



# A to Z on TRIPS & Farmers' Rights



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**SOUTHEAST ASIAN COUNCIL FOR  
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# The A to Z on TRIPS & Farmers' Rights

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**Southeast Asian Council for Food  
Security and Fair Trade (SEACON)**

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# Foreword

South East Asian Council for Food Security and Fair Trade (SEACON) is pleased to publish this booklet which aims to provide the people at large, mainly representatives of non-governmental organizations working with grassroots on issues related to agriculture, food sovereignty and trade to understand terminologies that are related to the agreement on Trade-related Intellectual Property Rights (TRIPS) and Farmers' Rights.

The Agreement on Trade-related Intellectual Property Rights (TRIPS) is an important part of all the agreements that come under the WTO. It requires developing countries to grant either patent or sui generis (unique) protection for the ownership of plant varieties. The International Union for the Protection of New Varieties of Plants (UPOV) is seen to be the ready made solution for compliance with TRIPs. Even though the TRIPs agreement does not mention UPOV, nevertheless the governments from the South East Asian region are promoting and developing their own Plant Protection Acts and Bills in the pretext of being compliant with WTO.

A controversial issue that is of concern to the South East Asian countries these days in relation to UPOV is farmers' rights. Patenting plants/seeds are of no help to the South East Asian countries because farmers cannot afford to pay exorbitant prices for these seeds. Moreover, farmers' right to save seeds is curtailed as they are no longer allowed to save seeds from their harvest. In view of this, farmers do not get to preserve and conserve their existing knowledge on seeds, hence traditional knowledge and Access Benefit Sharing (ABS) are forsaken.

SEACON hopes this booklet would be informative and useful to all .

I would like to extend SEACON's utmost gratitude to SEACA and MISEREOR for providing us the financial assistance to publish this booklet.

A handwritten signature in black ink, appearing to read 'Marimuthu Nadason', with a horizontal line underneath it.

**Marimuthu Nadason**  
CHAIRPERSON

# A

**Article 27.3 (b) of TRIPS** -. It requires countries who are members to the World Trade Organization to make laws to protect their new plant varieties either by Patent, “*Sui Generis*” or a combination of patent and *Sui Generis*.



# B

**Biodiversity** – *Various types of genes, species, populations and ecosystems.*

**Biopiracy** – *The use of intellectual property systems to take exclusive ownership and control over biological resources and biological products such as water, plant and seed, and processes that have been used over centuries in non-industrialized cultures.*

**Breeders' Rights** – *Persons/institutions' investments for the development of new varieties of plants. Breeders' rights in respect of a plant variety shall exist for a period of 20 years in the case of annual crops and 25 years in the case of trees, vines and others beginning on the day on which the successful application for a Breeders' Rights in respect of the plant variety was accepted.*



# C

**Convention of Farmers and Breeders (CoFAB)** – is an alternative model to Plant Variety Protection that was developed by Gene Campaign, a Delhi based non-governmental organization. This model seeks to ensure the interest of developing countries in agriculture and protects farmers' rights. Each country will recognize the rights of farmers by making arrangements to collect farmer's rights fee from the breeders of new varieties. Revenue collected from farmer's rights fees will flow into a National Gene Fund, the use of which will be decided by a multi-stakeholder body set up for that purpose. Specifically, the CoFAB model seeks to satisfy the following goals:

- ❖ Provide reliable, good quality seeds to the farmers
- ❖ Maintain genetic diversity in the field
- ❖ Provide for breeders of new varieties to have protection for their varieties in the market, without prejudice to public interest
- ❖ Acknowledge the enormous contribution of farmers as creators of land and traditional varieties which form the foundation of agriculture plant breeding
- ❖ Emphasize that the countries of the tropics are germplasm owning countries and the primary source of agricultural varieties; and
- ❖ Develop a system where farmers and breeders have mutual recognition and rights due to their respective contribution to the creation of new varieties

**Convention on Biological Diversity (CBD), 1992** - The CBD, 1992 is an international agreement that incorporated the principles of ethics and equity in the conservation and utilization of global biodiversity. There are 187 countries which are parties to CBD. Article 8(j) binds each country to:

- ❖ Respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity.
- ❖ Promote wider application with the approval and involvement of the people of such knowledge/innovations/practices.
- ❖ Encourage equitable sharing of benefits arising from the utilization.
- ❖ Prior informed consent and mutually agreed terms are stressed.

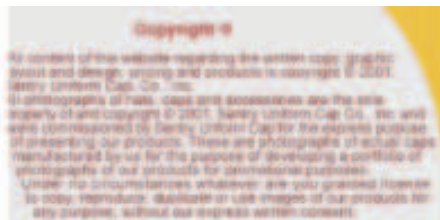
The shortcoming of CBD is that this convention is a bilateral agreement, i.e.



country-to-country dealing. If a variety is found in more than one country, this poses problem as to who the actual owner of the variety is.

**Community Registry** – An information system on plant genetic resources managed and asserted by the community

**Copyright** - Copyright is a protection that covers published and unpublished literary, scientific and artistic works, whatever the form of expression, provided such works are fixed in a tangible or material form. This means that if you can see it, hear it and/or touch it - it may be protected. If it is an essay, if it is a play, if it is a song, if it is a funky original dance move, if it is a photograph, HTML coding or a computer graphic that can be set on paper, recorded on tape or saved to a hard drive, it may be protected. Copyright laws give the creator the exclusive right to reproduce, prepare derivative works, distribute, perform and display the work publicly. Exclusive means only the creator of such work has the rights and access to it



# D

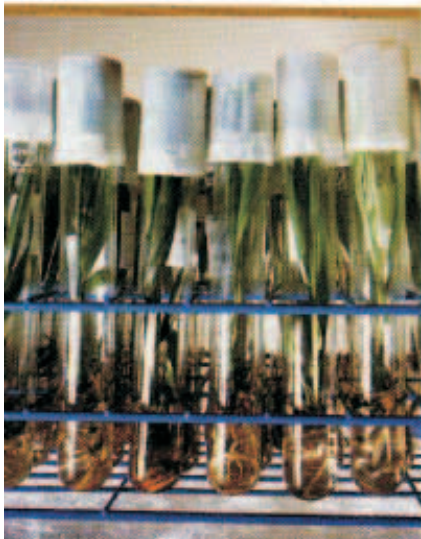
**Developing country** – A country with a low income average, a relatively undeveloped infrastructure and a poor human development index in comparison to the global norm. Developing countries are in general countries which have not achieved a significant degree of industrialization relative to their populations, and which have a low standard of living.





# E

**Ex Situ Conservation** – *Off site conservation; Conservation of a plant outside of its natural habitats, e.g. in a gene bank, botanical garden or field gene bank and stored as seed, tissue, entire plant or pollen*



# F

**Farmers' Rights** – *These are inherent rights of farmers to save, exchange, use and sell farm-saved seeds and other productive materials. The four rights of farmers are Right to Seed, Right to Traditional Knowledge, Right to Equity in Benefit Sharing Process and Right to Participate in Decision Making Process.*

**Food and Agriculture Organization (FAO)** – *A UN body that leads international efforts to address hunger. Serving both developed and developing countries, FAO acts as a neutral forum where all nations meet as equals to negotiate agreements and debate policy. FAO is also a source of knowledge and information. It helps developing countries and countries in transition modernize and improve agriculture, forestry and fisheries practices and ensure good nutrition for all. Since its founding in 1945, it has focused special attention on developing rural areas, home to 70 percent of the world's poor and hungry people.*



# G

**Gene** – *It is an inherited unit controlling the expression of one or more traits/ characteristics*

**Geographical Indications (GIs)** – *Indications such as words, phrases, symbols, images which identify a product as originating in the territory of a member, or region or locality in that territory, where a given quality, reputation, or other characteristic of the product is essentially attributable to its geographical origin. GIs are not newly created, but only recognized at a point in time, and are owned publicly by the country with a special communal right granted to a qualifying region e.g. Jasmine Rice from Thailand*

**Germplasm** - *The genetic material that carries the inherited characteristics of an organism.*





**Indigenous Knowledge (IK)** – *Knowledge or skill developed in a particular area and accumulated over time by being handed down from generation to generation*

**In Situ Conservation** – *On Site Conservation; Conservation of plants or animals in the areas where they develop their distinctive properties. i.e. in the wild or in farmers' fields*

**Intellectual Property Rights (IPRs)** – *The rights given to people over the creations of their minds. Intellectual property rights are customarily divided into two main areas:*

❖ *Copyright and rights related to copyright*

The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author. Also protected through copyright and related (sometimes referred to as “neighbouring”) rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations. The main purpose of protection of copyright and related rights is to encourage and reward creative work.

**Industrial property – Is divided into two main areas:**

- ❖ Protection of distinctive signs, in particular trademarks and geographical indications (GI)
- ❖ Protection to stimulate innovation, design and the creation of technology. Inventions fall in this category (protected by patents), industrial designs and trade secrets.

***International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), 2001*** – The first comprehensive international agreement that deals with plant genetic resources for food and agriculture. It aims at the 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, in harmony with Convention on Biological Diversity, for sustainable agriculture and food security. It is monitored by the Commission on Genetic Resources for Food and Agriculture (CGRFA) of the United Nations' Food and Agriculture Organization (FAO). This treaty establishes a multilateral system of access and benefit-

sharing that specifically applies to a list of major food crops. It sets out a mechanism for fair and equitable benefit-sharing which includes a funding mechanism that receives shares arising from the commercial utilization of plant genetic resources for food and agriculture under the system.

## K

**Knowledge** – *A person gains facts or ideas through study, investigation, observation, or experience*



# L

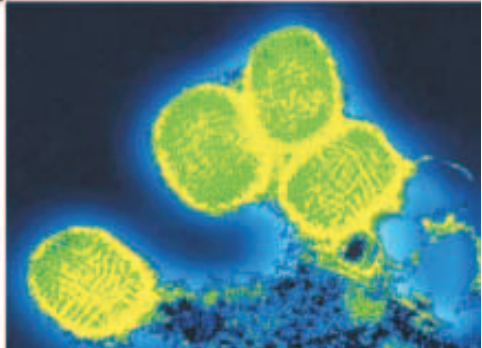
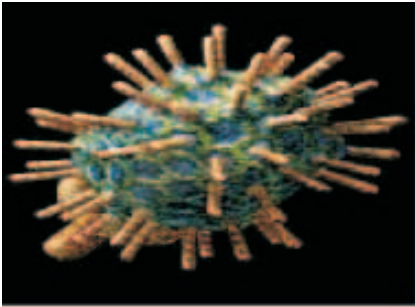
**Legislation of Namibia** – was developed by the Organization for African Unity (OAU). It was based on the African Model Law for the protection of the rights of local communities, farmers and breeders for the Regulation of Access to Biological Resources. It gives for farmers' rights and plant breeders' rights, while recognizing the rights of local communities over their biological resources and associated knowledge, innovations and practices.





# M

**Microorganisms** – An organism that can be seen only under a microscope, usually, an ordinary light microscope. It includes bacteria, mycoplasma, yeasts, single-celled algae and protozoa. Multicellular organisms are normally not included, nor fungi apart from yeasts. Viruses are also not automatically included as many scientists do not classify them as organisms. However, all organisms including human beings begin life as microscopic germ cells and fertilized eggs, so in practice, all reproductive processes can be interpreted as microscopic, and hence patentable.



# N

**Natural Selection** - The natural process by which organisms best adapt to their surrounding environment survive and those who adapt less well are eliminated



## O

***On-Farm Conservation*** – The traditional and most effective method of conserving varieties and wild species. This method involves continuous reproduction and selection of varieties under cultivation. Its effectiveness comes from continuous interaction of varieties with various natural and farmer selected species. All important economic characters were generated and enhanced by this process. This conservation is more dynamic and effective in regions recognized as the primary or secondary centers of diversity of a crop. Here high variety diversity and their proximity with wild relatives allow natural intermixing, leading to new genetic diversity.



# P

**Patent** – *Rights granted to an inventor to prevent others from making, using, and/or selling the patented invention for 20 years. Mandatory patent protection is required for microorganisms, non-biological and microbiological processes. The criteria for a patent are novelty (new), inventiveness (creativity) and utility (usage). The provision for patenting on life form is the most contentious issue within TRIPs.*

**Plant Breeder's Right** – *A form of exclusive right that allows the owner of the right to stop anybody from using the protected plant variety without any permission or license from him/her*

**Plant Breeding** – *The science and art of changing plants genetically*

**Plant Genetic Resources (PGR)** – *The diversity of genetic material contained in plant species and varieties*

**Plant Variety Protection (PVP)** – *An administrative procedure which an applicant complies with to secure a form of intellectual property right called the plant breeder's rights. This right is a recognition of the efforts of the mind, or work of intellectual creation, as applied on plant varieties transformed through breeding, whether done the classical way or through modern technologies.*



# R

***Right to Seed*** - Farmers in developing countries depend on informal seed supply system: they save, exchange, reuse and sell seeds. But under the IPR system, farmers will be denied the right to save patented or protected seeds for subsequent planting and will have to buy seeds for each season. Failing to do so, will mean a legal suit from seed companies and breeders.

***Right to Traditional Knowledge*** - Developing countries are home to 90 percent of the world's greatest genetic resources and traditional knowledge. But there seems no respect for such genetic resources and traditional knowledge of farmers within the IPR system. Reportedly, they are being used by companies or in other words did not provide any remuneration to the farmers. Bio-piracy and knowledge-piracy are two common phenomenon.

***Right to Equity in Benefit Sharing Process*** - Throughout the world, farmers and their communities have developed a vast portfolio of genetic diversity within crops and other plant species. Modern plant breeding also depends on plant germplasm traditionally developed/donated by farmers. But then there are cases where farmers are not involved in the commercial utilization of their resources and knowledge.

***Right to Participate in Decision Making*** - Farmers are the unorganized groups in the developing countries and are excluded from the decision making process. However, breeders and commercial companies are organized and have an important say in the decision making. Such an exclusion from the decision making process, which determines their fate, obviously is a violation of their right.



# S

**Seed** - The fertilized ripened ovule of a flowering plant containing an embryo and capable normally of germination to produce a new plant

***Sui Generis*** – Unique; of its own kind





# T

**Trade Related Intellectual Property Rights (TRIPs)** - *An international treaty that sets global standards for Intellectual Property Rights (IPRs). Although the standards set are minimum, however they were based on the level found acceptable in developed countries during the 1990s. These standards are in fact a burden to developing countries*

**Traditional Knowledge (TK)** - Traditional knowledge refers to the knowledge, innovations and practices of indigenous and local communities around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, and forestry.

**Trademarks** - Distinguish the products or services of one enterprise from those of other undertakings



# U

***Union for the Protection of New Plant Varieties (UPOV)*** - Established by the International Convention for the Protection of New Varieties of Plants. The Convention was adopted in Paris in 1961 and it was revised in 1972, 1978 and 1991. The objective of the Convention is the protection of new varieties of plants by an intellectual property right. As of June 2004, there are 54 countries that are members of UPOV. Up to date, there are 5 countries in the Southeast Asian region who are not members of UPOV but have enacted their PVP laws based on consultation with UPOV are Thailand (1999), Indonesia (2000), Philippines (2002) and Malaysia (2004). Vietnam in 2004 has applied to be a member of UPOV. The Southeast Asian countries that are not members of UPOV but are drafting PVP laws in consultation with UPOV are Cambodia, Laos and Myanmar (Burma). The UPOV convention restricts the ability of farmers to exchange, reuse and sell seeds, thus limiting their means of livelihoods. Article 15.2 mentions that farmers are allowed to reuse protected material only if the “legitimate interests of the breeders” are taken care of. The legitimate interests refers to royalty that the breeders should be paid. The Food and Agriculture Organization of the United Nations views this as “downgrading of the Farmers’ Privilege”.



**Variety** - a number of things of the same general class that are different in character or quality



# W

**World Trade Organization (WTO)** - The legal and institutional foundation of the multilateral trading system and successor to the General Agreement on Tariffs and Trade (GATT) as of January 1, 1995. The WTO acts as a forum for multinational trade negotiations, administers dispute settlements, reviews the trade policies of member nations, and works with organizations such as the International Monetary Fund and the World Bank in developing coherent global economic policies. It also covers new commercial activities beyond the jurisdiction of GATT, such as intellectual property rights, services, and investment.

**World Intellectual Property Organization (WIPO)** - An international organization dedicated to promoting the use and protection of works of the human spirit. These works known as intellectual property are expanding the bounds of science and technology and enriching the world of the arts. Headquartered in Geneva, Switzerland, WIPO is one of the 16 specialized agencies of the United Nations system of organizations. It administers 23 international treaties dealing with different aspects of intellectual property protection. The Organization counts 182 nations as member states.



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## About SEACON

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The Southeast Asian Council for Food Security and Fair Trade (SEACON) provides a coordinated approach to food security, agriculture and trade issues. We integrate local initiatives of agrarian reform and agricultural development with trade concerns at the Southeast Asian level. In each of our member countries, we support people centred national based food security councils that enable government, private sector and civil society representatives to meet and dialogue on agriculture and trade issues.

The establishment of the national food council is to ensure that whatever analysis / positions taken on at the regional level, would have the secure backing from the grassroots and vice versa.

Our role is thus to:

- Monitor and keep in check the adverse effects of free trade on peasant farmers
- Monitor the development of relevant economic and social domestic policies in the region ecologically that promote economically and sustainable production
- Offer alternative agro-trade strategies based on the principles of fair trade and food sovereignty
- Improve and lobby for policies related to food, agriculture and trade at regional and international levels

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