

## **Workshop**

### **“Seeds: Community commons, private control and public domain“**

## **Atelier**

### **« Semences: Droits collectifs, contrôle privé et domaine public »**

## **Report:**

The first objective of the workshop was to think about other "sui générés" systems that the civil society must oppose to this total confiscation of the living: What legal avenues are possible? The second objective was to find ways of defending the regional varieties, of opposing the appropriation of peasant seeds by industry and the GMO-contaminations all over the country, in particular of the centres of origin and the still existing public collections.

## **Part I**

### **International Treaty, PVP, patents etc. – about the current situation of farmers’ rights on international level**

Guy Kastler from France, Chief Secretary of RSP and member of the biodiversity commission of Via Campesina, gave a general overview on the international situation of peasant seeds and farmers’ rights.

In Europe, the common catalogue is an important tool that protects intellectual property rights (IPR) on seeds. The official motivation for it was to facilitate the development of seeds and the seed market and assure seed quality for farmers. In reality it bans seeds of farmers, protects industrial seeds and allows for the protection of varieties by describing their morphological characteristics.

Furthermore, the WTO imposes that countries accept either patents on plant varieties or another “sui generis” system of IPR such as Plant Variety Protection Certificates (PVP). Contrary to the patent, the PVP can be applied to protect a discovery and not only a new variety based on breeding.

Patents can only be imposed on inventions and have to state what the origin of a patented variety or trait is. The owner of patents can perfectly trace his “IPR” in the fields but patents are fewer efficacies to prevent farmers from seed saving.

Finally, the International Union for the Protection of New Varieties of Plants (UPOV) extended the protection of the PVP to “essentially derived varieties” and defined the variety by characteristics of the genotype. This allows considering farm-saved seeds as a copy and authorises the PVP holder to trace his/her property.

On the 28 October 2008 the French president will organise an international summit on genes. He is supposed to reject patents and propose PVP as more ethical. With the

genetically definition of a variety the PVP concept the PVP concept will ban farm saved seeds and permit clandestine GMOs.

Contrary to this development the International Treaty on Plant Genetic Resources (IT PGR) RECOGNIZES farmers' rights on seeds but is not applied. The next meeting of the governing body that has got farmers' rights on the agenda, will be held in 2009 in Tunisia.

(See background paper of the workshop "Community Commons, Private Control and Public Domain" by Guy Kastler)

### **The Indian Plant Variety Protection and Farmers' Rights Act, 2001**

Suman Sahai from Gene Campaign, India, introduced to the Indian sui generis law. India does not follow UPOV, which has only one right: the breeder's right. The Indian law regulates farmers' rights and breeder's rights in the same law. It recognizes the aspect of farmers' right from the Convention on Biological Diversity (CBD). Farmers have got the right to exchange, save, use and sell seeds. Even if a variety is registered, farmers are allowed to sell it without branding it. For S. Sahai this is the most controversial and most innovative part of the law.

She urges countries to go back to the early UPOV when it was framed and is of the opinion that no IPR is for ever: IPR can be exhausted after the first or a hundred sales. In the Indian case it exhausts right after one sale so that breeders have to gain all benefits in one sale. One reason is that the farmers are still the largest seed producer in India, and therefore must continue.

On the other hand breeders have strong rights, too. They are the only with the right to import and export seeds and sale branded seeds which are protected with a breeder certificate. If breeders derive new varieties from old varieties, e.g. from rice, the varieties can be registered but the breeders have to pay the national (or was it the international?) gene fund.

(Further information on [www.genecampaign.org](http://www.genecampaign.org), and paper on workshop forum's website "Farmers' Rights & Agricultural Security: India's Plant Variety Protection and Farmers' Rights Act, 2001" published by Suman Sahai)

### **Discussion:**

There is a discussion to implement NDUS (novelty, distinctness, uniformity, stability) and replace DUS. This would mean that genetically characteristics of varieties could be traced within farmer's fields.

Suman Sahai believes that there are two ways to lobby for the implementation of farmers rights: either you have to force more flexibility within UPOV or within your countries own law. It is not possible to translate one-to-one the Indian Plant Variety Protection and Farmers' Rights Act to the European situation but the example from India is an example what European can lobby for.

Participants from Senegal and other African countries express their need for information in order to protect farmers' and communities' rights better. Also Senegal has adopted UPOV,

the regulations are ignored on grass roots level, where peasants continue using “users’ rights”.

... (Monika)

## **Part II**

### **Saving the Diversity of Wheat – the International Emergency Comity**

Jürgen Holzapfel, a farmer and member of the European Civic Forum explains that he had more interesting results in breeding with old varieties than with conventional ones. He is working in cooperation with conservation initiatives that aim at bringing old varieties e.g. from gene banks back into use. But also the gene banks are an important source for his work. This was possible until the gene bank in Gatersleben (Germany) started experiments with genetically modified plants. Now, this gene bank does not guarantee for GE-free seed samples, if farmers or breeders order some. The gene bank at Gatersleben does not conserve safely the varieties of its selection, which is its original task; instead it has become a centre of danger in terms of GMO contamination.

As a contribution to farmers’ rights developing their own seeds, Jürgen Holzapfel is one of the founders of an international emergency committee. They are taking wheat varieties out of the gene bank that are at risk as long as the gene bank does not stop its GMO trials. The members of the emergency committee will have a lot of information work to do now. Furthermore, they want to invite people, who are of the same origin as the varieties of seeds to participate in order to bring the plants back to their original source.

For further information: Jürgen Holzapfel, [ulenkrug@t-online.de](mailto:ulenkrug@t-online.de).

### **The Situation of farmers’ rights in Senegal**

Abdoulaye Sarr, de PRABIOC et member de l’ASPSP (Association Sénégalaise de Producteurs de Semences Paysannes) explains the challenges in Senegal to achieve farmers’ rights.

First of all, they are challenged in passing information on GMOs and farmers’ rights in local languages because many farmers do not speak the official language, which is French.

Looking at the harmonization of the African Seed Law the framework would allow the on-farm development of seeds from the catalogue. However, there will be no peasant varieties in the catalogue.

Therefore, NGOs and farmers are trying to build up a sub-regional network for better and appropriate information in local languages and access to peasant varieties and seeds.

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## **Discussion:**

Adelita San Vicente Tello (Semillas de Vida) points out that Mexico has comparable problems like the African countries in the international context. The main issues are farmers' rights, the protection against GMO contamination, especially in the centres of origin, and community's rights to protect their traditional knowledge. Her organisation is pushing towards a moratorium for GMO in centres of origin. Adelita San Vicente Tello says that GMO cultivation will not end up with loosing maize varieties but also with loosing peasant.

Mamadou Lamine Coulibaly (CNOP) from Mali underlines the importance of information, even from this workshop. He predicts that farmers will be finished if PVP or patents are implemented in Mali. Furthermore, farmers cannot do a scientific characterization of their varieties, and therefore cannot protect them. We have to fight against registration of varieties.

Anne Berson explains that the Bangui Agreement of the African Intellectual Property Organization (*Organisation Africaine de la Propriété Intellectuelle* or OAPI) is the African version of UPOV. There is a tendency to uniform the legislation process and to oblige peasants to certify local varieties.

The sub-regions in Africa have ratified the agreement of Bangui. Today there are even two peasant varieties that are patented. One characteristic of seeds is still that they can be sold in some regions but in others they are given.

Flor Rivera (CECCAM) from Mexico wants to know what the Mexicans can learn from the African activities for farmers' right and peasant seeds. She will link up with the African participants. She adds that Mexicans have a perception of a seed as a human being.

Guy Kastler addresses that discussions on biosafety have changed from global to bilateral discussions. The rich countries are given money to impose biosecurity and seed laws. French seed companies answer by 'calls for tender' to draft seed laws. On the other hand, we are building civil society expertise on seed laws. But we cannot answer 'calls for tender' for draft laws. Lamine Biaye, who is also a member of BEDE, is specialized in organizing workshops on seed laws. He is building up knowledge from farmers to farmers. We have to allow our partners in the southern countries to continue their work.

Benin has got a moratorium on GMO, which had been extended for 5 years.

## **Conclusion:**

The discussion has identified several ways to strengthen farmers' rights. The workshop can be a starting point for new cooperation and support. Therefore, all participants are invited to commit themselves to use our new platform for asking and giving each other support. One important tool for it will be the following list of participants:

List of participants

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