary principle and prohibit or severely restrict the import of GMOs into their countries.

However, the Zimbabwe government has not allocated sufficient resources for the National Biotechnology Authority nor to disseminating information on GMOs. Moreover, the provisions of the Cartagena Protocol have yet to be translated into national laws to ensure their implementation. Much of the GM debate is being conducted at the level of policymakers, leaving the public and farmers largely in the dark about GMOs and the risks they pose to human health, biodiversity and society.

Alongside the current unsupportive policy and legal environment in Zimbabwe in regard to farmers' rights, the country has not enacted laws that would promote the participation of farmers in decision-making on issues that affect them.

The farmers have only limited understanding of what their rights are in relation to the plant varieties they grow.

Nevertheless, the Government has made small inroads into the development of a policy and regulatory framework touching on issues related to farmers' rights.

For example, Section 116 of the Environmental Management Act, which governs the **"Conservation of and access to biological resources,"** stipulates that the government *shall take such measures as may be necessary for the conservation of biological diversity and implementation of Zimbabwe's obligation under the United Nations Convention on Biological Diversity adopted in 1992, and in so doing:*

- *(j) protect the indigenous property rights of local communities in respect of biological diversity;*
- *(k) support the integration of traditional knowledge on conservation of biological diversity;*
- *(l) prohibit or restrict access by any person to or the exportation of any component of biological diversity of Zimbabwe."*

The Ministry of Environment and Tourism, which administers the EMA, has formulated regulations to address the abovementioned concerns.

Asia

Lao PDR

Lao PDR signed up to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) in 2006.

The seed regulatory environment in Lao PDR

The Regulatory Division of the Department of Agriculture (DOA) in Lao PDR is in charge of the licensing, registration and certification of seeds in the country and is guided by the **Regulation on the Use of Seed and Other Planting Materials in Agriculture in Lao PDR.** This regulations book makes a distinction between seeds as grains and seeds as planting materials.

The objectives of seed regulation in Lao PDR are as follows:

- To regulate the import/export of seeds and thus ensure that these conform to the standards and laws concerning the sale of seeds and grains (e.g., to ensure the seeds do not carry pests/diseases);
- To control the marketing and use of seeds for scientific/research purposes;
- To certify farmer-producers of seeds; and
- To prevent the use of seeds that are not tolerant to the environment where they are to be planted and grown.

Seed regulation in Lao PDR is credited with the following positive effects:

- Prevention of the entry of seeds from other countries that do not meet the standard requirements for seeds; and
- Provision of facilities for, and training in variety development.

However, the current seed regulation regime also has limitations:

- Because of the "long borders" in Lao PDR, monitoring the entry of seeds into the country is difficult, especially since seeds are accessed by farmers or groups in many different ways and because of weak policing;
- Conflict between the agricultural officers and the customs officers, who allow the entry of seeds without the necessary documentation;
- Inadequate enforcement of laws, thus allowing poor quality seeds to be imported or exported; and
- Absence of a list of certified seeds for extension to farmers, as a result of which farmers cannot be sure that the seeds they are buying have been certified or not.

Latin America

Brazil

Throughout Brazil, there have been many community/farmer experiences that are the basis for the development of local processes associated with the rehabilitation, conservation, exchange and sustainable use of local seed. At least 212 such community experiences have been documented.

These experiments involve different networks of local banks and seed houses. In the state of Paraíba, in the semi-arid northeastern Brazil, 6500 families currently comprise a network of 228 community seed banks, spread out over 61 municipalities. This is an example of a communal structure that guarantees the access of farming families to good quality seed at the right time for planting; eliminates the patronage system in the distribution of seeds; and prioritizes local seeds over improved ones, where the former are more adapted to local conditions.

The spread of networks devoted to community-based seed rehabilitation, multiplication and exchange has resulted in the formation of local systems of information on seed availability, which in turn has activated mechanisms of reciprocity and exchange.

Alongside these networks of seed banks, there are other experiences related to the rehabilitation of local varieties, such as the conduct of biodiversity fairs and festivals held throughout the country and in which farmers exchange their seeds.

The spread of networks devoted to community-based seed rehabilitation, multiplication and exchange has resulted in the formation of local systems of information on seed availability, which in turn has activated mechanisms of reciprocity and exchange. In this context, some organizations of farmers have taken up the challenge of producing registered seeds in an agro-ecological way, such as Bionatur, linked to the Movement of Landless Rural Workers (MST); and Unaic, or Union of Associations of Farmers in the State of Rio Grande do Sul, in the southern part of the country.

The articulation of these experiences both locally and nationally has led to some degree of influence on the formulation of public policies for the sector. An example at the local level was already mentioned in the state of Paraíba, where the government enacted a law to ensure that the Seed State Program is supplied with seeds of local varieties. Until then, these government seed programs had focused on the distribution of improved seeds that were dependent on intensive use of agrochemical inputs.

At the federal level, the Food Acquisition Program, which is operated by the National Supply Company, encourages and supports the marketing of local seeds produced by family farmers. Another example are the Multiplying Centers for the Management of Agrobiodiversity—CIMAS, which are the result of a partnership between the National Institute of Colonization and Agrarian Reform and the Ministry of Environment, which supports the genetic conservation of seeds and livestock in rural settlements.

Cuba

Cuban farmers are represented by the National Association of Small Farmers (ANAP), which was founded on May 17, 1961. ANAP participates in the formulation of policies and strategies related to agrarian and production issues. It collaborates and coordinates with national institutions on technical and productive programs, as well as socio-cultural development programs implemented in rural communities.

Cuban farmers are represented in government through 618 cooperativists and farmer delegates to municipal and provincial assemblies, and 12 cooperativists and farmers that are members of the Cuban Parliament. The national president of ANAP is represented in the Cuban Parliament, while men and women of peasant origin have been elected to the Assembly at the provincial and national levels.

Legislation guaranteeing the right to land

There are national laws that recognize the legal status of Agricultural Production Cooperatives (APC) and Credit and Service Cooperatives (CSC) and their right to ownership of land and other goods acquired through the contribution of their members. This recognition is established in the **Constitution of the Cuban Republic**, which stipulates in articles 19 and 20 that:

> *The State recognizes the right of small farmers to lands that legally belong to them and to all the [necessary] infrastructure…*

Legislation guaranteeing the right to association

The Cuban State has taken upon itself the responsibility to promote the formation of farmers' cooperatives. According to **Law 95 of the Cooperatives** the State is obligated to provide economic and technical assistance through qualified agents to enhance farmers' productivity.

Participation in the formulation of socio-economic development plans

The APC and CSC, as legal entities, and the farmers, as individuals, participate in development planning. They take part in discussion and elaboration of the figures related to cropping, sales, inputs, etc.

The Government of Cuba recognizes the right of small farmers to lands that legally belong to them and to all the necessary infrastructure…

Access to credit

The APC and individual farmers are able to access loans for production and other farm investment through the national bank credit system.

Additionally, the APC and CSC have the right to renegotiate and restructure the payment of their loans and also to apply for special financial schemes to settle the accounts of their indebted members.

The CSC can apply for credit for activities for the common benefit and collective use of its members.

Mechanisms for setting agricultural prices

There are several agricultural products in the country, such as sugar cane, coffee, tobacco, and cattle meat, whose prices are regulated under the "Resolutions and other Legal Norms" approved by the Ministry of Finance and Prices.

Prior to setting the price of agricultural products by the central and provincial government levels, an analysis and consultation among interested parties is carried out, and in that process the producers participate, either through the APC or CSC, or through the ANAP.

Price adjustments for products bound for the State agricultural markets are generally done through the Administration Councils of the Provincial Assemblies of the Popular Power (provincial governments), while for other products, prices are set in "offer and demand" markets.

Guaranteed market

The Cuban State guarantees to both the APC and CSC a market for their members' produce. The latter is sold to schools, hospitals, work centers and other destinations.

Non-contract producers sell their goods in the Agricultural Marketplace, which was formed in 1994.

In Cuba, the work of individual farmers is acknowledged, and farmers may exchange experiences and assist one another in replicating successes on their fields or acquiring patents for their work.

Policies and programs regulating the seed industry

The Cuban State guarantees the supply of seeds for production. More than 50 percent of the seed produced in Cuba comes from the farmers, who deliver part of that amount to the State in order to support the rest of the farmers.

Protection of farmers' Intellectual Property Rights

Cuban cooperatives have created a new forum on Science and Technology, in which the work of individual farmers is acknowledged, and where farmers may exchange experiences and assist one another in replicating successes on their fields or acquiring patents for their work.

The Agroecological Peasant to Peasant workshops are one way by which the experience of farmers from different parts of the country is disseminated.

Legislation to conserve and develop forestry resources

Law No. 85 provides for the creation of the National Forestry Development Fund, whose main goal is to promotion and fund projects and activities dedicated to the conservation and development of forestry resources.

Africa

Malawi

The following factors have been observed to limit the promotion of Farmers' Rights in Malawi:

1. Lack of coherence among Government policies and laws related to agro-biodiversity conservation

Although there are a number of policies, laws and strategies related to agro-biodiversity conservation, they all seem to have been developed in isolation. For instance, the National Biodiversity Action Plan (NBSAP) and the National Environmental Policy (NEP) provide for the development of *sui generis* agro-biodiversity related legislation, including the protection of farmers' rights; yet, there does not appear to be a link between this proposed law and the Plant Breeders' Rights Bill that is being developed.

2. Lack of clear guidelines on access and benefit sharing

Access to genetic resources in Malawi is partially provided for in the EMA and in the Procedures and Guidelines for Access and Collection of Genetic Resources in Malawi (2002) and in the Procedures and Guidelines for the Conduct of Research in Malawi (2002). However, these procedures and guidelines do not indicate the type of benefits to be shared; nor have they been promulgated into rules or regulations under the existing legislation. In addition, most of the local farmers and technocrats that have been consulted do not appear to be aware of the existence of these procedures and guidelines. Furthermore, the implementation of access and benefit sharing regimes is not well developed such that materials are collected without following the proper procedures.

3. Market forces

Market demand for certain varieties has tended to erode specific local varieties.

4. Barriers to farmers entering into seed markets

At the local level, farmers enjoy the right to save, exchange, sell or share seed, although seed exchanges are no longer a common practice. In a few areas across Malawi, farmers have established community seed banks of their own, with support from non-government organizations (NGOs). This has promoted local seed access. However, farmers who want to enter the commercial market are constrained by prohibitive regulations enforced by DARS under the Seed Act, 1988. For seed to enter the official seed market, it must first be certified. Before certification can be granted, seed inspectors need to pay regular visits to the farmers' field. However, where there is no outside support, the farmers have to shoulder the costs of hosting the inspectors. Costs include subsistence allowances, transportation and inspection fees. Most of the local farmers cannot afford to pay for these costs on their own.

5. Loss of habitat

The habitat for most of the indigenous tubers, such as *buye* and orchids, is severely restricted due to clearing of land to open up new gardens and settlements. As such, most of them have become rare. With limited programs on collection and management, most of the indigenous tubers will become extinct; hence farmers will not be able to access propagation materials.

Women selling a local edible tuber

6. Limited awareness and vision

Most of the farmers and institutions providing services related to agro-biodiversity lack a reasonable understanding of farmers' rights and its ultimate goals. Their awareness of the end-results of attaining farmers' rights is vague and their application of its principles is weak. Opinions and perceptions among stakeholders about the capacities of rural communities' abilities in this regard are extremely varied.

There is no institution within the public sector and civil society whose core business is to disseminate information on policies and legislation related to farmers' rights. The Government, despite having ratified the ITPGRFA, appears ambivalent about the implementation of this instrument, especially with regard to farmers' rights.

There are just a few NGOs engaged in work related to farmers' rights. These, however, are not involved in the core farmers' rights activities or in the application of its principles but address farmers' activities more as part of general food security support. Rights-based approaches are only taken on board as add-on issues.

7. Involvement of NGOs and government extension staff in promoting hybrid varieties

Most parts of rural Malawi are covered by NGOs implementing either sustainable livelihood or food security projects. In all these, the emphasis is on hybrid maize seeds provided often for free to participating farming communities with the aim of improving their household food security.

8. Weak coordination of smallholder farmer activities

Two institutions are driving most of the smallholder farmer activities in Malawi. These are the National Smallholder Farmers' Association of Malawi (NASFAM) and the Farmers' Union of Malawi (FUM). However, their coverage in terms of focus and geography is limited. There is little organization among smallholder farmers, rendering them unable to approach issues as a united front. This limits their potential to challenge plant breeders and to participate in the general campaign for recognition of their rights.

Although Malawi's plant breeders have ignored the development of local land races, the development of improved varieties, such as the hybrids, has relied on the strengths existing in local varieties.

9. Inadequate capacity of local level farmers' institutions

Institutions dealing with seed at the local level, such as the Association of Smallholder Seed Marketing Action Group (ASSMAG), lack the capacity to effectively coordinate seed production for smallholder farmers. Many smallholder seed producers complain of delays in getting payment for their seed. Most of the seed farmers interviewed in central Malawi indicated that they had not yet been paid for the seed they supplied both in 2005[3] and 2006. Private seed traders have also taken ASSMAG for a ride by collecting seed and returning it after failing to sell it. Yet, by then most of the seed will have gone bad.

10. Lack of attention to local varieties in agricultural research

Plant breeders in Malawi have focused their research on hybrid varieties, particularly maize. Little work is done on local land races or on local varieties. This has resulted in farmers lacking seed for some of the important local land races, such as

[3] Consultations were held in mid September 2007.

finger millet. However, it is ironic that although plant breeders in the country have ignored the development of local land races, the development of improved varieties, such as the hybrids, has relied on the strengths existing in local varieties. Certain crops, such as finger millet and sorghum, have been ignored in terms of research because of their perceived low economic value. Yet, in most rural areas in Malawi, particularly in the southern region, it is recognized that these crops provide farmers with the much-needed buffer during droughts.

Local finger millet, one of Malawi's neglected food crops

11. Privatization of the seed industry

With the coming in of private companies and other factors, there has been a dramatic shift to hybrid varieties, which are perceived to be highly productive, modern and demand shorter rainfall seasons. This has led to the gradual disappearance of local varieties. However, hybrid varieties demand high levels of chemical fertilizer inputs and a lot of investment in post-harvest chemicals as they are vulnerable to attacks by weevils. In addition, the hybrid seed is also very expensive and most of the local farmers cannot afford to keep paying for it.

Zimbabwe

1. Absence of policy and legislation

Zimbabwe does not have a policy and legal framework dealing with farmers' rights. The development of laws pertaining to farmers' rights has created uncertainties among the breeders. The plant breeders would like to maintain a critical role and are not inclined to support community technology. Thus, they have proceeded cautiously in regard to acknowledging farmers' contribution, which they have little knowledge of or confidence in.

Then too it is important to note that although most of the local farmers and breeders have the technical capability to undertake seed multiplication or breeding of new varieties, they have little knowledge of policies and laws related to agro-biodiversity conservation and protection in general.

Asia

Lao PDR

1. Factors hindering seed conservation and rehabilitation efforts

According to farmer representatives at the **Lao PDR Farmers' Policy and Technical Conference on Plant Genetic Resources** held in October 2007, the right to conserve and rehabilitate seed consists of the ability to: (1) produce grains for consumption, for re-planting, and for selling; (2) share and exchange seeds with other farmers; and (3) conserve crop varieties that have a socio-cultural significance. The right to seed conservation and rehabilitation also entails farmers' secure access to land, agricultural inputs, and irrigation facilities. Farmers should receive the necessary training and technical assistance to facilitate their seed conservation and rehabilitation initiatives. Lastly, farmers require government support, particularly in terms of policies that guarantee their access to land for field trials, or that provide tax exemptions on lands that are being used for such purposes.

However, the farmers' seed conservation and rehabilitation efforts are constrained by their small landholdings; their lack of access to tools, materials, and equipment; the high cost of irrigation and chemical inputs; the lack of government subsidies, or crop insurance, as a hedge against crop failure due to natural causes; difficulties in availing of the tax exemptions on land devoted to field trials; and the inexperience of many government agricultural extension workers. The farmers also expressed their dilemma in selecting which varieties they should focus their efforts on. Traditional varieties have longer grains and have good eating quality, but are prone to lodging (i.e., tend to droop). Meanwhile, improved varieties have a greater resistance to lodging, but do not have good eating quality, and are usually ill-suited to local conditions (e.g., flooding, drought), making them more difficult to manage.

2. Problems with seed production and marketing

The farmer representatives agreed that their right to produce and market their seeds was contingent on the following: (1) the right to exchange seeds with other farmers; (2) the right to organize themselves and to produce seeds collectively; (3) access to resources, such as information relevant to the marketing of their seeds, information on seed registration, training and technical assistance in seed production, and related support facilities; (4) farmers' participation in setting the price of seeds; and (5) marketing support, in the form of infrastructure, particularly, farm-to-market roads; promotion of processed products to encourage farmers to grow particular seed varieties; etc.

Marketing is an especially formidable challenge for Lao farmers because of the lack of infrastructure facilities and the problems with seed certification.

While the farmer representatives acknowledged the importance of exchanging seeds among themselves, they likewise conceded that they have neglected the more urgent task of getting certification for their seeds, so that they could sell these.

Collective seed production is hampered by their limited communal production area; unsuitable breeding conditions; inadequate technical capacity in regard to breeding; the high cost of inputs; and the lack of irrigation and post-harvest facilities.

It is difficult to enforce a uniform price for seeds because farmers belong to various production/trading groups, which set their own prices. This leads to competition among the trading groups, which lower their prices to undercut one another, resulting in depressed prices for everyone.

Marketing is an especially formidable challenge for the farmer representatives. In the first place, the lack of infrastructure facilities raises the overhead costs of farmers, resulting in uncompetitive prices for their seeds. And without the necessary certification, farmers would not be able to market their seeds at a premium price. Farmers are also unable to market their seeds effectively, for instance, through the use of effective packaging, and by participating in trade fairs, etc.

3. Complicated and costly seed registration and certification

According to the farmer representatives, the right to varietal selection and breeding requires patent protection for farmer-developed seeds, and farmer participation in the pricing of seeds. This right also gives the farmer the option to grow (or not) varieties introduced to them, and to stop using such varieties, where these prove to be unsuitable to local farming conditions.

The farmer representatives credited the government for supporting their varietal selection and breeding activities through enabling policies, training programs on breeding techniques, and by organizing farmer-to-farmer exchanges, such as farmers' field schools (FFSs). The government also finances the holding of these activities, provides the venue and budget for breeding trials, supplies varieties that are well-adapted to local conditions, and ensures that its extension workers are sufficiently trained.

However, the farmer representatives said that the process of registering their seeds (as a prerequisite to securing a patent) is too complicated and involves too many stages. Breeding activities also do not always yield the desired varieties, despite years of work. Another issue raised was the requirement imposed by importing

countries of "approval certificates" for the grains, and the lack of farmers' participation (especially of the unorganized ones) in the formulation of pricing policies. The farmer representatives expressed their need for land on which they could conduct joint breeding experiments.

4. Factors that hinder policymakers from promoting and protecting farmers' rights

Policymakers who participated in the **Lao PDR Farmers' Policy and Technical Conference on Plant Genetic Resources** cited the following factors that constrain their capacity to protect and promote farmers' rights:

- Lack of human resources and inter-agency coordination for the implementation of regulations, policies and programs; lack of expertise and specialization, specifically of lawyers in agriculture;
- Need to protect farmers' seeds
  - Protection of traditional varieties of Lao PDR from others without recognizing the sources;
  - No system to determine existing varieties in communities/districts/provinces (database on distribution and diversity of seeds);
- Weak capacity and linkage of extension agents and farmers on techniques and knowledge, e.g., on plant breeding;
- No formal recognition of farmers and researchers who develop new varieties;
- There is nothing in the "regulations" pertaining to support for conservation efforts;
- Lack of awareness and enforcement of regulations.

Philippines

1. Landlessness/lack of land tenure security

The poor performance of the Department of Agrarian Reform (DAR), especially the implementation of its Land Acquisition and Distribution (LAD) operations, is one of the major reasons why the majority of farming households in the Philippines remains landless, or lacks security of tenure. In 10 years of implementing the Comprehensive Agrarian Reform Program (CARP), the DAR has concentrated on redistributing government owned lands, and put off acquiring—compulsorily or otherwise—the large privately held estates, or *haciendas*, which have been the subject of contentious, and often violent, land disputes. Thus, at the expiration of the CARP on June 10, 2008, some 1.1 million hectares of land—mostly privately held—remained safely in the hands of the country's biggest landlords.

Efforts to pass a law extending the CARP for another 10 years, such as the pro-farmer CARP-extension-with-reforms bill (House Bill 4077), briefly made some headway, when pro-farmer members of Congress closed ranks with farmers' organizations in lobbying for its passage. Unfortunately, the bill failed to pass by June 10—the ap-

pointed deadline, being the date of CARP's expiration—and looks likely to be shelved. Meanwhile, pro-landlord legislators have sprung a nasty surprise in the form of HB 3972. This bill contains various anti-social justice provisions that are obviously meant to obstruct the passage of HB 4077 and to block the continued implementation of the agrarian reform program. Masquerading as a pro-farmer bill, HB 3972 promotes agricultural tenancy, which has long been repudiated by past Philippine administrations. The bill also promotes the implementation of Joint Venture Agreements, which would strengthen the control of big landlords over their lands, thus reversing many of the gains achieved in the past 10 years of agrarian reform implementation. The future of CARP is looking rather bleak.

The poor performance of the Philippines' Department of Agrarian Reform is one of the major reasons why the majority of farming households in the Philippines remains landless, or lacks security of tenure.

Besides the failure of the DAR to meet its targets, other factors and trends continue to undermine the farmers' right to land. Among these are the illegal conversion of agricultural lands to non-agricultural uses; the use of farmland as collateral, which is being aggressively promoted by the administration of Gloria Arroyo (i.e., through its support for the Farm as Collateral Bill); gaps and ambiguities in the Comprehensive Agrarian Reform Law (CARL) and in the Indigenous People's Rights Act (IPRA), which have resulted in violent land disputes between agrarian reform beneficiaries (ARBs) and indigenous communities seeking to establish their claims to their ancestral lands.

2. The Philippine Government's promotion of mining operations

The Mining Act of 1995 provides for:

- 100 percent foreign ownership of mining projects;
- 100 percent repatriation of profits, equipment, and investments;
- Foreign companies' claim to an area of up to 81,000 hectares onshore, or 324,000 hectares offshore;
- Complete protection to foreign companies against state expropriation;
- Tax breaks/holidays for foreign companies;
- 25-year-effectivity of mining concessions, with the option to extend such for 25 more years; and
- Priority access by mining companies to water resources within their area.

Even a cursory look at the provisions of this law would set alarm bells ringing among advocates of farmers' rights. Large-scale mining operations have long been infamous for exacting a heavy toll on the environment. Open-pit mining, in particular, results in clear-cutting of large swathes of forests, including watershed areas. The toxic effluents that mining operations routinely disgorge contaminate nearby water bodies and the water supply downstream, rendering the water unsafe for consumption and posing a dangerous health hazard to nearby communities. Mining companies' prior claim to nearby water resources further undermines the communities' water rights. The law's generosity in regard to mining companies' requirements for land leaves little doubt that local people, especially indigenous communities—on whose ancestral lands mining concessions are usually awarded—would be evicted from their homes and from their lands. Thus, at least three farmers' rights are undermined by mining operations: the right to a healthy environment, the right to water, and the right to land.

But one need not speculate on the potential damage that mining operations can inflict. The record shows that large mining companies deplete up to P375 million worth of natural resources every year, while paying only P30 million in taxes. Companies that mine for gold and manufacture cement account for 57 percent of the harm suffered by the environment, yet they make only a paltry contribution (6 percent) to the national income.

"Seed is life, and nourishes many lives. Because seeds support life, no single person or group should claim ownership of them."

3. Lack of appropriate support mechanisms to promote farmer-led initiatives in the use, conservation and development of plant genetic resources; lack of adequate safeguards to protect farmers' right to seeds

Farmer representatives at the **National Forum held in Quezon City** on 4-6 September 2007 articulated their right to seeds, as follows:

> *"[Ang] [b]inhi ay buhay na nagbubuhay sa maraming buhay; at sapagkat buhay, ito ay hindi inaari ng isang particular na tao o iilan sapagkat pagmamay-ari ito ng lahat, at ito ay kailangang gamitin, i-konserba, protektahan, at ipalago lalo na ng mga magsasaka."* ("Seed is life, and nourishes many lives. Because seeds support life, no single person or group should claim ownership of them. Seeds should be freely accessed, so that they could be used, conserved, protected, and improved upon, especially by farmers.")

The farmer representatives likewise defined their right to seeds as consisting of the following:

- Access to complete information on activities and results of research;

- Farmer participation in seed policy development;
- Recognition of farmer initiatives/farmer-developed varieties; and
- Secure access to and control of seeds.

These sub-categories of the farmer's right to seeds are guaranteed under Section 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which was adopted by the Philippine Government in 2006.

Nevertheless, the farmer representatives identified a number of issues and challenges that undermine the exercise of their right to seeds, as follows.

- **Lack of farmer participation in decision-making processes relevant to agriculture and/or seed policy development.**

  The farmer representatives observed that the Government adopts and supports programs and technologies that benefit the interests of private corporations rather than those that respond to the needs and conditions of small farmers. This is manifested by the following trends and developments:

  - ***Enactment of Republic Act 9168, or the Philippine Plant Varieties Protection Act (PPVPA).*** The PPVPA, which became law in August 2002, is supposed to encourage the development of new plant varieties by granting plant breeders exclusive rights to produce, reproduce, sell, and market, among other things, their new plant varieties. This law however has come under fire from farmers' groups, indigenous people (IP)'s organizations, NGOs, and a number of scientists, who claim that, due to the expense entailed in securing a PVP certificate, the PPVPA is likely to benefit only the large, moneyed applicants, such as the giant seed companies. Thus, the PPVPA will more than likely consolidate the control of giant seed companies of Philippine agriculture, and in the process, violate farmers' inherent and traditional rights to seeds and to the knowledge associated with the seeds, and pose a threat to biodiversity, sustainable agriculture (SA), and food security.

    The critics also argue that the PPVPA would discourage farmer-breeders from making further improvements on seeds because they would have only a limited pool of freely available varieties to work with.

  - ***Massive promotion of hybrid varieties.*** A farmer representative at the Luzon Consultation reported the experience of 17 farmers who took part in the Government's Hybrid Rice Commercialization Program (HRCP). Joselito "Ka Tolits" Tambalo related that, to induce farmers, like himself, to shift to hybrid seeds, the HRCP gave away inputs free of charge, and a P10,000-per-hectare cash incentive. As it turned out, however, 12 of the 17 HRCP farmers went bankrupt because Philrice rejected their seeds for not meeting the requirements for certification. Meanwhile, the other HRCP farmers, whose seeds were bought by Philrice, eventually withdrew from the program because the subsidies were cut and the hybrid varieties proved to be susceptible to diseases and pest infestation. The hybrid seeds also could not be re-used for the next cropping season.

❖ ***Promotion and commercialization of technologies, such as genetic engineering.*** The farmer representatives, particularly those engaged in organic farming, feared that their crops would be contaminated by genetically modified varieties, and could no longer be marketed as "organic."

Protest rally against genetically modified rice

➲ **Lack of appropriate mechanisms to protect farmers' rights to traditional crop varieties.**

The farmer participants expressed concern that the PPVPA does not provide adequate safeguards against private corporations securing patents on crop varieties that farmers have developed, and against other forms of bio-piracy.

➲ **Lack of recognition and related support for farmers' initiatives and contribution to plant genetic resource (PGR) conservation, development, and use.**

The farmer representatives argued that the lack of recognition and support for farmers' initiatives in regard to PGR conservation, development, and use, stems from the perception that traditional knowledge and methods are inferior to technological solutions. This same lack of appreciation for farmers' input accounts for the absence of programs promoting sustainable agriculture and farmers' conservation initiatives.

➲ **Lack of thorough dissemination of technologies and programs related to seeds.**

The government has failed to allocate sufficient funds and to build capacity in support of farmer extension and information dissemination programs.

4. Women's lack of access to land

The Comprehensive Agrarian Reform Law (CARL) provides that lands distributed under the agrarian reform program should be issued jointly to spouses. In practice, however, the "household head"—which in most, if not all, cases is presumed to be male—makes all the major decisions in regard to the use and disposition of family landholdings. Ironically, a large number of rural households are headed by women, or are financially sustained by women. Formal credit sources, like banks, are reluctant to lend to women without their husband's approval. It is no surprise that the majority of poor rural households are those that are headed by women.

5. Lack of market support for organic products

More broad-scale adoption of sustainable agriculture is hampered by the lack of government support. Agricultural support, in the form of production credit, subsidies, extension services, access to post-harvest facilities, etc., is still contingent on the practice of conventional chemical agriculture.

Another formidable obstacle to getting farmers to farm organically is the difficulty of marketing organic products. In the first place, the domestic market for organic food and other products is not yet developed; it is at best a niche market. Secondly, the process of getting products certified as organic is not only long and tedious, but very costly. Without such certification, organic farmers end up selling their products at the price of conventionally produced items, and not at a premium, which organic products should command. Thirdly, even though there is a thriving export market for organic products, organic farmers are unable to deal with importers directly, nor even to produce the volumes required and to comply consistently with the stringent quality standards of international markets. Again, the problem can be traced to the lack of government support for the organic sector.

6. Expansion of monocropped agricultural plantations, and its impact on the farm ecology and on human health

Monocropped agricultural plantations have a negative impact on the environment and on human health. The banana plantations in Davao City, in Mindanao, for instance, are especially infamous. Firstly, because these plantations were put up in slopey, upland areas, they have resulted in soil erosion and flooding in adjacent low-lying areas. Secondly, as is the practice in all monocropped plantations, those in Davao City require aerial pesticide spraying. Communities living near the banana plantations have reported a number of problems caused by aerial spraying.

The managers of the plantations do not scrupulously restrict their aerial spraying so as not to go beyond the designated buffer zone. However, even if they could strictly limit their spraying, they could not prevent pesticide drift, which has a 3.2 kilometer radius. Pesticide drift poisons the air and nearby water sources, often leading to pesticide-related deaths and health problems among both humans and

livestock. There has been a high incidence of health problems among communities living near the plantations, such as breathing difficulties, nausea, eye irritation, fever, vomiting, cough, asthma, anemia, a general feeling of weakness, and even cancer.

Pesticide drift contaminates organic farms. This affects the marketability of organically grown products, especially where these are subject to quality control and organic certification.

The fungicides applied in the banana plantations have been reported to kill beneficial fungi, which keep pests that attack coconuts (i.e., the rhinoceros beetle) in check. Pesticide drift also causes the premature flowering of coconuts. Both factors have been blamed for the decline in productivity of coconut crops in areas close to the banana plantations.

7. Inadequate access to support services and information that impact on farming

The farmer representatives complained that many of them do not have access to irrigation facilities, and that there is no consistent government program or policy to provide farmers such access. Many of the farmer representatives said that in place of institutional government support, they depend on their congressperson's largesse.

The patronage system—which is arbitrary and highly politicized—determines whether or not farmers or their organizations are able to purchase, put up, or gain access to post-harvest facilities, such as warehouse/storage facilities, mechanical dryers, tractors, etc.; or whether or not a farm-to-market road is constructed in their area.

Production loans are available at formal sources, such as banks, but these come with interest charges that the farmer representatives are hard-put to pay. Banks also require collateral, which few farmers could provide. As a result, farmers are forced to resort to informal credit sources, which charge usurious interest rates.

The farmer-representatives also cited their lack of awareness of the impact on their livelihood of national and international policies on agriculture and trade, such as the reduction of tariffs on agricultural imports, which has led to the inundation of the domestic markets by cheap developed country imports and, consequently, to the decline in prices of local products.

Other policies that have had an impact on local agriculture are the ASEAN free trade agreements, the Japan-Philippines Economic Partnership Agreement (JPEPA), which critics say is one-sided in favor of Japan, etc.

The farmer-representatives claimed that they get much of the information they need from civil society organizations (CSOs).

8. Militarization and human rights abuses

The Kilusang Magbubukid ng Pilipinas (KMP), a left-leaning federation of farmers' groups, has reported that 65 of its farmer leaders and 430 of its members have been killed by the Philippine military since 2001.

Another report has claimed that half of all victims of extra-judicial killings are peasants or fisherfolk associated with organizations or movements advocating access to land and other resources.

Increased militarization has also been observed in areas where mining operations are widely opposed by the affected communities. For instance, a large military contingent has been deployed to secure the mining operations of TVI Mining in Siocon, Zamboanga against local protesters. A number of human rights violations by the military have been reported in this area.

Latin America

Brazil

While the sustainable use of local seeds and the exercise of farmers' rights to the free use of seeds owe largely to the initiatives of civil society, the limits and threats to the free use of seeds come mostly from agribusiness and the State.

The experiences of rural populations show (and studies confirm) that the agribusiness model is the main factor responsible for the concentration of land, violence in the countryside, the rural exodus, urban unemployment, and consequently, for the degradation of biodiversity, soil and water.

The loss of the traditional practices of farmers and local communities in the management, production, use, storage, marketing and exchange of seed has resulted from the creation or modification of regulatory frameworks to serve the commercial interests of private groups and to introduce technologies, such as transgenic seeds. These new legal instruments tend to increase the privatization of genetic resources and their monopolistic exploitation through different mechanisms of industrial protection, such as patents.

The Plant Variety Protection law ensures the right to commercial reproduction and prohibits others from producing seeds and seedlings of protected varieties for commercial purposes. The intellectual protection is not restricted to seeds and seedlings. It also applies in some cases to the products of the harvest obtained from protected seeds.

These result in severe restriction of rights, increased costs, and loss of autonomy of farmers. Concretely, these changes could be implemented if Brazil joins UPOV 1991–Convention of the Union for the Protection of New Varieties of Plants. Among some sectors of the current government and agribusiness, the use of farm-saved seed is regarded as a bad

While the sustainable use of local seeds and the exercise of farmers' rights to the free use of seeds owe largely to the initiatives of civil society, the limits and threats to the free use of seeds come mostly from agribusiness and the State

"cultural habit" which farmers must be weaned from, and replaced by the practice of buying registered seeds.

Discussion is ongoing in the federal government for a draft law on access to genetic resources and benefit sharing. As in other cases already mentioned, this discussion has taken place without the participation of civil society and without consultation with the sectors that will be directly affected.

The technical-scientific approach that guides formal agricultural research and which permeates rural extension and the existing regulations for the financing of agriculture has had a negative impact on agro-biodiversity. The view that knowledge about the management of biodiversity resources is the exclusive domain of researchers and plant breeders discredits the know-how accumulated by farmers, and leads to increasing specialization of production and the progressive disappearance of local varieties and breeds.

The support given to the release of transgenic seeds by the current Brazilian government is a major threat to biodiversity resources and farmers' rights. Apart from exposure to the risks of transgenics, many of them still unknown, genetic contamination can result in the loss of varieties and exposes the farmer to legal penalties for infringement of patents. With the spread of contamination by transgenic seeds and crops, the farmer loses his right to choose what to grow and to devote his/her property to agro-ecologic management. Consumers, on the other end, lose the right to opt for transgenic-free food.

Africa

Malawi

1. Small-scale farmers may gain from favorable government policies that provide for secure land tenure, encourage rural credit under reasonable conditions and maintain accessible extension services

Several land utilization studies have commented on dwindling land sizes and its impact on farming practices. In some cases, small-scale farmers do not have adequate security of tenure to invest time and effort in conservation and innovation of agro-biodiversity. These may affect experimentation with PGRFA. In addition, policies that promote reduction in staffing to reduce Government spending have had negative impacts on maintaining extension services and creating enduring and sustainable partnerships between conventional science and local knowledge. Recent policy initiatives have led to the adoption of fairly supportive instruments, including the National land Policy and the National Environmental Policy. Supporting legislation is at various stages of development. The challenge is how to mobilize largely unorganized farmers to continuously engage Government to ensure that these are adopted and implemented.

2. Local markets should not erect artificial barriers that keep out local products

The Seed Act, for example, has stringent standards on labelling and packaging ostensibly to maintain standards and thus protect farmers, but which ultimately keep small-scale seed producers and sellers from entering the market. The Seed Act, as amended in 1996, however, provides for exceptions in that the Minister can provide for different standards and equipment for different seed testing stations. Nevertheless, it is essential for the legislation to provide for exemptions or modifications specifically for small-scale subsistence farmers that are engaged in the production and marketing of seeds. The draft Malawi Plant Breeders' Rights Bill could provide the framework for this but the thrust of the draft is biased towards commercial breeders. There is therefore a need for specific legislation to cover farmers" rights, including farmers' participation in the seed industry.

3. Government should promote pro-diversity labelling and public education campaigns that attract local consumers to local products.

Of course this does not mean the public should endure substandard products. The Consumer Protection Act clearly provides protection to consumers against substandard products; nevertheless the lack of a clear policy on the promotion of local products and the absence of public awareness initiatives to promote local products stifle local innovation.

Farmers in a millet field belonging to a fellow smallholder farmer. Traditionally, apart from assisting each other to carry out land husbandry practices, they also share and exchange seed.

4. While there is evidence that public breeders work with local farmers to promote seed production and animal breeding, there is no policy to encourage viable partnerships that promote transfer of skills and knowledge or the equitable sharing of benefits

Government should therefore work with local farmers or associations to deal with purely mechanical barriers that prevent diversity from reaching the market. Introducing stringent market regulations in the name of maintaining standards and protecting the public health favors large commercial breeders and seed companies while ignoring the disadvantages that small-scale farmers have to contend with in entering such a market. Recent reports suggest that some unscrupulous seed traders have exploited the system in times of urgency or emergency-buying and have put substandard products on the market with little or no consequences.

5. Policies should encourage cooperative research between farmers and public/private breeders and incentives need to be provided to the private sector to encourage them to invest in local products

Informal cooperation exists between local farmers and public breeders. These may need to be formalized and perhaps extended to the private sector where necessary, and specific incentives provided to ensure that both sides are motivated to pursue common objectives that promote breeding programs. Local farmers are simultaneously breeders, growers and primary consumers; thus, they have a stake in sharing the research products at no cost. But where these are commercialized, it is necessary to reflect the partnership in any commercial gains that may accrue.

This could include the establishment of community seed banks to deal with local land races, open pollinated maize varieties and legumes, since it has been established that the private seed industry is not willing to multiply these types of seeds.

Some of the local land races, e.g., Bambara nuts, stored at the National Gene Bank

6. While in most cases it is difficult to identify the custodians of local knowledge and therefore determine the beneficiaries of research and innovation, there is scope for taking a broader and communitarian approach to local community benefit sharing mechanisms

Not only will this reflect the nature of local knowledge, it will also assist considerably in reducing poverty that, though primarily an individual issue, affects the whole community. There is no policy and legislation to promote this approach in Malawi.

Further, the Patents Act under which innovations can be registered is ill suited for this type of innovation since this law is individually oriented. The definition of a patentable "invention" under the Patents Act suggests that local knowledge can easily be undermined. Indeed the Patents Act is ill suited for the protection of farmers' rights. On the other hand, breeders' rights, which normally follow the UPOV, are also individualistic in nature and have criteria that would not be suitable for farmers' rights.

Both the National Science and Technology Policy, 2002 and the Science and Technology Act, 2003 provide for the development of appropriate technology for agriculture development and for the promotion of patenting and commercialization of research for farmers and industry, but do not go into detail on how farmers' rights can be protected. The draft Malawi Plant Breeders' Rights Bill seems to lean towards conventional intellectual property legislation and to focus on commercial breeders. Malawi therefore requires a *sui generis* policy and legislation framework for the protection of farmers' rights and innovations pertaining to biological resources.

7. Promotion of farmers' rights

There is need to lobby national farmers' organizations such as NASFAM and FUM to include farmers' rights as part of their agenda. This would enable farmers to be united and be capable of challenging researchers or any other stakeholder who might be advancing interests that adversely affect farmers.

Zimbabwe

1. Development of a *sui generis* legislation that would enable the country to comply with international instruments

These instruments include the Convention on Biological Diversity (CBD), World Trade Organisation (WTO) rules; the International Treaty on Plant Genetic Resources for Food and Agriculture (ITGRFA); and the FAO Global Plan of Action for Food and Agriculture (GPA). This proposed law should hold the Government accountable for:

- Implementing the principles and relevant provisions of the CBD;
- Defining access to genetic resources in national legislation;
- Preserving and maintaining the knowledge, innovations and practices of indigenous and local communities as these embody traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application, with the approval and involvement of the holders of such knowledge, innovation and practices;
- Promoting equitable sharing of benefits from the utilization of such knowledge, innovation and practice;
- Preventing the loss of biological diversity as a result of unauthorized collection and exploitation;
- Creating a legal, administrative and policy environment to facilitate and empower communities to play vital roles in generating and enhancing biological diversity and related knowledge, intellectual practice and culture;
- Protecting resources in recognition of a global tendency towards the affirmation of intellectual property rights over biological diversity, the products and processes related to it; and
- Regulating research, collection, exploitation and use of genetic resources as well as related intellectual knowledge and cultural expressions, including the entry of such resources into the country.

Asia

Lao PDR

Farmer participants at the **Lao PDR Farmers' Policy and Technical Conference on Plant Genetic Resources** proposed the following recommendations to government as well as proposed actions by farmers in regard to three dimensions of the farmers' right to seeds, as follows:

1. Right to seed conservation and rehabilitation

Recommendations to government:

- Continue to provide improved and local varieties/plant genetic materials (PGRs) to sustain farmers' breeding work;
- Stabilize the price of grains to guarantee a fair price for agricultural products;
- Provide land for seed conservation and varietal rehabilitation;
- Implement incentive schemes, such as tax breaks for farmers engaged in seed conservation and development;
- Refurbish existing irrigation facilities, and maintain these in good working condition;
- Establish genebanks in which farmers' seeds could be stored for the long-term;
- 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;
- Provide access to credit on easy terms to farmers; and
- Support the rehabilitation of communities affected by natural disasters.

Proposed local/farmer action:

- Continue varietal selection and breeding of traditional and improved varieties, as well as seed conservation and rehabilitation, even after the CBDC–BUCAP ends;
- Sustain networking among farmers to exchange planting materials and information;
- Continue to develop varieties that could be stored in government established genebanks; and
- Provide labor as counterpart for the maintenance of irrigation facilities.

2. Right to varietal selection and breeding

Recommendations to government:

- Simplify the seed registration process;
- Give farmer-breeders credit for their work by naming the seeds after their developers;
- Hold yearly contests to recognize the work of the best-performing farmer-breeders;
- Facilitate the participation of farmers and farmers' groups in setting prices and developing regulatory measures; and

- 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.

Proposed local/farmer action:

- Lobby the government for a more simplified seed registration process; and
- Organize a savings group, using the CBDC–BUCAP funds as initial capital.

3. Right to seed production and marketing

Recommendations to government:

- 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;
- 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
- Reward the exemplary work of farmer-breeders by issuing certificates of recognition.

Proposed local/farmer action:

- Set up demonstration farms/plots for the benefit of other farmers;
- Organize a savings group to assist farmers in funding their seed production needs; and
- Set up a seed buying/collection station in different areas.

Policymakers likewise proposed recommendations to the Lao Government to first build its human resource capacity to make its interventions and assistance relevant to the seed conservation work of farmers. They cited at least two major agenda which would require capacity-building. The first is re-orienting of the extension officers on farmer-centered extension methodologies like the FFS while building up their technical skills and knowledge related to the different aspects of seed conservation work—from the technical aspects of seed conservation to production and marketing. The second agenda is the need to develop or recruit people with specialized seed management skills and experience and who at the same time have the required coordination skills to get the different sectors to work together toward common goals in seed conservation work and FRs and for the monitoring of the implementation and enforcement of related regulations/policies.

The following lists the specific support that the Policymakers Group believe should be provided to Lao PDR farmers and the support that they (policymakers) would need to broaden their understanding and appreciation of seed conservation work so that they can accordingly input these into their policy work.

Recommended Areas for Support	Support Needed by Policymakers
Government should provide support to farmers' work through the following: ➢ Institutionalization of policy/programs on strengthening farmer breeding and Farmers Field Schools (FFSs)-support to be given to both farmers and agriculturists; ➢ Strengthening seed conservation and seed dispersal programs in each village (e.g., seed stocks); ➢ Extension agents should provide training to farmers on seed production, marketing, organic farming, seed conservation and development, among others; ➢ In marketing, government should hire someone with expertise in marketing and who could organize and guide marketing committees; ➢ Organizing and institutionalizing seed exhibits and festivals at the community/provincial/national levels to highlight farmers' extensive work on seed conservation and development; ➢ Providing support and assistance in setting up and organizing farmers' committees and groups for seed production, marketing, organic farming, conservation and seed development; ➢ Exploring policies that provide assistance in the conservation work of farmers in the field, and the protection of traditional varieties and farmers' seeds.	To formulate policies to support farmers' work, policymakers identified the following as the support they need to fulfill their role: ➢ Seed distribution and seed diversity maps/database available in communities/districts and provinces as a benchmark tool for further work on conservation and development of farmers' varieties; ➢ Capacity-building activities through exchange of experiences; ➢ Capacity-building support for policymakers, government staff, and members of committees on issues on conservation ad sustainable use of seeds; ➢ Continuation of programs like BUCAP that aim for the conservation and sustainable use of farmers' seeds; ➢ For BUCAP to cover not only four Lao PDR provinces but all the other provinces as part of local capacity-building.

Philippines

Farmer participants at the **National Forum on Farmers' Rights** held in September 2007 identified the plan of action for farmers to promote each of the components in the bundle of rights that make up farmers' rights, as follows:

1. Access to complete information on activities and results of research

- ❖ Ensure that information reaches the grassroots level;
- ❖ Conduct on-farm research in as many places as possible;

2. Farmer participation in seed policy development

- ❖ Organized farmer groups, to work towards publicizing the issues;

3. Recognition of farmer initiatives/farmer-developed varieties

- ❖ Continue dialogue, negotiations and linkaging with government;
- ❖ Continue to practice sustainable agriculture (SA) including crop varietal improvement/farm trials;

4. Secure access to and control of seeds
   - ❖ Undertake campaigns against HYVs/GMOs;
   - ❖ Continue breeding/research efforts;
   - ❖ Engage LGUs to formulate a Sustainable Agriculture Code and organize fairs;

5. Right to land
   - ❖ Initiate legal action/petitions to rescind onerous land contracts;
   - ❖ Organize farmers to advocate for land tenure improvement;
   - ❖ Sustain networking/linkaging;
   - ❖ Provide education and training for farmers;

6. Right to water
   - ❖ Conduct dialogue between parties engaged in water rights disputes;
   - ❖ Initiate legal action against the conversion of farmlands to fishponds;
   - ❖ Lobby with local governments for the provision of irrigation facilities;
   - ❖ Initiate investigation into defective dam construction and diversion of funds;

7. Rights of women farmers
   - ❖ Involve women in negotiations, legal actions and dialogues;
   - ❖ Provide capacity-building for women's empowerment;

8. Right to market organic products
   - ❖ Organize organic producers;
   - ❖ Promote crop diversification;
   - ❖ Engage in the production of inputs for organic agriculture;
   - ❖ Link up with national and international markets;
   - ❖ Conduct training, seminars, exposure activities for farmers;
   - ❖ Build public and consumer awareness on organic products.;

9. Right to appropriate technology
   - ❖ Conduct training/awareness-raising on technologies like hybrid rice and GMOs through civil society organizations;
   - ❖ Use traditional varieties and develop other varieties through cross-breeding;

10. Right to participate in governance
    - ❖ Lobby for increased sectoral representation in local government units (LGUs);

11. Protection of human rights
    - ❖ Conduct dialogues, signature campaigns to publicize human rights violations;

- ❖ Lobby for Human Rights-related laws;
- ❖ Build and strengthen farmers' alliances at the national and international levels.

The farmer representatives drew up a **"Legislative Wish List,"** or proposed legislative action to promote the meaningful implementation of their bundle of rights. SEARICE committed to take the lead in advocacy and lobbying activities at the national level.

➲ **Right to seeds:**

- ❖ ***Repeal of PVP Act 9168 and enact laws that recognize farmers' right to seeds and traditional knowledge in seed resources conservation and development.*** Part of the lobby work here would be for the expansion of the Farmers' Rights Bill to include all the other rights identified in the 2007 National Forum and not to just limit it to Farmers' Right to Seeds.

➲ **Right to land:**

- ❖ ***Repeal of RA 6657 (CARL) and enact a genuine agrarian and fishery /aquatic reform law that addresses the loopholes of RA 6657.*** In terms of local action, this would include lobbying for the local legislative bodies to pass resolutions calling for Congress to repeal CARL and to address the inconsistencies in CARL and related agrarian reform laws. Areas to look into would be: ensuring that the "land to the tiller" principle is observed; abolition of monopoly landownership; distribution of land to legitimate tillers; and prioritization of big public lands in land distribution. The group further suggested using the People's Agrarian Reform Code (PARCode) as a working draft in formulating a genuine agrarian and fishery/aquatic reform law.

➲ **Right to water:**

- ❖ ***Repeal of the 1995 Mining Act to prevent the contamination of water and the destruction of watersheds, and thereby ensure access to safe and sufficient water;***
- ❖ ***Investigation into the construction of large but defective dam projects;***
- ❖ ***Support for small water impounding projects (SWIPs) and rehabilitation of watersheds with farmer/community participation.*** Measures must be undertaken to ensure farmers' access to and control of irrigation water; and to call on the Department of Agriculture to support SWIPs and watershed rehabilitation programs with farmer and community participation.

➲ **Rights of women farmers:**

- ❖ ***Passage of a Women Empowerment Code for Rural Women.***

➲ **Right to market organic products:**

- ❖ ***Repeal of DA Administrative Order #8 on entry of GMO products and enact laws banning the entry and use of GMOs in the country;***
- ❖ ***Scrutiny of the DA budget to support Sustainable Agriculture and complement related LGU initiatives.***
- ❖ ***Government subsidy for the certification of organic products of small farmer groups.***

- **Right to appropriate technology:**
  - ***Funding for EO 481 (Organic Agriculture Bill);***
  - ***Development of curriculum on organic agriculture in the DepEd and CHED;***
  - ***Recognition of farmers as farmer-scientists and local experts in sustainable agriculture extension systems.*** Related to these are efforts to ensure that the government allocates funds for these programs/initiatives.

- **Right to a healthy environment:**
  - ***Implementation of the Clean Air Act and the NIPAS;***
  - ***Enactment of laws banning the use of hazardous chemicals and similar substances (persistent organic pollutants, or POPs) in agriculture.***

- **Protection of human rights:**
  - ***Scrutiny of the intelligence fund/budget of the ISAPF;***
  - ***Support for the criminalization of enforced disappearances;***
  - ***Expansion of the FR Bill to cover other farmers' rights.***

Latin America

Brazil

To protect and guarantee farmers' right to seeds, the following measures have been proposed:

1. Strengthen linkages between social movements and organizations to lobby against laws that deny farmers the right to produce, exchange and market their seeds;
2. Create mechanisms to prevent the appropriation and misuse of local varieties by researchers and/or companies;
3. Formulate a National Program on Agro-biodiversity towards encouraging local initiatives that promote the free and autonomous use of biodiversity, for example, through the purchase and distribution of local seeds produced by farmers;
4. Encourage participatory research for the development of production systems using different local seeds;
5. Create "biomonitoring networks" to monitor and report on transgenic contamination;
6. Promote linkages among networks of community seed banks and support festivals and fairs for the exchange of local seeds;
7. Participate in ongoing debates on the implications of legislation on seeds and seedlings on family farming; and
8. Expand and intensify ongoing campaigns on farmers' rights issues.

Implementation of Farmers' Rights in Malawi
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We are very much indebted to farmers and officials in Government and non governmental organizations who took time to talk to us, often without appointments. We will continue to interface with them and hope that the preliminary findings in this report will generate debate on the way forward for farmers' rights in Malawi.

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October, 9 2007

Acronyms and Abbreviations

ASSMAG	Association of Smallholder Seed Marketing Action Group
BSAP	Biodiversity Strategy and Action Plan
CBDC	Community Biodiversity Development and Conservation
CBD	Convention on Biological Diversity
CEPA	Centre for Environmental Policy and Advocacy
DARS	Department of Agriculture Research Services
DUS	Distinctiveness, Uniformity and Stability
EAD	Environmental Affairs Department
EMA	Environmental Management Act
FAO	Food and Agriculture Organization of the United Nations
FUM	Farmers' Union of Malawi
GoM	Government of Malawi
IPR	Intellectual Property Rights
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
IUPGRFA	International Undertaking on Plant Genetic Resources for Food and Agriculture
NASFAM	National Smallholder Farmers Association of Malawi
NEP	National Environmental Policy
NGO	Non Governmental Organization
PGRFA	Plant Genetic Resources for Food and Agriculture
PIC	Prior Informed Consent
PVP	Plant Variety Protection
TRIPS	Trade–Related Intellectual Property Rights
UPOV	Union for the Protection of New Varieties of Plants
WTO	World Trade Organization

Introduction

The implementation of farmers' rights continues to pose a major challenge for developing countries in the face of efforts by multinational corporations to promote improved seed varieties. In addition, food insecurity and consumerism have adversely affected the utilization and conservation of traditional varieties, thus putting at risk the sustainability of seed diversity which is essential for adaptation to the distinct cultural, climatic and socio-economic situations of people all over the world.

The rights of farmers to save, exchange, sell, share and re-use seed are essential for reducing farmers" dependence on commercial seed companies. Farmers' rights need to be considered within a broader context by taking into account other important farming factors, such as access to water, land, credit, technology, and markets, and sound environmental management and equitable gender participation. The implementation of farmers" rights in Malawi is constrained because the country lacks a proper policy and legal framework that deals with the participation of farmers in decision-making in issues that affect them. In addition, the understanding and engagement among farmers towards farmers' rights is limited. Furthermore, multinational seed corporations such as Monsanto have the financial and marketing muscle to influence small-scale farmers about the advantages of improved maize varieties. In Malawi, for example, Monsanto has provided free improved seed to Government for distribution to poor farmers. Obviously, farmers will be "hooked" on to these seeds, and will buy them in the next season. On the other hand, this hand of "charity" will make it difficult for Government officials to implement policies, including farmers' rights, which do not promote the interests of Monsanto.

The policy and regulatory framework presents mixed signals. There are progressive draft pieces of legislation on farmers' and plant breeders' rights[1]. Farmers' rights have been incorporated into the draft Environment Management Bill (revised 2006), while plant breeders' rights are provided for in the Draft Malawi Plant Breeders' Rights Bill. Concerns have already been raised that incorporating farmers' rights into environmental legislation that will be implemented by an institution responsible for coordinating environmental management is inappropriate. The general feeling is that the legislation is anchored in the wrong institution and that this would pose a major challenge to enforcement.

The driving force of Malawi's agricultural sector is its rich agrobiodiversity. Maize *(Zea mays)*, sorghum *(Sorghum bicolor)*, rice, and millet *(Pennissetum spp.* and *Eleusine coracana)* are the major cereal crops for Malawi. Originally, Malawi was a country of sorghum and millet but these have been marginalized with the introduction of maize (GoM, 2005). Major leguminous crops grown in Malawi include common beans, cow peas, bambara

[1] Torheim (2005) defines plant breeders' rights as a kind of intellectual property rights protecting plant varieties that fulfil the DUS-criteria; They are the most common type of intellectual property rights to plant genetic resources.

beans, peas, groundnuts and pigeon peas. Cassava *(Manihot esculenta)*, sweet potatoes *(Ipomea batatus)* and Irish potatoes *(Solanum tuberosum)* are among the widely cultivated root/tuber crops. In addition to these there are also many edible tubers, with the most popular ones being *buye (Prectranthus esculentus)* and terrestrial orchids[2].

Most local farmers in Malawi use hybrid varieties, open pollinated varieties and local varieties of seeds for planting in their gardens. Over time, there has been a dramatic shift to hybrids followed by open pollinated varieties and farther away from local land races. This process has gained momentum as a result of food security concerns among small-scale farmers as improved maize varieties are considered high-yielding and better able to cope with shorter rain seasons than traditional varieties. This hybridization is threatening traditional varieties and farmers are loosing their capacity to grow.

Inspired by its participation in the development of legislation related to plant variety protection in Malawi and other international processes, the Centre for Environmental Policy and Advocacy (CEPA) initiated consultations to generate a review of the status of farmers' rights implementation in Malawi. This review was prepared within the context of the Community Biodiversity Development Cooperation (CBDC) network as part of the Malawi Farmers' Report to be presented to the 2nd Governing Body of the ITPGRFA between late October and early November 2007. The strategy involved holding several farmer and stakeholder consultations[3] in selected districts in central and southern Malawi. Interviews were also held with key institutions in the seed Malawi.

International Perspectives on Farmers' Rights

Farmers' rights gained prominence following discussions in the Food and Agriculture Organisation (FAO) which resulted in the adoption of the International Undertaking on Plant Genetic Resources for Food and Agriculture (IUPGRFA) in 1983. That non-binding instrument set the stage for the recognition of the rights of farmers as custodians of plant genetic resources for food and agriculture (PGRFA). It provided the framework for recognizing farmers' rights after decades when these were not acknowledged by developed countries that regarded traditional varieties as part of the common heritage of mankind and thus available to plant breeders to improve on without sharing any benefits to the sources of their materials.

The recognition of farmers' rights will ensure that some formal system of recognizing farmers' breeding efforts is established. Traditional varieties may be new, distinct and useful but may not be uniform as required by plant breeders' rights under the Interna-

[2] Orchid tubers are often processed into a meat substitute called *chikande.*

[3] The list of interviewees can be found on page.

tional Union for the Protection of Plant Varieties (UPOV). Farmers' rights protection will further ensure that genetically diverse traditional varieties are not replaced by genetically uniform modern varieties protected by plant breeders' rights. It will also ensure that plant breeders' rights do not restrict farming practices which include saving, selling, exchanging and using farm saved seeds[4].

Article 8 of the Convention on Biological Diversity (CBD) is supportive of farmers' rights as evidenced by its recognition of the contribution of local communities and indigenous peoples in conserving biodiversity, which includes agro-biodiversity. The CBD however deals with broad aspects of biodiversity conservation, its sustainable utilization and benefit sharing. The TRIPS requirement that all member states must provide patents or some *sui generis* system meant that farmer's rights had to be protected under some system which the CBD did not provide. Yet, neither patents nor the International Union for the Protection of Plant Varieties (UPOV), which some argue is the *sui generis* system for PGPFA, is suited to traditional varieties. The International Treaty for Plant Genetic Resources for Food and Agriculture (ITPGFA) recognizes that farmers' rights are based on historical and continuing farmers' contribution to PGRFA (Article 9.1). It outlines farmers' rights to include protection of traditional knowledge relating to PGRFA; right to participate in national decision-making at the national level on matters related to the conservation and sustainable use of PGRFA.

Although the treaty is ambivalent in regard to farmers' rights to save, exchange and sell farm saved seed (Article 9.3), its preamble declares that the treaty recognizes the right "to save, use, exchange and sell farm saved seed." Finally, the treaty contains several important provisions that are essential for the realization of farmers' rights, such as promotion of diverse farming systems (Article 6.2); participation of farmers in plant breeding (Article 6.2.c); adjusting breeding and seed distribution (Article 6.2.9) especially with regard to seed legislation; benefit sharing (Article 13.3); funding (Article 18.5); and the global plan of action which calls for better understanding and improvement of on-farm conservation, realization of farmers' rights and promotion of equitable sharing of benefits of PGRFA. State Parties however have the discretion on how to realize farmers' rights. This highlights the need for farmers and civil society to lobby their governments to implement farmers' rights.

[4] Torheim, 2005.

Malawi Policy and Legislation on Farmers' Rights

Institutional framework

Malawi has ratified the CBD, TRIPS and ITPGRFA. These three instruments are the responsibility of different government departments with often diverging interests and priorities. The CBD is implemented by the Environmental Affairs Department (EAD), which has developed the National Strategy on Sustainable Development (2004), the Biodiversity Strategy and Action Plan (2006), the National Environmental Policy (revised 2004) and the Environmental Management Act (EMA), 1996 (under revision). These address biodiversity and agro-biodiversity in general and specifically call for protection of farmers' rights.

The Ministry of Agriculture implements the ITPGRFA and is therefore responsible for farmers' rights issues. There is no legislation dealing with either plant breeders' rights or farmers' rights. A Plant Breeders' Rights Bill has been in draft for some five years or so. With technical and financial support from CEPA, the Department of Agriculture Research Services (DARS) undertook a review of the draft bill and a stakeholder consultation which culminated into the incorporation of farmers' rights. A new draft was developed, entitled Plant Variety Protection Bill, 2006. However, after internal consultations within Ministry of Agriculture, DARS removed the farmers' rights chapter from the PVP Bill and incorporated it into a revised EMA. This certainly brought more confusion about the implementation of farmers' rights and signaled the level of commitment to farmers' rights within the Ministry of Agriculture. CEPA will continue to lobby the Ministry to ensure that farmers' rights are recognized at official level. A subsequent stakeholder consultation has however recommended that farmers' rights be brought back into the Plant Variety Protection (PVP) Bill.

The Ministry of Trade and Industry is responsible for the implementation of TRIPS. To date, no significant steps have been undertaken to revise the intellectual property legislation, such as the Patents Act, the Copyright Act, the Trademarks Act, among others, which are old pieces of legislation mostly enacted during the colonial period. Malawi is however involved in trade negotiations with, among others, the European Union which will lead to the signing of Economic Partnership Agreements. These affect agriculture products and therefore farmers' rights; hence the need for the country to be clear about its policy direction in these discussions.

Policy and legislation affecting on-farm conservation of PGRFA in Malawi

The most important pieces of legislation that have a bearing on the conservation and utilization of plant genetic resources include the Seed Act, 1988, as amended in 1996; the Plant Protection Act, 1969; and the Patents Act, 1959. The Seed Act provides the regulatory framework for the production, sale, import and export of seeds as well as

standards for seeds germination. The Plant Protection Act, on the other hand, is intended to eradicate pests and diseases that are destructive to plants and to prevent the introduction of such pests and diseases. Both Acts seek to provide a conducive environment for the conservation of plant genetic resources by ensuring that appropriate standards are set up and that the people responsible for seed production, sale or import and export as well as the need to protect plant genetic resources from harmful pests and diseases have the requisite competence.

The thrust of the legislation however is to encourage conventional science: hence, seed producers and sellers must be registered and comply with certain formalities before they can participate in the seed business. The process therefore leaves out small-scale subsistence farmers that do not have the infrastructure. Further, the small-scale farmers rely on incremental local knowledge passed from generation to generation that can easily be considered as part of the "public domain," and therefore not patentable under the Patents Act. On the other hand, large-scale commercial seed companies have the necessary technology and information to make inventions patentable under current legislation, even though such inventions may have arisen from prior knowledge acquired from local communities. No mechanisms exist to protect local knowledge or indeed recognize its contribution to the conservation and sustainable utilization of biodiversity. Some of these commercial seed companies have benefited from publicly funded research and breeding programs which produced improved maize varieties. In Malawi, the National Seed Company which was wholly owned by Government was sold to a commercial company, and with this sale went the improved maize varieties, such as MH17, 18 and others, without benefit accruing to the Government. Since these varieties were not protected under any legislation, it is difficult to trace their original materials and to claim benefits from the continued use of the materials.

Conceptual Understanding of Farmers' Rights by Farmers

What are farmers' rights?

During the consultations, most of the breeders questioned the need to recognize the rights of farmers. They argued that farmers do not have rights over varieties but that the breeders themselves have rights because they are the ones who developed these varieties. This area will require harmonization because the breeders develop the improved varieties from local land races, which farmers have a right to. Most of the technologies can be traced back to local germ plasm—although researchers still argue that farmers do not have rights to these.

In essence the word **local land race** is used by researchers to negate local or indigenous varieties. This perhaps explains why these researchers or breeders do not obtain Prior Informed Consent (PIC) before they commence breeding programs using local land races

and hybrid varieties. It is a further reflection of the misconception that traditional varieties are a common heritage, and hence no Intellectual Property Rights[5] (IPR) are applicable.

In all districts visited during the consultations, farmers had difficulty defining farmers' rights but one lady farmer[6] came up with this definition which seems generally acceptable: "Farmers need to be freely allowed to plant what they feel will satisfy their needs, without being forced to choose certain varieties." She further illustrated her definition by indicating that currently agricultural extension staff and promotions being run on both state and private radio stations are advising farmers to use hybrid seeds. There is apparently no message related to local land races. Most of the stakeholders, including farmers, and technical and local political leadership, do not understand the importance of agro-biodiversity conservation, in general, and farmers' rights, in particular.

Although it is acknowledged that yields from local maize varieties are low, the case study on page 68 perhaps highlights the possibility of households achieving food security using local maize varieties and how local land races can be protected from extinction as long as farmers are given a say in the matter. Apart from low yields, local maize is supreme over hybrids on a number of factors as outlined in *Box 1 (See page 68)*.

Key Aspects of Farmers' Rights

There are a number of indigenous local varieties which smallholder farmers use in Malawi. These include finger millet, sorghum, *buye*[7], local sweet potatoes, local cassava cultivars and local maize varieties. However, the sustainability of these varieties has recently come under threat. Due to changing climatic patterns; the emphasis of political leadership, research, and the agricultural extension system; and the aggressiveness of private seed producers, a majority of farmers have been persuaded to use local land races less and less. Unless protected, these varieties are likely to become extinct. Farmers' rights can be attained through the following:

1. Recognition of local farmers' efforts

Once legislation on breeders' rights is enacted, hybrid varieties will be protected through the formal IPR system; the breeding work of local farmers will remain informal and in the public domain unless a parallel but equally effective *sui generis* system is established to protect traditional varieties. Breeders benefit from the conservation and protection of agro-biodiversity resources cultivated by local farmers. The hybrid seed for maize was developed from local germplasm. Yet, the farmers

[5] The rights granted by a state authority for certain products of intellectual effort and ingenuity.

[6] This definition was given by Ms Ngwenyama of Manyenje Village, Neno district in southern Malawi.

[7] Has very high protein content.

Box 1

Women Farmers' Perceptions of Local Land Races

Ms. Florence Ngwenyama is a 60-year-old female small-scale farmer based in Neno District in southern Malawi. She only grows the local variety of maize, groundnuts (local and improved varieties), soy beans and cow peas. She uses animal manure from her cattle. She does not apply any chemical fertilizers. She grows local maize variety because when she compares it with hybrid seeds, the local maize has a hard dent, weighs more per unit seed, uses less flour during preparation of nsima and allows for intercropping in the garden.

In addition, she stated that hybrid maize can get attacked by weevils even before it leaves the garden. In her area, many people had harvested a lot of maize during the 2006/2007 farming season but most of them have lost it due to weevils. The area is now infested with different types of weevils which she feels have been brought about by hybrid maize. Hybrid maize matures early and harvests are higher compared to local varieties but the maize easily gets attacked by weevils. Seeds also have to be purchased every planting season. In essence, she feels that hybrid seeds have not necessarily brought food security to the area. She has a garden of about two acres from which she is able to harvest enough for her household throughout the year.

Ms. Ngwenyama has been using local maize variety since she started farming. She got it from her parents. She says that farmers can maintain their local land races by not being easily taken by "zobwera" (meaning seeds which have just been brought into the country).

She stores her seed in a traditional way, by not removing the sheaths and stacking them on a wooden rack. She then puts a fire below and lets it burn for some time. She also makes sure that the maize is adequately dry before harvesting it. She selects her seed material for the next planting season during harvest time and keeps it somewhere safe.

She stated that the media has also played a big role in people shifting to hybrids because there are messages all the time promoting hybrid seeds: that they mature faster and yields are substantial. She does not recall having heard any promotions of local varieties through the radio or agricultural extension personnel. However, she feels that the local variety of maize is superior because the seed companies themselves in their adverts urge farmers to use improved varieties because they are similar than local varieties. This means that the commercial seed producers realize the superiority of local maize varieties.

Source: Farmer consultations conducted in the Neno District, October 2007.

did not receive any compensation because the local varieties were considered upon as common heritage. There is an urgent need to recognize the efforts of local farmers and bridge the value differences between the two.

2. Recognition of local land races as the basis of plant breeding

Breeders do not recognize farmers' local land races and genetic resources as varieties that are distinct and stable. Plant breeders' rights do not fit well into farmers' rights' protection. The characteristics of uniformity, stability, and distinctiveness

negate the rights of farmers who would have sustainably conserved and improved their varieties. There is concern about the effect of uniformity on biological diversity and the inability has to encompass land races and traditional varieties. Replacing the requirement of "uniformity" with "identifiability" would encourage heterogeneity by making it possible to protect populations or land races under a plant variety protection system.

3. Conservation and protection

Pure local varieties for most of the crops are under serious threat of becoming extinct in Malawi. Apart from natural disasters such as droughts and floods, one of the major reasons is the gradual replacement of local varieties with hybrids being aggressively promoted by private seed companies, breeders and the agricultural extension system in the country. There has also been a growing gap between agricultural research and local farmers. Perhaps this has led to the breeders having a negative attitude towards farmers. Because of the lack of institutional attention to local varieties, it has mainly been the local farmers who have been conserving and protecting local varieties.

4. Securing farmers' practices

Since the beginning of agriculture, farmers have sourced seed informally through saving, sharing and exchanging. With modern times have come other, formal ways of acquiring seed, like buying from profit-oriented private traders. This saving and exchanging of seeds is very essential for maintaining pure local varieties and, more importantly, for facilitating farmers' breeding. In some cases, researchers and breeders have worked with farmers in breeding; but this is mainly to enable breeders to access germplasm and related knowledge. The withdrawal of the state from the seed industry has restricted farmers' practices, including the interaction between breeders and farmers since commercial seed companies are only interested in marketing their already developed varieties and very much less about building local capacity in breeding.

Local farmers have been saving local plant genetic resources over the years. Yet these important resources are necessary for research and a number of breeders have used these to develop new varieties. Farmers who contribute to the conservation and protection of plant genetic resources which are eventually used by breeders must receive benefits. However, the challenge is in negotiating for such benefits to ensure fairness. Breeders often argue that they can not identify beneficiaries and entities to transact with since these are community rights. This is not an excuse as there are traditional, community and government organizations which can represent local communities.

Why Farmers' Rights are Not Realized

Several factors limit the promotion and protection of farmers' rights in Malawi. These include:

1. Absence of policy and legislation

Malawi does not have a policy and legal framework dealing with farmers' rights. The formulation of laws pertaining to farmers" rights has created uncertainties among the breeders. The plant breeders would like to maintain a critical role and are not inclined to provide support for community technology through farmers' rights. Thus, they have proceeded cautiously in dealing with the farmers' part, which they have little knowledge of and confidence in.

Then too it is important to note that although most of the local farmers and breeders have the technical capability on seed multiplication or breeding of new varieties, there is little knowledge on policies and legislation related to agro-biodiversity conservation and protection in general.

2. Linkages of Government policy and legal framework

Although there are a number of policies, legislation and strategies related to agro-biodiversity conservation, they all seem to have been developed in isolation. There is little reference to demonstrate linkages with ongoing national processes or commitment which was declared in previous frameworks. For instance, the National Biodiversity Action Plan (NBSAP) and the National Environmental Policy (NEP) make provision for the development of *sui generis* agro-biodiversity related legislation, including the protection of farmers' rights; yet as the Plant Breeders' Rights Bill is being developed, there is little evidence regarding its relationship to NBSAP and NEP.

3. Current management of access and benefit sharing

Access to genetic resources in Malawi is partially provided for in the EMA and in the Procedures and Guidelines for Access and Collection of Genetic Resources in Malawi (2002) and Procedures and Guidelines for the Conduct of Research in Malawi (2002). However, the procedures and guidelines do not indicate the type of benefits to be shared and have not yet been promulgated into rules or regulations under existing legislation. In addition, most of the local farmers and technocrats that had been consulted do not have adequate knowledge regarding the existence of these procedures and guidelines. Furthermore, the implementation of access and benefit sharing regimes is not well developed such that materials are collected without following the requisite procedures.

4. Market forces

Demand for certain varieties on the market has tended to erode specific local varieties. A classic example concerns the red kidney classes of beans which farmers

in southern Malawi cited. Farmers have been motivated to grow the other varieties demanded by the market, thereby undermining their local cultivars.

5. Barriers to farmers entering into seed markets

At local level, farmers enjoy the right to save, exchange, sell, or share seed, although the exchange of seed is no longer a common practice. In a few areas across Malawi, and with support from non-governmental organizations, farmers have established community seed banks of their own. This has promoted local seed access. However, for farmers who want to enter the commercial market, they are constrained by prohibitive regulations enforced by DARS under the Seed Act, 1988. For seed to be taken to the official seed market, it must be certified. Seed inspectors have to ascertain it through regular visits to the farmers' gardens. However, where there is no outside support, the farmers have to shoulder the costs of hosting the inspectors. Costs include subsistence allowances, transport and inspection fees. Most of the local farmers cannot afford to pay for these on their own.

6. Loss of habitat

The habitat for most of the indigenous tubers, such as *buye and orchids,* is severely restricted due to clearing of land to open new gardens and settlements. As such most of them have become rare. With limited programs on collection and management, most of the indigenous tubers will become extinct; hence farmers will not be able to access propagation materials.

7. Limited awareness and vision

Most of the farmers and institutions providing services on agro-biodiversity do not have a reasonable understanding of farmers' rights and its ultimate goals. The awareness and vision of the end results of attaining farmers' rights are vague and the application of its principles is weak.

Among stakeholders, opinions and confidence in rural communities' abilities are extremely varied. There is no institution within the public sector and civil society whose core business is dissemination of policies and legislation related to farmers' rights. The Government, despite having ratified the ITPGRFA, appears ambivalent about the implementation of this instrument, especially with regard to farmers' rights.

There are just a few NGOs engaged in work related to farmers' rights. These, however, are not involved in the core farmers' rights activities or in the application of its principles but address farmers' activities more as a part of general food security support. Rights-based approaches are only taken on board as add-on issues.

8. Involvement of NGOs and Government extension staff in promoting hybrid varieties

Most parts of rural Malawi are covered by NGOs implementing either sustainable livelihood or food security projects. In all these, the emphasis is on hybrid maize seeds provided often for free to participating farming communities with the aim of improving their household food security. This now includes what are taken as traditional crops such as sorghum and millet as was noted in the Lower Shire area where millet and sorghum are some of the staple foods. During the consultations farmers mentioned that there is an NGO which is supporting farmers with hybrid sorghum and finger millet seeds.

9. Weak coordination of smallholder farmer activities

Two institutions are driving most of the smallholder farmer activities in Malawi. These are the National Smallholder Farmers' Association of Malawi (NASFAM) and the Farmers' Union of Malawi (FUM). However, their coverage in terms of focus and geography are limited and require expansion. There is little organization among smallholder farmers, rendering them unable to approach issues as a united front. This limits their potential to challenge plant breeders and to participate in the general campaign for recognition of their rights.

10. Capacity of local level farmers' institutions

Institutions dealing with seed at the local level, such as the Association of Smallholder Seed Marketing Action Group (ASSMAG), have inadequate capacity to effectively coordinate seed production for smallholder farmers. Many smallholder seed producers complain of frustration with delays in getting payment after seed sales. Most of the seed farmers interviewed in central Malawi indicated that they had not yet been paid for the seed they supplied both in 2005[8] and 2006. Private seed traders have also taken ASSMAG for a ride by collecting seed and returning it after failing to sell it, yet by then most of the seed will have gone bad.

11. Emphasis of research

Plant breeders in Malawi have focused their research on hybrid varieties, particularly maize. Little is done on local land races. Local varieties have not received institutional attention. This has resulted in farmers lacking seed for some of the important local land races, such as finger millet. However, it is ironic that although the development of local land races has been neglected, the development of improved varieties such as hybrids has relied on the strengths existing in local varieties. Certain crops, such as finger millet and sorghum, have been ignored in terms of research

[8] Consultations were held in mid-September 2007.

because of their perceived low economic value. Yet, in most rural areas in Malawi, particularly in the southern region, it is recognized that these crops provide farmers with the much needed buffer in times of drought.

12. Privatization of the seed industry

With the coming in of private companies and other factors, there has been a dramatic shift to hybrid varieties as they are perceived to be highly productive, modern and demand shorter rainfall seasons. This has led to the gradual disappearance of local varieties. However, hybrid varieties demand high levels of chemical fertilizer inputs and a lot of investment in post-harvest chemicals as they get easily attacked by weevils. In addition, the hybrid seed is also very expensive and most of the local farmers cannot afford this[9].

Recommendations

Below we outline some policy recommendations to attain farmers' rights in Malawi:

1. Small-scale farmers may gain from favorable government policies that provide for secure land tenure, encourage rural credit under reasonable conditions, and maintain accessible extension services.

Several land utilization studies have commented on dwindling land sizes and their impact on farming practices. In some cases, small-scale farmers do not have adequate security of tenure to invest time and effort in the conservation and innovation of agro-biodiversity. These may affect experimentation with PGRFA. In addition, policies that promote reduction in staffing to reduce Government spending have had negative impacts on maintaining extension services and creating enduring and sustainable partnerships between conventional science and local knowledge. Recent policy initiatives have led to the adoption of fairly supportive instruments, including the National land Policy and the National Environmental Policy. Supporting legislation is at various stages of development. The challenge is how to mobilize largely unorganized farmers to continuously engage Government to ensure these are adopted and implemented.

2. Local markets should not erect artificial barriers that keep out local products.

The Seed Act, for example, has stringent standards on labelling and packaging ostensibly to maintain standards and therefore protect farmers, but which ultimately

[9] This has led to most of the bumper yields only occurring in seasons when subsidized farm inputs have been made available by government.

keep out small-scale seed producers and sellers from entering the market. The Seed Act as amended in 1996, however, provides for exceptions in that the Minister can provide for different standards and equipment for different seed testing stations. Nevertheless, it is essential for the legislation to provide for exemptions or modifications specifically for small-scale subsistence farmers that may be seed producers and sellers. The draft Malawi Plant Breeders' Rights Bill could provide the framework for this but the thrust of the draft is biased towards commercial breeders. There is therefore a need for specific legislation to cover farmers' rights, including their participation in the seed industry.

3. Government should promote pro-diversity labelling and public education campaigns that attract local consumers to local products.

Of course this would not mean the public should endure substandard products. The Consumer Protection Act clearly provides the public protection from substandard products; nevertheless the lack of clear policy on promotion of local products and absence of public awareness initiatives to promote local products stifles local innovation.

4. While there is evidence that public breeders work with local farmers to promote seed production and animal breeding, there is no policy to encourage viable partnerships that promote transfer of skills and knowledge or the equitable sharing of benefits.

Government should therefore work with local farmers or associations to deal with purely mechanical barriers that prevent diversity from reaching the market, thereby providing incentives for local farmers. It is a subsidy in favor of large commercial breeders and seed companies for Government to introduce stringent market regulations in the name of standards and public health while ignoring the disadvantages that small-scale farmers have in entering such a market. Recent reports suggest that some unscrupulous seed traders have exploited the system in times of urgency or emergency buying and have put substandard products on the market with little or no consequences.

5. Policies should encourage cooperative research between farmers and public/private breeders and incentives need to be provided to the private sector to encourage them to invest in local products.

Informal cooperation exists between local farmers and public breeders. These may need to be formalized and perhaps extended to the private sector, where necessary, and specific incentives provided to ensure that both sides are motivated to pursue common objectives that promote breeding programs. Local farmers act simultaneously as breeders, growers and primary consumers; thus, their incentives may partly lie in sharing the research products at no cost to them, but where these

are commercialized it is necessary to reflect the partnership in any commercial gains that may accrue[10].

This could include the establishment of community seed banks to deal with local land races, open pollinated maize varieties and legumes, since it has been established that the private seed industry is not willing to multiply these types of seeds.

6. While in most cases it is difficult to isolate the custodians of local knowledge and therefore determine the beneficiaries of research and innovation, there is scope for taking a broader and communitarian approach to local community benefit-sharing mechanisms.

Not only will this reflect the nature of local knowledge, it will also assist considerably in reducing poverty that, though primarily an individual issue, affects the whole community. There is no policy and legislation to promote this approach in Malawi.

Further, the Patents Act under which innovations can be registered is ill suited for this type of innovation since that is individually oriented. The definition of a patentable "invention" under the Patents Act suggests that local knowledge can easily be undermined. Indeed, the Patents Act is ill suited for the protection of farmers' rights. On the other hand, breeders' rights which normally follow the UPOV are also individualistic in nature and have criteria that would not be suitable for farmers' rights.

Both the National Science and Technology Policy, 2002 and the Science and Technology Act, 2003 provide for the development of appropriate technology for agriculture development and promotion of patenting and commercialization of research for farmers and industry, but do not go into detail on how farmers' rights can be protected. The draft Malawi Plant Breeders' Rights Bill seems to lean towards conventional intellectual property legislation and focuses on commercial breeders. Malawi therefore requires a *sui generis* policy and legislation framework for the protection of farmers' rights and innovations pertaining to biological resources.

7. Promotion of farmers' rights.

There is need to lobby national farmers' organizations, such as NASFAM and FUM, to include farmers' right as part of their agenda. This would enable farmers to be united and be capable of challenging researchers or any other stakeholder who might be advancing interests affecting farmers.

[10] See The Crucible Group (2001).

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List of Interviewees

1. Nathan Phiri, Farmer, Traditional Authority Maganga area, Salima District;
2. Traditional Authority Kwataine, Traditional Leader and Farmer, Ntcheu District;
3. Jean Chiumia (Mrs.), Farmer, Nkhamenya, Kasungu District;
4. Goodwin Philimon Miti, Farmer, Simulemba area, Kasungu District;
5. Damson Chaguma, Farmer, Simulemba area, Kasungu District;
6. George Mangani, Farmer, Simulemba area, Kasungu District;
7. Dr Francis Mkungula, Farmer/Director Bwanje Environmental and Rural Development Organization, Bwanje Area, Ntcheu District;
8. Prince Kapondamgaga, Executive Director, Farmers' Union of Malawi;
9. Dr M. H. P. Banda, Deputy Director, Department of Agricultural Research Services;
10. John Kanthungo, Curator, Gene Bank, Department of Agricultural Research Services;
11. Lawrent Pungulani, Documentation and Information Officer, Gene Bank, Department of Agricultural Research Services;
12. Harvey Charlie, Scientific Officer (Breeding), ICRISAT, Chitedze Agricultural Research Station;
13. Yona Chawanja, Agriculture Coordinator MALEZA, Nkhamenya, Kasungu District;
14. Ms. Florence Ngwenyama, Farmer, Manyenje Village, Neno District
15. Paramount Chief Lundu, Farmer, Traditional Leader, Chikwawa District;
16. Ms. Joyce Malape, Farmer, Fote 1 Village, Chikwawa District; and
17. Ms. Joyce Sikota, Farmer, Fote 1 Village, Chikwawa District.

Status of Farmers' Rights Implementation in Zimbabwe

October 2007

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Contents

Acronyms and Abbreviations

ASSMAG	Association of Smallholder Seed Marketing Action Group
BSAP	Biodiversity Strategy and Action Plan
CBDC	Community Biodiversity Development and Conservation
CBD	Convention on Biological Diversity
CEPA	Centre for Environmental Policy and Advocacy
DARS	Department of Agriculture Research Services
DUS	Distinctiveness, Uniformity and Stability
EAD	Environmental Affairs Department
EMA	Environmental Management Act
FAO	Food and Agriculture Organization of the United Nations
FUM	Farmers' Union of Malawi
GoM	Government of Malawi
IPR	Intellectual Property Rights
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
IUPGRFA	International Undertaking on Plant Genetic Resources for Food and Agriculture
NASFAM	National Smallholder Farmers Association of Malawi
NEP	National Environmental Policy
NGO	Non Governmental Organization
PGRFA	Plant Genetic Resources for Food and Agriculture
PIC	Prior Informed Consent
PVP	Plant Variety Protection
TRIPS	Trade–Related Intellectual Property Rights
UPOV	Union for the Protection of New Varieties of Plants
WTO	World Trade Organization

Introduction

The Food and Agriculture Organisation Conference held in 1989 recognized Farmers' Rights and member countries agreed to make every effort in the conservation of their genetic resources. It was agreed at that meeting that farmers and their communities should share benefits which arise as a result of of the use of their natural resources. Realizing this noble idea of has given rise to many challenges to the developing countries of the world where there are vast quantities of the genetic resources. The genetic resources have continued to to be exploited by multinational corporations and it is these conglomarets which continue to promote improved seed varieties, thus bringing about food insecurity since it affects the utilization and conservation of traditional varieties; which had adopted so well to the climatic conditions of the area where the varieties were grown.

The rights of farmers to save, exchange, sell, share and re-use seed are essential for reducing farmers' dependence on commercial seed companies. Farmers' rights need to be considered within a broader context by taking into account other important farming factors, such as access to water, land, credit, technology, markets, sound environmental management and equitable gender participation. Zimbabwe lacks the proper legislation to implement fully farmers' rights since there is no policy or legal framework that deals with the participation of farmers in decision-making in issues that affect them. Farmers have also limited knowledge and understanding of what their rights are in relation to the plant varieties they grow, and they are not clear on how they should engage the big companies in economic partnership when marketing their crops.

The Government has made however some inroads into coming up with a policy and regulatory framework touching on issues related to farmers' rights.

Farmers' rights have been incorporated into the Environment Management Act (Chapter 20:27).

The Plant Breeders' Rights Act (Chapter 18:16) through Amendment No. 11 of 2001 now recognizes the input of smallholder farmers through the provision which allows small holder farmers to:

(a) retain products of their harvest for replanting;
(b) exchange with any other such farmer:
    (i) any prescribed plant which he has grown or reproduced on his land; and
    (ii) any seeds from a plant referred to in subparagraph (ii).

However, the problem is not solved since there is no mechanism on how communities that have maintained varieties over a long period of time can be rewarded collectively. Maybe it will be necessary to provide for the registration of communities as collective owners of plant varieties protection rights. It should be emphasized that traditional farmers play a greater role in the achievement of food security in the country and incentives and rewards should be awarded to them.

Inspired by the important contribution of our traditional farmers toward food security in our country, we felt it necessary to review our current legislation and highlight the status of farmers' rights implementation in the country. In coming up with this report, we held several farmer and stakeholder consultations in selected districts in the country and interviews were also held with key institutions.

INTERNATIONAL PERSPECTIVES ON FARMERS' RIGHTS

The **Convention on Biological Diversity (CBD)** provides a holistic conservation framework which links biodiversity conservation and development in a stronger and clearer way than most Multilateral Environment Agreements (MEAs). The basic premise of the CBD is that biological resources and their diversity are important for development and should be used sustainably. It also stresses that international cooperation to promote these views is important. The CBD has taken on board issues of:

- the need to include the private sector in taking part in conservation efforts;
- the stewardship of biodiversity; and
- the critical role of indigenous and local communities in the conservation and sustainable use of biological resources.

Some of the CBD's key provisions include:

- The fundamental belief that natural resources can best be conserved at the national level—hence the need for national sovereignty over natural resources and the need for appropriate access legislation.
- A further call for devolving natural resources ownership from the national level to the local level. People at the local level have a closer relationship with natural resources than the State and are in a position to understand better the local ecological dynamics involved in the conservation. This relationship is encapsulated in indigenous knowledge systems (IKS), innovations and practices of indigenous and local communities which must be equated to scientific knowledge, respected and compensated for. This forms the fundamental basis for "equitable benefit sharing" called for in the CBD. It also raises the need for putting local communities at the centre of biodiversity conservation efforts.
- The need for Parties to regulate access and benefit sharing and to protect community rights and indigenous knowledge.
- The need for the private sector to share technological developments with the countries of origin of biodiversity materials they will have accessed and to pay royalties to these countries which will finance conservation efforts.
- In addition, article 10 calls on states to protect customary use of biological resources in accordance with cultural practices that are compatible with the conservation and sustainable use requirements. These provisions, therefore, not only call for the protection of community rights but also that the communities must approve the use of their knowledge and resources.

Each member country is therefore at liberty to enact legislation that protects community rights and indigenous knowledge systems as outline in article 15 that: *"Each contracting party shall take legislative, administrative or policy measures with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources."*

Trade Related Aspects of Intellectual Property Rights (TRIPS)

TRIPS was negotiated during the Uruguay Round of trade talks that took place from 1986–1994 under the auspices of the General Agreement on Trade and Tariffs (GATT). The TRIPS Agreement came into effect with the establishment of the WTO on the 1st of January 1995. The Agreement was framed with the intention of protecting intellectual property on a global scale by means such as patents, copyrights, plant breeders' rights, trademarks and industrial designs. IPRs are defined by the WTO as the rights that are given to persons over creations of mind, such as inventions, works of art and literature and designs. They usually give the creator exclusive rights over the use of his/ her creation for a certain period of time, usually 20 years. In order for a patent to be granted, it must fulfil certain criteria of novelty, innovativeness and usefulness.

The objectives of TRIPS were articulated in its preamble as:

> *"to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade."*

The TRIPS Agreement therefore requires member states to provide patent protection for any "inventions, whether products or processes, in all fields of technology, provided that they are new (novel in the strict sense of the word), involve an inventive step (technically non-obvious) and are capable of industrial application."

Of particular importance is article 27.3(b) of the TRIPS Agreement that requires WTO members to protect plant varieties either through patents; a sui generis regime, such as plant breeders' rights; or through a combination of both. The article states that member countries can make patents available for any invention whether processes in any field of technology without discrimination. There are however, three exceptions:

i. Article 27.2 states that countries may exclude from patentability inventions whose exploitation must be avoided to protect morality. This covers inventions dangerous to human, animal or plant life/health or seriously prejudicial to the environment.
ii. Article 27.3(a) creates a second exception that diagnostic therapeutic and surgical methods for the treatment of human and animals may be excluded from patenting.
iii. Article 27.3(b) creates the third exception that members may exclude "plants and animals other than micro-organisms and essentially biological processes" for the production of plants and animals other than non-biological and micro-biological processes.

It should be noted too that Article 8(j) of TRIPS states that:

> *"members may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance to their socio-economic and technological development provided that such measures are consistent with the provisions of the Agreement."*

Thus any country that determines that protecting communities' knowledge and associated biological material is required to enhance its socio-economic and technological development, may enact specific legislation for that purpose, within or outside the model provided by IPR and within or outside the framework of the TRIPS Agreement. The discontent of developing countries at the 'privatization of biodiversity' was exemplified by the SADC workshop on TRIPS in March 1999 whose summation stated:

> *"The problem with TRIPS is that the only inventions it recognizes are those that meet the criteria of novelty, inventiveness and industrial applicability or usefulness. This system denies property rights to local and indigenous knowledge practice and innovations. TRIPS only recognizes as worthy of protection inventions that conform to the northern definition. Local people end up being exploited and even made poorer by developed countries because their knowledge is accessed freely, then 'treated' in laboratories in the north, and ownership rights claimed through patents. Royalties are then paid to new owners by those who make use of their patented products."*

IPRs therefore provide protection to individual inventors at the expense of the collective rights of communities.

Contradictions between the CBD and the TRIPS Agreement

The TRIPS Agreement is in sharp contrast with the CBD in as far as the protection of indigenous knowledge is concerned. Of importance to this study is the provision on equitable sharing of benefits which is not a prerogative of the TRIPS Agreement, which came into force two years after the coming into force of the CBD. The TRIPS Agreement does not require the establishment of any mechanisms to ensure fair and equitable benefit sharing with states and the holders of the traditional knowledge. The tension between the WTO and the CBD relate to intellectual property and to trade practices that could impact on the conservation of biodiversity. While the CBD calls for the protection and promotion of indigenous knowledge, innovations and practices, TRIPS obligates members to adopt patents or *sui generis* systems for plant varieties. The TRIPS Agreement does not recognize obtaining prior informed consent from the holders of the biological resources before bio-prospecting. Patents are usually granted without examining the origin of the genetic material, existence of prior informed consent on the part of indigenous communities, or whether the patentee is committed to sharing the benefits with the knowledge provider.

In the CBD, intellectual property is explicitly referred to only in the context of technology transfer, which is supposed to be one of the main kinds of benefit that the provider

countries ought to receive. Article 16 on access to and transfer of technology requires Parties to the convention to undertake to provide and/or facilitate access and transfer of technologies to other Parties under fair and most favorable terms. The only technology referred to is biotechnology, but article 16 is concerned with technologies "that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment." Recognizing that technologies are sometimes subject to patents and other IPRs, access to such technologies must be "on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights." Of controversy is Article 16 (5) which requires Parties to cooperate to ensure that patent and other IPRs "are supportive of and do not run counter to" the CBD objectives. This article therefore poses a threat as to how the rights of communities, local farmers and commercial plant breeders are to be balanced.

It is therefore important to protect local seed diversity in the national and community genebanks from the forces of globalization. It is estimated that African farmers depend on seeds cultivated within their own communities for as much as 90 percent of their seed needs. Most of these seed breeders are women, as they produce 70 percent of the food used in the region. They carefully select those seeds that respond to various soil types and growing conditions and that carry particular traits, such as stability, disease resistance, drought tolerance, palatability, and storage quality. In Southern Africa, on-farm seed multiplication and farmer saved seed constitute 95–100 percent of the seed used for sorghum, millet, food legumes, roots and tuber crops. In Zambia, 95 percent of the millet crop is grown from farmers' seed. Even with a commercial crop like maize, small farmers are typically the main suppliers of seed. In Malawi, despite years of effort by the state seed company and private seed companies, hybrid maize covers no more than 30 percent of the smallholder area. Small farmers constitute by far the largest sector of seed breeders in Southern Africa and they have cultivated the abundant diversity that sustains the continent's food security. The above statistics clearly show the importance of local seed varieties to African agriculture.

OAU Model Law

Because of the inapplicability of the TRIPS/UPOV model of intellectual property rights for the African context, the Organization of African Unity (now the African Union) sought to formulate a genuinely African alternative. The OAU Model Law was intended to assist African states in their effort to develop and implement legal instruments capable of satisfying their conflicting obligations under TRIPS and the CBD. The OAU Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources is premised on the rejection of patents on life or the exclusive appropriation of any life form, including derivatives. Its provisions on access to biological resources make it clear that the recipients of biological resources or related knowledge cannot apply for any intellectual property right of exclusionary nature. The model legislation focuses mainly on the definition of the rights of communities, farmers and breeders. Community rights recognized include rights over

their biological resources and the right to collectively benefit from their use, rights to their innovations, practices, knowledge and technology, and the right to collectively benefit from their utilization. In practice, these rights allow communities the right to prohibit access to their resources and knowledge but only in cases where access would be detrimental to the integrity of their natural or cultural heritage. Further, the state is to ensure that at least 50 percent of the benefits derived from the utilization of their resources or knowledge is channelled back to the communities.

The rights of farmers under the OAU Model law are to a certain extent more precisely defined. These include the protection of their traditional knowledge, an equitable share of benefits arising from the usage; the right to participate in decision-making on matters related to the conservation and sustainable use of plant and animal genetic resources; the right to save, use, exchange and sell farm-saved seed or propagating material; and the right to use a commercial breeder's variety to develop other varieties. The breeders' rights defined under the model legislation generally follow the definition given in the UPOV convention and the duration of the rights is modelled after UPOV 1991. One specificity of the plant breeders' rights regime under the model legislation is the rather broad scope of the exemptions granted. Exemptions to the rights of breeders include the right to use a protected variety for purposes other than commerce, the right to sell plant or propagating material as food, the right to sell within the place where the variety is grown and the use of the variety as an initial source of variation for developing another variety. Farmers therefore are awarded the right to sell, use, reuse and exchange seed varieties.

Key provisions of the ITPGRFA

Article 1—Objectives

1.1 The objectives of this Treaty are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.

1.2 These objectives will be attained by closely linking this Treaty to the Food and Agriculture Organization of the United Nations and to the Convention on Biological Diversity.

Article 9—Farmers' Rights

9.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

9.2 The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contract-

ing Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:

(a) Protection of traditional knowledge relevant to plant genetic resources for food and 2agriculture;

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

(c) 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.

9.3 Nothing in this 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 10—Multilateral System of Access and Benefit-sharing

10.1 In their relationships with other States, the Contracting Parties recognize the sovereign rights of States over their own plant genetic resources for food and agriculture, including that the authority to determine access to those resources rests with national governments and is subject to national legislation.

10.2 In the exercise of their sovereign rights, the Contracting Parties agree to establish a multilateral system, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis.

Article 11—Coverage of the Multilateral System

11.1 In furtherance of the objectives of conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use, as stated in Article 1, the Multilateral System shall cover the plant genetic resources for food and agriculture listed in Annex I, established according to criteria of food security and interdependence.

11.2 The Multilateral System, as identified in Article 11.1, shall include all plant genetic resources for food and agriculture listed in Annex I that are under the management and control of the Contracting Parties and in the public domain. With a view to achieving the fullest possible coverage of the Multilateral System, the Contracting Parties invite all other holders of the plant genetic resources for food and agriculture listed in Annex I to include these plant genetic resources for food and agriculture in the Multilateral System.

11.3 Contracting Parties also agree to take appropriate measures to encourage natural and legal persons within their jurisdiction who hold plant genetic resources for food and agriculture listed in Annex I to include such plant genetic resources for food and agriculture in the Multilateral System.

11.4 Within two years of the entry into force of the Treaty, the Governing Body shall assess the progress in including the plant genetic resources for food and agriculture referred to in paragraph 11.3 in the Multilateral System. Following this assess-

ment, the Governing Body shall decide whether access shall continue to be facilitated to those natural and legal persons referred to in paragraph 11.3 that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate.

11.5 The Multilateral System shall also include the plant genetic resources for food and agriculture listed in Annex I and held in the *ex situ* collections of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR), as provided in Article 15.1a, and in other international institutions, in accordance with Article 15.5.

Article 12—Facilitated Access to Plant Genetic Resources for Food and Agriculture within the Multilateral System

12.1 The Contracting Parties agree that facilitated access to plant genetic resources for food and agriculture under the Multilateral System, as defined in Article 11, shall be in accordance with the provisions of this Treaty.

12.2 The Contracting Parties agree to take the necessary legal or other appropriate measures to provide such access to other Contracting Parties through the Multilateral System. To this effect, such access shall also be provided to legal and natural persons under the jurisdiction of any Contracting Party, subject to the provisions of Article 11.4.

12.3 Such access shall be provided in accordance with the conditions below:

(a) Access shall be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses. In the case of multiple-use crops (food and non-food), their importance for food security should be the determinant for their inclusion in the Multilateral System and availability for facilitated access.

(b) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;

(c) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the plant genetic resources for food and agriculture provided;

(d) Recipients shall not claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received from the Multilateral System;

(e) Access to plant genetic resources for food and agriculture under development, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;

(f) Access to plant genetic resources for food and agriculture protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;

(g) Plant genetic resources for food and agriculture accessed under the Multilateral System and conserved shall continue to be made available to the Multilat-

eral System by the recipients of those plant genetic resources for food and agriculture, under the terms of this Treaty; and

(h) Without prejudice to the other provisions under this Article, the Contracting Parties agree that access to plant genetic resources for food and agriculture found in *in situ* conditions will be provided according to national legislation or, in the absence of such legislation, in accordance with such standards as may be set by the Governing Body.

12.4 To this effect, facilitated access, in accordance with Articles 12.2 and 12.3 above, shall be provided pursuant to a standard material transfer agreement (MTA), which shall be adopted by the Governing Body and contain the provisions of Articles 12.3a, d and g, as well as the benefit sharing provisions set forth in Article 13.2 d(ii) and other relevant provisions of this Treaty, and the provision that the recipient of the plant genetic resources for food and agriculture shall require that the conditions of the MTA shall apply to the transfer of plant genetic resources for food and agriculture to another person or entity, as well as to any subsequent transfers of those plant genetic resources for food and agriculture.

12.5 Contracting Parties shall ensure that an opportunity to seek recourse is available, consistent with applicable jurisdictional requirements, under their legal systems, in case of contractual disputes arising under such MTAs, recognizing that obligations arising under such MTAs rest exclusively with the parties to those MTAs.

12.6 In emergency disaster situations, the Contracting Parties agree to provide facilitated access to appropriate plant genetic resources for food and agriculture in the Multilateral System for the purpose of contributing to the re-establishment of agricultural systems, in cooperation with disaster relief co-ordinators.

Article 13—Benefit-sharing in the Multilateral System

13.1 The Contracting Parties recognize that facilitated access to plant genetic resources for food and agriculture which are included in the Multilateral System constitutes itself a major benefit of the Multilateral System and agree that benefits accruing there from shall be shared fairly and equitably in accordance with the provisions of this Article.

13.2 The Contracting Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body:

(a) Exchange of information. The Contracting Parties agree to make available information which shall, *inter alia* , encompass catalogues and inventories, information on technologies, results of technical, scientific and socio-economic research, including characterization, evaluation and utilization, regarding those plant genetic resources for food and agriculture under the Multilateral System. Such information shall be made available, where non-confidential, subject to applicable law and in accordance with national capabilities. Such information shall be made

available to all Contracting Parties to this Treaty through the information system, provided for in Article 17.

(b) Access to and transfer of technology:

(i) The Contracting Parties undertake to provide and/or facilitate access to technologies for the conservation, characterization, evaluation and use of plant genetic resources for food and agriculture which are under the Multilateral System. Recognizing that some technologies can only be transferred through genetic material, the Contracting Parties shall provide and/or facilitate access to such technologies and genetic material which is under the Multilateral System and to improved varieties and genetic material developed through the use of plant genetic resources for food and agriculture under the Multilateral System, in conformity with the provisions of Article 12. Access to these technologies, improved varieties and genetic material shall be provided and/or facilitated, while respecting applicable property rights and access laws, and in accordance with national capabilities.

(ii) Access to and transfer of technology to countries, especially to developing countries and countries with economies in transition, shall be carried out through a set of measures, such as the establishment and maintenance of, and participation in, crop-based thematic groups on utilization of plant genetic resources for food and agriculture, all types of partnership in research and development and in commercial joint ventures relating to the material received, human resource development, and effective access to research facilities.

(iii) Access to and transfer of technology as referred to in (i) and (ii) above, including that protected by intellectual property rights, to developing countries that are Contracting Parties, in particular least developed countries, and countries with economies in transition, shall be provided and/or facilitated under fair and most favourable terms, in particular in the case of technologies for use in conservation as well as technologies for the benefit of farmers in developing countries, especially in least developed countries, and countries with economies in transition, including on concessional and preferential terms where mutually agreed, *inter alia*, through partnerships in research and development under the Multilateral System. Such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights.

(c) Capacity-building. Taking into account the needs of developing countries and countries with economies in transition, as expressed through the priority they accord to building capacity in plant genetic resources for food and agriculture in their plans and programmes, when in place, in respect of those plant genetic resources for food and agriculture covered by the Multilateral System, the Contracting Parties agree to give priority to (i) establishing and/or strengthening programmes for scientific and technical education and training in conservation and sustainable use of plant genetic resources for food and agriculture, (ii) developing and strengthening facilities for conservation and sustainable use of plant genetic resources for food and agriculture, in particular in developing countries, and countries with economies in transition, and (iii) carrying out sci-

entific research preferably, and where possible, in developing countries and countries with economies in transition, in cooperation with institutions of such countries, and developing capacity for such research in fields where they are needed.

(d) Sharing of monetary and other benefits of commercialization

(i) The Contracting Parties agree, under the Multilateral System, to take measures in order to achieve commercial benefit-sharing, through the involvement of the private and public sectors in activities identified under this Article, through partnerships and collaboration, including with the private sector in developing countries and countries with economies in transition, in research and technology development;

(ii) The Contracting Parties agree that the standard Material Transfer Agreement referred to in Article 12.4 shall include a requirement that a recipient who commercializes a product that is a plant genetic resource for food and agriculture and that incorporates material accessed from the Multilateral System, shall pay to the mechanism referred to in Article 19.3f, an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is available without restriction to others for further research and breeding, in which case the recipient who commercializes shall be encouraged to make such payment. The Governing Body shall, at its first meeting, determine the level, form and manner of the payment, in line with commercial practice. The Governing Body may decide to establish different levels of payment for various categories of recipients who commercialize such products; it may also decide on the need to exempt from such payments small farmers in developing countries and in countries with economies intransition. The Governing Body may, from time to time, review the levels of payment with a view to achieving fair and equitable sharing of benefits, and it may also assess, within a period of five years from the entry into force of this Treaty, whether the mandatory payment requirement in the MTA shall apply also in cases where such commercialized products are available without restriction to others for further research and breeding.

13.3 The Contracting Parties agree that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly and indirectly, to farmers in all countries, especially in developing countries, and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.

13.4 The Governing Body shall, at its first meeting, consider relevant policy and criteria for specific assistance under the agreed funding strategy established under Article 18 for the conservation of plant genetic resources for food and agriculture in developing countries, and countries with economies in transition whose contribution to the diversity of plant genetic resources for food and agriculture in the Multilateral System is significant and/or which have special needs.

13.5 The Contracting Parties recognize that the ability to fully implement the Global Plan of Action, in particular of developing countries and countries with economies

in transition, will depend largely upon the effective implementation of this Article and of the funding strategy as provided in Article 18.

13.6 The Contracting Parties shall consider modalities of a strategy of voluntary benefit sharing contributions whereby Food Processing Industries that benefit from plant genetic resources for food and agriculture shall contribute to the Multilateral System.

Supporting components

Article 14—Global Plan of Action

Recognizing that the rolling Global Plan of Action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture is important to this Treaty, Contracting Parties should promote its effective implementation, including through national actions and, as appropriate, international cooperation to provide a coherent framework, *inter alia,* for capacity building, technology transfer and exchange of information, taking into account the provisions of Article 13.

Article 15—Ex Situ Collections of Plant Genetic Resources for Food and Agriculture held by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other International Institutions

15.1 The Contracting Parties recognize the importance to this Treaty of the *ex situ* collections of plant genetic resources for food and agriculture held in trust by the International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research (CGIAR). The Contracting Parties call upon the IARCs to sign agreements with the Governing Body with regard to such *ex situ* collections, in accordance with the following terms and conditions:

(a) Plant genetic resources for food and agriculture listed in Annex I of this Treaty and held by the IARCs shall be made available in accordance with the provisions set out in Part IV of this Treaty.

(b) Plant genetic resources for food and agriculture other than those listed in Annex I of this Treaty and collected before its entry into force that are held by IARCs shall be made available in accordance with the provisions of the MTA currently in use pursuant to agreements between the IARCs and the FAO. This MTA shall be amended by the Governing Body no later than its second regular session, in consultation with the IARCs, in accordance with the relevant provisions of this Treaty, especially Articles 12 and 13, and under the following conditions:

(i) The IARCs shall periodically inform the Governing Body about the MTAs entered into, according to a schedule to be established by the Governing Body;

(ii) The Contracting Parties in whose territory the plant genetic resources for food and agriculture were collected from *in situ* conditions shall be provided with samples of such plant genetic resources for food and agriculture on demand, without any MTA;

(iii) Benefits arising under the above MTA that accrue to the mechanism mentioned in Article 19.3f shall be applied, in particular, to the conservation and sustainable use of the plant genetic resources for food and agriculture in question, particularly in national and regional programmes in developing countries and countries with economies in transition, especially in centres of diversity and the least developed countries; and

(iv) The IARCs shall take appropriate measures, in accordance with their capacity, to maintain effective compliance with the conditions of the MTAs, and shall promptly inform the Governing Body of cases of non-compliance.

(c) IARCs recognize the authority of the Governing Body to provide policy guidance relating to *ex situ* collections held by them and subject to the provisions of this Treaty.

(d) The scientific and technical facilities in which such *ex situ* collections are conserved shall remain under the authority of the IARCs, which undertake to manage and administer these *ex situ* collections in accordance with internationally accepted standards, in particular the Genebank Standards as endorsed by the FAO Commission on Genetic Resources for Food and Agriculture.

(e) Upon request by an IARC, the Secretary shall endeavour to provide appropriate technical support.

(f) The Secretary shall have, at any time, right of access to the facilities, as well as right to inspect all activities performed therein directly related to the conservation and exchange of the material covered by this Article.

(g) If the orderly maintenance of these *ex situ* collections held by IARCs is impeded or threatened by whatever event, including *force majeure,* the Secretary, with the approval of the host country, shall assist in its evacuation or transfer, to the extent possible.

15.2 The Contracting Parties agree to provide facilitated access to plant genetic resources for food and agriculture in Annex I under the Multilateral System to IARCs of the CGIAR that have signed agreements with the Governing Body in accordance with this Treaty. Such Centres shall be included in a list held by the Secretary to be made available to the Contracting Parties on request.

15.3 The material other than that listed in Annex I, which is received and conserved by IARCs after the coming into force of this Treaty, shall be available for access on terms consistent with those mutually agreed between the IARCs that receive the material and the country of origin of such resources or the country that has acquired those resources in accordance with the Convention on Biological Diversity or other applicable law.

15.4 The Contracting Parties are encouraged to provide IARCs that have signed agreements with the Governing Body with access, on mutually agreed terms, to plant genetic resources for food and agriculture not listed in Annex I that are important to the programmes and activities of the IARCs.

15.5 The Governing Body will also seek to establish agreements for the purposes stated in this Article with other relevant international institutions.

Article 16—International Plant Genetic Resources Networks

16.1 Existing cooperation in international plant genetic resources for food and agriculture networks will be encouraged or developed on the basis of existing arrangements and consistent with the terms of this Treaty, so as to achieve as complete coverage as possible of plant genetic resources for food and agriculture.

16.2 The Contracting Parties will encourage, as appropriate, all relevant institutions, including governmental, private, non-governmental, research, breeding and other institutions, to participate in the international networks.

Article 17—The Global Information System on Plant Genetic Resources for Food and Agriculture

17.1 The Contracting Parties shall cooperate to develop and strengthen global information system to facilitate the exchange of information, based on existing information systems, on scientific, technical and environmental matters related to plant genetic resources for food and agriculture, with the expectation that such exchange of information will contribute to the sharing of benefits by making information on plant genetic resources for food and agriculture available to all Contracting Parties. In developing the Global Information System, cooperation will be sought with the Clearing House Mechanism of the Convention on Biological Diversity.

17.2 Based on notification by the Contracting Parties, early warning should be provided about hazards that threaten the efficient maintenance of plant genetic resources for food and agriculture, with a view to safeguarding the material.

17.3 The Contracting Parties shall cooperate with the Commission on Genetic Resources for Food and Agriculture of the FAO in its periodic reassessment of the state of the world's plant genetic resources for food and agriculture in order to facilitate the updating of the rolling Global Plan of Action referred to in Article 14.

ZIMBABWE POLICY AND LEGISLATION ON FARMERS' RIGHTS

The clearing of large tracts of land for cash crop production has been going on in Zimbabwe even before its independence, and has resulted in the displacement of small - scale subsistence agriculture in which most Africans were and continue to be engaged.. The policy then (before independence) was to propagate commercial agriculture, and thus laws were put in place to support the colonial agriculture policy. Africans were alienated from their traditional source of food.

Indigenous values, knowledge and practices, especially farmers' rights, were not reflected in colonial government policies and legal frameworks. No one understood the fact that food security can only be attained if attention is paid to growing traditional food crops. Farmers who used traditional crop varieties, such as millet and sorghum, did not benefit from financial and research services. Thus, the traditional farmer was demotivated. It is

within this context that one has to view our IPR legislative framework on farmers' rights Current IPR laws can be divided into the following categories:

- Copyright;
- Trademarks;
- Trade secrets;
- Industrial designs;
- Geographical indications; and
- Patents.

Copyright protects ideas expressed in a creative and tangible way. Trademarks protect symbols, words and marks used to distinguish goods and services in the market. Geographical indications identify goods as originating from the territory of a member, or region or locality in that territory. No significant steps have been undertaken to revise the intellectual property legislation, such as the Patents Act, the Copyright Act, the Trademarks Act, among others, which are old pieces of legislation mostly enacted during the colonial period. Zimbabwe is however involved in trade negotiations with, among others, the European Union. These affect agriculture products and therefore farmers' rights; hence the need for the country to be clear about its policy direction in these discussions.

Patents Act (Chapter 26:03)

A patent grants to the inventor certain rights which include the right to exclude others from making, using or selling an invention for a given period. A patent holder can sue an infringer of his rights too and he can obtain compensation or recover damages. The knowledge or the work of farmers has led to the discovery of new genes. These farmers who are holders of traditional knowledge have not received just compensation for the use of their knowledge.

Two systems govern ownership and access to genetic and biochemical resources: On one hand, unimproved genetic materials (i.e. wild species and traditional variations of crops and plants) are treated as ownerless. On the other hand, Intellectual Property Rights (IPR) regimes, including patents, plant breeders rights and trade secrets, establish ownership for new varieties of plants and animals developed by commercial breeders and chemicals isolated and developed by pharmaceutical firms. There is therefore controversy on the applicability of property rights to natural biodiversity and to information about its potential use. It is uncertain whether IPRs could be extended to wild genetic and biochemical resources and whether such rights would hurt or help the objectives of increasing food security. It should be emphasized that extending IPRs to wild species would address the balance between the rights of ownership for improved and unimproved genetic resources. IPRs can stimulate domestic innovation and technology acquisition, thus providing an incentive for the sustainable development of the resource within the source country and thus economic benefits may be generated that may be used to support conservation or to compensate the community who owns the biodiversity. Greater benefits can be obtained if the traditional societies are empowered to restrict access and also empowered to have contracts—formal and informal—to ensure just com-

pensation for their knowledge. All individuals who contribute intellectually in the identification and processing of plant varieties should be compensated. Once farmers are in a position to have intellectual property protection, i.e refuse access to knowledge or traditional seed variety, then they are in a position to negotiate an equitable settlement and they may even be in a position to issue collecting permits only after prior informed consent had been obtained from the local communities before any collection has been done.

There is therefore need for national legislation which will regulate:

- User fees for access to genetic or biochemical resources on public or private land; and
- Requirements that collectors negotiate with the local communities, the farmers who are the custodians of the biodiversity collected or who contributed to the discovery of the plant variety.

It should however be highlighted that developing policies and legislation on IPRs as regards farmers rights is a complex issue. The indigenous, traditional local communities view IPR regimes as instruments of dominion and totally incompatible with indigenous cultures. IPRs are regarded as colonialist, racist and usurpatory. Further ecological boundaries are not bound by political boundaries; thus, there is need for harmonized regulations for the SADC region, so that bio-prospectors might not move to other countries which have lax laws or regulations. The current patent law is therefore unsuitable in protecting traditional intellectual contributions to plant varieties; thus it is advocated that an effective *sui generis* system should be developed since there is need to recognize IPRs over genetic resources at the level of traditional farming communities.

Plant Breeders Rights Act (Chapter 18:16)

There are two types of farming systems in Zimbabwe. The commercial farming (A2)—which is a large scale, agricultural production system with an active private plant-breeding sector.

The small scale subsistence farmers (A1)—these are mainly traditional communal farmers who normally grow crops for local consumption.

Under the TRIPS (Trade-Related Intellectual Property Rights) agreement, each state is encouraged to provide for the protection of plant varieties either by patents or by an effective *sui generis* system, or by any combination thereof.

Plant varieties can only be protected if they are:

- distinct from existing, common varieties;
- sufficiently homogenous;
- stable; or
- new.

Plant breeders' rights gives exclusive property rights to a breeder. There has been however controversy over the equitable distribution of benefits arising from the use of plant genetic resources. Controversy surrounds the question of assigning IPRs to those who breed new plant varieties while traditional farmers who have created the plant diversity that lay the basis for modern breeding are not legally recognized. It becomes evident that the right of farmers in developing countries including Zimbabwe should be acknowledged to counter-balance the rights of plant breeders in industrialized countries.

It was found that it was necessary to promote farmers' rights so as to encourage the maintenance and development of varieties through ownership. This means access to a plant variety would be under a farmer's control. However, still the problem is not solved since there is no mechanism on how communities who have maintained varieties over a long period of time can be rewarded collectively. Maybe it will be necessary to provide for the registration of communities as collective owners of plant varieties protection rights.

New legislation should be developed which clearly distinguish between the rights of farmer-cultivators and farmer-conservers. The farmer cultivator rights enables the farmer to save seed for raising crops and enter into a limited exchange or sale in her/his neighborhood. The farmer-conserver shall practice farm conservation and add value in terms of selection. It is important here to highlight that the OAU model has defined farmers' rights as including the following:

- protect their traditional knowledge of plant and animal genetic resources;
- obtain an equitable share of benefits arising from the use of plant and animal genetic resources;
- use new breeders' varieties protected under the law to develop farmers' varieties,; including propagation material obtained from genebanks or plant genetic resource centers; and
- collectively save, use, multiply and process farm saved seed of protected varieties.

The recognition of the input of smallholder farmers led to the amendment of the Plant Breeder' Rights Act (Chapter18:16) (Amendment No. 11 of 2001) and the insertion of the provision which allows the smallholder farmers to:

(a) retain products of their harvest for replanting;

(b) exchange with any other such farmer:

(i) any prescribed plant which he has grown or reproduced on his land; and

(ii) any seeds from a plant referred to in subparagraph (ii).

Seeds Act (Chapter 19:13)

The Seeds Act (Chapter19:13) regulates the production of high quality seed by seed houses for both the domestic and export markets. This is achieved through the registration of sellers of seed and seed testing laboratories; the regulation of seed exports and imports; and the testing, certification and inspection of seed. Although the Act has served the former large scale commercial farming sector well over the years, it led to the fol-

lowing problems for the smallholder farming sector: It required the registration of seed growers and inspectors which smallholder farmers could not afford. Compulsory certification has, however, been lifted and smallholder farmers can now produce and sell seed of prescribed crops as standard grade seed. The advantages of allowing smallholder farmers to produce such seed are twofold: First, seed prices are likely to decrease as standard grade seed is cheaper to produce than certified seed. Second, it allows smallholder farmers and other indigenous operators to go into the seed production business. It did not sanction the sale of open-pollinated maize varieties as they did not meet the criteria of distinctiveness, uniformity and stability. However, this requirement was relaxed in 2001 and farmers can now access open pollinated maize varieties. Seed of such varieties is cheaper and its progeny can be retained for planting in the next season unlike that of hybrids.

National Biotechnology Authority Act (Chapter14:31)

The main argument issued by GM industries to speed up the development and use of genetically modified organisms (GMOs) or genetically modified (GM) crops in food and agriculture is that these will be the best resources for ensuring food security in the 21st century. They argue that GM crops will have a strategic role in promoting sustainable farming by increasing yields and hence reducing the need to expand crop areas into forest and marginal areas as well as reducing the use of herbicides and pesticides. However, these arguments are misleading and false. Considerable pressure is being exerted on African governments to accept the introduction of GM crops into African Agriculture. These pressures come in the form mainly of the provision of GMOs in food aid and privatization of agricultural research and development. During the 2002/2003 food crisis, Zimbabwe and other countries in the SADC were all targeted with GM maize. Zimbabwe banned the import of unmilled GM crops and unsupervised field trials of GM crops. The introduction and use (experimental or commercial) of GMOs in Zimbabwe is controlled by the National Biotechnology Authority of Zimbabwe, which was established through an Act of Parliament, National Biotechnology Authority Act (Chapter14:31) (No.3 of 2006). It falls under a full fledged Ministry of Science and Technology created in 2005. Zimbabwe now has an explicit policy on biotechnology. The National Biotechnology Authority of Zimbabwe licences laboratories that meet the stringent requirements to import or work on GMOs in the country. They also supervise any work on GMOs that is conducted in Zimbabwe. There are currently three competent laboratories that have been licensed to conduct research on GMOs. These are the Tobacco Research Board (Kutsaga Research Station); African Institute of Biomedical Science Technology (AIBST); and Central Veterinary Laboratory (CVL). Three other institutions, namely, the University Zimbabwe, National University of Science and Technology and SIRDC are in the process of registering their laboratories as well. Experimental work that has been conducted to date includes crops such as maize and cotton. Zimbabwe is a party to the Cartegena Protocol on Biosafety (Biosafety Protocol). The protocol is part of the CBD and allows countries that are Parties to the Protocol to apply the precautionary principle and prohibit or severely restrict the import of GMOs into their countries, where they believe scientific uncertainty exists concerning the safety of GMOs in terms of the environment

and human health. The main reasons to be wary of the introduction of GMOs into Agriculture are:

- GM crops will contaminate non-GM Crops;
- GM crops will foster dependency on corporate seed supply;
- GM crops favor industrial agricultural systems and threaten alternative agricultural systems;
- GM crops threaten organic and sustainable farming;
- Stringent and well-capacitated biosafety systems are required to deal with the risks posed by GMOs; and
- GMO crops threaten biodiversity.

Zimbabwe's priority is currently low due to lack of awareness and limited resources and capacity to implement this act. While most of the GM debate is done at the political level, the public and farmers, especially, are still kept in the dark about GMOs and the risks they pose to human health, biodiversity and society. Therefore, public awareness campaigns based on accurate information and an open and honest debate are needed. In addition, decisions on the future of GMOs should be science-based but communicated in simple terms. Zimbabwe's capacity to monitor GMOs needs to be strengthened. There is need to incorporate the provisions of the Cartagena Protocol on Biosafety into national legislation for effective implementation.

Environmental Management Act (Chapter 20:27)

Section 116 of the Environmental Management Act stipulates as follows:

> ***"Conservation of and access to biological resources***
> *The Minister shall take such measures as may be necessary for the conservation of biological diversity and implementation of Zimbabwe's obligation under the United Nations Convention on Biological Diversity adopted in 1992, and may, in so doing:*
> *(j) protect the indigenous property rights of local communities in respect of biological diversity;*
> *(k) support the integration of traditional knowledge on conservation of biological diversity;*
> *(l) prohibit or restrict access by any person to or the exportation of any component of biological diversity of Zimbabwe."*

The Ministry of Environment and Tourism which administers the Environmental Management Act has come up with regulations, which are now awaiting gazetting, which shall address the issues stated above.

CONCEPTUAL UNDERSTANDING OF FARMERS' RIGHTS BY FARMERS

Chiredzi District

Farmers'rights means the following:

a) Access to land: dryland; irrigatable;
b) Opportunities for training: Master farmer trainings; advanced technologies; conservative farming;
c) Access to communication (effective): telephone, media memos and circulars; flow of information from top to bottom;
d) Access to market: Local, district, national and international level;
e) Access to transport network: land and air;
f) Loan facilities;
g) Access to irrigation facilities;
h) Access to power supply;
i) Ownership of seed;
j) Access to participation in decision making at all levels;
k) Right to exchange seed: traditional crop varieties;
l) Right to storage of seed and post-harvest treatment of local varieties; and
m) Legal documents/policy supporting farmers' rights.

Tsholotsholo District

Farmers' rights are considered as rights to use, exchange and sell farm saved seeds. They also include use and protection of traditional knowledge. These are rights to conserve seeds for future use and improve on participatory plant breeding. These also entail participation in decision-making on issues related to the use and conservation of seed materials.

UMP District

Farmers' rights are rights which farmers have and which are supported by legislation. Farmers' rights should involve the whole community, i.e, village assembly; village development committee; ward assembly; ward development committee (E.H.T, AREX, Justice, Police, Registrar General's Office); committee of council; farmers' unions; provincial committee; national committee (cabinet).

Farmers' rights should include the following:

- Access to land;
- Access to inputs and implements;
- Access to draught power;
- Access to water;
- Access to technology to boost productivity;

- Right to choose the correct variety of seed which suits our areas;
- Right to sell our produce;
- Right to access international markets;
- Right to access government loans, subsidies and incentives;
- Right to quality seed/produce e.g., tomatoes;
- Government to chip in with loans from banks for marketing purposes;
- Access to information, through government gazettes, statutory instruments, etc.;
- Right to participate in decision-making- farmers unions, associations; and
- Right to food security.

KEY ASPECTS OF FARMERS' RIGHTS

Interpretation

"Farmers' variety": a botanical variety developed or maintained by farmers which can be differentiated from another of the same kind by one or more characteristics which is/are capable of definition and recognition (identifiable).

Recognition of Farmers' Rights

(1) Farmers' Rights are recognized as stemming from the enormous contributions that local farming communities; especially their women members, of all regions of the world, particularly those in the centers of origin or diversity of crops and other agro-biodiversity, have made in the conservation, development and suitable use of plant and animal genetic resources that constitute the basis of breeding for food and agriculture production; and

(2) For farmers to continue making these achievements, therefore, Farmers' Rights have to be recognized and protected.

Application of law on farmers' varieties

(1) Farmers' varieties and breeds are recognized and shall be protected under the rules of practice as found in, and recognized by, the customary practices and laws of the concerned local farming communities, whether such laws are written or not.

(2) This Act shall apply only in respect of a plant which has its origin in Zimbabwe and which is a new farmers variety in that:

(a) before the date of application it was not available in trade outside a restricted area or at community level;

(b) before the date of application it was not generally known;

(c) it is distinct; and

(d) it is identifiable.

Registrar of Farmers' Rights and other Officers

Subject to the Public Service Act (Chapter 16:04), there shall be:

(1) an officer, to be styled the Registrar of Farmers Rights, who shall exercise such functions as are conferred or imposed on the Registrar by this Act; and

(2) such examiners and other officers as may be necessary for the better carrying out of the provisions of this Act.

Register of Farmers' Rights

(1) The Registrar shall cause to be kept a Register of Farmers Rights in which shall be entered:
  (a) particulars of farmers; rights which are in force and of any licences issued in respect thereof; and
  (b) notice of all matters which are required by or under this Act to be entered in the Register and of such other matters affecting the validity or ownership of farmers' rights as the Registrar thinks fit.

(2) The Register shall be prima facie evidence of any matters entered therein which are required or authorized by or under this Act to be entered therein.

Persons entitled to make application

(1) An application for the grant of farmers' rights in respect of a new farmer's variety may be made by any of the following persons:
  (a) a person or a community who is the breeder or maintainer of the new variety;

An application in terms of subsection (1) may be made by a headman or chief on behalf of the community.

Application for farmers' rights and effective date thereof

(1) An application for the grant of farmers' rights shall be:
  (a) made in the prescribed form; and
  (b) lodged with the Registrar in the prescribed manner.

(2) The effective date of application in terms of this section shall be the date on which the application is received by the Registrar.

(3) The Registrar may require:
  (a) that the plant concerned be shown to him or to a person designated by him; and
  (b) that any additional information or specimens which he considers necessary to determine whether or not the plant concerned constitutes an eligible variety be furnished to him.

Naming of plant concerned

(1) The name of the plant concerned shall be proposed by the person who applies for the grant of farmers' rights.

Refusal of application

The Registrar may refuse an application made if *prima facie* it appears to him that:
(a) the application is not entitled in terms of this Act to make the application; and
(b) the application does not comply with the requirements of this Part.

Grant of farmers' rights

(1) A variety with specific attributes identified by a community shall be granted intellectual protection through a variety certificate issued by the Registrar, unless the application has been refused.

Duty of holder of farmers' rights to maintain reproductive material

(1) An individual or community that holds farmers' rights shall ensure that throughout the period for which the rights are exercisable, he/they are in a position to produce to the Registrar reproductive material which is capable of producing the variety to which the rights relate.

(2) The registration of a variety shall be cancelled when it has been found that characteristics of the plant of the registered variety have become different from the characteristics of the plant at the time of its registration.

Rights of holder of farmers' rights

(1) A holder of farmers' rights shall [during the designated period] have the sole right to sell, reproduce and multiply reproductive material of the plant concerned.

(2) The term of farmers rights shall, subject to the provision of this Act, be fifty years from the date of grant thereof. It shall not be an infringement of the rights conferred by subsection (1) for a farmer:

(a) to use the variety concerned as an initial source of variation for the purpose of creating any other new variety;

(b) to save, use and exchange farm—saved seed/propagating material of farmers varieties; and

(c) use a protected breeder's variety to develop farmers' varieties, including material obtained from genebanks or plant genetic resource centers.

Notwithstanding paragraph (c) the farmer(s) shall not sell farm saved seed/propagating material of a breeders' protected variety in the seed industry on a commercial scale.

Issue of licences

(1) A community that is the holder of farmers' rights may apply to the Registrar for the rights to registered as rights in respect of which licences may be issued. On receipt of an application in terms of subsection (1), the Registrar shall cause to be entered in the Registrar of Farmers' Rights notice that licences in respect of the rights concerned may be issued by the holder and thereafter, if the holder grants to any person a licence to sell, reproduce or multiply reproductive material of the variety concerned, the holder shall within three months of granting such licence, notify the competent authority in writing of the grant of the licence and of any conditions, limitations or restrictions imposed.

(2) In granting any licence, the holder of the farmers' right may impose such conditions, limitations or restrictions as they think fit.

WHY FARMERS' RIGHTS ARE NOT REALIZED

Several factors limit the promotion and protection of farmers' rights in Zimbawe. These include:

Absence of policy and legislation

Zimbabwe does not have a policy and legal framework dealing with farmers' rights. The development of legislation pertaining to farmers' rights together with the plant breeders' rights has created uncertainties among the breeders. The plant breeders would like to maintain a critical role and are not inclined to provide support for community technology through farmers' rights. As such, they have proceeded cautiously in dealing with the work of farmers, which they have little knowledge of and confidence in. Then too it is important to note that although most of the local farmers and breeders have the technical capability for seed multiplication or breeding of new varieties, there is little knowledge on policies and legislation related to agro-biodiversity conservation and protection in general.

RECOMMENDATIONS

The development of a *sui generis* legislation will make us fully compliant with international instruments, such as:

- Convention on Biological Diversity (CBD);
- World Trade Organisation (WTO);
- International Treaty on Plant Genetic Resources for Food and Agriculture (ITGRFA); and
- Global Plan of Action for Food and Agriculture (GPA).

The above international instruments call on nation states to:

- implement the principles and relevant provisions of the CBD;
- provide for access to genetic resources in national legislation;
- respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities, which embody traditional lifestyles relevant to the conservation and sustainable use of biological diversity, and promote their wider application with the approval and involvement of the holders of such knowledge, innovation and practices;
- be committed to equitable sharing of benefits from the utilization of such knowledge, innovation and practice;
- recognize that biological diversity is being reduced by many human activities and if left unprotected can be lost by unauthorized collection and exploitation;
- create a legal, administrative and policy environment to facilitate and empower communities to play vital roles in generating and enhancing biological diversity and related knowledge, intellectual practice and culture;
- protect resources in recognition of the global trend towards the affirmation of intellectual property rights over biological diversity, and over the products and processes related to it;

- regulate research, collection, exploitation and use of genetic resources as well as related intellectual knowledge and cultural expressions, including the entry of such resources into the country.

Article 15 of CBD recognises the sovereign rights of states over their natural resources and their authority to determine access to them subject to national legislation. The rationale of the legislative proposal will also make us fully comply with the provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights article 27 (3b), which calls for the establishment of a *sui generis* system of plant protection.

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Farmers' Rights: Field and Policy Perspectives

Highlights of the Lao PDR Farmers' Policy and Technical Conference on Plant Genetic Resources
Luang Prabang
11–12 October 2007

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CONFERENCE OVERVIEW

Background

The Farmers' Policy and Technical Conference on Plant Genetic Resources held in Luang Prabang last 11–12 October 2007 was the third in a series of Farmers' Technical Conferences (FTCs) conducted in Lao PDR. The Conference was participated in by around 50 farmers and extension agents (around 20 percent of whom were women); 15 officials/staff from the local government units (LGUs) and agencies from four Lao PDR provinces (Champassak, Luang Prabang, Savanakhet and Vientiane); and six male farmers and project staff from the Community Biodiversity Development and Conservation (CBDC) Project in Thailand.

The first two FTCs, held in 2005 in the provinces of Vientianne and Champasak, aimed to provide a venue for the sharing of lessons and experiences from the conduct of Farmers' Field Schools (FFS) and from the farmers' and trainers' technical work on the conservation, development and use of plant genetic resources (PGR–CDU).

Rights of farmers to seeds upheld by the ITPGRFA

- Protection of traditional knowledge linked to seeds
- Right of farmers to equitably participate in sharing benefits from the use of seeds
- Right of farmers to participate in decision-making at the national level on matters related to the conservation and sustainable use of seeds
- Right of farmers to save, use, exchange, and sell farmer-saved seeds

This third FTC, which was organized and facilitated by SEARICE for partner-farmers in the Community Biodiversity Development and Conservation–Biodiversity Use and Conservation in Asia Program (CBDC–BUCAP), differed from the earlier FTCs in that it departed from the usual technical discussions and farmers' sharing on activities related to PGRs to give way to a discussion of farmers' perspectives on their rights to seeds and of how the support systems should function so that, together with farmers, they may ensure the conservation and development of PGRs, and of rice seeds, in particular.

The use of the FTCs as a forum to discuss farmers' rights (FRs) was in line with recent national developments in Lao PDR, including its membership in March 2006 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Article 9 of this Treaty promotes the conservation and sustainable use of plant genetic resources for food and agriculture and upholds the rights of farmers to these plant genetic resources. Article 9 likewise acknowledges the important contribution being made by local and indigenous communities and by farmers everywhere, and enjoins all governments to institute measures to recognize their contributions and to protect their rights.

The Government of Lao PDR has since become interested in developing its *sui generis legislation* in support of farmers' seed systems. However, its present seed regulatory environment needs to be reviewed in light of its potential consequences on the work of

farmers concerning the conservation, development and use of plant genetic resources, especially in their transition from subsistence farming to market-oriented farming.

It was in this context that the 2007 FTC sought to provide a venue where Lao farmers could discuss with field extension agents and government officials how their work on PGR-CDU (i.e., seed production and marketing, participatory plant breeding and plant varietal selection, and conservation efforts) are an expression or concretization of their rights to seeds.

Objectives of the conference

The two-day Conference aimed to provide the opportunity for farmers, policy makers and other key actors in the local seed system to discuss and analyze how farmers' rights to seeds were being implemented in Lao PDR, and thereby contribute to the formulation of practical recommendations.

Specifically, the conference aimed to:

- Enhance the participants' understanding of farmers' rights to seeds as enshrined in the ITPGRFA and how the country's policies and seed regulations support or contradict FRs based on the farmers' understanding of the concept and on farmers' rights are articulated in the treaty;
- Analyze farmers' work on PGR–CDU as expressions and realization of their rights to seeds;
- Identify gaps, issues, challenges and enabling factors in the current status of farmers' rights to seeds in Lao PDR by critically reviewing its existing local and national policies and seed regulations; and
- Propose practical recommendations, including policy support, to fully realize farmers' rights to seeds in Lao PDR.

Conference program

The Conference program had four modules: (i) Setting the context; (ii) Understanding Farmers' Rights and their manifestations; (iii) Issues/gaps and enabling factors for the realization of FRs; and (iv) Recommendations towards the realization of FRs in Lao PDR.

Setting the context for the Conference involved providing input, such as the Conference overview (objectives and general program); presentations on the ITPGRFA; explanation of the international, regional, and national perspectives on FRs.

Understanding Farmers' Rights and their manifestations consisted of sharing of experiences in defining FRs and discussions on how these are manifested in their specific contexts and along pre-identified thematic groupings. The activities in this part of the Conference included farmer field visits; viewing of Conference exhibits; small group discussions; and presentations by Lao farmers on their experiences in the CBDC–BUCAP Program, especially on farmer-led techniques for seed rehabilitation, varietal selection,

breeding, seed characterization, and production of bio-extracts. Additionally, experiences, lessons and recommendations from the CBDC Program in Thailand were also presented by participants from CBDC–Thailand.

For the small group discussions, the farmers and extension agents were pre-assigned, based on their experiences and expertise, to three thematic groupings, i.e., Seed Conservation and Rehabilitation; Varietal Selection and Breeding; and Production and Marketing. The participants from the government and policy-makers comprised the fourth group—the Policy Making group, who reflected not only on their understanding of FRs but also on what they perceived to be their role in supporting FRs. Participants from CBDC-Thailand comprised the fifth group.

The five small groups went into further discussions to identify the **Issues/Gaps and Enabling Factors for the Realization of FRs** based on how the groups defined and understood FRs. From these the groups formulated **Recommendations** to address and strengthen the technical work of farmers and the policy and operational environment that supports the realization of FRs.

Inputs to the workshop sessions

The following are highlights of the various inputs presented during the first day of the Conference. The CBDC–Thailand sharing is presented as a separate chapter of the report.

ITPGRFA

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) was adopted in 2001 by the Food and Agriculture Organisation (FAO) of the United Nations. This international agreement was drawn up so that countries around the world could better manage the different PGRs for food and agriculture, and to promote recognition of the rights of farmers to manage these resources. When 54 countries signed up to the ITPGRFA in 2004, the Agreement became legal and binding. Lao PDR signed up in 2006.

The ITPGRFA has the following objectives relevant to the work of farmers. These pertain to:

1. Conservation and Sustainable Use of PGRs for Food and Agriculture, or specifically, how member-countries could better manage their PGRs for food and agriculture to meet both their present and future needs;
2. Rights of Farmers to Seeds or the rights that the ITPGRFA recognizes to promote and protect the work of farmers. The ITGPRFA is relevant to the work of farmers because it recognizes the past contributions of farmers in maintaining, conserving, and developing the diverse PGRs for food and agriculture that are available today. It also recognizes the contributions of farmers in maintaining and developing the seeds that are necessary for sustainable agriculture and food security. The Treaty recognizes the rights of farmers to seeds and enjoins governments to take the necessary measures to protect and promote these.

Furthermore, the Treaty supports and promotes the work on farmers, particularly the following activities—conservation and seed-saving; seed rehabilitation; selection of seeds; development of good varieties; seed production and marketing; sustainable agriculture through organic farming; seed exchanges; and customary and traditional methods in farming and seed management, among others—in the following ways:

1. **The ITGPRFA provides for four core rights of farmers pertaining to PGRs for food and agriculture:**
   - ❖ Protection of traditional knowledge of farmers to PGRs for food and agriculture;
   - ❖ Right of farmers to equitably participate in sharing benefits from the use of PGRs for food and agriculture;
   - ❖ Right of farmers to participate in making decisions at the national level, on matters pertaining to the conservation and sustainable use of PGRs; and
   - ❖ Right of farmers to save, use, exchange and sell farm-saved seeds;

2. **Article 5 of the ITPGRFA promotes:**
   - ❖ Efforts and work of farmers and local communities in managing and conserving their seeds on-farm (Article 5.1[c]); and
   - ❖ Efforts of indigenous and local communities to conserve, in-situ, wild crop relatives and wild plants for food production;

3. **Article 6 of the ITPGRFA provides for:**
   - ❖ Agricultural policies that promote the development and maintenance of diverse farming systems that enhance the sustainable use of seeds (Article 6.2[a]);
   - ❖ Strengthening research which enhances and conserves biological diversity by maximizing variation for the benefit of farmers who generate and use their own varieties and apply ecological principles to maintain soil fertility and combat diseases, weeds and pests (Article 6.2[b])
   - ❖ Promoting plant breeding efforts with the participation of farmers in order to strengthen their capacity to develop varieties adapted to social, economic and ecological conditions (Article 6.2[c]);

From International Commitments to National Implementation

- ➲ For the implementation of the Treaty to be relevant, it must address the realities and experiences of farmers in their continuing work towards the conservation and sustainable use of plant genetic resources
- ➲ A national framework must be developed towards supporting and realizing farmers' rights and promoting the work of farmers on conservation and sustainable use of seeds
- ➲ Farmers must realize that they have rights under the Treaty
- ➲ Policymakers must understand their important role in supporting farmers attain their goals of sustainable agriculture and food security

- ❖ Broadening the genetic base of crops and increasing the range of genetic diversity available to farmers (Article 6.2[d]); and
- ❖ Promoting the expanded use of local and locally adapted crops, varieties and underutilized species (Article 6.2[e]).

For implementation of the ITPGRFA to be relevant, it must address the realities and experiences of farmers in their continuing work towards the conservation and sustainable use of PGRs for food and agriculture. There is also a need to develop a national framework that supports and assists in the realization of FRs, and promotes the work of farmers on conservation and sustainable use. Part of this process of helping farmers to realize their important roles under the ITPGRFA is recognition by policy-makers of farmers' contribution towards achieving the country's goals of sustainable agriculture and food security through the exercise of FRs.

The Seed Regulatory Environment in Lao PDR

The Regulatory Division of the Department of Agriculture (DOA) in Lao PDR is in charge of the licensing, registration and certification of seeds in the country and is guided by the **Regulation on the Use of Seed and Other Planting Materials in Agriculture in Lao PDR.** This regulations book makes a distinction between seeds as grains and seeds for planting purposes.

The objectives of seed regulation in Lao PDR are as follows:

- ➲ To regulate the import/export of seeds to ensure that these conform to the standards and laws concerning the sale of seeds and grains (e.g., to ensure the seeds do not carry pests/diseases);
- ➲ To control the marketing and use of seeds for scientific/research purposes;
- ➲ To certify farmer-producers of seeds; and
- ➲ To prevent the use of seeds that are not tolerant to the environment where they are to be planted and grown.

Seed regulation in Lao PDR is credited with the following positive effects:

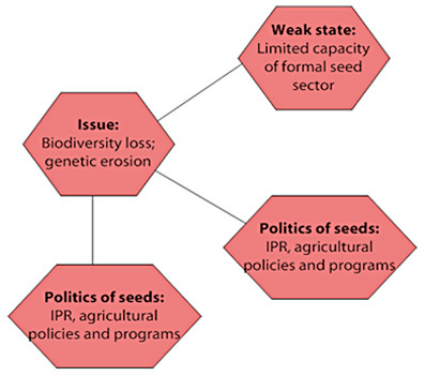
- ➲ Prevention of the entry of seeds from other countries that do not meet the standard requirements for seeds, e.g., in order to avoid the spread of seed-borne pest and diseases in the country; and
- ➲ Provision of facilities for, and training in variety development.

However, the current seed regulation regime also has limitations:

- ➲ Because of the "big/long borders" in Lao PDR, monitoring the entry of seeds into the country is difficult, especially since seeds are accessed by farmers or groups in many different ways and because of weak policing.
- ➲ Conflict between the agricultural officers and the customs officers, who allow the entry of seeds without the necessary documentation;
- ➲ Inadequate enforcement of DOA regulations, allowing poor quality seeds to be imported or exported; and

- Absence of a list of certified seeds for extension to farmers, as a result of which farmers cannot be sure that the seeds they are buying have been certified or not.

The CBDC–BUCAP program context



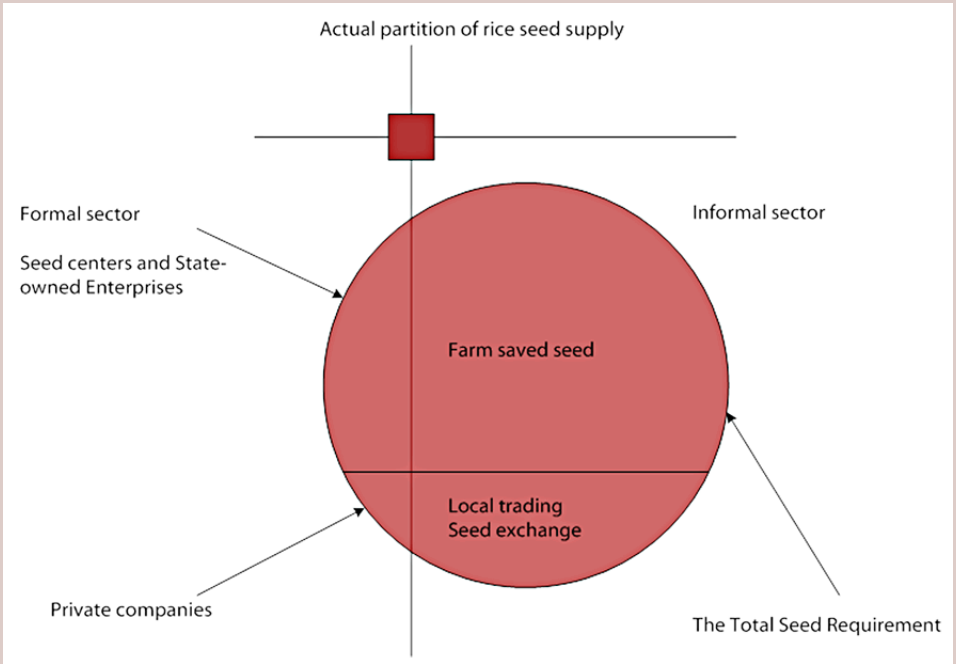
CBDC–BUCAP program

The Biodiversity Use and Conservation in Asia Program (BUCAP) which has been merged with the Community Biodiversity Development Conservation (CBDC) Program is "farmers' rights in practice." It is a regional program covering 42 provinces in five countries in Asia: eight provinces in Bhutan; four, in Lao PDR; four, in the Philippines; two, in Thailand; and 24, in Vietnam.

The Program views the farmer as a victim of three forms of agricultural tenancy. The first is land tenancy, where, for example in the Philippines, farmers do not own the lands they till.

The second is technological tenancy, where the farmers are mere recipients of developed tech-

Distribution of rice seed supply, by source, to meet total rice seed requirements



nologies, and therefore heavily dependent on those who develop the technologies, like seeds, fertilizers and pesticides.

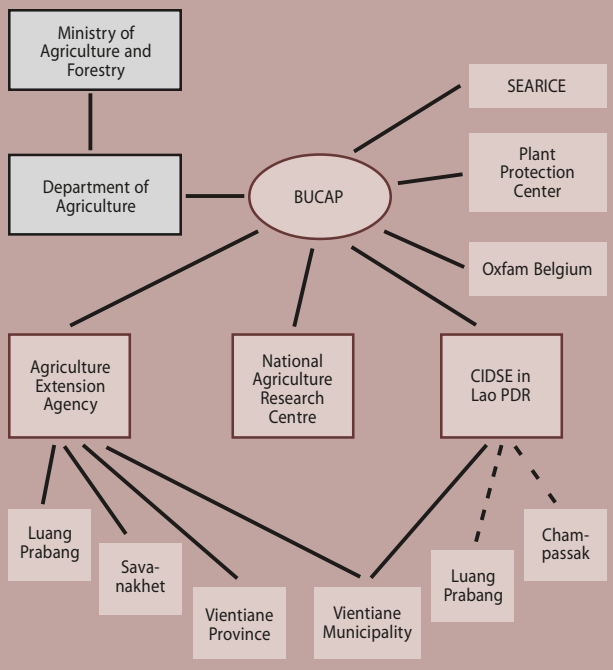
The third is market tenancy, where the farmers do not have control over the prices of their produce or even over the kinds of crops to produce because these are controlled by market forces and by politics. In some cases, governments mandate farmers to grow only specific varieties of crops. For example, in Vietnam, the farmers are allowed to plant only five varieties of rice (which are in great demand in international markets), rendering them unable to conserve their own seeds.

What is lamentable is that while around three-fourths of the total rice seeds requirements are provided by farmer-saved seeds and only about 10 percent come from the formal sector, farmers have little say in the seed system. This is why in CBDC–BUCAP, the major areas of work do not only pertain to increased biodiversity through technical interventions (varietal rehabilitation, selection, evaluation and hybridization using both traditional and improved varieties); but also include political work (policy lobbying, advocacy and campaigning), strengthening of farmers' and local institutions, and socio-economic work as part of the process of empowering communities.

Implementation of CBDC–BUCAP in Lao PDR

The multi-stakeholder set-up is a major feature of BUCAP-Lao PDR. The main challenge is to ensure that leadership of the program is done jointly. BUCAP Lao-PDR focuses on

Institutional framework for implementation of the Lao PDR BUCAP implementation



the capacity-building of farmers and institutions in rice breeding work, extension and marketing. The program works directly with farmers and extension agents. A number of these farmers participated in this third FTC.

PERSPECTIVE OF FARMERS AND EXTENSION AGENTS

Few Lao farmers are aware of the concept of farmers' rights, even if they have unknowingly been practicing it. Thus, it was difficult to discuss FRs with them, despite the input on the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). So rather than asking the farmers what they thought FRs meant, they were encouraged to talk about their involvement in CBDC-BUCAP activities, and thereafter to identify their needs in regard to PGRs. They went on to describe how they felt about the importance of seeds, as follows:

- Seeds are essential to their lives: a basic need of farmers without which they cannot plant and will have no food to eat;
- Farming is the only work they have and without seeds they cannot farm;
- Seeds selection and breeding activities are important because farmers are able to develop varieties that are high-yielding, are resistant to the harsh environmental conditions of their farms, and which are as good or better than their aromatic varieties;
- Breeding activities allows farmers to have access to many other varieties, from which they could develop new ones which are acceptable to the markets and thus earn them more money; and
- In general, farmers are always happy to have new varieties of seeds and want to share these with other farmers (although there are some who are reluctant to participate in seed exchanges).

The participants moved on to discuss what they feel are the rights of farmers or at least to describe manifestations of these rights. The matrices in the following pages present the perceptions of farmers and extension agents who participated in the Conference on what constitutes FRs; what they perceive to be FRs as manifested in their farming activities; and the gaps/issues and enabling factors that affect the realization and practice of these rights in the context of seed conservation and rehabilitation, varietal selection and breeding, and seeds production and marketing. Some of the identified FRs do not have corresponding gaps/issues and/or enabling factors, not because there are none but because of the limited time for further discussions during the Conference.

TABLE 1
Farmers' rights in seed conservation and rehabilitation

Identified FR/FR concept and as practised	Gaps/Issues	Enabling factors
Farmers should be able to produce grains for consumption and seeds for planting	➢ Traditional varieties have longer grains and are of good eating quality but are susceptible to lodging; ➢ Improved varieties not prone to lodging but have poor eating quality, and are not usually suitable to local/land conditions; ➢ Adaptability/non-adaptability of varieties in some areas and to environmental conditions (flooding, drought)	➢ Availability of traditional varieties as parent materials for breeding; ➢ Easy access to improved varieties (from seed multiplication centers and from DAFO); ➢ Projects like BUCAP help farmers develop knowledge and skills in seed purification and varietal rehabilitation; ➢ Farmers have the capacity to produce good quality seeds suitable to their conditions.
Farmers should be able to sell the grains they produce.	➢ Price of rice dependent on the market; ➢ Low grains prices as dictated by middlemen.	
Farmers should be able to share and exchange seeds with other farmers.		Farmers can still freely exchange and share seeds.
Farmers have a right to land.	Many farmers at the Conference have very small landholdings.	Government should provide land for seed conservation and varietal rehabilitation.
Farmers have a right to irrigation facilities; Farmers should have access to agricultural inputs and other services (seeds, fertilizers, equipment, low interest credit, etc.)	➢ Lack of or no access to tools/materials/equipment, e.g., poor and costly irrigation facilities; ➢ High cost of chemical fertilizers.	
Farmers should have access to training and technical information to develop their capacities.	➢ Not easy to find help/get technical support; ➢ Limited knowledge/experience of extension agents.	Farmers provided training by government on planting techniques.
Right to supportive government policies (e.g., provision of land for field trials, tax exemption on lands used for field trials)	➢ Government does not have enough funds for subsidy to crops damaged by natural calamities; ➢ Some useful government policies are not being implemented, e.g., tax exemption on land when crops are damaged by natural calamities.	Financial support from government
Farmers have the right to conserve varieties for socio-cultural practices.		

TABLE 2
Farmers' rights in seed production and marketing

Identified FR/FR concept and as practised	Gaps/Issues	Enabling factors
Right to do seed selection and to conserve/improve local varieties (manifested in seed exchanges among farmers)	➢ Farmers like to share seeds but in the process they do not earn income from the seeds; exchanged seeds are not certified and therefore farmers have no right to these varieties and cannot sell them; ➢ Seeds exchange is not the same as marketing of seeds (the latter goes through a seeds certification process to assure that good and stable quality seeds are sold).	Processing activities available, thus increasing the demand for the development and production of specific varieties of seeds.
Right to put up seed multiplication areas, which includes the right of farmers to group themselves for collective production of seeds	➢ Limited area for production; ➢ Natural environment not suitable for breeding activities; ➢ Farmers into different jobs, limiting their participation in groups; ➢ Low technical capacity of farmers to engage in breeding activities; ➢ High cost of inputs (chemical fertilizers, electricity for irrigation, soil preparation, seed testing); ➢ Limited irrigation facilities; ➢ No post-harvest facilities.	➢ Strong farmer production groups; ➢ Interest of farmers to produce seeds, e.g., for increased household income as influenced by market potential of seed varieties; ➢ High local demand for seeds.
Access to budget/resources like marketing information, technical information, seed registration (to include training and technical assistance on seeds production and related support facilities).	➢ Limited funds for assistance programs; ➢ Low capacity of technicians/extension agents.	Availability of government support in terms of funds and technical support programs and facilities/resources (including training facilities, fertilizers, seeds for initial production).
Participation in setting price of seeds	➢ No uniform pricing among the different production groups; not all farmers are members of production or trading groups; ➢ Low marketing capacity.	➢ Strong farmer/production groups that can negotiate in setting of prices; ➢ Access to trading centers that set quality and pricing standards.

TABLE 3
Farmers' rights in varietal selection and breeding

Identified FR/FR concept and as practised	Gaps/Issues	Enabling factors
Protection of farmers' seeds (registration/copyright protection) since farmers consider seeds as essential to their life; without seeds farmers "die"/cannot farm	➢ Seed regulation process is too complicated (i.e., too many steps) for the farmer; ➢ Technical issues/problems, like sterile seeds (no F1); ➢ Breeding activities not always 100 percent successful; when doing breeding, the desired characteristics are not realized even after planting them for generations.	➢ Government alliows/encourages farmers to do breeding/selection activities through: policy development, provision of training programs on breeding techniques, and through farmer-to-farmer exchanges on breeding experiences, e.g., the Farmers' Field School (FFS) approach as platform or venue for training/learning; ➢ Availability of budget to carry out the above initiatives.
Farmers' participation in pricing (appropriate pricing of seeds when marketed)	➢ Farmers, especially the unorganized ones, are not properly consulted in the pricing of their produce nor in the formulation of pricing policies; ➢ Many states are asking for approval certificates in the marketing of seeds.	
The farmer decides whether to use or not use a variety being introduced to them. For example, when the government introduces a new seed variety, it is up to the farmer whether to plant it or not. If the farmer plants the new variety, s/he can do away with the variety is s/he finds out that it is not suitable to her/his farming conditions.	➢ No communal land where farmers can conduct breeding experiments; ➢ Environmental constraints/climate not suitable to the variety.	➢ Supportive government policies; capable trainers and availability of a place/venue and budget for breeding trials; ➢ Variety suitable to the farming/environmental conditions.

PERSPECTIVE OF PARTICIPANTS FROM THE GOVERNMENT AND POLICYMAKERS

The "Policy Makers" workshop group discussed what they perceive as their role in supporting FRs as well as the issues related to that role. A number of the workshop participants were concerned that officials at the provincial level have yet to fully understand and appreciate BUCAP interventions. In general, however, they acknowledged that the BUCAP Program fits into the Agricultural Development Program (ADP) of Lao PDR for 2006-2010, which emphasizes increased farm production and productivity to attain the country's food security, poverty reduction, and trade objectives.

There are provinces in the country where varietal improvement is a government priority and investments are made in station trials and multi-location testing, with successful results being passed on to extension work. Farmers interested in the newly developed varieties are directed to buy the seeds from the trial stations.

Under the ADP, participatory approaches are used to involve the farmers, especially in the establishment of multi-locational trials and seed multiplication plots; the government provides the seeds and the farmers in turn provide the labor and the use of their land. Before project implementation, government holds farmers' meetings where farmers are given the opportunity to ask questions and give suggestions. Surveys and evaluation activities are also conducted to assess the viability of certain government programs and projects.

Tables 4 and 5 present the perceived roles of government representatives and policymakers in supporting farmers' rights to seeds; how such roles are put into action; and the gaps/issues and enabling factors that affect the realization of FRs, particularly to seeds.

TABLE 4
Roles perceived by the Policymakers Group in promoting/protecting FRs in Lao PDR and how these are manifested

Role of Policymakers in regard to FRs	Manifestation
Provide farmers with improved/good varieties/seeds	The Agricultural Development Program of the government, which aims to improve local conditions of farmers through increased food security and commercial (livelihood and market-oriented) activities, provides improved seeds to farmers at the provincial level.
Ensure participation of farmers in project implementation	In the implementation of programs, farmers are given the opportunity to participate from the planning to implementation stages through their involvement and consultations with them in small project meetings, evaluation activities, and surveying activities.
Recognize the role of farmers in: ➢ Breeding work and in improving traditional varieties; ➢ Selection and improvement of varieties; ➢ Growing and conserving traditional varieties.	This is best manifested in government support for the BUCAP project on seed conservation and improvement.
➢ Provide farmers with farm techniques (skills and technologies); ➢ Recognize and promote local knowledge related to agro-biodiversity	➢ This role is carried out through government extension workers; ➢ Accessions through gene banks.

TABLE 5
Hindering and enabling factors identified by Policymakers Group in promoting FRs

Gaps/Issues/Problems	Enabling/Supporting factors
➢ Lack of human resources and inter-agency coordination for the implementation of regulations, policies and programs; lack of expertise and specialization, specifically, lawyers in agriculture; ➢ Need to protect farmers' seeds ❖ Protection of traditional varieties of Lao PDR from others without recognizing the sources; ❖ No system to determine existing varieties in communities/districts/provinces (database on distribution and diversity of seeds); ➢ Weak capacity and linkage of extension agents and farmers on techniques and knowledge, e.g., on plant breeding; ➢ No formal recognition of farmers and researchers who develop new varieties; ➢ There is nothing in the "regulations" pertaining to support for conservation efforts; ➢ Lack of awareness and enforcement of regulations.	➢ Through institutional linkages, strengthening human resource capacity building programs within the government is already part of government plans; ➢ The existing set-up in government for seed networking (distribution) continues to provide seeds to farmers; ➢ There is farmers' participation (consultation) in all project processes; ➢ There are existing programs on conservation and utilization of seeds that complement farmers' work.

PERSPECTIVE OF CBDC–THAILAND PARTICIPANTS

The seed supply system in Thailand

The Thai participants explained that in their country farmers are mere recipients of developed or improved seeds. The traditional varieties grown by farmers, together with the wild plant varieties, are collected and go into the National Gene Bank. Normally, the gene bank collections are accessed only by the research centers and agricultural universities that undertake varietal development trials. Once stable varieties are developed, these are released from the experiment stations and go into the seed multiplication units. Seeds from the multiplication units are then distributed to farmers by the agricultural extension office through its agricultural technology transfer unit. For areas reached by the CBDC program, where the Farmer Field Schools (FFS) approach is practiced, farmers are not mere recipients of developed or improved seeds but they also actively participate in plant varietal development. The FFS are able to get seeds from the gene bank, from the research stations and agricultural universities, from the extension office, and even from NGOs implementing varietal development projects. Farmers in the FFS then run their own breeding programs and stable varieties developed are then reproduced by seed production groups for distribution to farmers in the community. In this set-up, therefore, the National Gene Bank is able to collect not only traditional and wild plant varieties from the community but also farmer-developed varieties.

Farmers' rights in CBDC-Thailand

The summary of the sharing among the Thai participants is presented in Table 6.

TABLE 6
Farmers' rights perspectives of CBDC–Thailand participants

Identified FR/FR concept and as practised	Gaps/Issues	Enabling factors
Right to: ➢ Ownership of land and other properties; ➢ Select planting materials; ➢ Share and exchange information/ knowledge to and with individuals and institutions, and transfer these to the next generation; ➢ Services from government and other partners (access donor support); ➢ Access to irrigation (water supply) and to other natural resources to support the farming system; ➢ Share/exchange, distribute and sell or market seeds; ➢ Conserve planting materials for special ceremonies (religious/cultural activities); ➢ Conserve planting materials for daily use/home consumption; ➢ Organize as farmers' or community groups for seed production and storage and other processes; ➢ Access to banks/credit facilities; ➢ Access to seeds outside their communities (local and international to seeds of other countries).	Selection and Conservation: ➢ Many farmers only wait for seeds distributed by the government and think that these are already good seeds, thus posing a threat to local varieties; Breeding: ➢ Poor awareness on seed certification; some farmers think that if they do not distribute seeds, there will not be enough seeds to distribute and therefore they distribute seeds even without seed certification; ➢ Farmers' inability to produce seeds in high quantity to meet demand; Support: ➢ Seeds policy a constraint to FFS partners (farmers need to inform government on this), e.g., problems with regard to seed registration.	*Through the Farmer Field School/Seed Groups* Selection and Conservation: ➢ Farmers conserve their seeds right on their fields; Breeding: ➢ A farm/family can decide on their own what seeds to produce/develop; ➢ Faster time to develop varieties and therefore seeds can be reproduced and distributed faster to farmers; ➢ Farmer groups able to solve their problems related to seeds; Support system: ➢ Farmers help each other in the FFS with equal sharing of benefits; ➢ FFS helps link the farmers to NGOs and their partners.

In particular, the group identified the following challenges in promoting FRs in Thailand:

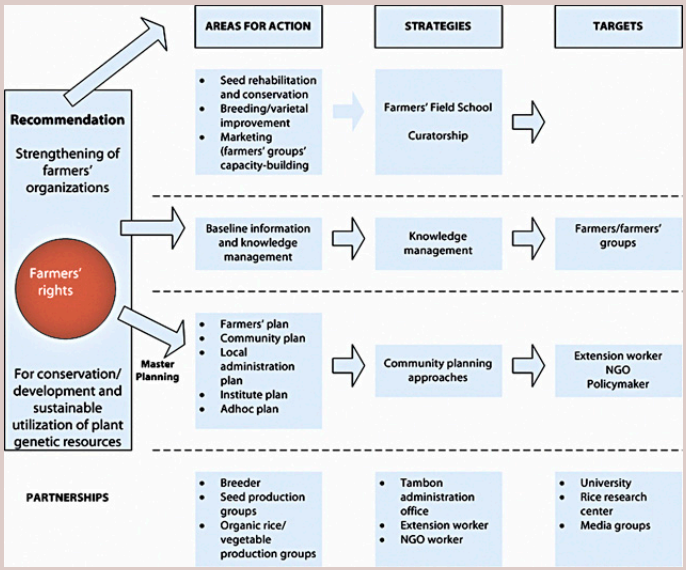
1. Challenges to the farmer: seed rehabilitation work, planning for seed selection, and doing campaigns/awareness activities, which would include proper recording and documentation of experiences for use in the campaigns;
2. Challenges to the government, NGOs and others:
   - ❖ Need to work together to improve extension/promotion work by using farmer-centered approaches;
   - ❖ Need for technical skills and information among government officials and NGOs to enable them to formulate better support strategies and mechanisms for farmers' human resource development; and

- Need for farmers to be better informed of policies so that they can participate in policy development, e.g., by giving feedback.

Integrating farmers' rights in CBDC–Thailand

The Thai participants came up with a set of recommendations pertaining to their work in Thailand. Their major recommendation is for the integration of FRs in all areas of intervention of CBDC–Thailand.

Integrating farmers' rights in CBDC–Thailand



RECOMMENDATIONS FROM FARMERS AND EXTENSION AGENTS

The recommendations from the farmers and extension agents pertain to three contexts—seed conservation and rehabilitation; varietal selection and breeding; and seed production and marketing.

However, while the participants attempted to come up with recommendations in response to each specific gap/issue identified in the previous section, there was simply not enough time during the workshop to do this. As a result, some of the recommendations are quite general.

Tables 7 to 9 in the following pages provide a summary of the recommendations from farmers and extension agents who participated in the Conference.

TABLE 7
Farmers' recommendations for improving and supporting FRs related to seed conservation and rehabiliation

Identified FR/FR concept and as practised	Gaps/Issues	Enabling factors
Projects like BUCAP help farmers develop knowledge and skills in seed purification and varietal rehabilitation.	Beyond BUCAP to allow farmers to: ➢ Continue varietal selection and breeding of traditional and improved varieties; ➢ Continue work on varietal rehabilitation and seed conservation.	Continue to provide improved and local varieties/PGR materials for breeding work of farmers, especially when farmers have difficulty accessing parent materials for breeding.
Low grain prices as dictated by middlemen.		Government should set pricing policies for grains to protect the interest of farmers.
Farmers can still freely exchange and share seeds.	Maintain the network of farmers (as a source of materials through seed exchanges) to enhance learning through exchange of experiences.	
Lack of or no access to tools/materials/equipment and other services, e.g., poor and costly irrigation facilities.	➢ Continuous growing of traditional varieties would require support for the establishment of gene banks where farmers can keep seeds for a longer time; ➢ Farmers can help/provide labor to maintain irrigation facilities, while government pays for the maintenance of equipment.	➢ Provide land for seed conservation and varietal rehabilitation; ➢ Provide incentives, e.g., tax breaks to farmers doing seed conservation and development.
➢ Not easy to find help/get technical support; ➢ Limited knowledge/experience of extension agents.		Capacity-building for farmers/extension agents (theory and practice); government to assign a local official/technician to stay with the farmers doing seed conservation/rehabilitation work.

TABLE 8
Farmers' recommendations for improving and supporting FRs related to seed production and marketing

Identified FR/FR concept and as practised	Gaps/Issues	Enabling factors
➢ Seed registration is too complicated (too many steps) for the farmer; ➢ Technical issues/problems; sterile seeds (no F1); ➢ When doing breeding techniques, the desired characteristics are not realized even after planting them for generations.	Farmers/farmer groups to ask the government to help in facilitating the seed registration process on behalf of farmers.	➢ Set up policies for registration of farmers' varieties (which should include allowing farmers/farmers' groups to decide on the name of seed varieties they develop); ➢ Hold yearly contests to recognize farmers who are able to produce good seed varieties.
Farmers, especially the unorganized ones, are not properly consulted in the pricing of their produce nor in the formulation of pricing policies.		Encourage participation of farmers/farmers' groups in setting of prices and seed regulations.
Government allows/encourages farmers to do breeding/selection activities through: policy development; provision of training programs on breeding techniques; and farmer-to-farmer exchange of breeding experiences, e.g., the FFS approach as platform or venue for learning/training.		Provide more programs on selection and breeding (including provision of related infrastructure/facilities for training, seeds storage facilities for farmers' groups)
Availability of budget to carry out the above initiatives.	Farmers to set up a savings group (utilizing the CBDC-BUCAP budget for initial capitalization).	

TABLE 9
Farmers' recommendations for improving and supporting FRs related to varietal selection and breeding

Identified FR/FR concept and as practised	Gaps/Issues	Enabling factors
For issues related to seed production	➢ Set up demonstration plots/trials for promotion to other farmers; ➢ Set up savings groups for seed production purposes.	➢ Provide technical knowledge to farmers; ➢ Provide seeds in time to farmers; ➢ Irrigation areas should cover all farm areas; ➢ Provide budget for seed production; ➢ Set up demonstration plots/trials for farmers to see and allow for expansion of seed production areas.
For issues related to seed marketing	Set up groups for buying/collecting seeds in different areas.	➢ Extension agents should participate in identifying and finding the markets; ➢ Extension agents should participate in the pricing of seeds; ➢ Government should support and promote the best varieties of farmers, e.g., through the issuance of recognition certificates to farmers that have produced good varieties.

RECOMMENDATIONS FROM GOVERNMENT REPRESENTATIVES AND POLICY MAKERS

A major recommendation that came out from the Policy makers Group is for government to first build its human resource capacity to make its interventions and assistance relevant to the seed conservation work of farmers. They cited at least two major agenda, which would require capacity-building. The first is re-orienting of the extension officers on farmer-centered extension methodologies like the FFS while building up their technical skills and knowledge related to the different aspects of seed conservation work – from the technical aspects of seed conservation to production and marketing. The second agenda is the need to develop or recruit people with specialized seed management skills and experience and who at the same time have the required coordination skills to get the different sectors to work together toward common goals in seed conservation work and FRs and for the monitoring of the implementation and enforcement of related regulations/policies.

Table 10 lists the specific support that the Policy makers Group believe should be provided to Lao PDR farmers and the support that they (policy makers) would need to broaden their understanding and appreciation of seed conservation work so that they can accordingly input these into their policy work.

TABLE 10
Recommended areas for support from policymakers

Recommended areas for support	Support policymakers need
Government should provide support to farmers' work through the following: ➢ Institutionalization of or policy programs on strengthening farmer breeding and Farmers Field Schools (FFSs)-support to be given to both farmers and agriculturists; ➢ Strengthening seed conservation and seed dispersal programs in each village (e.g., seed stocks); ➢ Extension agents should provide training to farmers on seed production, marketing, organic farming, seed conservation and development, among others; ➢ In marketing, government should hire someone with expertise in marketing and who could organize and guide marketing committees; ➢ Organizing and institutionalizing seed exhibits and festivals at the community/provincial/national levels to highlight farmers' extensive work on seed conservation and development; ➢ Providing support and assistance in setting up and organizing farmers' committees and groups for seed production, marketing, organic farming, conservation and seed development; ➢ Exploring policies that provide assistance in the conservation work of farmers in the field, and the protection of traditional varieties and farmers' seeds.	To formulate policies to support farmers' work, policymakers identified the following as the support they need to fulfill their role: ➢ Seed distribution and seed diversity maps/database available in communities/districts and provinces as a benchmark tool for further work on conservation and development of farmers' varieties; ➢ Capacity-building activities through exchange of experiences; ➢ Capacity-building support for policymakers, government staff, and members of committees on issues on conservation ad sustainable use of seeds; ➢ Continuation of programs like BUCAP that aim for the conservation and sustainable use of farmers' seeds; ➢ For BUCAP to cover not only four Lao PDR provinces but all the other provinces as part of local capacity-building.

STATUS OF FARMERS' RIGHTS IN LAO PDR: A Summary

This Summary Status Report was based mainly on the perspectives of farmers and extension agents who participated in the Conference.

When one examines Tables 1 to 3, which present the farmers' perspective and matches identified farmers' rights with gaps/issues (challenges and opportunities) in implementation and then Tables 7 to 9, which contain the recommendations put forward by the

farmers, it becomes clear that FRs from the perspective of the Lao farmers go beyond Article 9 of the ITPGRFA to include the following concepts:

1. Protection of traditional knowledge relevant to PGRs for food and agriculture;
2. Participation in sharing the benefits arising from the conservation, use, and development of seeds by farmers, directly or indirectly through government programs and incentives supporting farmers' work on the conservation, use and development of seeds;
3. Participation in national decision-making on matters related to the conservation, use, development or breeding, and marketing of seeds, as well as support to farmers' organizing and networking initiatives;
4. Free use, sharing and exchange of seeds and varieties available to farmers, as well as exchange of techniques and experiences among farmers and extension agents;
5. Access to land and other production inputs/resources especially when engaging in breeding activities/varietal experiments e.g. irrigation water, fertilizers, seeds for breeding experiments, low-interest credit/financing;
6. Protection of farmer-developed varieties (while this may be subsumed under Article 9.2a of the ITPGRFA, this deserves special emphasis inasmuch as a major part of the farmers' discussions in the Conference workshops revolved around farmer-developed varieties); and
7. Access to information and other technical support/facilities, e.g. training programs, seed banks, markets.

This expanded list of major FR categories is presented in Table 11.

In general, much has been accomplished by both government and farmers when it comes to: (1) the protection of traditional knowledge, e.g. the practice of seed exchange and organization of farmers' groups; and (2) access to information and other technical support, particularly extension/training programs.

However, there is still much scope for improvement, as reflected in the various farmers' recommendations in Tables 7 to 9, specifically government support/policies. Much has been done in these two major categories of FRs, partly because of the complementation work between the government and the CBDC–BUCAP Program.

With regard to participation in the sharing of benefits, the general environment has been quite permissive, particularly in the CBDC–BUCAP areas. Some progress has been made in this area, although stronger supportive policies still need to be instituted.

Policy weaknesses are more evident when it comes to farmers' participation in national decision making. It is important to note, however, that at the local level where there are strong production/traders groups, farmers are able to participate in decision-making processes, particularly in the setting of market prices.

Concerning farmers' right to land, access to other production inputs/resources, and protection of farmer-developed varieties, much work remains to be done inasmuch as there is still a bias in favor of conventional farming, seeds systems characterized by the use of inorganic/chemical inputs, and seed certification processes that favor the big or conventional seed producers

TABLE 11
Expanded list of major FR categories

With respect to	Major Categories of FRs as Identified in Art. 9 ITPGRFA and CBDC-BUCAP Farmers					
	Protection of Traditional Knowledge	Participation in Sharing the Benefits	Participation in National Decision-Making	Access to Land and Other Production Input	Protection of Farmer Developed Varieties	Access to Information & Other Technical Support
Article 6.1 Promote an integrated approach to the exploration, conservation and sustainable use of PGRFA						
Article 6.2c	✓	✓	×	×	×	✓
Article 6.2f	×	×	×	×	×	✓
Article 6.2 Take steps to minimize or if possible eliminate threats to PGRFA						
Article 6.2a	✓	×	×	×	×	✓
Article 6.2b	✓	×	×	×	×	✓
Article 6.2d	✓	✓	×	×	×	✓
Article 6.2e	×	✓	×	×	×	✓
Article 6.2g	×	✓	✓	✓	×	✓

Report of Regional and National Fora on Farmers' Rights in the Philippines
2007

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Contents

This report is dedicated to the memory of
Mr. Eulogio 'Tay Gipo' Sasi, Jr.,
Mrs. Guadalupe "Nang Upe" Dispo
and
Mr. Eliezer "Boy" Billanes,
who dedicated their lives to the struggle for and advancement of Farmers' Rights in the Philippines.

Acronyms and Abbreviations

ARBs	Agrarian Reform Beneficiaries
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
CBDC–BUCAP	Community Biodiversity Development and Conservation—Biodiversity Use and Conservation in Asia Programme
CLOA	Certificate of Land Ownership Award
CSO	Civil Society Organization
DA	Department of Agriculture
DAR	Department of Agrarian Reform
FFS	Farmers' Field School
FRs	Farmers' Rights
HRs	Human Rights
HRCP	Hybrid Rice Commercialization Program
IPRs	Intellectual Property Rights
IPRA	Indigenous People's Rights Act
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
LAD	Land Acquisition and Distribution
NGO	Non Government Organization
PGRs	Plant Genetic Resources
PGRFA	Plant Genetic Resources for Food and Agriculture
PPVPA	Philippine Plant Varieties Protection Act

Introduction

The Southeast Asia Regional Initiatives for Community Empowerment (SEARICE) seeks to promote community based conservation, development and sustainable use of plant genetic resources (PGRs). As such, much of its advocacy work in regard to promoting farmers' rights has traditionally focused on ensuring that farmers enjoy continued access to the seeds that they have developed.

However, SEARICE also acknowledges that the farmer's "right to seeds" could not be meaningfully implemented unless the farmer's other entitlements are guaranteed. On 26 February 2003, SEARICE identified 38 "rights," including the right to land, to organize, to participate in policy-making processes related to agriculture, and the right to food, among others which must be enforced simultaneously and at multiple levels—household, community, and national levels. This statement defining the farmer's "bundle of rights" has since become known as the Cebu Universal Declaration on Farmers' Rights. (See page 152.)

Thereafter, SEARICE sought to establish the legal basis for farmers' rights in the Philippines, particularly by situating the pursuit of farmers' rights within the broader framework of human rights advocacy.

In 2004, SEARICE conducted a consultation to identify the issues and challenges that are undermining farmers' right to seeds and to continued access to a diverse pool of PGRs. The farmers expressed concern over the expansion of mining operations; the conversion of prime agricultural land to industrial and residential uses; the emphasis on high-value industrial and export crops and the consequent neglect of staple food crops; the use on a commercial scale of genetically modified crops; and the government's massive promotion of hybrid rice.

At the First Meeting of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the importance of farmers' rights was recognized, and discussion of it was tabled for the Governing Body's Second Meeting in October 2007.

In response to the growing awareness and appreciation of farmers' rights worldwide, and as a follow-up to the Philippine Government's formal adoption of the ITPGRFA, SEARICE decided to further flesh out the concept of farmers' rights, as these apply in the Philippines. In line with this, SEARICE conducted regional fora and a national consultation to determine farmers' capacity to claim their rights, as well as the issues and challenges that are tending to limit or undermine the exercise of such rights.

The consultation process began with a Forum on Farmers' Rights in Mindanao—dubbed *Bugkos* (Bundle of Rights)—which was held in Tacurong City, Sultan Kudarat Province, in Mindanao, on 25 June 2007. This was followed by the Visayas consultation held in Cebu

City on 31 July 2007. The Luzon consultation was held back-to-back with the National Forum held in Quezon City on 4-6 September 2007.

The findings from these consultations are the subject of this report.

Major categories of farmers' rights

Farmer representatives at the National Forum identified 10 major categories of farmers' rights, as follows:

1. Right to seeds;
2. Right to land;
3. Right to water;
4. Rights of women farmers;
5. Right to opportunities and information in regard to marketing organic products;
6. Right to appropriate technology;
7. Right to a healthy environment (air, land, and water);
8. Right to participate in governance processes;
9. Right to support services (e.g., access to information, irrigation facilities, post-harvest facilities, credit, social security services, and health care); and
10. Right to life (i.e., protection against human rights violations).

Issues and Challenges in Pursuit of Farmers' Rights

Landlessness/lack of land tenure security

The poor performance of the Department of Agrarian Reform (DAR), especially the implementation of its Land Acquisition and Distribution (LAD) operations, is one of the major reasons why the majority of farming households in the Philippines remains landless, or lacks security of tenure. In 10 years of implementing the CARP, the DAR has concentrated on redistributing government owned lands, and put off acquiring—compulsorily or otherwise—the large privately held estates, or haciendas, which have been the subject of contentious, and often violent, land disputes. Thus, at the expiration of the CARP on June 10 this year, some 1.1 million hectares of land—mostly privately held—remains safely in the hands of the country's biggest landlords.

Efforts to pass a law extending the CARP for another 10 years, such as the pro-farmer CARP-extension-with-reforms bill (House Bill 4077), briefly made some headway, when pro-farmer members of Congress closed ranks with farmers' organizations in lobbying for its passage. Unfortunately, the bill failed to pass by June 10—the appointed deadline, being the date of CARP's expiration—and looks likely to be shelved. Meanwhile, pro-landlord legislators have sprung a nasty surprise in the form of HB 3972. This bill contains various anti-social justice provisions that are obviously meant to obstruct the passage of HB 4077 and to block the continued implementation of the agrarian reform program. Masquerading as a pro-farmer bill, HB 3972 promotes agricultural tenancy, which has long been repudiated by past Philippine administrations. The bill also promotes the implementation of Joint Venture Agreements, which would strengthen the control of big landlords over their lands, thus reversing many of the gains achieved in the past 10 years of agrarian reform implementation. The future of CARP is looking rather bleak.

Besides the failure of the DAR to meet its targets, other factors and trends continue to undermine the farmers' right to land. Among these are the illegal conversion of agricultural lands to non-agricultural uses; the use of farmland as collateral, which is being aggressively promoted by the administration of Gloria Arroyo (i.e., through its support for the Farm as Collateral Bill); gaps and ambiguities in the Comprehensive Agrarian Reform Law (CARL) and in the Indigenous People's Rights Act (IPRA), which have resulted in violent land disputes between agrarian reform beneficiaries (ARBs) and indigenous communities seeking to establish their claims to their ancestral lands.

Box 1

The Struggle for Farmers' Land Rights in Hacienda Esperanza

The experience of a group of ARBs in Hacienda Esperanza, in La Carlota City, Negros Occidental illustrates how farmers, armed only with a government issued land title, resisted the attempts of the former landlord to regain control of land that had been awarded to the farmers under the CARP.

Hacienda Esperanza is a 564-hectare sugar estate owned by the Benedictos, a rich and politically powerful family. In 1992, the Malibo Corporation—the entity managing the estate—was given notice that the hacienda would be put under the CARP. Not all the farm workers in the estate welcomed the news however: one group opted to remain as they were: mere wage workers in the estate. The second group could not make up its mind, probably fearing reprisals from their powerful landlord. The third group, numbering 182 members, decided it was worth the risk and organized themselves into a cooperative in order to qualify as ARBs. In 1999, the DAR, then headed by Horacio "Boy" Morales, distributed Certificates of Land Ownership Award (CLOAs) to the 182 ARBs. However, the former landowner resisted the DAR order and hired armed guards to prevent the ARBs from entering the estate. A year after the CLOAs were distributed, the ARBs split into three groups: the first group, composed of 32 ARBs, decided to work, not as a group, but as individuals; the second group, numbering 74 ARBs, joined the Workers Amalgamated Union of the Philippines (WAUP); and the third group, composed of 76 ARBs, formed the NARB Multi-Purpose Cooperative (NARB–MPC).

The DAR divided the estate to give the three groups a portion of the estate. However, none of them could resume work in the estate without being harassed or forcibly removed by the estate guards. The stalemate lasted for three years, from 2000 to 2003. The ARBs repeatedly sought the intervention of the national office of the DAR and of President Gloria Arroyo, to no avail. During the ARBs' ninth attempt to enter the estate, they were accompanied by DAR Undersecretary Braganza. But the estate guards were unfazed by the DAR official, who broke down and cried when he failed to get the ARBs into the estate. The former landowner also filed several cases against the ARBs to further derail the land transfer process.

On 6 March 2003, 150 members of the NARB-MPC decided they had waited long enough and forced their way into the estate. In the ensuing scuffle, one of the ARBs, Diony Gaylan, was killed, and two elderly women, age 47 and 50, respectively, were wounded. The military intervened, but this was still not enough to put an end to the impasse. The dispute turned into a legal battle between the Malibo Corp. and the cooperative.

In the meantime, members of the cooperative were allowed limited access to the estate. However, the former landowner made sure that their stay would be as uncomfortable as possible. Water and power facilities were cut off. The harvest could not be brought to the sugar mill because of blockades put up by the former landowner. There was little money for food, and much less for the children's schooling. Farmers who tried to find work in other haciendas found that they had been blacklisted and were turned away.

Despite their hardship, the members of the cooperative tried to eke out a living from a small portion of the estate. Fortunately, a number of NGOs, such as Kaisampalad, Inc., JCNC, PAP21, and NCPERD provided financial support for production. The farmers were also assisted by legal aid groups in prosecuting their case in court.

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Box 1

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Finally, the cooperative won its case and was awarded 155 hectares by the DAR. Since then, the cooperative has made a number of improvements on their land. They have diversified to other crops, apart from sugar, to ensure that their food needs are adequately met. Each member household now maintains a 3,000-square-meter backyard garden on which they grow vegetables and other food crops. The coop started a capital build-up program, and in a few years, was able to purchase a tractor, a multi-purpose truck, and 10 bull carts. It has also put up a small office.

The coop has learned the value of linking up with government agencies, financial institutions, and NGOs, in order to gain access to support services. Its linkage with the DAR for instance has enabled it to get scholarships for a number of its members' children.

The members of the NARB–MPC have learned that the struggle to secure their right to land is a life-and-death struggle. Lives could be lost. But while fighting for their rights carries enormous risks, the coop members have found that it is a fight that can be won.

The Philippine Government's promotion of mining operations

The Mining Act of 1995 provides for:

- 100% foreign ownership of mining projects;
- 100% repatriation of profits, equipment, and investments;
- Foreign companies' claim to an area of up to 81,000 hectares onshore, or 324,000 hectares offshore;
- Complete protection to foreign companies against state expropriation;
- Tax breaks/holidays for foreign companies;
- 25-year effectivity of mining concessions, with the option to extend such for 25 more years; and
- Priority access by mining companies to water resources within their area.

Even a cursory look at the provisions of this law would set alarm bells ringing among advocates of farmers' rights. Large-scale mining operations have long been infamous for exacting a heavy toll on the environment. Open-pit mining, in particular, results in clear-cutting of large swathes of forests, including watershed areas. The toxic effluents that mining operations routinely disgorge contaminate nearby water bodies and the water supply downstream, rendering the water unsafe for consumption and posing a dangerous health hazard to nearby communities. Mining companies' prior claim to nearby water resources further undermines the right to water. The law's generosity in regard to mining companies' requirements for land leaves little doubt that local people, especially indigenous communities—on whose ancestral lands mining concessions are usually

awarded—would be evicted from their homes and from their lands. Thus, at least three farmers' rights are undermined by mining operations: the right to a healthy environment, the right to water, and the right to land.

But one need not speculate on the potential damage that mining operations can inflict. The record shows that large mining companies deplete up to P375 million worth of natural resources every year, while paying only P30 million in taxes. Companies that mine for gold and manufacture cement account for 57% of the harm suffered by the environment, yet they make only a paltry contribution (6%) to the national income.

South Cotabato Province, particularly Tampakan, Koronadal, is the site of one of the most widely opposed mining projects in the country. The Tampakan mine site is regarded as one of the best copper-gold mines in the world, yielding an estimated 11.6 million tons of copper and 14.6 million ounces of gold a year. However, since the 1990s local communities have been protesting the open-pit mining operations being conducted in Tampakan by the Western Mining Coporation (WMC), later renamed Tampakan Mineral Resources Corporation. In fact, the provincial council of South Cotabato had passed a resolution in 1996 (Resolution No. 74, series of 1996) stating that bulldozing vast areas of land to make way for the open-pit mining operations being conducted by WMC in Tampakan would result in deforestation, loss of soil fertility and productivity, displacement of forest-dwelling communities, and irreversible damage to the environment, and that taking these into consideration, South Cotabato stands to lose rather than gain from the WMC operations. The province also issued its own Environmental Code (2005), which prohibits open-pit mining in the province (Sec. 21); mandates the protection of critical watersheds (Sec. 28), and water resources (Sec. 38); and guarantees the rights of indigenous communities to their ancestral domain (Sec. 114).

Notwithstanding the clear prohibition against open-pit mining, another company—Sagittarius Mines, Inc. (SMI)—was awarded a mining concession for the same area in 2002 and picked up where the WMC had left off. The affected communities promptly resumed their protest actions. In 2006, the Municipality of Buluan passed Resolution No. 13 "strongly opposing the continued operations of SMI in South Cotabato."

However, all such opposition has gone unheeded. By 2010, SMI would be joined by two of the world's biggest mining companies—Indophil Resources NL, an Australian publicly listed company; and Xstrata, the UK-Swiss mining conglomerate—in extracting Tampakan's gold and copper. At least four forest-dwelling communities would be caught in the middle of these mining operations—Bong Mal, Tablu, Danlag, and Folu Bato. Groups opposed to the project also fear that the project would lead to large-scale land grabbing, especially of the ancestral lands of the B'laan tribe; the destruction of important water resources, such as Taplan River, Lake Buluan, and the Liguasan Marsh; and to the contamination of the water supply of South Cotabato, North Cotabato, Sultan Kudarat, and General Santos City.

Early this year, the facilities of SMI–INDOPHIL–XTRATA were raided twice by the New People's Army (NPA), the combatant unit of the Communist Party of the Philippines (CPP).

The NPA condemned the project for its "destructive and plunderous operations," and the Arroyo government, for "auction[ing] off the country's natural resources to big foreign capitalists."

Lack of appropriate support mechanisms to promote farmer-led initiatives in the use, conservation and development of plant genetic resources; lack of adequate safeguards to protect farmers' right to seeds

Farmer representatives at the National Forum held in Quezon City on 4-6 September 2007 articulated their right to seeds, as follows:

> *"[Ang] [b]inhi ay buhay na nagbubuhay sa maraming buhay; at sapagkat buhay, ito ay hindi inaari ng isang particular na tao o iilan sapagkat pagmamay-ari ito ng lahat, at ito ay kailangang gamitin, i-konserba, protektahan, at ipalago lalo na ng mga magsasaka."* ("Seed is life, and nourishes many lives. Because seeds support life, no single person or group should claim ownership of them. Seeds should be freely accessed, so that they could be used, conserved, protected, and improved upon, especially by farmers.")

The farmer representatives likewise defined their right to seeds as consisting of the following:

- Access to complete information on activities and results of research;
- Farmer participation in seed policy development;
- Recognition of farmer initiatives/farmer-developed varieties; and
- Secure access to and control of seeds.

These sub-categories of the farmer's right to seeds are guaranteed under Section 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

Nevertheless, the farmer representatives identified a number of issues and challenges that undermine the exercise of their right to seeds, as follows.

➲ Lack of farmer participation in decision-making processes relevant to agriculture and/or seed policy development.

The farmer representatives observed that the Government adopts and supports programs and technologies that benefit the interests of private corporations rather than those that respond to the needs and conditions of small farmers. This is manifested by the following trends and developments:

1. **Enactment of Republic Act 9168, or the Philippine Plant Varieties Protection Act (PPVPA).** The PPVPA, which became law in August 2002, is supposed to encourage the development of new plant varieties by granting plant breeders exclusive rights to produce, reproduce, sell, and market, among other things, their new plant varieties. This law however has come under fire from farmers' groups, indigenous people (IP)'s organizations, NGOs, and a number of scientists, who claim that, due to the expense entailed in securing a PVP certificate,

the PPVPA is likely to benefit only the large, moneyed applicants, such as the giant seed companies. Thus, the PPVPA will more than likely consolidate the control of giant seed companies of Philippine agriculture, and in the process, violate farmers' inherent and traditional rights to seeds and to the knowledge associated with the seeds, and pose a threat to biodiversity, sustainable agriculture (SA), and food security.

The critics also argue that the PPVPA would discourage farmer-breeders from making further improvements on seeds because they would have only a limited pool of freely available varieties to work with.

Farmer representative, Avelino Sarino, added that, even if individual farmers could somehow raise the money to get a PVP certification for their seeds, they would still be hard put to make sure that their seed patents are enforced. In any case, the farmer representatives maintained that seeds, which generations of farmers have developed, should not be "owned" by a single person or group—including farmers—but rather should remain common property, which farmers can freely access, use, exchange, and make further enhancements on.

2. **Massive promotion of hybrid varieties.** A farmer representative at the Luzon Consultation reported the experience of 17 farmers who took part in the Government's Hybrid Rice Commercialization Program (HRCP). Joselito "Ka Tolits" Tambalo related that, to induce farmers, like himself, to shift to hybrid seeds, the HRCP gave away inputs free of charge, and a P10,000-per-hectare cash incentive. As it turned out, however, 12 of the 17 HRCP farmers went bankrupt because Philrice rejected their seeds for not meeting the requirements for certification. Meanwhile, the other HRCP farmers, whose seeds were bought by Philrice, eventually withdrew from the program because the subsidies were cut and the hybrid varieties proved to be susceptible to diseases and pest infestation. The hybrid seeds also could not be re-used for the next cropping season.

3. **Promotion and commercialization of technologies, such as genetic engineering.** The farmer representatives, particularly those engaged in organic farming, feared that their crops would be contaminated by genetically modified varieties, and could no longer be marketed as "organic."

➲ Lack of appropriate mechanisms to protect farmers' rights to traditional crop varieties.

The farmer participants expressed concern that the PPVPA does not provide adequate safeguards against private corporations securing patents on crop varieties that farmers have developed, and against other forms of bio-piracy.

- **Lack of recognition and related support for farmers' initiatives and contribution to plant genetic resource (PGR) conservation, development, and use.**

  The farmer representatives argued that the lack of recognition and support for farmers' initiatives in regard to PGR conservation, development, and use, stems from the perception that traditional knowledge and methods are inferior to technological solutions. This same lack of appreciation for farmers' input accounts for the absence of programs promoting sustainable agriculture and farmers' conservation initiatives.

- **Lack of thorough dissemination of technologies and programs related to seeds.**

  The government has failed to allocate sufficient funds and to build capacity in support of farmer extension and information dissemination programs.

Box 2

Farmer Initiatives to Assert Their Right to Seeds

The bulk (85–90%) of the country's seed requirements is supplied through the informal system, wherein farmers select the seeds for planting, save some from their harvest for re-planting in the next cropping season, and exchange seeds and varieties with other farmers.

Farmer representatives from FCC, ASEPLAFA, and SEEDS shared during the regional and national fora how this informal system (specifically for rice) is enhanced in the provinces of Bohol, North Cotabato, and Sultan Kudarat, through a number of practices, as follows.

***On-farm conservation of traditional and local varieties** entails the cultivation by each farmer of different types of local crop varieties (on the average, 3–5 varieties per farmer) on her/his farm plot to conduct her/his own on-farm trials. The size of the individual on-farm trials depends on the availability of land and on the volume of seeds available. It is in these individual on-farm trials that farmers select seed materials for eventual reproduction and parent materials for breeding. Farmers' groups affiliated with SEEDS (in North Cotabato) and FCC (in Bohol), and farmer members of ASEPLAFA (in Sultan Kudarat) maintain communal farms on which they conduct joint on-farm trials involving an average of 5 to 10 varieties.*

Members of SEEDS had organized themselves and set up 3 community seedbanks that served as a back-up storage facility for the traditional and local varieties they had collected. At the same time, they would regularly (i.e., every season) pick and select

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Box 2

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seed materials from the seedbank set up by CONSERVE. The CONSERVE seedbank has a cold storage facility and a 400-square-meter seed regeneration area, which is used by farmer-breeders as back-up storage of varieties whose advanced lines are difficult to maintain. There are at least 15 traditional and local varieties found in the CONSERVE seed regeneration area, from which farmers could pick and select. The seeds selected are reproduced in a 0.75 hectare area set aside by CONSERVE for seed production. Upon harvesting, the seeds are packed and distributed to farmers and organizations of farmers that request them. Eventually, the community seedbanks were shut down because of the difficulties of maintaining and monitoring them. Now, the farmers store the seeds in their homes, using traditional methods of storing seeds. The individual varietal trials however are still done every cropping season.

In Bohol, the FCC, a network of 7 farmers' groups, in collaboration with SEARICE and CVSCAFT, the local university/college, have put up and continue to maintain a community seedbank within the facilities of CVSCAFT. There are currently 260 rice varieties stored in this seedbank. These are continuously planted, regenerated, and reproduced by farmers in an organic seed production area. FCC members and other civil society organizations (CSOs) promoting sustainable agriculture in Bohol are welcome to the harvested seeds.

Participatory farmer plant breeding (PPB) and participatory varietal selection (PVS). *SEARICE has been conducting season-long Farmers Field Schools (FFSs) on CDU since 2000. But a number of FCC and SEED members had received their training in seed breeding much earlier, from training facilitated by CONSERVE and the CBDC (?) Program. To date, some 231 varieties have been crossed, bred, and selected by farmers.*

STORIES OF THREE FARMER-BREEDERS

Eulogio Sasi, Jr., or Tatay Gipo, lives in President Roxas, North Cotabato. He owns a hectare of land, and has been farming for 40 years. Tatay Gipo has experienced the initially positive, as well as the longer-term, negative impact of the Green Revolution technology. When he noticed the adverse effects of the latter on the soil, he started to experiment with crop breeding. He grew the modern varieties alongside traditional ones on small plots, and yielded varieties that showed promising traits. Eventually, he developed a variety which was resistant to drought, pests, and diseases. He named this sturdy rice variety, Bordagol. Bordagol *became so popular that Tatay Gipo received a citation for it from the provincial government of North Cotabato. It spread even wider, throughout most of the country, that the national seed board certified it as PSB RC34 in 1994.*

The certification was done without Tatay Gipo's knowledge or permission. For a while, the incident discouraged Tatay Gipo from further experimentation. Eventually, however, he resumed his breeding and selection work with the help of his two sons. He wanted to develop a variety with good eating quality. Crossing Bordagol *and* Basmati*—an Indian rice variety—Tatay Gipo produced—after three years—many stable lines which he called GIFTS (for Genetically Improved Farm Technology of Seeds).*

Tatay Gipo worries about maintaining and conserving the lines because he does not have enough land. He is also concerned about the effects of the PPVPA on farmer-breeders like himself. Yet, he continues his breeding work and encourages other farmers to do the same. He says that small farmers can not count on anyone but themselves.

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Box 2

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Ruperta Mangayaay, a member of the FCC, lives in Bilar, Bohol. After attending the FFS on PGR CDU, Ruperta tried her hand at breeding rice. She wanted to develop a variety that was resistant to pests and diseases, and to lodging; had high tillering (branching) ability; was high-yielding; and produced big grains that had good eating quality, and therefore highly marketable. Following a series of varietal crossings, Ruperta produced 6 stable varieties, which she named according to the color of the grains.

Through breeding and selection, Ruperta is able to produce enough seeds to supply all her planting requirements. She is also able to share the varieties she has developed with other farmers, and to encourage the latter to do their own breeding.

Avelino Sarino, a member of SEEDS, owns a 0.28 hectare farm land in President Quirino, North Cotabato. He started breeding in 1994 to develop rice varieties that yielded abundant grains that were not prone to breaking and had good eating quality, that could resist lodging, as well as pests and diseases, and that grew to a medium height but could produce enough biomass for soil composting. Avelino produced 5 lines after crossing 2 farmer-bred varieties. He named these lines after his initials, AS. A few AS lines that have become popular are AS54, AAS5, and AS1.

Local seed exchanges. *Farmers continue to spread the varieties within their communities and to neighboring ones through sharing, barter, seed as loan payment, and seed sales. Farmers' organizations also take advantage of local agriculture fairs and even community fiestas (feasts) to promote their seeds. But a more regular venue for the exchange of seed materials and seed-related information are farmers' meetings.*

Establishment of a community registry system. *Farmer representatives at the Mindanao consultation cited the importance of a community registry as a mechanism to protect a community's rights to PGRs against PPVPA claims. A community registry is an inventory of all PGRs in a community to show proof that these are pre-existing (thus precluding potential patent applications) and belong to the public domain.*

The preparation of one such community registry for Bilar, Bohol was facilitated by the FCC. The FCC listed all existing crop varieties, along with their distinctive features, the name of the farmer-breeder, or the source of the variety, and the specific uses of each variety. This list was attached to an affidavit cum declaration executed by FCC. The list is updated every cropping season. The validity of the community registry was reinforced when the barangay and municipal council of Bilar recognized the document by way of a municipal resolution in 2004.

➲ Lack of access to land by women

The Comprehensive Agrarian Reform Law (CARL) provides that lands distributed under the agrarian reform program should be issued jointly to spouses. In practice, however, the "household head"—which in most, if not all, cases is presumed to be male—makes all the major decisions in regard to the use and disposition of family landholdings. Ironically, a large number of rural households are headed by women, or are financially sustained by women. Formal credit sources, like banks, are reluctant to lend to women without their husband's approval. It is no surprise that the majority of poor rural households are those that are headed by women.

➲ Lack of market support for organic products

More broad-scale adoption of sustainable agriculture is hampered by the lack of government support. Agricultural support, in the form of production credit, subsidies, extension services, access to post-harvest facilities, etc., is still contingent on the practice of conventional chemical agriculture.

Another formidable obstacle to getting farmers to farm organically is the difficulty of marketing organic products. In the first place, the domestic market for organic food and other products is not yet developed; it is at best a niche market. Secondly, the process of getting products certified as organic is not only long and tedious, but very costly. Without such certification, organic farmers end up selling their products at the price of conventionally produced items, and not at a premium, which organic products should command. Thirdly, even though there is a thriving export market for organic products, organic farmers are unable to deal with importers directly, nor even to produce the volumes required and to comply consistently with the stringent quality standards of international markets. Again, the problem can be traced to the lack of government support for the organic sector.

Box 3

Altertrade Makes a Breakthrough for Philippine Organic Producers

MIARBA is a federation of people's organizations (POs) composed of 879 members—all of whom are agrarian reform beneficiaries (ARBs)—from various municipalities of Negros Occidental. Altertrade, an NGO that focuses on assisting organic producers to gain access to export markets, facilitated the formation of MIARBA.

The landholdings of MIARBA's PO members total 709.98 hectares. Part of this is planted to crops that have been certified as organic: sugarcane (409.11 hectares); rice (40 hectares); banana (11 hectares); assorted crops (27.77 hectares). MIARBA's operations are inspected by the Institute for Market Ecology (IMO), which uses the standards laid down by the European Union, the US, etc. MIARBA's products are certified by Naturland-Verband (Germany) and Biosuisse (Switzerland), both of which are private certifiers. MIARBA has also secured the Fairtrade Labelling Organizations International (FLO) Fair Trade Certification.

With the help of Altertrade, MIARBA has established links with international markets, among them, Alter Eco-France & America; Alternative People's Network for Peace and Life—Korea; Gepa-Germany; Chocolat Bernrain & Claro Switzerland; Daishizen Corporation-Japan; Eine welt handel-Austria; Liberemondo-Italy; CED Import/Export; Chrisna Jenio & Matahari Organic Wholesaler-Malaysia; and Alter Trade Japan, Inc.

In 2006, 16 PO members of MIARBA reported a net income of PhP19,490,744.35 from sugarcane and other crops, and from poultry and livestock. MIARBA's accumulated capital amounts to P18,016,088.12. It has acquired 7 trucks, 1 thresher, and 3 farm tractors. It has put up health and training centers, housing for its livestock, irrigation facilities, etc.

➲ Expansion of monocropped agricultural plantations, and its impact on the farm ecology and on human health

Monocropped agricultural plantations have a negative impact on the environment and on human health. The banana plantations in Davao City, in Mindanao, for instance, are especially infamous. Firstly, because these plantations were put up in slopey, upland areas, they have resulted in soil erosion and flooding in adjacent low-lying areas. Secondly, as is the practice in all monocropped plantations, those in Davao City require aerial pesticide spraying. Communities living near the banana plantations have reported a number of problems caused by aerial spraying.

The managers of the plantations do not scrupulously restrict their aerial spraying so as not to go beyond the designated buffer zone. However, even if they could strictly limit their spraying, they could not prevent pesticide drift, which has a 3.2 kilometer radius. Pesticide drift poisons the air and nearby water sources, often leading to pesticide-related deaths and health problems among both humans and livestock. There has been a high incidence of health problems among communities living near the plantations, such as breathing difficulties, nausea, eye irritation, fever, vomiting, cough, asthma, anemia, a general feeling of weakness, and even cancer.

Pesticide drift contaminates organic farms. This affects the marketability of organically grown products, especially where these are subject to quality control and organic certification.

Box 4

Lobbying by Local Group Leads to Ban on Aerial Spraying

In response to the widespread negative impact of aerial spraying in the banana plantations in Davao City, a local group called Mamamayan Ayaw sa Aerial Spraying [or Citizens Opposed to Aerial Spraying] (MAAS) organized the affected communities and undertook a massive campaign against aerial spraying. MAAS sought to raise awareness of the injurious effects of aerial spraying by distributing information materials; getting people to sign a petition for the banning of aerial spraying; using the media to get their message across; and mobilizing protest actions to draw the municipal government's attention to the issue. MAAS also lobbied hard with the City Council and the Mayor of Davao City for a city ordinance/resolution banning aerial spraying.

In August 2004, a draft ordinance aimed at regulating aerial spraying was submitted to the City Council. This was followed, in April 2005, by a proposed ordinance to ban aerial spraying within the next 5 years. Starting April 2006 until the end of that year, this proposed ordinance went through extensive deliberations, while MAAS kept up its anti-aerial spraying campaign. Finally, in February 2007, the City Ordinance imposing a ban on aerial spraying was signed by the Mayor of Davao City, Rodrigo Duterte. The ban became effective on June 23, 2007. The City Ordinance provides for a 30-meter buffer zone and imposes stiff penalties for non-compliance: for first time offenders, a P5,000 penalty and/or imprisonment for 1-3 months; and for the most recalcitrant (third-time offenders), a P5,000 penalty, up to a year's imprisonment, and cancellation of the City-issued permit to operate a plantation.

The fungicides applied in the banana plantations have been reported to kill beneficial fungi, which keep pests that attack coconuts (i.e., the rhinoceros beetle) in check. Pesticide drift also causes the premature flowering of coconuts. Both factors have been blamed for the decline in productivity of coconut crops in areas close to the banana plantations.

➲ Inadequate access to support services and information that impact on farming

The farmer representatives complained that many of them do not have access to irrigation facilities, and that there is no consistent government program or policy to provide farmers such access. Many of the farmer representatives said that in place of institutional government support, they depend on their congressperson's largesse.

The patronage system—which is arbitrary and highly politicized—determines whether or not farmers or their organizations are able to purchase, put up, or gain access to post-harvest facilities, such as warehouse/storage facilities, mechanical dryers, tractors, etc.; or whether or not a farm-to-market road is constructed in their area.

Production loans are available at formal sources, such as banks, but these come with interest charges that the farmer representatives are hard-put to pay. Banks also require collateral, which few farmers could provide. As a result, farmers are forced to resort to informal credit sources, which charge usurious interest rates.

The farmer-representatives also cited their lack of awareness of the impact on their livelihood of national and international policies on agriculture and trade, such as the reduction of tariffs on agricultural imports, which has led to the inundation of the domestic markets by cheap developed country imports and, consequently, to the decline in prices of local products.

Other policies that have had an impact on local agriculture are the ASEAN free trade agreements, the Japan-Philippines Economic Partnership Agreement (JPEPA), which critics say is one-sided in favor of Japan, etc.

The farmer-representatives claimed that they get much of the information they need from civil society organizations (CSOs).

➲ Militarization and human rights abuses

The Kilusang Magbubukid ng Pilipinas (KMP), a left-leaning federation of farmers' groups, has reported that 65 of its farmer leaders and 430 of its members have been killed by the Philippine military since 2001.

Another report has claimed that half of all victims of extra-judicial killings are peasants or fisherfolk associated with organizations or movements advocating access to land and other resources.

Increased militarization has also been observed in areas where mining operations are widely opposed by the affected communities. For instance, a large military contingent has been deployed to secure the mining operations of TVI Mining in Siocon, Zamboanga against local protesters. A number of human rights violations by the military have been reported in this area.

SUMMARY OF ISSUES RELATED TO FARMERS' RIGHTS AND PROPOSED PLANS OF ACTION

Tables 1 to 10 provide a summary of the discussion of concepts related to farmers' rights and proposed actions:

TABLE 1
Summary of concepts and status of farmers' rights to seeds from experiences and perspectives shared by Forum participants

Access to complete information on activities and results of research

Corresponds to the following FR elements of the 2003 Cebu Declaration:

- Element 16: Right to support services
- Element 17: Right to access the best available and appropriate farming practices techniques and technologies
- Element 27: Right to take part in government programs
- Element 31: Right to access information/to be informed of market data and agricultural policies of government
- Element 38: Right to equitably benefit from the country's genetic resources

Practice	Gaps	Issues	Action	Results
• Participation in forums, meetings and conferences; access to extension materials in popular form, e.g., comics • Use of demo farms	• Only few can participate in forums, etc. • Government bias for TNCs/ MNCs in terms of research and information	Lack of funds and capacity to carry out information campaigns and research that fit the requirements of farmers	Challenges: • Information must reach grassroots level; • On-farm research should be conducted in as many places as possible.	Intended results: • Well-informed farmers; • Research done is appropriate and tested in different farm and farmer situations.

Farmer participation in seed policy development

Corresponds to the following FR elements of the 2003 Cebu Declaration:

- Element 22: Right to be consulted and to participate in governmental decision-making on laws related to farmers in determining farm-gate prices government support prices and in the formulation of trade policies including importation
- Element 28: Right to be heard and be given attention regarding ecological matters and those having adverse health impacts i.e. mining cement projects, GMOs.
- Element 32: Right to active participation in decision-making processes of government
- Element 33: Right to redress of grievances
- Element 35: Right to be recognized as the country's primary food producers vital to achieving food self-sufficiency and sovereignty
- Element 36: Right to genuine participation in all levels of policy-making and decisions regarding agriculture& farmers' welfare

Practice	Gaps	Issues	Action	Results
Nothing here as government does not encourage this	No consultations with the farmers	Bias toward influential people in the agriculture sector	Push by farmers [organized farmer groups] to bring out the issues	Concrete actions/ public awareness campaigns staged to influence policy development

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TABLE 1 *(ctd.)*

Summary of concepts and status of farmers' rights to seeds from experiences and perspectives shared by Forum participants

Recognition of farmer initiatives/farmer-developed varieties

Corresponds to the following FR elements of the 2003 Cebu Declaration:

- Element 10: Right to create initiatives in order to help others
- Element 24: Right to use, share, exchange, sell and develop genetic resources
- Element 25: Right to collective ownership of seeds (right to own way of life)
- Element 29: Right to be supported by government regarding technologies generated/invented by farmers in the country side
- Element 33: Right to redress of grievances
- Element 35: Right to be recognized as the country's primary food producers vital to achieving food self-sufficiency and sovereignty
- Element 38: Right to equitably benefit from the country's genetic resources.

Practice	Gaps	Issues	Action	Results
Continuing seeds conservation and development activities.	• Government indifference to farmers' grievances; • Acceptability of technology/practice.	No government support (financing and seeds certification) for farmer-developed varieties.	• Continuing dialogue, negotiations and linkage with government; • Practice of sustainable agriculture (SA) including crop varietal improvement/farm trials.	Hope remains that government would recognize farmer initiatives; meantime initial victories have been achieved: (a) Increased rice diversity; and (b) production of good quality seeds; access to source of new varieties

Secure access to and control of seeds

Corresponds to the following FR elements of the 2003 Cebu Declaration:

- Element 24: Right to use, share, exchange, sell and develop genetic resources
- Element 25: Right to collective ownership of seeds (right to own way of life)
- Element 29: Right to be supported by government regarding technologies generated/invented by farmers in the country side
- Element 35: Right to be recognized as the country's primary food producers vital to achieving food self-sufficiency and sovereignty
- Element 38: Right to equitably benefit from the country's genetic resources.

Practice	Gaps	Issues	Action	Results
• Seed conservation; • Plant breeding; • Local exchanges.	• PVP, patenting, bio-piracy; MNC plantations use chemical agriculture; • Value of naturally-produced food not well appreciated.	• Bias of government to HYVs/GMOs; • Importation policies of government; • Lack of marketing support.	• Campaigns against HYVs/GMOs; Continued breeding/research efforts; • Engaging LGUs to formulate a Sustainable Agriculture Code and organize fairs.	• Interest of LGUs to support programs on seeds, e.g., ordinance for a community seed registry; • Production of safe food coming from farmer-developed seeds/ traditional varieties.

TABLE 2

Farmers' right to land

Farmers' right as identified in the 2007 National Forum: Farmers' right to land

Farmers' conceptual understanding of the FR: Farmers' right to manage their own land and make it productive

Farmers' Right to Land

Corresponds to the following FR elements identified in the 2003 Cebu Declaration:
Element 5: Right to peaceful life, old age and security and other support services
Element 7: Right to decent and peaceful living
Element 9: Right to land and other farm equipment to make the land productive
Element 15: Right to security over land
Element 19: Right to peace and order
Element 31: Right to access information/to be informed of market data and agricultural policies of government
Element 33: Right to redress of grievances

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
• Many loopholes in CARL, e.g., Agri-Venture Agreements, Voluntary Offer to Sell, Farm as Collateral (FAC) Bill; • Criminalization of agrarian cases; • Conversion of agricultural lands; • Divisiveness among farmers; • Gaps in the IPRA Law; • Inconsistency in CARL and IPRA.	• Lack of DAR political will; • Big corporations and influential clans taking advantage of CARL loopholes; • Big businesses encroaching on ancestral lands; • Use of guns, goons, and gold (3Gs) by landowners; • Lack of information on FR to land, making farmers prone to harassment.	• Legal actions/petitions to rescind onerous contracts; • Organizing farmers (LTI advocacy)/mobilization/ mass actions; • Lobbying and advocacy; • Networking/linkaging; • Education and training for farmers; • Keeping the media in the dark about pro-farmer actions until these are in progress so that landowners cannot immediately resort to their unfair strategies.	• Established good relations with LGUs though the process has been difficult; • Positive media coverage.

TABLE 3
Farmers' right to water

Farmers' right as identified in the 2007 National Forum: FR to Water

Farmers' conceptual understanding of the FR: Water is life; Farmers need water both for irrigation and domestic use

Farmers' Right to Water
Corresponds to the following FR elements identified in the 2003 Cebu Declaration:
Element 5: Right to a peaceful life, old age and security and other support services
Element 8: Right to irrigation and equitable distribution of irrigation water
Element 14: Right to a subsidy (50%-50%) for farming practices
Element 16: Right to support services
Element 22: Right to be consulted and to participate in governmental decision making on laws related to farmers, in determining farm-gate prices, government support prices and in the formulation of trade policies including importation

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
• Not enough water to irrigate the farms; • No consistent water program or policy.	• Large dams constructed are defective/diversion of funds; • Conversion of farmlands to fishponds, thus increasing competition for water; • High irrigation fees.	• Dialogue between the parties concerned; • Legal action; • Lobbying with local governments.	Some got access to water but still no clear policies on water use.

TABLE 4
Women and farmers' rights

Farmers' right as identified in the 2007 National Forum: Women and FRs

Farmers' conceptual understanding of the FR: Women are integral to the whole agricultural and development process; need for distinct women's organizations with a peasant character

Women and FRs
Corresponds to the following FR elements identified in the 2003 Cebu Declaration:
- Element 1: Right to self-determination, to make decisions on matters that will affect him/her
- Element 11: Right to create initiatives in order to help others
- Element 15: Right to security over land
- Element 20: Right to access affordable health services
- Element 21: Right to oppose laws, policies and programs that will affect the livelihood of farmers
- Element 22: Right to be consulted and to participate in governmental decision making on laws related to farmers, in determining farm-gate prices, government support prices and in the formulation of trade policies including importation
- Element 23: Equal rights for women, youth and other farmers in political, social, cultural and economic spheres
- Element 28: Right to be heard and be given attention regarding ecological matters and those having adverse health impacts i.e. mining cement projects, GMOs
- Element 36: Right to genuine participation in all levels of policy-making and decisions regarding agriculture& farmers' welfare

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
A social culture still not supportive of women's empowerment, e.g., husbands still resist the participation of their wives in organizations.	• Discrimination against women, e.g. women given lower wages than men for the same work; • Women not encouraged to participate in land conversion issues and not given equal rights to land; • Access to health services (irregular and not comprehensive).	• Involvement of women in negotiations, legal actions and dialogues, e.g., women participated in barricades as front liners on land conversion issues; • Capacity building for women's empowerment.	Farm families able to gain possession of lands through the involvement of women in the issues.

TABLE 5

Farmers' right to market organic products

Farmers' right as identified in the 2007 National Forum: FR to Market Organic Products

Farmers' conceptual understanding of the FR: Marketing supports the livelihood systems and economic sustainability of farmers

Farmers' Right to Market of Organic Products

Corresponds to the following FR elements identified in the 2003 Cebu Declaration:

- Element 11: Right to good all-weather roads and bridges
- Element 13: Right to just prices for agricultural produce
- Element 29: Right to be supported by government regarding the technologies generated/invented by farmers in the countryside
- Element 31: Right to access information/be informed of market data and agricultural policies of government
- Element 34: Right to full government support in all levels of production and marketing
- Element 35: Right to be recognized as the country's primary food producers vital to achieving food self-sufficiency & sovereignty
- Element 38: Right to equitably benefit from the country's genetic resources

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
• Farmers do not have sufficient information on and understanding of market demands and prices for crops; • Tedious and expensive certification of organic products which farmers find difficult to comply with; • Low production volume of organic products to meet market requirements; • Poor quality of organic products; • High cost of organic product certification; • Low consumer awareness of organic products.	• Lack of market support and subsidies; • Fair pricing for organic products; • Problematic organic certification standards in the Philippines.	• Organizing organic producers; • Crop diversification; • Production of inputs for organic agriculture; • Linkage with national and international markets; • Trainings, seminars, exposure activities for farmers; • Building public and consumer awareness on organic products.	• Organized local marketing, thus able to sell organic products in local supermarkets and through other institutions; • Expansion of local organic production; • Established international markets for organic products, e.g., ATFI; • Productive lands through crop diversification.

TABLE 6
Farmers' right to appropriate technology

Farmers' right as identified in the 2007 National Forum: FR to Appropriate Technology

Farmers' conceptual understanding of the FR: Access to and use of sustainable cost-effective technologies and farming systems

Farmers' Right to Appropriate Technology
Corresponds to the following FR elements identified in the 2003 Cebu Declaration:
- Element 16: Right to support services
- Element 17: Right to access the best available and appropriate farming practices techniques and technologies
- Element 22: Right to be consulted and to participate in governmental decision making on laws related to farmers, in determining farm-gate prices, government support prices and in the formulation of trade policies including importation
- Element 26: Right to protect and preserve traditional farming knowledge and systems
- Element 27: Right to take part in government programs
- Element 28: Right to be heard and be given attention regarding ecological matters and those having adverse health impacts i.e. mining cement projects, GMOs.
- Element 29: Right to be supported by government regarding technologies generated/invented by farmers in the country side
- Element 31: Right to access information/to be informed of market data and agricultural policies of government
- Element 32: Right to active participation in decision-making processes of government

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
• Lack of (no budget) support for SA programs, including integration of SA in the school curricula; • Technologies and research are confined to research centers • Bias for WTO policies and hybridization/GMOs evident in the government's promotion of technologies that seek to replace local traditions and farming systems; • Lack of appropriate educational opportunities for farmers.	• Lack of government research on appropriate farming technologies; • Farmers do not have sufficient access to technologies that are appropriate and adapted to their traditions and practices.	• Policy advocacy/ lobbying; • Training/awareness on technologies like hybrid rice and GMOs through civil society organizations; • Use of traditional varieties and development of other varieties through cross-breeding.	• Partnerships with LGUs, NGOs and other agencies; • Farmers made aware about hybrid rice and GMOs and decide to enhance use of traditional varieties.

TABLE 7
Farmers' right to a healthy environment

Farmers' right as identified in the 2007 National Forum: FR to a Healthy Environment (air, land, water)

Farmers' conceptual understanding of the FR: Farmers' access to safe and sound environment in the pursuit of farming and livelihood systems

Farmers' Right to a Healthy Environment (air, land, water)
Corresponds to the following FR elements identified in the 2003 Cebu Declaration:
- Element 6: Right to access quality, adequate, safe and sufficient foods for the family
- Element 28: Right to be heard and be given attention regarding ecological matters and those having adverse health impacts i.e. mining cement projects, GMOs.
- Element 30: Right to protect the environment
- Element 32: Right to active participation in decision-making processes of government

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
• Encroachment on protected areas; • Threats from the 1995 Mining Act; • Use of hazardous substances in agriculture.	• Non-compliance with Environmental Clearance Certificate (ECC) requirements; • Destruction of watersheds; • Buffer zone regulations ignored in aerial spraying; • Only small farmers are fined for violations.	• Campaigns/Lobbying/ Advocacy; • Organizing work.	• City ordinance on aerial spraying (Davao City); • Construction of farm-to-market roads.

TABLE 8
Farmers' right to participate in Governance

Right as identified in the 2007 National Forum: FR to Participate in Governance

Farmers' conceptual understanding of the FR: Participation of farmers in local governance is important to push for implementation of SA in LGU programs

Farmers' Right to Participate in Governance
Corresponds to the following FR elements identified in the 2003 Cebu Declaration:
- Element 21: Right to oppose laws, policies and programs that will affect the livelihood of farmers
- Element 22: Right to be consulted and to participate in governmental decision making on laws related to farmers, in determining farm-gate prices, government support prices and in the formulation of trade policies including importation
- Element 27: Right to take part in government programs
- Element 28: Right to be heard and be given attention regarding ecological matters and those having adverse health impacts i.e. mining cement projects, GMOs.
- Element 32: Right to active participation in decision-making processes of government
- Element 36: Right to genuine participation in all levels of policy-making and decisions regarding agriculture& farmers' welfare

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
• Local sectoral representation as provided by the Local Government Code has not materialized; • DA budgeting process not flexible.	Creation of local special bodies to push for SA requires a separate law for implementation.	Lobbying for sectoral representatives in local government units (LGUs).	• Participation of farmers in local development councils; • Access to the LGU internal revenue allotment (IRA).

TABLE 9A
Farmers' right to support services

Farmers' right as identified in the 2007 National Forum: FR to Support Services

Farmers' conceptual understanding of the FR: Rights that include (i) Access to information; (ii) Access to irrigation, post-harvest facilities, credit; and (iii) Access to social security services and health care

Farmers' Right to Support Services - ACCESS TO INFORMATION
Corresponds to the following FR elements identified in the 2003 Cebu Declaration:
- Element 22: Right to be consulted and to participate in governmental decision making on laws related to farmers, in determining farm-gate prices, government support prices and in the formulation of trade policies including importation
- Element 28: Right to be heard and be given attention regarding ecological matters and those having adverse health impacts i.e. mining cement projects, GMOs.
- Element 31: Right to access information/to be informed of market data and agricultural policies of government

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
• Government promotion of certain technologies does not usually show the whole picture; • No real effort by government to inform/ educate farmers and to explain policies; • Farmers not consulted.	Farmers have no access to information.	Information secured by farmers through civil society organizations and organized farmers' groups.	Farmers are consulted and participate in issues affecting them.

TABLE 9B
Farmers' right to support services

Farmers' right as identified in the 2007 National Forum: FR to Support Services

Farmers' conceptual understanding of the FR: Rights that include (i) Access to information; (ii) Access to irrigation, post-harvest facilities, credit; and (iii) Access to social security services and health care

Farmers' Right to Support Services - ACESS TO IRRIGATION, POST-HARVEST FACILITIES, CREDIT
Corresponds to the following FR elements identified in the 2003 Cebu Declaration:

- Element 5: Right to a peaceful life, old age and security and other support services
- Element 8: Right to irrigation and equitable distribution of irrigation water
- Element 9: Right to land and other farm equipment to make the land productive
- Element 11: Right to good all-weather roads and bridges
- Element 12: Right to own appropriate post-harvest facilities
- Element 14: Right to a subsidy (50%-50%) for farming practices
- Element 16: Right to support services
- Element 17: Right to access the best available and appropriate farming practices
- Element 34: Right to active participation and decision making processes of government
- Element 37: Right to access to farm credit at affordable interest rates (comprehensive farm credit policy)

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
• Lack of infrastructure, e.g., for irrigation; • Farmers have no capacity to purchase farm tractors; • Loan/credit facilities for farmers are not cheap and require collateral; • Loan/credit usually conditioned on use of certified crops which create problems for farmers using traditional varieties.	Padrino system (patron-client relations) in accessing government services.	Lobbying by farmers' groups.	• Farmers able to buy tractor through funds from the Department of Agriculture (DA) and the LGU; • Installment payment of loans extended to a longer period (soft loans to farmers).

TABLE 9C
Farmers' right to support services

Farmers' right as identified in the 2007 National Forum: FR to Support Services

Farmers' conceptual understanding of the FR: Rights that include (i) Access to information; (ii) Access to irrigation, post-harvest facilities, credit; and (iii) Access to social security services and health care

Farmers' Right to Support Services - ACCESS TO SOCIAL SECURITY SERVICES AND HEALTH CARE
Corresponds to the following FR elements identified in the 2003 Cebu Declaration:

- Element 5: Right to peaceful life, old age and security and other support services
- Element 16: Right to support services
- Element 20: Right to access affordable health services

Status as per the National Forum Discussions

Gaps	Issues	Action	Results
No health insurance and appropriate social security services for farmers.	No specific support for farmers.	None mentioned.	

TABLE 10
Farmers' right to life/ Farmers' rights as human rights

Farmers' right as identified in the 2007 National Forum: FR to Life / FR as HR

Farmers' conceptual understanding of the FR: A dead farmer cannot farm to enjoy his/her rights as farmer; Farmer has to assert his/her right to live peacefully and all other rights—civil, political, economic, social and cultural rights

Farmers' Right to Life/Farmers' Rights as Human Rights Corresponds to the following FR elements identified in the 2003 Cebu Declaration: • Element 1: Right to self-determination, to make decisions on matters that will affect him/her • Element 5: Right to peaceful life, old age and security and other support services • Element 7: Right to decent and peaceful living • Element 19: Right to peace and order • Element 33: Right to redress of grievances			
Status as per the National Forum Discussions			
Gaps	Issues	Action	Results
• Association of Human Rights (HRs) advocacy with "leftist" groups/ideology; • HRs not given much importance or not part of the discussions even in schools.	• Extra-judicial killings; • Harassment of farmers asserting their rights/ tagged as leftists; • State policies, e.g., the Human Security Act, do not distinguish between peaceful protesters and armed dissidents; • Militarization especially in relation to agrarian reform matters.	• Dialogues/pastoral letters; • Socio-economic programs; • Lobbying in the crafting of HR-related laws; • Alliance building – national and international; • Signature campaigns; • Use of alternative media.	• United front among the NGOs; • Philippines put in the HR spotlight.

LEGISLATIVE WISH LIST

The farmer representatives drew up a "Legislative Wish List," or proposed legislative action to promote the meaningful implementation of their bundle of rights. SEARICE committed to take the lead in advocacy and lobbying activities at the national level.

1. FR to Seeds:

❖ Repeal PVP Act 9168 and enact laws that recognize farmers' right to seeds and traditional knowledge in seed resources conservation and development.

Part of the lobby work here would be for the expansion of the Farmers' Rights Bill to include all the other rights identified in the 2007 National Forum and not to limit it to FR to Seeds.

2. FR to Land:

❖ Repeal Republic Act 6657 (CARL) and enact a genuine agrarian and fishery / aquatic reform law that addresses the loopholes of RA 6657.

In terms of local action, this would include lobbying for the local legislative bodies to pass resolutions calling for Congress to repeal CARL and to address the inconsistencies in CARL and related agrarian reform laws. Areas to look into

would be: ensuring that the "land to the tiller" principle is observed; abolition of monopoly landownership; free distribution of land to legitimate tillers; and prioritization of big public lands in land distribution. The group further suggested using the People's Agrarian Reform Code (PARCode) as a working draft in formulating a genuine agrarian and fishery/aquatic reform law.

3. FR to Water:

- Repeal of the 1995 Mining Act to prevent the contamination of water and the destruction of the watersheds, and thereby ensure access to safe and sufficient water;
- Review and investigate the construction of large but defective dam projects; and
- Support for small water impounding projects (SWIPs) and rehabilitation of watersheds with farmer/community participation.

Measures must be undertaken to ensure farmers' access to and control of irrigation water; and to call on the Department of Agriculture to support SWIPs and watershed rehabilitation programs with farmer and community participation.

4. Women FRs:

- Passage of a Women Empowerment Code for Rural Women.

5. FR to Market Organic Products:

- Repeal of DA Administrative Order #8 on entry of GMO products and enact laws banning entry and use of GMOs in the country;
- Scrutiny of the DA budget to support Sustainable Agriculture and complement related LGU initiatives; and
- Government subsidy for the certification of organic products of small farmer groups.

6. FR to Appropriate Technology:

- Funding for Executive Order (EO) 481 (Organic Agriculture Bill);
- Development of curriculum on organic agriculture in the DepEd and CHED; and
- Recognition of farmers as farmer-scientists and local experts in sustainable agriculture extension syste*ms.*

Related to these are efforts to ensure that the government allocates funds for these programs/initiatives.

7. FR to a Healthy Environment:

- Implementation of the Clean Air Act and the NIPAS; and
- Enactment of laws banning the use of hazardous chemicals and similar substances (persistent organic pollutants, or POPs) in agriculture.

8. Protection of FR as HR:

- Scrutiny of the intelligence fund/budget of the ISAPF;
- Support for the criminalization of enforced disappearances; and
- Expansion of the FR Bill to cover other farmers' rights.

Next steps

The National Forum participants entrusted to SEARICE the consolidation of the various regional reports presented and agreed with SEARICE's recommendation that the consolidated report incorporates the 38 Elements of FR identified in Cebu (i.e., the Cebu Declaration). The draft report would be circulated to participants for validation and then further shared with other stakeholder groups so that the report becomes a truly "national report".

The participants further agreed that SEARICE should take the lead in lobbying for the legislative wish list at the national level, while they conduct their respective lobbying work at the local level to lend support to SEARICE's national lobby initiatives.

SEARICE informed the participants that the consolidated report would be disseminated at the 2nd Governing Body Meeting of the ITPGRFA slated in October or November 2007. SEARICE would provide regular updates to the participants and to other interested stakeholder groups through the Farmers' Right Monitor (BUGKOS Newsletter). The first issue of BUGKOS would feature the highlights of this 2007 National Farmers' Forum.

38 Elements of Farmers' Rights (2003 Cebu Declaration)

Household level

Element 1: Right to self-determination, to make decisions on matters that will affect him/her
Element 2: Right to livelihood for the entire family
Element 3: Right to continuing, free education of the farmer's children, up to college
Element 4: Right to build own house and lot
Element 5: Right to peaceful life, old age and security and other support services
Element 6: Right to access quality, adequate, safe and sufficient foods for the family
Element 7: Right to decent and peaceful living

Farm level

Element 8: Right to irrigation and equitable distribution of irrigation water
Element 9: Right to land and other farm equipment to make the land productive
Element 10: Right to create initiatives in order to help others
Element 11: Right to good all-weather roads and bridges
Element 12: Right to own appropriate post-harvest facilities
Element 13: Right to just prices for agricultural produce
Element 14: Right to a subsidy (50%–50%) for farming practices

Element 15: Right to security over land
Element 16: Right to support services
Element 17: Right to access the best available and appropriate farming practices techniques and technologies
Element 18: Right to choose planting materials

Community level

Element 19: Right to peace and order
Element 20: Right to access affordable health services
Element 21: Right to oppose laws, policies and programs that will affect the livelihood of farmers
Element 22: Right to be consulted and to participate in governmental decision making on laws related to farmers, in determining farm-gate prices, government support prices and in the formulation of trade policies including importation
Element 23: Equal rights for women, youth and other farmers in political, social, cultural and economic spheres
Element 24: Right to use, share, exchange, sell and develop genetic resources
Element 25: Right to collective ownership of seeds (right to own way of life)
Element 26: Right to protect and preserve traditional farming knowledge and systems

National level

Element 27: Right to take part in government programs
Element 28: Right to be heard and be given attention regarding ecological matters and those having adverse health impacts i.e. mining cement projects, GMOs
Element 29: Right to be supported by government regarding technologies generated/invented by farmers in the country side
Element 30: Right to protect the environment
Element 31: Right to access information/to be informed of market data and agricultural policies of government
Element 32: Right to active participation in decision-making processes of government
Element 33: Right to redress of grievances
Element 34: Right to active participation and decision making processes of government
Element 35: Right to be recognized as the country's primary food producers vital to achieving food self-sufficiency and sovereignty
Element 36: Right to genuine participation in all levels of policy-making and decisions regarding agriculture& farmers' welfare
Element 37: Right to access to farm credit at affordable interest rates (comprehensive farm credit policy)
Element 38: Right to equitably benefit from the country's genetic resources

Farmers' Rights in the Context of FAO's Treaty on Plant Genetic Resources—The Debate in Brazil

Rio de Janeiro
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Contents

This paper summarizes the current debate in grassroots organizations about farmers' rights particularly in regard to the resources of biodiversity, their social practices of management, the current threats to these rights, and the forms of resistance by farmers' organizations and civil society organizations. This document will be incorporated into a broader text that addresses the state of the debate in other countries in the CBDC—Community Biodiversity Development and Conservation network.

For the preparation of this document several inputs of grassroots organizations were reviewed, such as letters and statements made at political meetings in recent years that were marked by broad participation of farmers.

Farmers' Rights

The topic of Farmers' Rights, which in Brazil includes the rights of family-based farmers, peasants, extracting farmers, agrarian reform settlers, local communities and traditional traditional populations, has been systematically discussed in recent years at major events and public demonstrations of organizations and entities representing various social sectors.

In these areas of social and political expression, increasing emphasis is being given to Farmers' Rights over the resources of biodiversity, in particular, and to seeds of agricultural and forestry use.

The concept of "Farmers' Rights," as addressed in different international fora, is not necessarily incorporated into the debate of grassroots organizations in Brazil. However, it is evident that these organizations regard seeds as simultaneously a material and economic resource, as well as a cultural asset that is part of the patrimony of farming peoples and is a condition of their existence. This understanding of the seed as a cultural good highlights the inextricable relationship between their knowledge and the resources of biodiversity.

Discussion of farmers' rights is included in discussion of the right to seeds and of the recognition and exercise of other rights that affect full access to the resources of biodiversity. Hence, farmers' rights comprise the right of farmers to express their own socio-cultural identity: the right to work, the right of access and permanence in the land, the right of access and availability of drinking water, the right to preserve their culture, their ways of life and management practices of natural ecosystems. Also emerging from that integrating approach is the right of women to material and sociocultural goods as well as recognition for their work and innovative capacity[1]. In this broader context of social

[1] March of the Daisies, National Confederation of Workers in Agriculture—Contag, 2006.

struggle is the right to food in adequate quantity and quality for the nutrition and health of families, respecting their cultural diversity[2] and the right to foods free from pesticides and transgenic organisms[3].

Specifically in relation to access to and use of seeds, the organized grassroots movement is unanimous in saying that "to produce, sell and exchange their seeds is a right of the farmer." They also believe that the State, through legal mechanisms and appropriate public policies, should promote such rights[4], among others, supplying the public institutional markets mainly with home and family production[5], and ensuring the participation of rural family farmers in the definition, development and implementation of policies for sustainable rural development.

FARMERS' RIGHTS IN PRACTICE

There are now in all regions of Brazil a large number of community farmer experiences that have been the basis for the development of local processes of agro-ecological transition[6] associated with the rehabilitation, conservation, exchange and sustainable use of local seed. It is these social practices that affirm the importance of farmers and their organizations as the true guardians of local seeds, while they exercise their rights to biodiversity resources.

These experiments involve different networks of local banks and seed houses. In the state of Paraíba, in the semi-arid northeastern Brazil, 6500 families currently comprise a network of 228 community seed banks, distributed in 61 municipalities. This is an example already very well known in the country of communal structures that guarantee farming families access to good quality seed at the right time, i.e. for planting; eliminate the frequent political use of their distribution; and prioritize local seeds over improved ones for other management conditions.

There are other experiences related to the rehabilitation of local varieties, e.g. traditional practices of selection and multiplication in communal seed fields.

The knowledge and exchange of these experiences occur in different biodiversity fairs and festivals held throughout the country and in which farmers exchange their seeds.

[2] Idem.

[3] II ENA, March of Daisies.

[4] Federation of Workers in Family Farming, 17/09/2007; II ENA.

[5] II ENA, 2006.

[6] World March of Women, 2006.

The spread of networks for community rehabiliation, multiplication and exchange of breeding material has resulted in the formation of local systems of information on seed availability, which in turn has activated mechanisms of reciprocity and exchange. In this context, some organizations of farmers have taken up the challenge to produce registered seeds in an agroecological way, such as Bionatur, linked to the Movement of Landless Rural Workers (MST), and Unaic, Union of Associations of Farmers in the State of Rio Grande do Sul, in the southern part of the country.

The articulation of these experiences both locally and nationally has led to some degree of influence on the formulation of public policies for the sector. An example at the local level was already mentioned in the state of Paraíba, where the government enacted a law that ensured the supply of stocks of the Seed State Program with seeds from local varieties. Until then these government programs of seeds were characterized by the distribution of improved seeds in different environmental conditions, and adapted for systems based on intensive use of agrochemical inputs.

At the federal level, the Food Acquisition Program can be highlighted, operated by the National Supply Company, which encourages and supports the marketing of local seeds produced by family farmers, and the Multiplying Centers for the Management of Agrobiodiversity—CIMAS, the result of a partnership between the National Institute of Colonization and Agrarian Reform and the Ministry of Environment, which support the genetic conservation of seeds and livestock in rural settlements.

THREATS TO FARMERS' RIGHTS

If on the one hand, the sustainable use of local seeds and the exercise of farmers' rights to the free use of seeds have been due mostly to the initiative of civil society, on the other hand, initiatives to restrict these rights and the threats that may limit the free use of the seed come mostly from agribusiness and the State.

The experiences of rural populations show, and studies confirm it, that the agribusiness model is primarily responsible for the concentration of land, the violence in the countryside, the rural exodus, the urban unemployment and the degradation of biodiversity, soil and water[7,8]. The predatory way in which agribusiness corporations occupy territory, promoting their physical destruction, is a serious threat to rural populations.

[7] Letter of the ENA II.

[8] Gemmil, B, and Varela, AM Modern agriculture and biodiversity: uneasy neighbors. Policy Briefs. Science and Development Network, Feb, 2004.

The retrenchment of the traditional practices of farmers and local communities in management, production, use, storage, marketing and exchange of seed have been occurring due to the creation or modification of regulatory frameworks that protect the commercial interests of private groups and the introduction of technologies such as transgenic seeds. These new legal contours tend towards increasing privatization of genetic resources and its monopolistic exploitation through different mechanisms of industrial protection, such as patents, in the case of transgenics.

The experiences cited previously, and many other ongoing in the country that were not mentioned in the text, are considered legal only because there are small "gaps" in the national legislation on seeds and seedlings (Law 10711/03) and plant variety protection (Law 9456/97), which recognize the local seeds (hitherto regarded as "grains") and allow their use. The law also ensures equal conditions to farmers who grow conventional and local seeds, particularly in access to state subsidies agriculture, such as credit.

These small exceptions are a result of recent mobilization by civil society. If it were not for this, all community experiences of management of biodiversity resources would be deemed illegal.

The present moment could be used for consolidation and expansion of experiences, as an exercise of these rights. However, what is happening is that the organizations and movements engaged in the promotion and protection of the local seeds are investing their efforts in a new process of mobilization to prevent changes in the law that reverse these "loopholes" and impose further restrictions on the use of the resources of biodiversity.

Family farmers who produce registered seed commercially experience difficulties in meeting the requirements of legislation, since the access to basic seed (produced by the breeder or maintainer of the variety) has been heavily restricted[9] to family farm organizations. Contrary to the law of Seeds and Seedlings, farmers who use local seed have difficulties in accessing agricultural insurance, intended solely to benefit users of registered seed[10].

The Plant Variety Protection law ensures the right to commercial reproduction and prohibits others to produce seeds and seedlings of protected varieties for commercial purposes. But in its current form, the law provides that the personal use of protected seed (harvested and used as seed the following year), and the consumption or sale of production do not infringe any property rights. Moreover, the same law allows for the do-

[9] Article 2, section XXV of the Seed Law defines the maintainer of seeds as "natural or legal person responsible for making available a minimum inventory of propagating material of a cultivar listed in the National Registry of Cultivars–RNC, retaining features of genetic identity and varietal purity."

[10] London, F. The new legislation on seeds and seedlings in Brazil and its impacts on the family farm. National Agroecology Articulation: Rio de Janeiro, 2006.

nation or exchange of seeds among small producers. Currently, the government is considering changes in legislation so that, inter alia, the protection that today focuses on a specific list of species will apply to all grown plants, fungi and algae.

As if all this was not enough, the intellectual protection is not restricted to seeds and seedlings, covering in some cases the products of the harvest obtained from protected seeds. The results are restriction of rights, increased costs and loss of autonomy of farmers. Concretely, these changes could be implemented if Brazil joins UPOV 1991—Convention of the Union for the Protection of New Varieties of Plants. For some sectors of the current government and agribusiness, the use of farm-saved seed is a bad "cultural habit" of the farmer, who needs to be re-educated to use registered seeds[11].

Discussion is currently ongoing in the federal government for a draft law on access to genetic resources and benefit sharing, which the government intends to send to Congress to replace the national guidelines currently in effect.

As in other cases already mentioned, this discussion has taken place without the participation of civil society and without the consultation of the sectors that will be directly affected.

It is convenient to cite the negative impacts on the conservation of agrobiodiversity arising from the technical-scientific approach that guides agricultural research and which permeates rural extension and the existing regulations for the financing of agriculture. A view that knowledge about the management of biodiversity resources is the exclusive domain of researchers and plant breeders results in the discredit and disqualification of the know-how accumulated by farmers in the management of diverse agroecosystems, leading to increasing specialization of production and progressive disappearance of the local varieties and breeds[12].

The grassroots social movements have been working throughout the country to defend and strengthen the sustainable use of local seeds by farmers and traditional populations. At the same time, they seek to improve their strategies to address the impacts of the agribusiness companies that want to control Brazilian seeds, production and agricultural trade and policies. The main strategies of peasant resistance lie in the strengthening of local experiences and their affirmation as a way of influencing public policies.

[11] Lobby in Congress that restricts the right of farmers to save seeds. Socioenvironmental Institute, 08/08/2007. Available in http://www.socioambiental.org/nsa/direto/direto_html?codigo=2007-08-08-153804, consulted on 03/10/2007.

[12] Letter from I ENA.

Among others, some initiatives underway can be highlighted that seek to guarantee the rights of farmers to seeds:

- Linkages between social movements and organizations to ensure that Brazilian seed legislation does not deny farmers the right to produce, exchange and market their seeds;
- Creation of mechanisms to prevent the appropriation and misuse of local varieties by researchers and/or companies;
- Negotiations so that rural credit programs, crop insurance, technical assistance and State programs encourage the free and autonomous use of seeds with an agro-ecological focus, guaranteeing farmers' rights;
- Formulation of a National Program on Agro-biodiversity towards encouraging local initiatives to free and autonomous use of biodiversity, including through the purchase and distribution of local seeds produced by farmers;
- Encouraging participatory research for the development of production systems using different local seeds;
- Creation of "biomonitoring networks" to monitor and report on transgenic contamination;
- Development of networks of community seed banks and promotion of festivals and fairs for the exchange of local seeds;
- Support for the social debate on the implications of legislation on seeds and seedlings to family farming;
- The expansion and intensification of campaigns, such as "Seeds Heritage of Humanity", led by Via Campesina, and the "Campaign For A Transgenics Free Brazil";
- The presence of social movements and civil society organizations in areas of consultation and political impact, such as the CONSEA—National Food Safety Council, or the CONDRAF—Council of Rural Development and Family Agriculture, the CTNBio—National Technical Commission on Biosafety, the CNBS—National Council Biosafety and the Advisory Council of Foreign of Embrapa; and
- Linking up consumers and family farmers, thus enhancing the quality of food production and promoting a production system that is environmentally friendly.

The Rights of Family-based Agriculture

Workshop Report—Final Summary

October 2007

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Contents

BACKGROUND

General objective of the workshop

To discuss and identify the rights of family-based agriculture.

Specific objectives of the workshop

- To identify the objectives of family-based agriculture;
- To introduce the participants and their communities; and
- To provide participants with a methodological framework to define farmers' rights.

Methodology

Selection of participants

- Six territories were identified, according to receptivity in the territories (Rebolledo, 2007).
- In each territory several farmer organizations were visited (mainly Neighbor Councils) through which sub-territories were characterized (6 in total).
- Within each sub-territory, the problems of peasant communities were identified, and classified, e.g., technical, etc.
- Each organization was invited to participate in the workshop on Farmers' Rights. Four representatives from each community, from 6 sub-territories, were invited and asked to ensure that both genders were equally represented.
- In total 17 farmers participated in the event.

WORKSHOP

Presentation of the activity

- Introduction to Farmers' Rights;
- Discussion on the objective of family-based agriculture;
- What do farmers think about their rights;
- How are their rights realized in practice.

Results

1. Presentation of the activity;
2. Introduction to Farmers' Rights
   Activity carried out by the facilitator of the workshop;
3. Discussion on the objective of family-based agriculture
   The discussion focused on:
   - Livelihood production;
   - How to ensure subsistence;
   - What types of assistance are necessary;
4. What do farmers think about their rights?
   Farmers discussed seven thematic areas. Those areas were:
   - Technology;
   - Seed;
   - Environment;

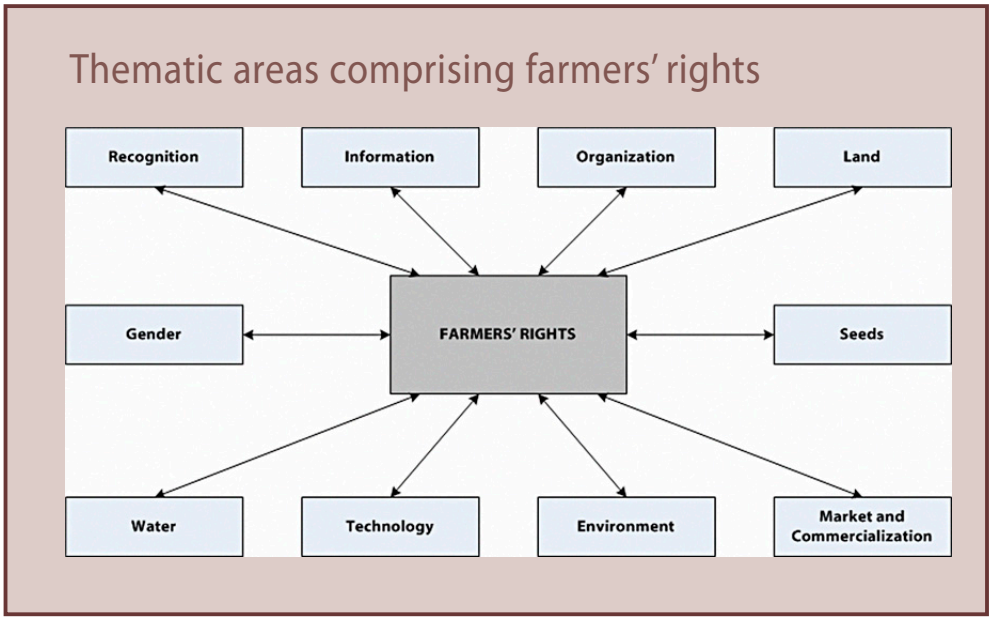
- Organization;
- Information;
- Market; and
- Commercialization.

In particular, the following were discussed:

- Technology
  - How to improve production;
  - The costs of technology are high;
  - The technical assistance has been positive (from the PRODESAL), this should be shared with other farmers;
  - The farmer does not do what the professional recommends (alluding to the indications by the veterinarian doctor in the management of milking cows in the commons).
- Seed
  - Seeds should be allowed to be reproduced;
  - Access to seed;
  - The farmers recognize that despite the influx of certified seeds, they have kept local seeds of bean, maize, melon, tomato, coriander, watermelon, lettuce, peach, apple. The advantages of using these seeds were described, mainly associated with better taste and greater diversity of uses;
  - Seed with high yields;
  - Genetic quality.
- Environment
  - High pollution due to pesticides;
  - Pollution from cellulose processing plant;
  - Foul odors from porcine production.
- Organization
  - The need for greater participation is recognized, at the same time as developing a better level of commitment from farmers in matters of protection of agriculture;
  - The need for a unit of organization for the protection of agriculture;
  - The "committee" disappeared, we are not united and we have had therefore to depend on the Neighbor Council from another community.
- Information
  - They do not know which institutions to go to for information.
- Market and commercialization
  - Being able to access markets with their production;
  - Maintain food fairs;
  - The producers are not taking their products to the fairs;
  - Increase commercialization places;
  - Access to transport facilities;
  - An itinerant fair was implemented which did not have the support of the farmers (because they were not informed);
  - They are not organized for commercialization;
  - They do not have purchasing power;
  - Peasant products are not preferred;

- Middle-men buy the vegetables and sell them at a much higher price than what they buy them from the farmers; and
- The land is abandoned and the owners are selling it.

Afterwards the work was done through cards which proposed other entries to the discussed topics.



The following thematic areas were added then:

- Land;
- Water;
- Gender; and
- Recognition.

Gender

- It is acknowledged that men and women share roles.
- Women recognize that men should not bear all the heavy burden of work.
- Men think that women work the same as men. It is said that women are hired based on their physical appearance, and this constitutes a form of discrimination.
- Shared work on the basis of equity is what should be promoted.
- Men are discriminated against when physically disabled.
- There is a high demand for women at work posts. They feel molested in the work places.
- Women also discriminate when they are in charge.
- Women are valued because of their delicacy (especially when working with blueberries).

Land

- Not losing the ones they now have.
- To have work in their lands.

- It is not acceptable that forestry activities (with eucalyptus) are done on wheat fields.
- There is a lack of control in the fields.

Water

- Lack of water leads to the bankruptcy of the vineyards.
- Improving canals and wells is needed.

Recognition

- Authorities and technicians should learn about the interests and problems of the peasants.
- They should fulfill their promises.
- They should listen to the farmers.

5. How are Farmers' Rights realized in practice?

   Farmers recognize that they have not carried out practices for the protection of their rights to date. They recognize that somehow the work through community organizations, the requests to the municipal authority about improvement on the communities' infrastructure, the individual work done by some leaders, the creation of women's organizations and the technical practices for the protection of their crops and animals contribute to the protection of their rights. They also recognize that there are individualistic practices that work against the collective rights of farmers.

THE RIGHTS OF FAMILY-BASED AGRICULTURE

1. The right to continue being a peasant farmer

This can be understood in a simple way, as the right to produce what is necessary, and to ensure their present and future subsistence.

This is also expressed in terms of being recognized as such. The latter meaning that the peasant farmers wish their authorities and technicians know in a better way the interests and problems that affect them.

2. Rights of female and male peasants farmers

It is recognized that men and women share roles in the diverse activities of farmwork. The need to eliminate the discriminatory practices that both men and women have to deal with in agricultural activities is also recognized. In the same way, the importance to take advantage of the skills and talents of their relations is also recognized. In particular, women express their concern for their increasingly hard and demanding work.

3. Right to maintain their seeds

Farmers claim the right to decide which type of crops they wish to grow and therefore the type of seeds. This choice has been strongly determined by the markets, resulting in the loss of the local seeds. Local seeds offer other advantages and uses.

4. Right to land and water

The right to land, understood as protection against the loss of the right to work in their own lands, is felt by many farmers who have had to relocate to the cities and to take on non-farm work. The right to land also means not being forced to sell, not accepting legal regulations for the use of their land; and not giving up their land for forestry activities.

In relation to water there is a need to improve the canals and the wells.

5. Right to appropriate technology

Farmers require improvements in food production. The importance of services delivered by the State is recognized, even when they claim that this is a right to which all farmers are entitled. Nevertheless, it is necessary to design new technologies that require few, low-cost inputs. Farmers recognize that technological paackages that rely on pesticides and fertilizers pose a risk to human health, but the lack of alternatives forces them to take part in that kind of agriculture.

6. Right to a healthy environment

There is an increasing concern for the contaminating effects generated by agriculture. Similarly, the porcine industry generates foul smells.

Also worrying is the pollution generated by the installation of a cellulose processing plant in the territory.

7. Right to have their own markets

Local food fairs represent one of the significant spaces for the peasantry. It is important to maintain such spaces, at the same time as highlighting the concern for the fact that the producers have discontinued their presence there. They recognize the need to protect such places though, especially since consumers' access to peasants' products depends on middlemen who collect greater gains.

8. Right to information

In general there is not very good access to information, particularly those related to State policies that involve or affect the peasantry.

9. Right to organize

Farmers acknowledge their limited organizational ability. It is important to identify the elements of participation. In this way, organizations do not simply fold for no apprarent reason.

Farmers' Rights in Cuba

Report of the Second Meeting of the Superintendent Organism of the International Treaty on Plant Genetic Resources for Food and Agriculture (FAO), in Rome from the 30th of October to the 2nd of November

Associacion National de Agricoltores Pequenos
(National Association of Cuban Small Farmers), Cuba
Calle I no.206 entre Línea y 13 Vedado, Plaza de la Revolución
Ciudad de la Habana, Cuba

Contents

BACKGROUND

Upon the victory of the Cuban Revolution, a process of great and profound structural transformation began, aimed at establishing a fair distribution of the wealth that was concentrated in the upper classes and land tenants, eliminating the exploitation system that existed. In order to do that, significant programs were put in motion to deal with employment, education, public health, housing, security, basic food production, science, culture and sports that, together with social justice and the conquered national independence, eliminated the grave social problems and the high unemployment rates, unsanitary conditions and low literacy levels that were characteristic of Cuban society before the victory of the revolution.

Before 1959, arable land in Cuba added up to 1.9 million hectares, or around 17 percent of the national territory, for a population of six million inhabitants.

The predominant land tenure form was the "latifundio" (large land holdings). Around 8 percent of the farms were concentrated in about 71 percent of the land; and 64 percent of the farmers were not owners of the land they worked in.

Social development indicators in the country in those times showed that between 1956 and 1957, more than 40 percent of the people were illiterate.

Laws of Agrarian Reform were promulgated by the Revolution between 1959 and 1963, and they not only abolished large landholdings, but also guaranteed a secure job to agricultural workers.

In general, the beneficiary farmers were settled in lands that were suitable for agriculture, and there were even changes in land use as well as relocations where necessary in order to provide the owners with a better life and better working conditions.

The right to property, according to agrarian laws, extends to the instruments and tools of work, the housing and infrastructure and to the product of the work. Regarding property, these laws continue in effect and the agrarian legislation after its promulgation continues to be respected and its mandate taken into consideration.

CONTEXT

The Cuban peasantry with the victory of the revolution has never had to go through the misery that was characteristic of the pre-Revolution times. Cuban peasants can count on rural support institutions, a wide spectrum of free and accessible services, infrastructure, access to land, low interest credit, inputs and a stable market, together with strong national policies regarding social values.

Starting from the 1990s, a deep economic crisis hit the island. With the fall of the Soviet Union and the socialist block in Eastern Europe, Cuba lost 80 percent of its import ca-

pacity. Farmers did not have fuel for their tractors, fertilizer nor pesticides for their crops, nor spare parts for their water pumps; agricultural production, as well as all other activities were completely stopped, and parallel to this the sanctions imposed by the United States government to the island became ever more crude.

FARMERS' RIGHTS

1. Collective Rights

The first right that us Cuban farmers are granted is the right to have our own Revolution and the right to defend it. As part of the organized defensive system of our country, we have the inalienable right to be free and to decide our own destiny; we have the right of association, free health services, education and sports, as well as the right to maintain our cultural identity. We have the right to use and conserve the resources that Nature has given us, the use of the land, the right to credit in order to develop our farms, insurance against natural disasters for our crops and infrastructure. The right to choose and be chosen for the elective positions of the farmers' organizations, as well as of the different institutions in the popular government.

2. Organization that represents farmers

The Cuban farmers have an organization that represents them from the economic, political, social and cultural points of view: the National Association of Small Farmers (ANAP), founded on a 17th of May 1961.

As a representative of the peasantry in the different institutions of Cuban society, ANAP participates in the formulation of policies and strategies related to agrarian and productive issues and to the economy; it collaborates and coordinates with the national institutions on technical and productive programs, as well as on sociocultural development initiatives implemented in rural communities.

3. The Right to be represented in Cuban Parliament

Cuban farmers enjoy all the rights and liberties to participate in the electoral process; they have the chance to propose candidates and be chosen. For example, right now there are 618 cooperativists and farmers that are Delegates to municipal and provincial assemblies; and 12 cooperativists and farmers are members of the Cuban Parliament. In the general elections that were held on October 21, there were 1600 men and women candidates from the cooperatives.

In the Cuban parliament not only is the highest direction of the ANAP represented in the country, through its National President, but also men and women with peasant origins who are elected as congress people for the Assembly at the provincial and national levels.

4. Right to land property

There are national laws that recognize the legal status of Agricultural Production Co-operatives (APC) and Credit and Service Cooperatives (CSC) and their right to the ownership of land and other goods acquired through the contribution of their members. This recognition is established in the **Constitution of the Cuban Republic**, in effect to date and in which articles 19 and 20 ascertain categorical precepts, such as:

- The State recognizes the property of small farmers on lands that legally belong to them and all the infrastructure that is necessary for the exploitation activity that they do, according to the Law.

5. Law of protection to the peasantry/Right to associate in APC or CSC in a voluntary form

It is important to highlight that the Cuban State takes into account its responsibilities for the development of agrarian cooperativism and in the **Law 95 of the cooperatives** the obligation of the State in allowing economical and technical help through human qualified resources for increasing their production is stated, as well as its commitment to facilitate the process of identifying the common interests of the cooperative with the interests of society.

In another article of the law it is expressed that the APC and CSC should have their own legal status as well as their internal life ordered through an **Integral Regulation** that must be approved by the General Assembly of its members. This regulation aims at the exercise of the cooperative democracy as an internal functioning norm.

6. Right to participate in the socio-economic development plans of the nation

The axis of integration of the producers from the peasant and cooperative sectors to the national economy is formed by the relations of the APC and CSC with the State, through specialized planning systems, contracts, finance, prices, credit, agricultural insurance, social security and life insurance, among others.

The APC and CSC, as legal entities, and the farmers individually as natural persons, are economic beings that participate in the execution of the **socio-economic development plan of the nation**. As such, they are incorporated in the process of discussion and elaboration of the figures related to cropping, sales, inputs, etc.; in order to formulate and approve an annual techno-economic plan for agricultural production.

7. Right to enter into contract

The economic and monetary-market relations between parties are ruled by economic contracts. The economic contracts highlight the obligation of the contractors, among themselves and with the Plan. There are several types of contracts,

e.g., for pre-sale of goods, buy-sell special agricultural products, inputs, services, transport, construction, insurance over property, etc.

The basic norms for economic contracts among executing parties of the Plan are found in the **Decree of Law 15/78 of the Ministers Council.**

8. Access to credit

The APC and the individual farmers receive loans from the national bank to finance production and to make productive investments. The production credit covers the ordinary costs of each productive cycle and the investment covers the expenses for acquiring or building basic structures and their repair; they may also avail of credit for the promotion, renovation or rehabilitation of permanent crops and for the construction of houses.

The paperwork process to obtain credit can be done by the CSC in the name and representation of its members if they so agree. There are norms, backed by Resolutions from the Central Bank of Cuba and the Commercial Banks, for the grant, regulation and repayment of agricultural loans. Bank loans generate interest for the time between the granting and amortization of it. The current interest rates are approximately between 4 and 6 percent for the loans on production and investment, accordingly, and for rural housing the rate could be around 2 or 3 percent, depending on whether they are located in the uplands or lowlands.

Additionally, the APC and CSC have the right to renegotiate and restructure the payment of their loans and also to apply for special financial concessions for the settlement of the loans of their indebted members.

The CSC can solicit loans for activities for the common benefit and collective use of its cooperativists. These loans are paid with the income generated from the sales on inputs and services.

9. Right to social security

The APC pays an annual contribution to guarantee the social security of its members, paid vacations, sickness, pension. The CSC, when it employs a workforce in its administrative tasks, also contributes to the payment of the social security for its staff.

Independently from these conquests won by the Cuban peasantry, they have the right to another series of social benefits for their employees or family members. For example, children with physical limitations are enrolled in Special Schools, where they are educated and taught skills according to their limitations. There are schools for the blind and visually impaired. For the elderly who do not have families, there are homes with all the necessary accommodations.

10. Right to fair prices for their produce

They participate in setting prices for their agricultural products

There are several agricultural products in the country, such as sugar cane, coffee, tobacco, cattle meat, which prices are regulated according to Resolutions and other Legal Norms approved by the Ministry of Finance and Prices. There are cost-record cards with commercial margins and utilities. The proposal for new prices or modification to existing ones are generally done through the Administration Councils of the Provincial Assemblies of the Popular Power (provincial governments), for those products that are to be sold within the province and those that are bound for State agricultural markets. Additionally, there are prices for products to be sold in the offer and demand markets.

Prior to setting prices for products to be distributed at the central government level as well as at the province, an analysis and consultation among interested parties is carried out, and in that process the producers participate, either through the APC or CSC, or through the ANAP, as the representative organization of the economic and social interest of the Cuban farmers.

11. Right to safe commercialization of production

The Cuban State guarantees to both the APC and CSC a ready market for their members' produce, e.g., state owned corporations, schools, hospitals, work centers and other destinations.

For non-contract production, the Agricultural Marketplace was created in 1994 so that producers can sell at liberalized prices to the offer and demand market.

12. Right to agricultural insurance

The Cuban farmers asre protected by an agricultural insurance system, both for crops and cattle and other goods, against the damage or loss caused to their plantations, crops, animals or other goods by natural disasters or other risks.

13. Right to seed

The Cuban State, through its created structures to attend the cooperative and peasant sectors, guarantees the necessary seeds for the productive processes. The Cuban peasants also have traditionally developed methods and techniques for the conservation and propagation of our main varieties of staple foodstuffs, preserving their main characteristics, which have allowed them to adapt perfectly to our climate conditions.

More than 50 percent of the seed produced in Cuba icomes farmers, and they deliver part of that amount to the State in order to support the rest of the farmers.

The ANAP is developing right now an agro-ecological program, and one of its main venues is the conservation of native varieties of each region, and to start their adaptation to other parts of the country.

14. Right to intellectual property

The recrudescence of the US sanctions against our country has made it necessary to constantly search for different alternatives to maintain our machinery and tools in good working condition, and to develop varieties that are more resistant to pests and diseases. To address this need, our cooperatives have created a new forum on Science and Technology where the creativity of our farmers is evidenced and at all moments the authors' rights to their creations are respected, provided these are not used for commercial purposes, but rather shared with the rest of the interested producers who may want to apply the inventions in their fields. Farmers can even file patent claims for varieties they have developed.

The Agroecological Peasant-to-Peasant workshop is one of the ways by which the experiences of our farmers from different parts of the country are disseminated.

15. Women's rights

Women, just like men, have the right to own land and to protect and conserve the natural resources found in it, and to be owner and heir. They also have the right to become members of the Cuban parliament. Currently 11 percent of ANAP's members are women. Furthermore, ANAP has a gender strategy to promoting greater women's participation. In the Agricultural Production Cooperatives (APCs), there are more than 10857 women incorporated, or about 22 percent of the total membership; and in the Credit and Service Cooperatives (CSCs), there are 25268 women, 10.3 percent of the total members. Some 10191 (or 8.8 percent) of all landlowners are women. Of this number, 885 are leasing (10.6 percent), and from the total number of women leaders, 52 are presidents of APCs and 79 of CSCs.

16. Environmental and natural resources law that protects farmers

Small and mid-sized farmers in Cuba (and in this last category we include the APC) have the responsibility to produce a significant percentage of the food that the population will consume, but they have the right and commitment to manage the surrounding naturall resources. Protecting these resources is protecting themselves and their loved ones, and that is the rationale for their efforts to practice a healthier, more harmonious, and more balanced agriculture.

Law No. 85, of the Forestry Law from the Ministry of Economy and Planning and the Ministry of Finance and Prices establishes the creation of the National Forestry Development Fund, which has as its main goal the promotion and finance of projects and activities dedicated to the conservation and development of forestry resources.

Biodiversity and the Rights of Peasant Farmers

Report on social consultation and participation in Venezuela October 2007

Instituto para la Produccion e Investigacion dela Agricultural Tropical (IPIAT)
Venezuela

Contents

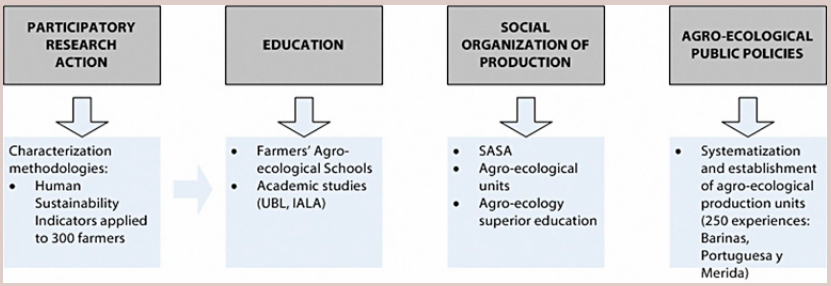
CURRENT SOCIO-POLITICAL CONTEXT

Constitutional popular process 1989

- National Constitution of Bolivarian Republic of Venezuela (CNRBV) 1999
- Constitutional reform, 2007
- Proposal from the Social and Agroecological Movement for Food and Agroecological Sovereignty, article 305 of the CNRBV.

Institute for the Promotion and Research in Tropical Agriculture

Scope of work in Agroecology IPIAT 2007



CONSULTATION PROCESS: Biodiversity and Farmers' Rights

Grassroots collectives

- Agroecological producers associated with IPIAT
- Students from the Latin American Agroecology Institute Paulo Freire
- Farmers' Cooperative Aromas de Calderas
- Farmers' Cooperative Cobalongo-Conuquero
- Network of organizations of Agroecological Coffee Producers
- Socio-cultural production calendars
- Popular meetings "Enriqueta Arvelo Larriva"
- Mission Culture: Altamira Church, Calderas
- Agroecologic Cooperative Arco Iris

Number of people consulted

200

Methodology

CBDC, through socialized debates and assessment of the collective systematized experiences.

VISION OF THE PEASANT FARMERS OF VENEZUELA

1. Right to water

- The communities have the right to participate in the process of design and selection of the sources of water that supply rural and urban aqueducts;
- Each water service must be public, sufficient and of potable quality;
- The State, together with grassroots organizations and peasant families, will integrate Agro-ecology in an organizational and productive structure for the management of watersheds and affluents;
- Right of farmers and communities to protect and defend the water sources from the predatory invasion of development mega projects implemented by public institutions, and multinational corporations.

2. Right to land

- Right to recognize the legitimacy and legality of land tenure based on the traditional and cultural work of peasant families in the conservation of local biodiversity;
- Right to family, collective and communal property of the land, that allows the social permanence in the conservation and stewardship of the local peasant biodiversity;
- Eliminate the classification of "idle land" of areas designated by the farmer for the conservation of local forestry resources and wildlife;
- Right to establish an agro-ecological legal framework aimed at protecting the environment of the parcels, or agroecological production units.

3. Right to seeds

- Right of farmers to conserve, save and use traditional seeds;
- Right to recognize the genetic quality of the traditional peasant seed;
- Right to consider seed as a item of cultural tribute and of profound importance to the farmers and indigenous peoples;
- Right to recognize fallow land as an ecological space to maintain the embryo of seeds;
- Right to recognize the value of peasants' knowledge in conserving and keeping traditional and local seeds;
- Right to recognize the contribution of farmers who are located in remote areas in the conservation and maintenance of local seeds;
- Recognition of the Sovereignty of peasant and indigenous communities by acknowledging the genetic value of their seeds, by promoting participatory methodologies, and farmer-to-farmer exchange and research.

3. Right to culture

- Right to recognize and respect the intellectual property and tradition of the peasant, afro-descendant and indigenous knowledge;
- Right to recognize the historical resistance of peasants and indigenous peoples against the negative impacts of the agricultural models of the Green Revolution;

- Right to recognize that from the peasant and indigenous culture of resistance, alternative proposals on sustainable production are also built. This statement is assumed from the concept of cultural, material and immaterial patrimony that includes the knowledge, seeds, territory, land, struggle, social organization;
- Right to recognize the peasant cultural diversity as a social practice in the conservation and maintenance of biodiversity.

4. Political rights

- Right to recognize the agro-food sovereignty of the peoples from an agro-ecological scope and perspective;
- Right to guarantee ways and means of access to public and private institutions without political or market pressures, with respect to the autonomy and interest of the peasant families and communities;
- Right to recognize the supervision and management of the biodiversity from peasant and indigenous social movements and their grassroots organizations without interference from external actors.

5. Right to commercialization and markets

- Right of farmers to local markets in direct relation to land-producer-consumer, strengthening the traditional crops;
- Design and application of clear and precise public policies with a solid base on agro-ecology as a valid strategy for conservation and preservation of biodiversity;
- Right of farmers to receive agricultural insurance from the States and Governments to guarantee and maintain local production;
- Right to recognition of agricultural finance in case of natural disaster situations that lead to the loss of crops.

6. Right to technology

- Right to use and enjoy alternative and appropriate technologies that contribute to the improvement of the quality of life of difficult-to-access communities and with a minimum impact on biodiversity;
- Right to recognition, development and implementation of the research done by "popular scientists", which are in permanent articulation and balance with nature.

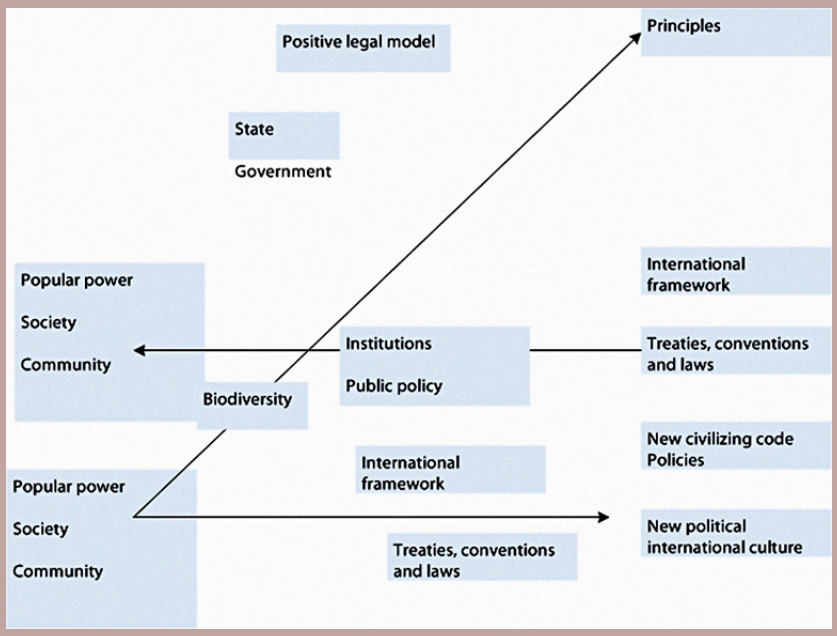
7. Right to education

- Right of the peasant family to teach their children how to take care of their animals, water and biodiversity in general;
- Right to community education on the knowledge and skills to take good care of local biodiversity;
- Right to recognize the peasant "huerta" (family plots) as a family and community space for education about local biodiversity;
- Right to implement programs on rural education, according to the social and environmental reality.

8. Right to social security

- Right of farmers to be included by the State in the Social Security and the Agrarian Pension Systems;
- Right of the rural communities to have public services adjusted to their cultural and environmental conditions;
- Right to physical security of the peasant family against political terrorism, drug trafficking, and organized crime.

Model of collective law, active, participatory, real



CONCLUSIONS

- The historical process of study, research and formulation of public policies linked to issues of biodiversity has yielded a good amount of treaties, conventions and agreements signed by the governments where farmers' rights are recognized. This fact must be understood as a result of the decades-long social struggle by the world's peasant movement. That is, they are rights conquered and achieved by the peoples movement.

- From this perspective the IPIAT considers that it is imperative to establish the principle that laws must be guided by the concrete practice of the community, popular power, cultural diversity, the self-determination of the peoples, and community based management of local natural resources. All that within the basic principle of unity and indivisibility of the national territories.

- The two previous points are essential political conditions to advance the formal recognition of the positive law, the real legal and concrete exercise of the communities' rights and those of the peasant farmers in relation to the conservation and preservation of biodiversity.

What is CBDC?

The Community Biodiversity Development and Conservation Programme (CBDC) is a global initiative developed by governmental and non-governmental organisations (GOs and NGOs) involved in agricultural initiatives in Africa, Asia and Latin America, in cooperation with Northern partners. Its purpose is to strengthen the ongoing work of farming communities in conserving and developing the agricultural biodiversity that is vital to their livelihood and food security.

The CBDC Network

Assessoria e Serviços a Projetos em Agricultura Alternativa (AS–PTA, Brazil)

Centro de Educacion y Tecnologia para el Desarrollo del Sur (CET–SUR, Chile)

Centro de Investigacion, Educación y Desarollo (CIED, Peru)

Community Biodiversity Action Network (CBAN, Sierra Leone)

Community Technology Development Trust (CTDT, Zimbabwe)

Action Group on Erosion, Technology and Concentration (ETC Group)

Hug Muang Nan Network (Thailand)

Instituto Mayor Campesino (IMCA, Colombia)

Institut de l' Environnement et de Recherches Agricoles (INERA, Burkina Faso)

Mekong Delta Farming Systems Research and Development Institute, Can Tho University (NARS)

Centre of International Environment and Development Studies Agricultural University of Norway (NORAGRIC, Norway)

South East Asia Regional Initiatives for Community Empowerment (SEARICE, the Philippines)

Unitarian Service Committee of Canada (USC–Canada, Mali)

Center for Genetic Resources, Norwegian University of Life Sciences