SGRP

Policy brief

The importance of recognizing the International Treaty in the CBD's Protocol on access and benefit-sharing

Introduction

Since 2004, parties to the Convention on Biological Diversity (CBD) have been negotiating an international regime on access and benefit-sharing. By the end of first part of the Ninth Session of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (WG-ABS 9) in Colombia, March 2010, negotiations had resulted in the development of a text called the 'revised draft Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity'[1] (the Protocol). The current text does not make explicit reference to any other international agreements addressing access and benefit-sharing laws. Most importantly, for the purposes of this brief, the text does not refer to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Some delegations stated that the ITPGRFA should be explicitly mentioned; others were not so clear, questioning whether it was necessary or desirable.

Currently, the ITPGRFA is the only international agreement which establishes an international regime on access and benefit-sharing focusing on plant genetic resources for food and agriculture. It provides legal certainty with respect to the conditions under which a wide range of plant genetic resources for food and agriculture (PGRFA) may be accessed and used, and the ways in which benefits associated from their use must be shared. Through creating this certainty, the ITPGRFA has laid the foundation for socially important uses of PGRFA in agricultural research, plant breeding, conservation and training. It has also created a basis for generating monetary benefits that will be shared with farmers in developing countries and countries in transition. It is critically important that that legal certainty – which took seven years of negotiations to obtain – should not be clouded or lost as a result of lack of clarity about the relationship of the ITPGRFA with the new Protocol.

The ITPGRFA was explicitly developed to be in harmony with the CBD and states that its objectives are to be attained by closely linking the ITPGRFA to the CBD. The Governing Body of the ITPGRFA and the Conference of the Parties to the CBD have continually emphasized the need to sustain harmony between both instruments and to enhance cooperation between them, including through their respective Secretariats.[2]

The purpose of this policy brief is to provide: a) background information about the structure and logic of the ITPGRFA's Multilateral System of Access and Benefit-Sharing; b) an update on international movements of PGRFA as facilitated by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) within the multilateral system; and c) the kinds of benefit-sharing that have already been accomplished under the ITPGRFA. It is our hope that this information will help delegates to appreciate the importance of clearly defining the relationship of the Protocol to the ITPGRFA.

The rationale for the design of the International Treaty's multilateral system of access and benefit-sharing

The ITPGRFA's multilateral system was constructed to reflect the fact that PGRFA are critical to food security, and that all countries are highly interdependent on PGRFA (that is to say, they require access to PGRFA that are located within each other's borders).

Plant genetic resources are critical to food security because they are the basic building blocks of crops' resistance to diseases, pests, and environmental stresses and to improving yields and quality attributes. They are also important in the rehabilitation of degraded ecosystems and farming systems. Agricultural research and plant breeding depends upon having access to a broad range of plant genetic diversity. Farmers, particularly those in more marginal agroecological zones, depend on genetic diversity to maximize stability of yields and to provide an insurance against biotic and abiotic stresses.

The interdependence of countries on PGRFA is reflected both at the level of international exchanges of plant genetic materials in support of research, breeding, production and conservation, and at

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the level of individual cultivars, which incorporate PGRFA from numerous countries and regions.

Interdependence as demonstrated by international movements of PGRFA

Most crops have been domesticated over millennia. Over the course of hundreds, in some cases thousands, of years they have been moved around the world, primarily through deliberate human intervention. Wheat (which encompasses more than 20 species, some of which earliest domestication took place in the Fertile Crescent), was introduced to the Americas over 500 years ago, while rice was introduced from Asia over 200 years ago.[3] Finger millet was domesticated in Africa possibly as early as 6000 years ago and was introduced into South Asia as early as 4000 years ago.[4] Columbus took maize from the Americas to Europe; from there it was introduced to Africa, where it has been managed and further developed by farmers for more than 500 years. Barley was one of the first domesticated crops in the history of agriculture. Over 2000 years ago it was introduced into Ethiopia, which has since become an important secondary centre of diversity. Very often, crops have fared better in their new environments than in the original centres of origin, given that the new environments were often free from the natural diseases and pests prevalent in those centres of origin. But once such diseases and pests do find their way into those new environments, breeders and farmers may have to go back to the centres of origin and diversity of crops in order to find natural resistances.

As a consequence of the movement of PGRFA, the overwhelming majority of countries in the world today are dependent (in terms of percentage of total calories consumed within the country) upon main food crops that originated from outside their borders, and in many cases from outside their sub-regions and continents.[5] The median level of minimum dependence for food energy supplies on non-indigenous major crops in Sub-Saharan Africa is 73%,[6] while that of European countries ranges from 54 to 99%, South American countries from 81 to 95% and the Indian Ocean countries from 85 to 100%.[7]

Much of the diversity of the most popular crops - i.e. those that contribute most to overall human caloric consumption around the globe - has been collected and is stored in ex situ collections, further contributing to the interdependence of countries on PGRFA. There are over seven million crop accessions held worldwide in approximately 1750 genebanks, located on every continent.[8]

Most of the crops we currently depend on for food security were originally domesticated in areas that are now developing countries. One might expect therefore that most current international movements of PGRFA would be from south to north. However, that is not generally the case. In more recent times, the flow of germplasm, as facilitated by international and some national genebanks,[9] is mostly between developing countries. A study of approximately 1 million samples distributed from ex situ collections of the Centres of the CGIAR from 1973 to 2001 revealed that 73% of the samples originally collected from developing countries were distributed to developing countries. Transfers to developed countries of materials that were obtained from developing countries constituted only 16% of the total. Flows from developed to developing countries accounted for some 8%. Only 3% of the transfers carried out by the Centres were from developed countries back to developed countries. Through such transfers, countries are able to enjoy a multiplier effect, gaining access to a much wider range of diverse materials than exists within their own borders. As a result of this, virtually all countries are net recipients of plant genetic resources. For example, 88% of the unique accessions of seven crops accessed by Uganda and Kenya over the last 20 years were originally collected in other countries and continents.[10] Maximizing the multiplier effect was one of the original intentions of creating the International Network for the Genetic Evaluation of Rice (INGER). Between 1975 and 2004 over 23 000 unique entries were contributed to the network from all regions of the world, and each region has benefited by being able to evaluate between 2 and 20 times as many varieties as it contributed.

Interdependence at the level of individual cultivars

The historic wide-spread flow and use of PGRFA is evident in the ancestry of individual crop varieties. For example, the VEERY wheat variety, which was widely released in the 1980s and is still used in breeding programmes around the world, was developed through 3170 crosses involving 51 parents from 26 different countries. A study of pedigrees of 1709 rice varieties released in 15 countries revealed that only 145 varieties (8.5%) were developed entirely from own-country parents, grandparents and other ancestors.[11] Of the 15 countries studied, 13 were more than 80% dependent on foreign progenitors for their rice breeding programmes. The two exceptions were India, with 39% of own-country progenitors, and the USA, with 67%. Subsequent analysis of progenitors of 4549 improved rice varieties released in 98 countries revealed that on average 63% of the genetic composition of each variety was of foreign origin. On average, each variety was a mixture of germplasm of seven landraces from four or five countries. Over 93% of the parents were foreign to the 30 countries most reliant on 'outside' parents; interestingly all of them were from developing countries.[12]

As a result of this interdependence, countries increasingly need to look for PGRFA outside their own borders, or even outside their own regions, when faced with new diseases or other environmental challenges. A recent example is the virulent fungus known as Ug99, which has been found in Uganda, Kenya, Ethiopia, Sudan, Yemen and Iran. Scientists estimate that 90% of the wheat varieties around the world lack sufficient resistance to the original Ug99. Breeding programmes have expanded collaboration in order to jointly identify and share varieties that can resist the fungus.[13] Another example of diseases that has forced countries to broaden the genetic base of their crops is that of the cacao's frosty pod rot (*Moniliophthora roreri*), which affects crops in 11 countries in tropical America and causes up to 80% of production losses.[14]

Table 1. Summary of international flows of rice ancestors in selected countries*

Country	Total landrace progenitors in all released varieties	Own landraces	Borrowed landraces
Bangladesh	233	4	229
Brazil	460	80	380
Burma	442	31	411
China	888	157	731
India	3917	1559	2358
Indonesia	463	43	420
Nepal	142	2	140
Nigeria	195	15	180
Pakistan	195	0	195
Philippines	518	34	484
Sri Lanka	386	64	322
Taiwan	20	3	17
Thailand	154	27	127
United States	325	219	106
Vietnam	517	20	497

* Fowler, C. and Hodgkin, T. 2004. Plant Genetic Resources for Food and Agriculture: Assessing global availability. Annual Review of Environmental Resources 29: 10.1–10.37, based on a table originally included in Gollin, D. 1998. Valuing farmers' rights. In Agricultural Values of Plant Genetic Resources (Evenson, R.E. Gollin, D. and Santaniello, V. eds.). CAB International, Wallingford, UK.

A recent study submitted to the Commission on Genetic Resources for Food and Agriculture predicted that climate change would increase countries' level of interdependence on PGRFA as they struggled to exploit genetic diversity to adapt to climate change related stresses.[15]

Crop research increasingly depends upon: the coordinated efforts of several institutions in different countries around the world; access of researchers to a wide range of genetic resources related to the crop; and frequent transfers of materials between the participating organizations. Requiring unique, transfer-by-transfer negotiations for access to the required materials substantially boosts the time and costs of such research. Take the example of International Rice Research Institute's rice collection, which includes 100 785 accessions from 126 countries. In the absence of a multilateral system for access and benefit-sharing, each one of these countries would have to negotiate a minimum of 125 contractual agreements to get access to that same diversity. For all countries represented in the collections, to get access to all of the material would require a minimum of 15 570 agreements. Moreover, a further 2509 accessions held in the same collection originate in regions that cannot be attached to a single current recognized country. For example, accessions coming from the USSR without information on a specific location of origin within the USSR. Who would negotiate on behalf of the country of origin in these cases?

PGRFA users and providers in different countries have reported that germplasm flows among countries have been negatively affected by legal uncertainties concerning the conditions under which access can be granted to genetic resources[16] which increased transaction costs to (or total frustration of) research, breeding or conservation efforts.

The International Treaty's multilateral system of access and benefit-sharing

The ITPGRFA negotiations concluded in 2001; it came into force in June 2004; and has been ratified by123 countries.[17] The design of the multilateral system created by the ITPGRFA reflects an appreciation of:

- the interdependence of all countries on PGRFA
- the importance to food security of maintaining their continued exchange
- the difficulties of identifying countries of origin for crops that have been widely exchanged and that may have developed their distinctive properties in any number of different areas
- the need to avoid high transaction costs in ongoing (and desirable future) patterns of relatively low-cost, high-volume exchanges in support of agricultural research and conservation, and
- the importance of sharing the benefits associated with the use of PGRFA.

Parties to the ITPGRFA agree to provide facilitated access on a multilateral basis to the crops and forages listed in the ITPGRFA's Annex 1 for the purposes of research, breeding and training for food and agriculture. Access shall be free or at a minimal cost. Crops and forages are included in Annex 1 based on their importance for food security and countries' interdependence upon them.
The Annex 1 list may be amended, by consensus of all Contracting Parties, following Article 24 of the ITPGRFA. Discussions on the possible amendment of the list would normally take place in the Governing Body of the ITGPRFA, in which all Contracting Parties are represented.

All PGRFA of Annex 1 crops and forages that are in the public domain and under the management and control of Contracting Parties are automatically included in the multilateral system. Contracting Parties are to encourage other holders of Annex 1 PGRFA to include their collections in the multilateral system on a voluntary basis. The multilateral system's coverage extends to *in situ* materials, access to which Contracting Parties agree 'will be provided according to national legislation, or in the absence of such legislation, in accordance with such standards as may be set by the Governing Body.' (ITPGRFA article 12.3.h.). International organizations are also encouraged to place PGRFA collections they host under the purview of the ITPGRFA, placing their Annex 1 materials in the multilateral system. The ITPGRFA specifies that "recipients shall not claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received from the multilateral system".

So far, 13 countries have confirmed which of their collections are automatically included in the multilateral system according to the criteria described above. Information about those collections is available on the ITPGRFA's website.[18] As a result, it is now confirmed that there are at least 1.3 million accessions of PGRFA are available through the multilateral system (i.e., the total of just those collections that have been confirmed and those of international organizations referred to below).

Clearly the actual number is considerably higher.

Benefit-sharing under the multilateral system is also structured on a multilateral basis. In view of its importance for food security and sustainable agriculture, the facilitated access to the PGRFA in the multilateral system is probably the largest single benefit. Other forms of benefit-sharing under the multilateral system include exchange of information, access to and transfer of technology, capacity building and sharing of monetary benefits derived from commercialization. Recipients of PGRFA from the multilateral system who commercialize products that incorporate that material will pay 1.1% of gross sales (minus 30%) into an International Benefit-Sharing Fund set up by the Governing Body of the ITPGRFA. The payment is mandatory where restrictions are placed on the availability of the product to others for further research and breeding. Where no such restrictions are imposed, the payment is voluntary. The fund is entirely under the direct control of Contracting Parties to the ITPGRFA. Practically, it is the Governing Body that establishes priorities and selects projects for funding. The International Benefit-Sharing Fund supports conservation and crop improvement efforts, especially in developing countries and countries with economies in transition. In 2009, the International Benefit-Sharing Fund provided grants totalling USD 500 000 to support 11 projects in 11 different developing countries focusing on sustainable use, conservation on farm, information exchange, technology transfer and capacity building.[19] More recently, a number of donor governments as well as the United Nations Development Programme (UNDP) have announced new contributions to the fund totalling approx. USD 13.4 million. Due to the high engagement levels of Contracting Parties, additional investments are anticipated before the end of 2010. Those funds will support projects that help ensure food security by assisting farmers to adapt to climate change through a targeted set of high impact activities for conservation and sustainable use of PGRFA.

All materials in the multilateral system are exchanged under the standard material transfer agreement (SMTA) that was adopted by the Governing Body of the ITPGRFA at its First Session in 2006. The SMTA includes all relevant terms with respect to access, benefit-sharing, enforcement, dispute resolution and so on. Those terms are fixed and cannot be altered. There is thus no need for costly bilateral negotiations. (For materials which are under development, providers can add additional terms and conditions, but they must be consistent with the SMTA.)

In becoming party to the ITPGRFA, the Contracting Parties have agreed in advance, and on a multilateral basis, on the terms that are to govern the exchange of PGRFA with other Contracting Parties and have provided their prior informed consent to that exchange. Both the Conference of the Food and Agriculture Organization of the United Nations (FAO) and the Conference of Parties to the CBD have welcomed the ITPGRFA as providing a special solution for PGRFA that is responsive to the needs of farmers, breeders and sustainable agriculture in general.[20]

International movements of PGRFA in the multilateral system as facilitated by the CGIAR Centres

In 1994, eleven CGIAR Centres signed agreements with FAO placing *ex situ* collections of PGRFA that they held under the auspices of FAO, on the understanding that they held those collections "in trust for the benefit of the international community, in particular the developing countries".[21] Those agreements were approved by the Commission on Genetic Resources for Food and Agriculture. They provided a sound international legal basis for the collections during a time of political and legal uncertainty. Useful as they were, they were always intended to be temporary until the negotiations of the ITPGRFA were finalized.

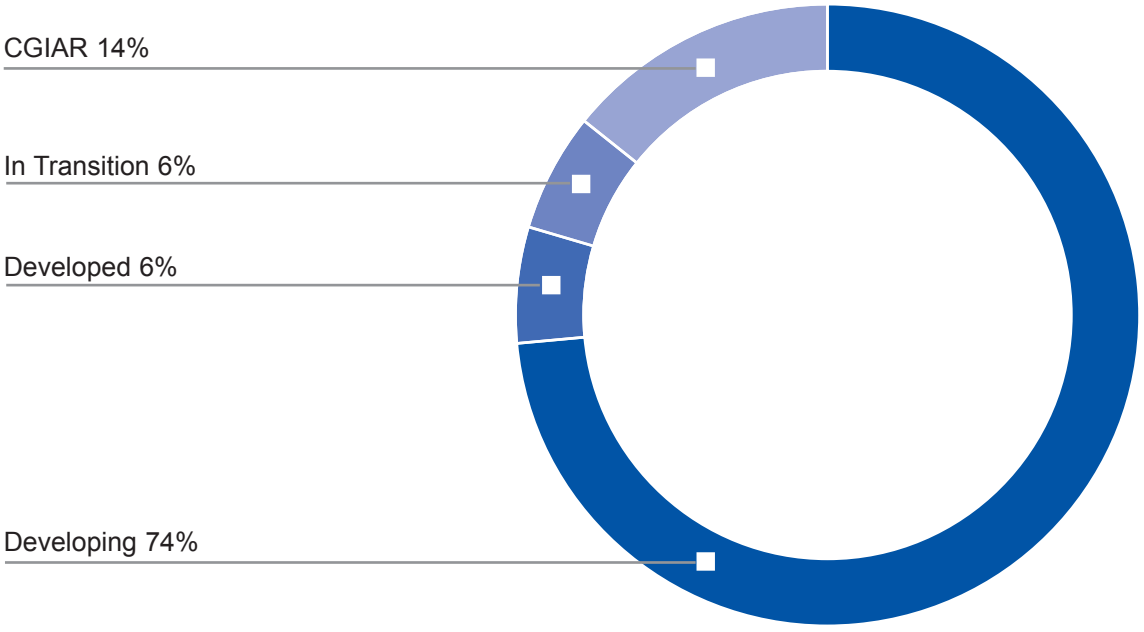
Article 15 of the ITPGRFA invites the CGIAR Centres to place those in trust collections under the framework of the ITPGRFA. In 2006, the CGIAR Centres signed agreements with the Governing Body to place approximately 650 000 accessions of in trust PGRFA under the purview of the ITPGFA, and under the policy guidance of the Governing Body. Pursuant to those agreements, the Centres agreed to distribute the 64 crops and forages named in Annex 1 of the ITPGRFA using the SMTA. In 2007, the Governing Body decided that the Centres should also use the SMTA when distributing PGRFA of non-Annex 1 crops and forages acquired before the entry into force of the ITPGRFA.

In the first 19 months of operating under the ITPGRFA's framework (1 January 2007 to 1 August, 2008), the Centres distributed approximately 550 000 samples of PGRFA all over the world under the SMTA.[22] One quarter of those materials were PGRFA as they were originally acquired and included in the *ex situ* collections maintained by the Centres. The other three quarters were materials that the Centres had been involved in improving. The overwhelming majority of those samples were sent to developing countries (74%) and countries with economies in transition (6%). Only 6% were sent to developed countries while 14% consisted of transfers between CGIAR genebanks for creating safety back-ups, etc. (see Figure 1).[23]

Only 68 samples of PGRFA under development were distributed with additional conditions to those in the SMTA. These conditions were not added by the Centre concerned, but by the previous provider to the Centre, which the Centre was obliged to pass on.

We appreciate that by focusing on the movement of germplasm in the multilateral system as facilitated by the CGIAR Centres, that we are not telling the whole story. But the figures are indicative of how the system is working.

Figure 1. Distribution of PGRFA from CGIAR genebanks and breeding programmes from August, 2007 to August, 2008.



Conclusions

The multilateral system for access and benefit-sharing created by the ITPGRFA reflects the world community's recognition that PGRFA are essential for achieving food security and that countries are very much interdependent on them. The ITPGRFA has provided legal certainty with respect to the conditions under which PGRFA can be accessed and used, and how the benefits derived from their use should be shared. In this way, it has established a foundation for the use of PGRFA in agricultural research, breeding and conservation that has the support of the international community. While the multilateral system is still in its early days, it has established an impressive track record, with at least 1.3 million accessions of PGRFA confirmed in it. Furthermore, tens of millions of dollars are now available for benefit-sharing with developing countries through the International Benefit-Sharing Fund.

If the Protocol does not clearly establish the relationship to the ITPGRFA, uncertainties about the legal regime applicable to PGRFA will create difficulties for providers and users in the distribution of and access to genetic material and will therefore disrupt the movements of PGRFA, the majority of which is to developing countries.[24] Such uncertainties can be avoided by the Protocol clearly recognizing the access and benefit-sharing provisions of the ITPGRFA.

Endnotes

1 Annex 1 to the Report of the First Part of the Ninth Meeting of the Ad Hoc Open-Ended Working Group on Access and Benefit-Sharing, UNEP/CBD/WG-Abs/9/3 26 April 2010. Available at: http://www.cbd.int/doc/meetings/abs/abswg-09-2nd/official/abswg-09-2nd-03-en.doc#_toc258249459

2 See, for example: Report of the Second Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (Rome, 27 October- 2 November 2007). GB-2/07/Report, P. 15; Report of the Third Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (Tunis, 1-5 June 2009). IT/GB-3/09/Report. P. 39 of Appendix A; Report of the Ninth Meeting of the Conference of the Parties to the Convention on Biological Diversity (Bonn, 19-30 May 2008). UNEP/CBD/COP/9/29. Pp. 33 and 67; and CBD COP5 Decision V/26, para 7..

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5 Palacios, X.F. n.d. Contribution to the Estimation of Countries' Interdependence in the Area of Plant Genetic Resources. Background Study Paper No. 7, Rev. 1. Commission on Genetic Resources for Food and Agriculture, FAO, Rome, Italy.

6 Palacios, X.F., supra note 5.

7 Palacios, X.F., supra note 5.

8 FAO, 2009. Second Report of the World's Plant Genetic Resources for Food and Agriculture. Commission on Genetic Resources for Food and Agriculture. United Nations Food and Agriculture Organization. Rome, Italy. Pp 3 & 51.

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14 Daniel Debouck; Andreas Ebert; Eduardo Peralta; Miguel A. Barandiarán; Marleni Ramírez. 2008. La importancia de la utilización de la diversidad genética vegetal en los programas de investigación agrícola en América Latina. In Lopez, I., O'Keeffe, E., Halewood, M. Recursos Naturales y Ambiente No. 53 Abril 2008. El Sistema multilateral de acceso y distribucion de veneficio del Tratado Internacional sobe los Recursos Fitogeneticos para la Alimentacion y law Agricultura.

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16 FAO, 2009. Second Report of the World's Plant Genetic Resources for Food and Agriculture. Commission on Genetic Resources for Food and Agriculture. United Nations Food and Agriculture Organization. Rome, Italy. P.168. See also Wambugu, P., and Z. Muthamia. (forthcoming) Incentives and disincentives for Kenya's participation of the global system for conservation and use of plant genetic resources for food and agriculture. In Halewood. M., Lopez, I. (Eds.) Implementing the multilateral system of access and benefit sharing. Case studies.Bioversity International, Rome.

17 For the status of participation in the Treaty, see http://www.fao.org/legal/treaties/033s-e.htm

18 http://www.planttreaty.org/inclus_en.htm

19 More information about the 11 grants is available on the Treaty website at http://www.planttreaty.org/funding_en.htm.

20 See Decision VI/6, The International Treaty on Plant Genetic Resources for Food and Agriculture. Conference of the Parties to the Convention on Biological Diversity. Sixth meeting. The Hague, 7-19 April 2002. . UNEP/CBD/COP/DEC/VI/6/; See also the report of the Conference of FAO, Thirty-first Session Rome, 2 - 13 November 2001. C 2001/REP.

21 1994 In Trust Agreements: The Agreement between [name of Centre] and the Food an d Agriculture Organization of the United Nations (FAO) Placing Collections of Plant Germplasm under the Auspices of FAO. Article 3: Status of Designated Germplasm.: (a) The Centre shall hold the designated germplasm in trust for the benefit of the international community, in particular the developing countries in accordance with the International Undertaking on Plant Genetic Resources and their terms and conditions set out in this Agreement; (b) The Centre shall not claim legal ownership over the designated germplasm, nor shall it seek any intellectual property rights over that germplasm or related information.

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