

To

The Hon'ble Prime Minister of India, Shri Narendra Modi

Sign-On letter from India against IPR on Seed

25th February 2019 | New Delhi

Shri Modiji,

The undersigned signatories representing agricultural and farmer groups from all over India are deeply concerned and writing to you to emphasise that the Regional Comprehensive Economic Partnership (RCEP) negotiations must not place any obligation on India or any other developing country with respect to intellectual property (IP) on seed and planting materials.

RCEP IS 'WTO-PLUS'

The demand for tighter IPR comes in the form of insistence on provisions on rights in plant varieties. It is demanded by some RCEP-participating countries (RPCs) that such plant variety protection (PVP) shall provide for the IP protection of all plant genera and species by an effective PVP system, which is consistent with the 1991 Act of the *International Convention for the Protection of New Varieties of Plants* (UPOV 1991 Convention). This demand makes RCEP go beyond the World Trade Organisation (WTO), and is thus 'WTO-plus'.

It is important to recall that Article 27.3(b) of the WTO TRIPS Agreement only requires WTO member countries to make available an effective *sui generis* system for the protection of plant varieties. Countries have complete freedom to adopt a system suitable to their agricultural condition and needs. Nothing in the RCEP negotiations should affect and limit this freedom.

The office of the former Special Rapporteur on the Right to Food in its 2009 report to the General Assembly highlights that "States – particularly developing countries where the function of traditional, farmers' seed systems is even more important both for the prevention of genetic erosion and for the livelihoods of farming communities – should design *sui generis* forms of protection of plant varieties which allow these systems to flourish, even if this means adopting non-UPOV compliant legislations". He concludes: "No State should be forced to establish a regime for the protection of intellectual property rights which goes beyond the minimum requirements of the (WTO) TRIPS Agreement; free trade agreements obliging countries to join the 1991 UPOV Convention or to adopt UPOV-compliant legislation, therefore, are questionable."ⁱ

INDIA'S NATIONAL LAW AND REALITIES

India passed WTO-compliant national legislation – *Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act* in 2001. The Act has a specific chapter on farmers' rights. Section 39 of this Act safeguards a farmer's right to save, use, sow, resow, exchange, share or sell her farm produce including seed of a protected variety provided it is not sold as a "branded seed" of a variety protected. The ground reality in India as per the Government's

Agricultural Census data for 2015-16 is that 86% of farmers operate on land holding of less than 2 hectares while less than 1% hold more than 10 hectares. Informal farmer-managed seed systems supply around 70% of seed needs in India to small and marginalised farmers. Nothing in the RCEP negotiations must adversely affect farmers' rights especially their freedom to operate with respect to farm-saved seed/propagating material.

UPOV CONVENTION IS INAPPROPRIATE

The UPOV system is simply unsuitable for India. Because UPOV 1991 provides exclusive commercial control to the breeder/company over the reproductive material of the protected variety and the right to enforce licenses, thus farmers would have no right to save seeds for replanting. In fact, breeders can also claim compensation from farmers' harvest and direct products of that harvest, if breeders license fee is not paid. Such an IPR system severely restricts policy space for India to implement measures to reflect national realities, protect public interest and farmer seed systems.

INTERNATIONAL SEED TREATY OBLIGATIONS

India is also a party to the *International Treaty on Plant Genetic Resources for Food and Agriculture* (ITPGRFA). In fact, the UPOV system conflicts with requirements of Articles 6 and 9 of the ITPGRFA.ⁱⁱ Article 6 requires Contracting Parties to develop and maintain appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture including supporting the development and maintenance of diverse farming systems, promote participatory plant breeding, strengthen the capacity to develop varieties adapted to social, economic and ecological conditions, broaden the genetic base of crops etc.

Article 9 of the ITPGRFA states it is government's responsibility to take measures to "protect and promote" Farmers' Rights including farmers' right to save, use, exchange and sell farm saved seeds, their right to the protection of tradition knowledge and to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture.

Even though the International Seed Treaty (ITPGFRA) requires governments to protect and promote farmers rights but this would be rendered ineffective once a ITPGRFA member country decides to join UPOV 1991. This is evident from Malaysian and Philippines cases (both are members of ITPGRFA) where UPOV explicitly required them to delete *inter alia* provisions in their national plant variety protection (PVP) legislation that implemented farmers' right to save, use, exchange and sell farm save seeds, if they wished to join UPOV 1991. So the gains in the form of farmers rights, achieved through the Indian PPV&FR Act 2001, will be lost forever.

A recent study undertaken on behalf of the German Federal Ministry for Economic Cooperation and Development concluded that "UPOV 1991-based PVP laws were found to not advance the realisation of Farmers' Rights; rather they are effective in the opposite direction".ⁱⁱⁱ

A human rights impact assessment of UPOV 1991 also concluded “...if implemented and enforced, UPOV 1991 would sever the beneficial inter-linkages between the formal and informal seed systems”, and its “restrictions on the use, exchange and sale of protected seeds could adversely affect the right to food, as seeds might become either more costly or harder to access” as well as “other human rights, by reducing the amount of household income which is available for food, healthcare or education.”^{iv}

The assessment further adds that traditional knowledge of farmers in the selection, preservation and storing of seed is the basis of local innovation and *in situ* seed conservation and “UPOV’s restrictions on saving, exchanging and selling protected seed comes at the expense of farmers gradually losing their know-how related to seed selection and preservation. They would also gradually lose their ability to make informed decisions about what to grow and on which type of land, how to respond to pest infestation, or how to adapt their seed system to changing climatic conditions.” “The process of “deskilling” of farmers – which is already underway with the decline of local agrobiodiversity – could become more acute with restrictions on use of seeds introduced through UPOV 1991-style laws, and that from a human rights perspective, restrictions on traditional practices and seed management systems ... adversely impact on farmers’ rights, cultural rights, minority rights, indigenous peoples’ rights, women’s rights, as well as on biodiversity and the right to food”.

BENEFIT SHARING REGIMES

India is a party to the Convention on Biological Diversity (CBD) and its sub-treaty the Nagoya Protocol on Access and Benefit Sharing (ABS). The CBD and its Nagoya Protocol are premised on the ethics that farmers must get their due when the seed industry accesses their seed know-how or seed material. India has another national law – the Biological Diversity Act to implement CBD. India’s National Biodiversity Authority has also issued ABS Regulations, 2014 in line with the Nagoya Protocol. The ABS regime requires that the prior informed consent of local seed keepers be taken, that the source be acknowledged if seed material is taken from them and that they are legally entitled to a share of the benefits that accrue to the user/accessor upon commercialisation of farmers’ accessed material/knowledge. These will be rendered meaningless if UPOV 1991-type breeder rights are granted to the seed industry, whether public sector or private companies. Adopting UPOV means giving preference to IP-protected seeds in the market.

OTHER UN INSTRUMENTS

According to the General Comment 12 of the UN Committee on Economic, Social and Cultural Rights, the right to food requires States to pro-actively engage in activities intended to strengthen people's access to and utilization of resources [includes seeds] and means to ensure their livelihoods including *not* taking any measures that result in preventing such access.^v Therefore intellectual property regimes and seed policies must be compatible with and conducive to the realization of the right to adequate food.

More recently India supported adoption of the UN Declaration on Peasants’ Rights. We applaud India’s support for the “Declaration on the right of peasants and other people working in rural areas” adopted by the Human Rights Council and the UN General

Assembly which requires States to “take measures to respect, protect and fulfil the right to seeds of peasants and other people working in rural areas” which include Farmers’ Rights. Implementation of the Declaration requires India to have and maintain full policy space to put in place relevant measures.

NO UPOV; NO RCEP!

In short, UPOV system offers an extremely rigid and inappropriate legal framework for developing countries. It was developed in the 60s for seed production modalities prevailing in developed countries especially in Europe. India and other developing countries never participated in UPOV negotiations. Hence, unsurprisingly multiple independent experts recommend that developing countries should not join UPOV.^{vi}

We urge that UPOV 1991 in its entirety, or elements of UPOV 1991 or UPOV 1991-like commitments, and ‘UPOV 1991-plus’ commitments must all be rejected.

We stress that recognising any aspect of UPOV system would be inconsistent with and undermine farmer seed systems in India and the international rights and obligations of India under the various international instruments. Most importantly nothing must affect the right of Indian farmers to freely save, use, exchange and sell farm saved seeds/propagating material.

A mega free trade agreement, like RCEP that undermines farmers’ seed freedoms in a mega diverse country, with seed diversity and farmers’ knowledge is unacceptable.

Signed by

Organisations

1. All India Coordination Committee of Farmers Movement, Yudhvir Singh
2. All India Farmers Association
3. All India Kisan Sabha (AIKS), Hannan Molla
4. All India Kisan Mazdoor Sabha (AIKMS), Dr. Ashish Mital
5. Alliance for Sustainable and Holistic Agriculture (ASHA)
6. Annadana Soil and Seed Savers, Sangita Sharma
7. Bharat Krishak Samaj, Ajayvir Jakhar
8. Bhartiya Kisan Union (BKU), Rakesh Tikait,
9. Bhartiya Kisan Union, Haryana, Ratan Singh Mann
10. Bhartiya Kisan Union, Punjab, Jagmohan Singh and Ajmer Singh Lakhawal
11. Chhattisgarh Prakritisil Kisan Sanghathan
12. Deccan Development Society

13. Desiya Karshaka Samajam
14. Deshi Bihan Suraksha Manch, Odisha, Saroj Mohanty
15. Development Research Communication and Services Centre, West Bengal
16. Farmers Relief Forum
17. Federation of Indian farmers Association
18. Forum against FTAs, India
19. Gramya Resource Centre for Women, V Rukmini Rao
20. Gujarat Kisan Sangathan
21. Jai Kisan Andolan, Avik Saha
22. Karnataka Rajya Raitha Sangha, Badagalapura Nagendra
23. Karnataka State Farmers Organization Federation
24. Karshaka Munnettam
25. Kisan Sangharsh Samiti, Dr Sunilam
26. Lok Sangharsh Morcha, Pratibha Shinde
27. Mahila Kisan Adhikaar Manch (Forum For Women Farmers' Rights)
28. Malanadu Karshaka Raksha Samithi
29. National Alliance of People's Movements (NAPM), West Bengal
30. Paschimi Odisha Krushak Sangathan Samanvay Samiti
31. Punarchith, Nagavalli Village, Karnataka, A R Vasavi
32. Rashtiya Kisan Masdoor Mahasangh
33. Rashtriya Kisan Mahasangh
34. Shetkari Sangathana, Maharashtra, Vijay Jawandhia
35. South India River linking farmers organization
36. South Indian Coordination Committee of Farmers Movement, S. Kannaiyan,
37. South Indian Organic Producers and Retailers Association
38. Sunray Harvesters, Aruna Rodrigues
39. Tamil Nadu Farmers Association, K. Sella Mutthu
40. Uzhavar Ulaippalar Katchi, Tamil Nadu, Nallagounder
41. Vanastree, Karnataka

Concerned Citizens

1. D Narasimha Reddy, Independent Consultant
2. Anil K. Yadav, Director, National Institute of Labour Economics Research and Development, NITI Aayog
3. Gayatri Menon, Azim Premji University, Bengaluru

4. Kishor K. Podh, Ph. D. Scholar, Center for the Study of Social Systems, JNU
5. M. Vijayabaskar, Madras Institute of Development Studies
6. Mudit Singh, Motilal Nehru National Institute of Technology, Allahabad
7. Nachiket Udupa, Member, Network of Agrarian and Rural Studies
8. Padmini Swaminathan, Former Director, MIDS
9. Purendra Prasad, Member, Network of Agrarian and Rural Studies
10. Rajeswari Sarala Raina, Professor, School of Humanities and Social Sciences, Shiv Nadar University
11. Sailen Routray, Independent Researcher, Member, NARS
12. V Sujatha, Professor, Centre for the Study of Social Systems, Jawaharlal Nehru University, JNU

cc/-

Hon'ble Minister of Commerce and Industry, Shri Suresh Prabhu

Hon'ble Minister of Agriculture, Shri Radha Mohan Singh

Hon'ble Commerce Secretary, Dr. Anup Wadhawan

Hon'ble Additional Secretary, Ministry of Commerce and Industry, Shri Sudhanshu Pandey

Hon'ble Joint Secretary, Ministry of Commerce and Industry, Shri Dammu Ravi

ⁱ Olivier De Shutter, Seed policies and the right to food: enhancing agrobiodiversity and encouraging innovation, 2009, available at http://www.srfood.org/images/stories/pdf/officialreports/20091021_report-ga64_seed-policies-and-the-right-to-food_en.pdf

ⁱⁱ International Contradictions on Farmers' Rights: The interrelations between the International Treaty, its Article 9 on Farmers' Rights and Relevant Instruments of UPOV and WIPO, available at

https://www.publiceye.ch/fileadmin/files/documents/Saatgut/2015_BD_Saatgut_EN_9-15_def.pdf

ⁱⁱⁱ Available at <https://www.giz.de/fachexpertise/downloads/giz2015-en-upov-convention.pdf>

^{iv} "Owning Seeds, Accessing Food – A human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines," October 2014. Available at <https://www.publiceye.ch/en/topics-background/agriculture-and-biodiversity/seeds/owning-seeds-accessing-food/>

^v Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food (Art. 11), May 1999, available at: <http://www.refworld.org/pdfid/4538838c11.pdf>

^{vi} The UPOV Convention, Farmers' Rights and Human Rights - An integrated assessment of potentially conflicting legal frameworks" published by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of the German Federal Ministry for Economic Cooperation and Development" (June 2015) available at <https://www.giz.de/fachexpertise/downloads/giz2015-en-upov-convention.pdf>; UNDP (2008) "Towards a Balanced Sui Generis Plant Variety Regime", available at

<http://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/toward-a-balanced-sui-generis-plant-variety-regime.html>; "Owning Seeds, Accessing Food – A human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines," October 2014. Available at <https://www.publiceye.ch/en/topics-background/agriculture-and-biodiversity/seeds/owning-seeds-accessing-food/>;

Carlos M. Correa et al. (2015), « Plant Variety Protection in Developing Countries: A Tool for Designing a Sui Generis Plant Variety Protection System: An Alternative to UPOV 1991 », APBREBES, available at <http://www.apbrebes.org/news/new-publication-plant-variety-protection-developing-countries-tool-designing-sui-generis-plant>