

## COFAB, A DEVELOPING COUNTRY ALTERNATIVE TO UPOV

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India has taken the first step in enacting a sui generis legislation. The Lok Sabha passed the Plant Variety Protection and Farmers Rights Bill on 9 August 2001. Once the Bill clears the Rajya Sabha, India will have a legislation granting Farmers Rights and Plant Breeders Rights.

This draft legislation finally has a strong section on Farmers Rights thanks to a determined and sustained campaign by civil society, spearheaded by Gene Campaign

Gene Campaign's position right from the start has been that if the status quo has to be changed and we have to grant Plant Breeders Rights, our legislation will have to grant a strong Farmers Rights at the same time. These rights, we insisted, would have to allow the farming community to retain the same control over seed production and use that they have always had. Central to maintaining this was for the farmer to retain the right to sell the seed of any variety that he grows, even if the variety is protected by a Plant Breeders Right.

The Indian legislation should motivate other developing countries to incorporate Farmers Rights in their respective laws so as to ensure self-reliance for the farming community and food security for the country. Agricultural economies, specially those based on fragile ecosystems and in difficult terrain, like in the mountain countries will have to pay particular heed that the rights of rural people are not subverted by new developments like the WTO/TRIPS. Legally, nothing should restrict the farmer's independence as a producer and provider of seed.

Apart from national legislation, we as a region must also decide which forum we will use to interact with other nations. At present there is only UPOV, a platform regulating Plant Breeders Rights for the industrial nations. These countries do not have the large numbers of small and marginal farmers like we do. Almost all agricultural research and plant breeding in the countries of our region is financed with public money unlike UPOV members where private capital finances plant breeding and seed production. In Europe and the US agriculture is a commercial activity. For the majority of South Asian farmers however, it is a livelihood. We should not join UPOV because it does not address our needs. There is no concept of Farmers Rights in the UPOV system, rights are granted only to the breeder, which in today's context are the seed companies.

### *CoFaB, a developing country alternative to UPOV*

Gene Campaign along with Centre for Environment and Agriculture Development has drafted an alternative treaty to UPOV to provide a forum for developing countries to implement their Farmers and Breeders Rights. This treaty is called the **Convention of Farmers and Breeders, CoFaB** for short. CoFaB has an agenda that is appropriate for developing countries. It reflects their strengths and their vulnerabilities and it seeks to secure their interests in agriculture and fulfil the food and nutritional security goals of their people.

Unlike the provisions of the UPOV, the CoFaB treaty seeks to fulfil the following goals:

\* Provide reliable, good quality seeds to the small and large farmer

- \* 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 to the identification, maintenance and refinement of germplasm
- \* Acknowledge the role of farmers as creators of land races and traditional varieties, which form the foundation of agriculture and modern plant breeding,
- \* Emphasise that the countries of the tropics are germplasm owning countries and the primary source of agricultural varieties
- \* Develop a system wherein farmers and breeders have recognition and rights accruing from their respective contribution to the creation of new varieties

**The salient features of COFAB are as follows:-**

1. **Farmers rights:** Each member will recognise the rights of farmers by arranging for the collection of a Farmers Rights fee from the breeders of new varieties. The Farmers Rights fee will be levied for the privilege of using land races or traditional varieties either directly or through the use of other varieties that have used land races and traditional varieties, in their breeding program.

2. **Breeders rights:** Each member state will recognise the right of the breeder of a new variety by the grant of a special title called the Plant Breeders Right.

The Plant Breeders Right granted to the breeder of a new plant variety is that prior authorisation shall be required for the production, for purposes of *commercial and branded* marketing of the reproductive or vegetative propagating material, as such, of the new variety, and for the offering for sale or marketing of such material.

Authorisation by the breeder shall not be required for the utilisation of the new variety as an initial source of variation for the purpose of creating other new varieties. When applying for a Plant Breeders Rights, the breeder must declare the name and source of all varieties used in the breeding of the new variety. Where a land race or farmer variety has been used, this must be specially mentioned.

In the event of a variety becoming susceptible to pest attack, the normal period of protection may be curtailed to prevent the spread of disease. The breeder will also forfeit his right if the "Productivity Potential" as claimed in the application is no longer valid. To give primacy to the goals of food security, it has been provided in CoFaB that the right of the breeder will be forfeited if he is not able to meet the demand of farmers, leading to scarcity of planting material, increased market price and monopolies.

The UNDP Human Development Report (1999) describes CoFaB as a strong and coordinated international proposal which offers developing countries a far better alternative to European legislation, by focusing on the need to protect farmers interests and food and nutritional security goals. Gene Campaign's purpose in drafting an alternative to UPOV was to provide the basis for a discussion on what kind of non- UPOV platform developing countries should have. Once there is a comprehensive analysis and critique and consensus emerges among developing countries, it will not take long to come up with a minimum operational framework with which to start.