

Definition of farmers rights law international essay

Law



**ASSIGN
BUSTER**

Su DonglAR 515FDue Date: April 22nd 2013India□ Coordinated Compliance on breeders' rights, farmers' rights and Intellectual Property rightsIt is every nation's responsibility to fulfill nationals' food demands, food security of a nation decides whether its nationals can realize the right to food or not. Farmers play a key role in ensuring this food security. They preserve and maintain the crop genetic resources, and help in their further development, which are crucial for sustaining the agro-biodiversity. Basically, farmers' rights include that farmers are able to continue their work in promoting agricultural biodiversity, rewarding them for their contributions to genetic resources. These rights are critical to ensure the conservation and sustainable use of genetic resources for food and agriculture. In developing countries, realization of farmers' rights enables a decrease in the number of rural poor. Farmers' Rights are a precondition for the maintenance of crop/plant genetic diversity, which is the basis of all food and agriculture production around the world and probably it is the most important factor to influence farming[1]. To some extent, farmers' rights promote public breeding programs but discourage private and plant ones. On the one hand, the right could enhance the performance of plant breeding programs if breeders willing to share landraces that they developed and owned, the agriculture will be diversified□and meantime food and agriculture production will rise in more areas. On the other hand, the right could be seen as having adverse effect on breeding programs because it needs breeders to put their own-invented varieties in public domain, freely available for use by anybody. In other words, the right reduces breeders' control over their proprietary varieties. In order to protect their own commercial interests, a large number of private plant breeders have started to use intellectual property rights

<https://assignbuster.com/definition-of-farmers-rights-law-international-essay/>

(IPRs) over the propagating material and rare plant varieties. The phenomenon raised great concerns about the realization of all farmers' rights and their ability to sustain the agro-biodiversity. These rights have been further impacted by the new developments in technology such as the hybrid, terminator, and other biotechnology-products.[2]According to MASIPAG (Magsasaka at Siyentipiko para sa Pag-unlad ng Agrikultura), "Farmers' rights implicitly reject IPR and genetic engineering which compromise farmers' ability to produce food and to fulfill their obligations as stewards of genetic resources. Privatization of genetic resources clashes with the very essence of farmers' rights which implies collective rights and responsibilities." It further claims that: " Food security is only possible if we allow farmers to freely grow food and protect agro-biodiversity as has been their right and responsibility for generations. Recognition and implementation of farmers' rights is essential not only to protect farmers in the present but in order to ensure the continuity of activities that are crucial for humanity at large." [3]

Definition of Farmers' Rights

Generally speaking, ' Farmers' Rights' is comprised of the customary rights of farmers to use, keep, exchange and sell farm-saved seed and propagating material, rights to be recognized, rewarded and supported for their contribution to the global pool of genetic resources as well as to the development of commercial varieties of plants, and to participate in decision making on issues related to crop genetic resources.[4]The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), adopted by the Food and Agriculture Organization (FAO) in 2001,[5]is the

first international legally binding instrument which formally recognized and established the farmers' rights.[6]The FAO Resolution 5/89 endorsed the concept of ' Farmers' rights' which means rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centers of origin/diversity. These rights are recognized internationally, as trustees for present and future generations of farmers, for the sake of ensuring full benefits to farmers and supporting the continuation of their contributions. The Resolution explicitly explains why all farmers should have rights, but it does not identify what exactly the rights of the farmers are.[7]The FAO Resolution 3/91 which does not identify these rights either stated that farmers' right will be implemented through an international fund on plant genetic resources [PGRs], which will support programs for plant genetic utilization and conservation.[8]The ITPGRFA in Part III (Article 9) recognizes that the rights of farmers (without defining who is a farmer) are conserving and developing available PGRs [which constitute the basis of food and agriculture production around the world (Para 1). It endorses governments to conserve and develop " Farmers' Rights" under their national law, in accordance with their own demands and priorities, which include the protection of traditional knowledge related to PGRs for food and agriculture, the right to equally participate in sharing benefits arising from the utilization of PGRs for food and agriculture, and the right to participate in making decisions at the national level on matters related to the conservation and sustainable use of PGRs (Para 2). The treaty also recognizes the rights of farmers to save, use, exchange and sell farm-saved seed/propagating material (Para 3). It is a regret that the ITPGRFA is only restricted to PGRs

<https://assignbuster.com/definition-of-farmers-rights-law-international-essay/>

regarding food and agriculture and does not allow IPRs on PGRs as such. According to the terms of standard Material Transfer Agreements (Article 12) the transfer and access to PGRs is subject to the multilateral system. The Treaty is limited to protect agro-biodiversity from reducing, however it formally recognizes farmers' rights and pushes the rights being accepted by domestic law.

Implementing Farmers' Rights

The extent to which Farmers' Rights can be implemented in a country is not only depended on the needs and priorities within the country but is often subject to the obligations that the country has towards various international and regional agreements. Among all, the most important international agreements are - rather than the ITPGRFA -the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), the Convention on Biological Diversity (CBD), and World Intellectual Property Organization (WIPO) and the Convention of the Union for the Protection of New Varieties of Plants (UPOV). These international agreements are interlinked and they have strong interactions in various ways with regard to Farmers' Rights. Even though the CBD does not have any explicit provision on farmers' rights, Article 8(j) mandates the contracting parties to respect, promote, preserve and maintain knowledge, innovation and practices of local and indigenous communities, embracing traditional lifestyle in biodiversity conservation and sustainable development. The inter-Governmental Committee of the WIPO is engaged in devising the mechanism to protect traditional knowledge (TK) since August 2000. The TRIPS Agreement requires the members to protect plant varieties " either through patents or by an effective sui generis system

or by any combination thereof." (Article 27(3)(b) It does not have any specific mandate to protect farmers' rights but while adopting a sui generis system, the members are able to incorporate provisions on these aspects. Paragraph 19 of the Doha Declaration, November 2001, has suggested the Council of TRIPS to take into account the fact of protection of traditional knowledge while reviewing the implementation of Article 27(3) (b). The International Convention of the Union for the Protection of New Varieties of Plants (UPOV), 1961, however, has the clear provisions on the farmers' rights.[9]The Convention primarily aimed at protecting the breeders' rights, and the farmers' rights we mentioned were mostly included in the breeders' rights. Breeders' rights in this convention refer to the privileges of farmers to save seed or reproductive material of protected varieties from their harvest and thus breeders can sow the seeds on their land to produce new crops. Protecting farmers' privilege is supported by several reasons below□One reason is that farmers have strong intention to maintain their traditional practice of saving seeds. The other is the difficulties that existed for breeders to effectively monitor or seek to control everything happened on different farms. The saving of seeds from breeders' own harvest out of the protected variety is not an infringement under the 1978 Act. Under the 1991 Act, unlicensed multiplication of propagating material or seeds without persuasive purpose is an infringement, but Article 15(2) allows contracting parties, in their discretion, to provide an exception to favor the breeders. Thus the farm saving of seeds or propagating material can be allowed under Article 15(2) of the 1991 UPOV Act to provide Member state a specific protection for that right. Again, the term ' farmer' has not been defined.

[10]The Convention merely provides the privilege of saving seeds for sowing
<https://assignbuster.com/definition-of-farmers-rights-law-international-essay/>

purposes, and not for sale or exchange, but discretion is available to the state-parties. According to their international commitment under the ITPGRFA, CBD and TRIPS Agreement, several countries promulgated domestic laws to ensure the local implementation of the farmers' rights. African countries reached an agreement on a joint law called 'The African Union Model Law on Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources' in 1998. India promulgated its 'Protection of Plant Varieties and Farmers' Rights Act' in 2001, and its 'Protection of Plant Varieties and Farmers' Rights Rules' in 2003. The Philippines promulgated Republic Act 9168, 'An Act to Provide Protection to New Plant Varieties, Establishing a National Plant Variety Protection Board and for Other Purposes' in 2002.[11] Another 21 countries and certain regional organizations have incorporated provisions on the protection of farmers' rights and TK in varying degrees.[12] The United States provides patent-like protection to plant varieties under the Plant Patents Act 1930 (for asexually produced varieties) and Plant Variety Protection Act 1970 (reproduced by seeds), beside granting patents for transgenic plants and animals.[13]

The Issues Affecting Farmers' Rights

IPRs – Farmers' rights are inherently in contradiction to IPRs, which are monopolistic and private, IPRs against the farmers' rights which are collective and thrive on freedom of use of the seeds/propagating material. Farmers' rights implicitly reject intellectual property right (IPR) and genetic engineering. Terminator Technology – returns from plant varieties are unstable, varies from season to season that induces seed companies to

attempt to replicate the "technological" protection offered by hybrids (which are productive only for one cropping season) in the case of self/open pollinated varieties as well. This has culminated in the potential development of what is commonly known as "terminator technology." 'Terminator technology' which originated from the Rural Advancement Foundation International (RAFI) refers to the 'patent on a technique that genetically alters seed so that it will not germinate if re-planted the following season'. RAFI claims that the technology is designed to prevent farmers from saving seeds from their harvest, thus forcing them to purchase seeds every cropping season. From the economic perspective, the most important implication of this technology is that farmers cannot save seeds from their crops- they have to buy fresh seeds from the seed companies every year.

Hybrid Technology- Hybrid seeds offer promising yield. Hybrid plants are artificially cross-pollinated, and breed favorable and desirable characteristics, like high quality and high yield, and they can even grow on agriculturally hostile ground. These seeds, apart from being expensive, have a limited life span of one cropping season. Seeds produced from hybrid plants lose their 'hybrid vigor' due to the concept of segregation. Hence, only seed companies are capable to develop hybrid seeds, and farmers must buy hybrid seeds every planting season. Furthermore, hybrid seeds require greater inorganic agricultural inputs like pesticides, chemical fertilizers and among others. Inevitably hybrid seeds stop farmers from saving, and replanting these seeds. Since hybrid seeds have a wide market and capability to generate huge profit, they are rapidly replacing open-pollinated seeds, becoming the mainstream of seeds market. As a result, genetic pool of open-pollinated varieties, which is the prime source of seeds for small

<https://assignbuster.com/definition-of-farmers-rights-law-international-essay/>

farmers, is indirectly weakened. With the proliferation of public and private breeding companies, the right of farmers to save, exchange, and re-use seeds is disappearing. Purchase/Licensing contracts - In order to improve the rate of returns from the plant variety protection, the seed industry is also using the technique of purchase/licensing contracts and label notices. A purchase contract specifically prohibits a farmer from using the harvested seed of a protected variety for replanting, or for selling, for breeding or diverse purposes concerning development. Sometimes, restrictions on the use of seed are sought to be imposed by affixing notices on the label of a product and the purchaser is deemed to agree to the restrictions when he opens the packet and uses the seed. The enforceability of such purchase contracts and label notices, especially when the product is covered by PVP and not by patents, is not very clear and probably has to be decided by judicial decisions. Such measures have become extremely important in the context of the sale of transgenic or genetically modified varieties. These varieties are covered by utility patents rather than by PVP. Seed companies like Monsanto demand each farmer to sign an agreement with the company, which prohibits the farmer from reusing the seed he has sowed previously. The company can carry out physical checks/" audits" for a three- year period after the sale to ensure that the farmer has not replanted farm-saved seed. Seed companies have also been using different pricing systems. For example, the price of transgenic seeds is comprised of a basic seed price and a technology fee. In certain cases, the company refund a portion of the technology fee depending on the actual benefit derived by the farmer in way of lower use of pesticides etc.[14]This implies that the company can effectively charge every farmer a different price that has been criticized as <https://assignbuster.com/definition-of-farmers-rights-law-international-essay/>

price discrimination. Gene licensing agreements that back up ' terminator technology' are expected to boost productivity on the farm. The emergence of " terminator" seeds can be seen as a technological innovation. To some extent, right to food can be satisfied due to high and stable yield. However we cannot ignore a fact that the principal purpose of Gene licensing agreements is to control seed availability and to minimize farmers' rights.

[15]Meanwhile, genetically modified leads to the monoculture, resulting in the depletion of the genetic base of crops and animals. This in turn increases the risk for crops having pests and diseases. Genetic modification has been called an infringement of basic human rights since it prevents farmers from their conventional practices of saving, replanting and exchanging seeds. This technology has shattered the myth that commercial biotechnology aims at feeding hungry people. The technology does not favor the poor and forces farmers to plant " specially-bred" seed that is obtainable only from patent owners, and seed reuse is impossible as that seed will either fail to germinate or not bear any crop. This means the farmer must always to go back to the supplier for new seed, without any solution against the poor quality of seeds. Small farmers will be affected the most because the new method of plant breeding is too costly for them. In such a situation, farmers may either revert to traditional methods of breeding, thereby giving up the latest methods or leave their land without tilling. Social cost in either case will be very high for a country. About 1. 4 billion people world-over depend on farm-saved seeds and local plant breeding. The modified seeds will increase the dependency of farmers on multinational seed companies, thereby destroying farmers' rights and national seed sovereignty.[16]

Indian Act

In India, farmers have significant role in seed production, providing about 87% of the country's annual requirement of seeds.[17]Hence, in 2001 India's Protection of Plant Varieties and Farmers' Rights Act (PPVFRA) provided a well-defined Farmers Rights in line with the ITPGRFA. It defines ' Farmer' as:

" Any person who (i) cultivates crops by cultivating the land himself; or (ii) cultivates crops by directly supervising the cultivation or land through any other person; or (iii) conserves and preserves, severally or jointly, with any other person any wild species or traditional varieties or adds value to such wild species or traditional varieties through selection and identification of their useful properties." (Sec. 2 (k)). Section 39 of the PPVFRA illustrates the privileges and rights of the farmers. They will be entitled to register a new variety, which is developed or bred by them, like a breeder. Farmers can save, use, sow, re-sow, exchange, share and sell farm produce of a protected variety except sale under a commercial marketing arrangement (branded seeds). A farmer who is engaged in the conservation, development of genetic resources of landraces or wild relatives of economic plants would be entitled in the prescribed manner for recognition and rewarding from the Gene Fund (created under section 45(1) of the Act), by means of that to encourage an individual who preserves and develops so selected and preserved material. As a donor of genes in varieties, his donation will be registered under the Act. [Section 39 (1), (i)-(iv)]. The Act acknowledges rural communities as contributors of landraces and farmer varieties in the breeding of new plant varieties (Sec. 41). Furthermore, the farmers have also been provided protection of innocent infringement when they at the time of infringement without realizing the existence of breeder rights [Section 42

<https://assignbuster.com/definition-of-farmers-rights-law-international-essay/>

(1)]. The Act mandates the breeder to disclose to the farmers the expected performance of a variety at the time of selling seed/propagating material. A farmer or a group of farmers or an organization of farmers can claim compensation according to the Act, if a variety or the propagating material fails to produce the expected performance under given conditions, as claimed by the breeder of the variety.[18]The Act prohibits the registration of a variety using terminator technology. Section 29(3) provides that any species which involve technology that could result in injury to the life or health of human beings, animals or plants should be registered under this Act. " Explanation—For the purpose of this sub-section; the expression " technology" includes genetically use restriction technology and terminator technology."

Conclusion:

Farmers are playing an important role in realizing the right to food because they are responsible for preserving and developing the genetic resources, which are significant in the growth of agriculture. Farmers' rights is originally defined as recognition of the farmers' tremendous role in the conservation and development of plant genetic resources, that has been proved mainly as a definition to market-oriented breeders' rights rather than ordinary farmers'. The rights to save, exchange, and re-use seeds is farmers' rights really appreciate, but they have been rendered illusory by developments in biotechnology and consequent protection of large seeds companies' rights through patents and sui generis legislations. The terminator and hybrid technologies have rendered farmers' right to save, exchange, and re-use seeds.

Recommendation

These rights of the farmers can be realized by involving states to promote public access to plant varieties domestically. Business groups and NGOs must work corporately with the governments, fulfilling strong obligations to provide access to plant varieties and technologies that are important for realizing farmers' rights. It is urgent for the governing body to develop models on how to make coordinated compliance possible between IPRs and Farmers' Rights. Finding ways to solve the contradictions arising from various international agreements is important. Most relevant agreements are IPRs-favoured that leads PGRs to be taken out from the public domain. Case studies of how various countries implemented these treaties but still successfully protected famers' right have to be further analysed and learned from. Some crop varieties that have been registered as patents under international treaties were owned by other countries, and therefore they are forbidden to plant in India, the Indian government could promote collaboration and sharing valuable information resources with other states, such as trading or swapping patents.