

# Reimagining the Governance of Genetic Resources and Intellectual Property for Agriculture and Food Security in Asia:

Consolidating Local Interests in Agriculture: A case Study on Plant Breeders'  
Rights in Sri Lanka

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## Background to PBRs

- International treaty context: Article 27.3 (b) of TRIPS Agreement- Requires ‘protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof’
- Pre TRIPS sui generis protection- UPOV Act of 1978 and 1991 (International Convention for the Protection of New Plant Varieties).
  - TRIPS does not reference to UPOV
  - Many developing countries acceded to the UPOV sui generis system.
  - Alternatives- India and Thailand created sui generis systems based on national, social and economic conditions and priorities.

## Sri Lankan Legal Framework on PBR

- The Protection of Plant Varieties Bill (2001): Sui generis system based on UPOV 1991
  - Recommendations were made to the Draft by interested parties.
    - In 2011, 2001 Draft was extensively revised.
      - Draft was not open for public comment.
- Still the 2011 Draft does not have any provision to protect PGR, does not recognise farmers as breeders, does not recognise benefit sharing, and contains no clause to prevent terminator technology.

## Agriculture and PGR in Sri Lanka

- Sri Lanka's agricultural landscape
  - 55%- Agriculture:
    - 35% - Paddy
    - 28% - Plantation crops
    - 37% - Other crops
  - 70%- Livelihood is agriculture
- Majority engage in subsistence farming
- Over the years new varieties has been developed by farmers formally and informally and have preserved the genetic diversity of the country.
  - Agrarian customs have resulted in range of farming systems and traditions.

### Questions raised

- Local seed development
- Exclusion of traditional varieties
  - What Farmers' Rights exist
    - Plant breeding
    - Variety Registration
- PGR and equitable sharing of benefits
  - Transfer of foreign germplasm

## Seed Development in Sri Lanka

- Predominantly public but private breeding is now available.
- Seed regulation through National Seed Policy and Seed Act.
  - Loopholes in the Seed Act:
    - No compensation system
    - Does not address latest developments in agriculture
    - Need further power for regulation
  - New Seed Bill introduced to remedy the loopholes.

## Excluding traditional varieties

- Traditional varieties are not protected as these are not classified as new varieties.
- Within a sui generis system traditional varieties could be protected: Ex. India and Thailand ( with minimum eligibility criteria)
- Advantages: Farmers will be consider as breeders and they will be motivated to conserve and preserve traditional varieties.
  - Sri Lanka did not make use of this flexibility.

# Farmers' Rights

Farmers should be included as breeders

Farmers should be regarded as users of plant varieties

Farmers should have the right to save, sell and exchange seeds. This tradition has been exercised by farmers for generations.

This right has an impact on PBR

Should this be restricted or unrestricted right?

Sections on Farmers' Rights in the Draft:

s34(1): Entitled for registration- only for new varieties

s34(2): can sell and exchange seeds of a protected variety but prohibited from selling branded seeds of a protected variety.

s35(1): Protected from infringement action



## Plant Breeding and transfer of Germplasm

Plant breeding mainly by public sector government encourage private sector breeding.

### **Questions raised:**

Would private sector competition cause public sector restricted to basic research?

Would foreign applicants stifle local completion with the implementation of PBR?

Research shows that budgetary pressure may encourage public sector to engage in applied research.

Section 36(2) of the Draft recognised the contribution of the breeder who has bred the variety.

Transfer of germplasm stimulate plant breeding since foreign breeders may reluctant to send varieties with no PBR. This has become an informal condition for licencing germplasm.

This could have an adverse effect to Sri Lanka since free exchange is not possible with PBR.

## Variety Registration

### Part 3 of the Draft:

Establishes a register known as the Register of New Plant Varieties.

Register also creates a National Registry of New Plant Varieties.

Breeders should be aware of enforcement rights.

Holders of PBR should enforce rights either individually or collectively.

## Equity and PGR

Both developed and developing countries have come to rely heavily on non-indigenous crops to meet their food needs.

Monopolistic control over these varieties by a few entities would have potential negative consequences on food security, particularly in developing countries.

In this situation multilateral system of benefit sharing for PGR are put to achieve the conservation of PGR.

This concept is recognised by the CBD and Sri Lanka is a member of the CBD.

Thus compensation and benefit sharing is a new commercial element that has entered into PBR legislation of recent times which is not in the TRIPS Agreement but is not inconsistent with TRIPS. Ex. Indian Act and African Modal Law

## Equity and PGR - Continues

Due to lack of legal mechanism on benefit sharing and compensation has made Sri Lanka vulnerable to bio-piracy.

The Draft does not contain any provision with regard to benefit sharing and compensation and Draft Access law is not yet implemented.

Without further delay a national policy on access to biological resources should be in place to prevent and minimise the unlawful and unfair exploitation of countries resources.

Additionally other laws such as Forestry Act and Environmental Protection Acts could efficiently used to address these issues through advocating mechanisms such as permits and contractual obligations and civil and criminal penalties.

# CONCLUSION

General awareness of PBR in Sri Lanka is minimal due to two reasons.

1. There is a great deal of opposition to PBR and minimum publicity was given to keep the public silent over the issue.
2. There are numerous other issues in Sri Lanka that need more priority than PBR such as unemployment, corruption, and increases in the cost of living, and hence the public are not so interested in PBR.

But implementing TRIPS Agreement is a mandatory treaty obligation it is important to implement a good form of PBR as discussed in this presentation that addresses the Sri Lankan needs.



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