

BREEDERS RIGHTS VS. COMMUNITY RIGHTS

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The rights of communities over bioresources derive from the fact that they maintain and refine these resources and they are the repositories of the knowledge about these resources, their characteristics and their use. The importance of indigenous knowledge can not be understood when one realises that there are no rice or wheat plants nor did cotton or mustard find lying around in the forest. What are found in the forest are wild plants out of which communities of men and women over generations have bred races of several food and cash crops. These communities have bred out of the wild plants of the forests, the thousands of land races which are the basis of the world's agriculture. The land races bred by farming communities are the foundation material of modern plant breeding and global food security. These land races are the self-same varieties that plant breeders use to breed other varieties and for which they seek special and exclusive privileges like Plant Breeders Rights.

It needs to be remembered that farm women and men have not only created several thousand races of food and cash crops, they have also identified valuable genes and traits in these crops and maintained them over generations through a highly sophisticated system of crossing and selection. Communities have not only developed complex systems of pest management and biological control, they have identified and managed a series of genes conferring valuable traits for commercial and domestic needs. So it is that genes for traits as diverse as disease resistance, high salt tolerance, resistance to water logging and drought tolerance have been maintained in the repertoire of communities.

This work of genetic selection, maintenance and cross breeding is the result of innovative and creative scientific experimentation in the field. This work is in no way less than the scientific experimentation conducted by scientists in the experimental plots of agricultural research stations. The fact is that there would be no plant breeders working on experimental farms if it were not for the prior knowledge gained from rural communities. Indigenous knowledge is not only the foundation of modern science in this and many other fields; it is also what could be described as the reference and referral centre for modern plant breeding.

Today, faced with the threat of global warming and climate changes across agricultural zones, scientists are on the look out for crop varieties that are more heat tolerant. They acquire this information by going to deserts and hot regions and asking local farming communities to identify varieties that can withstand extreme heat. Armed with this indigenous knowledge, scientists can engage in a breeding and selection program that will result in the combination of traits needed for varieties that are to cope with post-global warming agriculture.

If credit had to be apportioned for the breeding of a new crop variety, then it could be shared perhaps as 80:20 or at least 70:30 between the farming and scientific communities. One could say quite easily that if the breeding of a crop variety entailed 100 steps, then indigenous knowledge contributed the first 80 or 70 steps and laboratory science

contributed the next 20 or 30 steps. It stands to reason therefore that credit, reward and recognition for a new variety should be similarly shared. That is the reason why the claim to place Farmers Rights on par with Breeders Rights is such a natural claim. Farmers have a greater and more innovative share in the creation of new plant varieties than scientists. Their contribution must be recognised with at least the same degree of enthusiasm, if not more than that accorded to scientists.

We need to address ourselves to a few important aspects in order to lay down a comprehensive national policy with respect to the rights of communities. The first of these is the documentation of the location of biological resources at the regional and national level. If we want to use bioresources as the foundation for national growth, we must at least know where we have what. This documentation which should be compiled as a National Bioresource Register will serve several functions.

- a. The first is that of a data bank for people seeking access to information. This access should be made available for a fee accompanied by the conditions governing the use of this information. This is the normal practice with data banks every where.

The fee charged for prospecting for biological material like land races or wild relatives must be paid into a Community Gene / Technology Fund in the dispensation of which, representatives of communities will have a say. A profit sharing formula should be worked out in addition, if a new variety or other commercial product is developed, to pay for the use of community held raw material and indigenous technology.

- b. The documentation can be used to stake the claim of communities or individuals for royalty payments for the transfer of indigenous technology. This data base can also be used to identify communities which should be included in the National Authority that will govern the use of bioresources and implement conditions of the Convention on Biological Diversity (CBD) like Prior Informed Consent and Material/ Information Transfer Agreements.
- c. Finally, this data bank will serve the important function of establishing community knowledge firmly in the public domain. This will provide the technical basis for rejecting patent claims that derive from indigenous knowledge.
- d. We must ensure that the information that is documented is banked in a government owned repository and is legally admissible in a court of law as evidence for prior knowledge. In order to strengthen the claim of indigenous communities over their knowledge base, our laws must admit Oral Tradition as documentation of use. This will be of importance when dealing with knowledge other than that documented in journals and scientific publications, since most of our community knowledge is verbally held.

Drafting of national legislation is the other important aspect. New laws should be drafted quickly to deal with all aspects of bioresources and policy governing their use. These laws are to be drafted primarily in the context of two international treaties, the Convention on Biological Diversity (CBD) signed in Rio in 1992 and the GATT/

TRIPs which was finalised in 1994 .CBD laws are required to establish ownership rights over India's biological resources and to formulate the guidelines for material and information transfer agreements which will vest all rights with indigenous communities. Our sui generis legislation should place Farmers Rights on par with Breeders Rights and acknowledge and reward the contribution of farm men and women to the development of land races and therefore to the development of new varieties. The indigenous knowledge involved in the location of favourable genes needed for successful breeding work should be paid for. The recipient can be the Community Gene / Technology Fund mentioned earlier.