TRIPS, Bilateral FTAs, and IPRs:

Impact of Globalization on Farmers' Seed Access and Control

Southeast Asia Regional Initiatives for Community Empowerment (SEARiCE)

International Forum on Alternatives to Corporate-Led Globalization and Regional Integration

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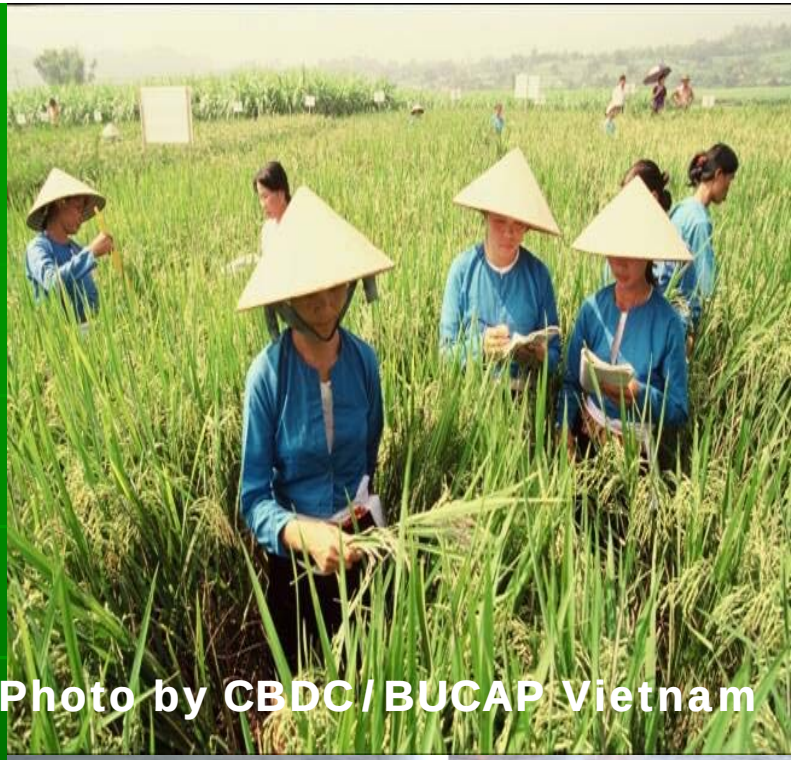
Overview:

- Asian Region as center of origin and diversity of many important food crops including rice
- Asian agriculture remains dominated by smallholder cultivators who rely mainly on *farm-saved seeds*
- *Transformation of production and seed systems resulting from:*
  - *Integration into national and international markets*
  - *Accession to international treaties and agreements with important implications to agriculture and seeds – translation into national laws and policies*



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I. Four Prevailing Seed Systems in Asia

A. Traditional Seed System

B. Participatory or Collaborative Seed System

C. Formal or Public Seed System

D. Corporate Seed System

- Four distinguishing elements through:
  - (1) Main Actors
  - (2) Genetic Resources: Process of Seed Development
  - (3) Methods: Use and Management
  - (4) Access and Control

A. Traditional Seed System

(1) Maintained by indigenous communities or communities in remote areas that are not so much affected by new technologies or market developments

(2) Conservation and use of traditional or indigenous varieties (commonly termed as landraces)

(3) Farmers select offtypes or different plant types that they see in their seed beds, plant them, and evaluate the characteristics of these varieties, and replant them – over the years, its use develops them into new varieties

(4) Open and free access and control – seeds are free for everyone to use

B. Participatory Seed System

(1) Involves formal and informal collaborations between farmers and certain institutions – Farmers have management over their seeds with some support and intervention from institutions and organizations

(2) Participatory plant breeding process – to encourage farmer-developed or farmer-bred seeds

Institutions assist farmers to develop own varieties under their own economic and cultural settings

(3) Farmer-breeders use local materials or infuse new materials for cross-breeding or to enhance genetic pool in the community

Materials undergo local selection and breeding methodologies.

(4) Open and free access and control; Facilitated access - in some communities with certain protocols/ways of seed sharing

C. Formal/Public Seed System

(1) Run by the state and other public institutions

(2) Scientists develop varieties that are called modern or high-yielding varieties

(3) Use of professional methods – conventional breeding and often related to hybrid seeds

(4) Centralized and Regulated Access

D. Corporate Seed System

(1) Run by seed companies

(2) Seed companies also develop own seeds which are marketed as commercial seeds to farmers

(3) Use of professional methods

(4) Centralized and Regulated Access

Table 1: Characteristics of the diverse seed supply systems in Southeast Asia

Elements	Traditional	Participatory	Formal	Corporate
Main Actors	Farmers and Indigenous communities	Farmers + Institutions/ Organizations	State/Public Institutions	Seed Companies
Genetic Resources	Traditional/ Indigenous varieties	Farmer-developed varieties	Scientist-developed varieties (modern varieties)	Corporate-developed
Methods	Farmer selection	Local selection and breeding	Conventional breeding of seeds and biotechnology	Conventional breeding, hybrid seeds and biotech
Access and Control	Open/Free Access	Open/free and facilitated access	Centralized and regulated by legislation	Monopolistic and IPR-based

.In formal/corporate – top-down flow of resources; access and control maintained/regulated by the formal/corporate sector
Concept of IPR arises where access and control is monopolized by the formal/corporate sector

In traditional/participatory – horizontal and decentralized process
Each farmer maintains access and control over its seeds. They maintain freedom in breeding and production without much regulations from authorities

II. Evolution of Frameworks on Seed Access and Control

Common heritage

National Patrimony

SEEDS

Private Property

Common heritage

- Based on the universally accepted principle that “plant genetic resources are heritage of mankind and consequently should be available without restriction" Article 1 of International Undertaking of 1983.
- This category of ownership ensures free and open access to seeds/plant genetic resources (as common property resource)
- Individual communities as holders of genetic resources across state boundaries

National Patrimony

- Each state has sovereign rights over their genetic resources found within its territory – nation-states become holders of genetic resources as having ownership or patrimony over them
- Genetic resources subject to regulation; keeping and sharing based on state policies and regulations
- Rich PGR diversity in the South (commercial interest in the North through private public research)
- The issue of common heritage was challenged due to the emergence of new technologies and property rights over modern varieties and the South's equitable sharing of benefits from these resources. This led to the sense of unfairness and feeling of exploitation among developing countries.
- Two important treaties highlighting the role of nations in sustainable seeds conservation as holders of these genetic resources:
  - Convention on Biological Diversity (CBD)
  - International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

1. Convention on Biological Diversity (CBD)

- Objectives:
  - CONSERVATION of biological diversity;
  - SUSTAINABLE USE of its components; and
  - FAIR AND EQUITABLE SHARING of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies
- Shift from "Common Heritage" over biological and genetic resources to the NATIONAL PATRIMONY principle
  - Biodiversity found in one country is part of its national patrimony

2. ITPGRFA

- Objectives
  - Conservation and sustainable use of PGR for FA
  - Fair and equitable sharing of benefits arising from the use of PGR for FA
  - Sustainable agriculture and food security
- Guided by the "National Patrimony" principle laid down in the CBD
- Defines, promotes and ensures protection of FARMERS' RIGHTS

FARMERS' RIGHTS

- Protection of traditional knowledge relevant to PGR for food and agriculture
- Right to equitably participate in sharing benefits arising from the utilization of PGR for food and agriculture
- Right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of PGR for food and agriculture
- Rights of farmers to SAVE, USE, EXCHANGE and SELL FARM-SAVED seeds/propagating materials
- SUBJECT TO NATIONAL LAW AND AS APPROPRIATE

Private Property

- A situation when individual or corporation has the right to exclude others from using the resources
- Genetic resources as private property subject to intellectual property rights – evolved out of commercial endeavors of companies in developed countries with objective to generate profits

- Intellectual property rights (IPR) such as plant variety protection and patents are relevant
- IPRs – legal system of protection of knowledge, products, & technologies that give IPR holder exclusive rights over the use of his/her creation; these include patents, copyrights, trademarks, plant variety protection, etc.
- Systems of IPRs are adopted in order to give incentives for breeding and research

- Increasing commercial and trade value of seeds gave rise to two significant treaties:
  - WTO-TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights)
  - UPOV (Union for Protection of New Plant Varieties)

1. Salient WTO-TRIPS provisions

- TRIPs obliges countries to adopt IPR systems, with special mention on agro-biological resources
- Art. 27.3 (b) says Members may exclude from patentability :
  - plants and animals other than microorganisms
  - essentially biological processes for the production of plants or animals other than non-biological and microbiological processes
- Art. 27.3 (b) further states:
  - "...However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof."
- TRIPs calls for the protection of PLANT VARIETIES thru :

  a) the patent system

  b) an effective *sui generis* system

  c) combination of patent and *sui generis* system

TRIPs in the Philippines: Plant Variety Protection Act of 2002

- Republic Act 9168, signed into law June 7, 2002
- PVP Act was essentially patterned after the UPOV (1991 version), an international treaty of mostly industrialized countries that protect plant breeders' rights on new varieties; UPOV has been widely promoted as the effective *sui generis* system available to countries

2. UPOV

- An intergovernmental organization based on the International Convention for the Protection of New Varieties of Plants (1961)
- It encourages adoption of *sui generis* laws for protecting new plant varieties by creating its own distinct system outside patent law
- For protection eligibility of a plant variety, requirements: (1) New, (2) Distinct, (3) Homogenous (uniform), (4) Stable
- Criterion of uniformity excludes possibility of protecting landraces and farmers' varieties due to their dynamic and often heterogenous nature

- Trend to strengthen rights granted to patent-holders, revision of UPOV in 1991 to:
  - Extend rights of right-holders beyond reproductive material – harvested material and products obtained through illegal use of propagating material
  - Allow members legal option for patent or UPOV-style protection
  - Extend coverage to all plant genera and species

Significant Implications of 1991 UPOV/Phil. PVP Act of 2002

(1) On rights of farmers to save seed for replanting:

- Instead of assisting this right, members have the option to allow farmers to save seed for their own use
- Without positive action by the member-state, right of farmers is lost

(2) Authorization of rights-holder is required for the use of varietal material essentially derived from protected varieties:

- Production or reproduction
- Conditioning for purpose of propagation
- Offering for sale
- Selling or other marketing
- Exporting or importing
- Stocking for any of said purposes

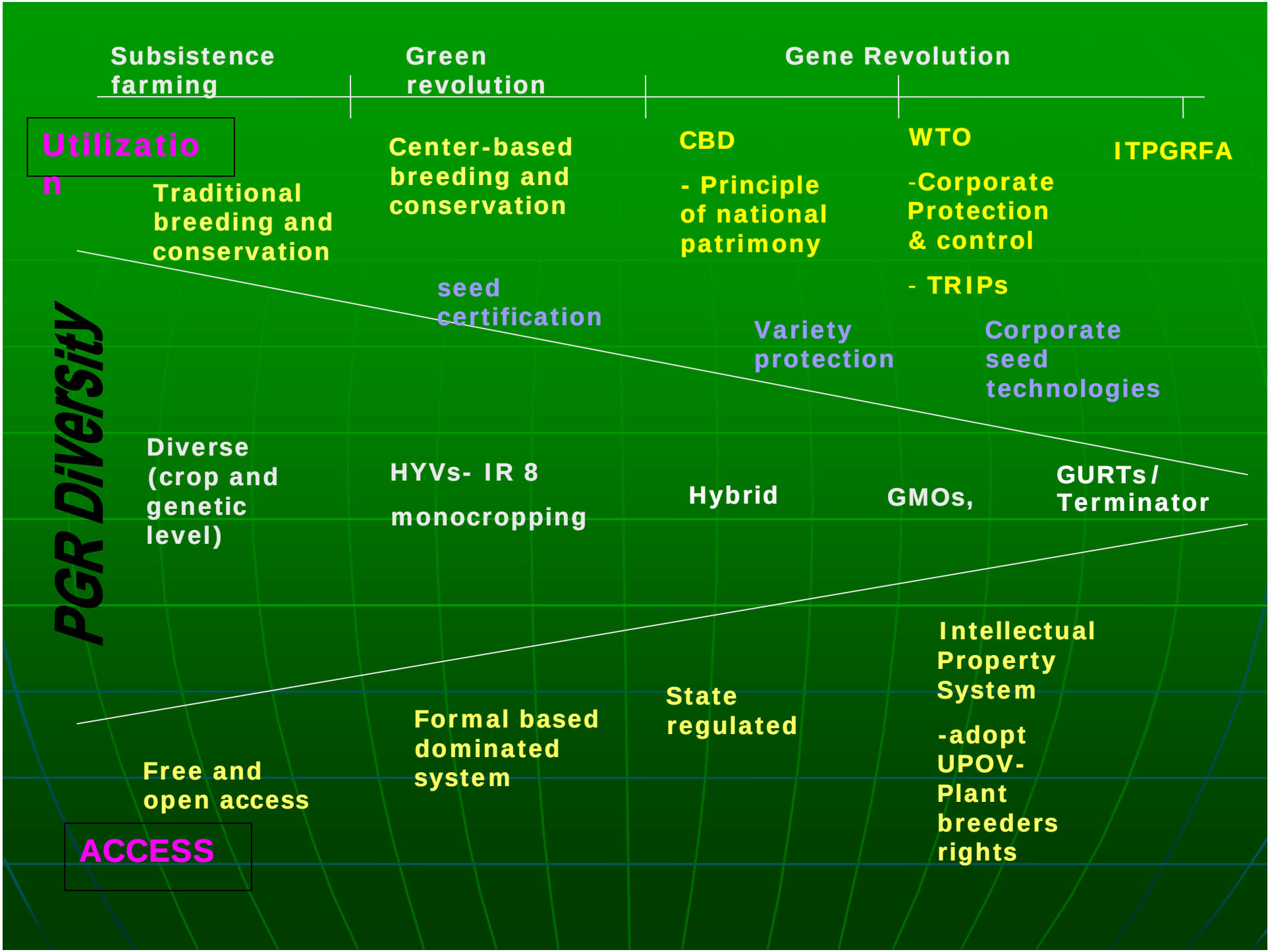
(3) Phil. Scenario – cost of patent application

Farmers' Seed Access and Control: under more fire from pressure to enter into Bilateral FTAs

- The US and industrialized countries are increasingly resorting to BFTAs to pursue their trade agenda with different countries
- As of 2002, there were more than 2,200 BFTAs
- One goal of the US BFTA program is “to support the development of international law standards,” which, among others, require the “highest international standards” of intellectual property protection, meaning: US standards
- For industrialized countries, BFTAs have the advantage of not having international arbitration over issues of conflict unlike the WTO and multi-lateral agreements

- Examples of BFTAs & BFTA negotiations:
  - US-Thai: No GMOs, no treaty; US pressure on Thai government to reverse its moratorium on GMOs that was won by farmers & civil society; also includes patents on plants & animals
  - Japan-Philippines (JPEPA): IPR as Investments; Nationality/Equal Protection provision

- FTAs and investment treaties are the **strongest tool** to get governments to accept the patenting of life across the globe today. Multilateral debates at WTO and WIPO are being superseded by what's happening at the bilateral level.
- FTA negotiations happen behind closed doors. Yet the privatisation of biodiversity is a **major public policy issue** cutting into the heart of our food and health systems and threatening people's livelihoods.
- Corporations keep making the patent system and UPOV stronger and stronger to serve their interests. Society's interests get weaker and weaker - we are reduced to thieves in a world that they own.


Subsistence farming
Green revolution
Gene Revolution
Utilization
Traditional breeding and conservation
Center-based breeding and conservation
CBD
- Principle of national patrimony
WTO
-Corporate Protection & control
- TRIPs
ITPGRFA
seed certification
Variety protection
Corporate seed technologies
PGR Diversity
Diverse (crop and genetic level)
HYVs- IR 8
monocropping
Hybrid
GMOs,
GURTs/ Terminator
Intellectual Property System
-adopt UPOV-Plant breeders rights
State regulated
Formal based dominated system
Free and open access
ACCESS

Daghang salamat ug maayong adlaw!