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**Recognizing Farmers' Rights As Human Rights: Rights-
Based Approach Reduces Vulnerability**

by

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Recognizing Farmers' rights as human rights: Rights-based approach reduces vulnerability

Abstract

The United Nations' Declaration of Human Rights adopted more than half a century ago though speaks about protection of fundamental rights of all individuals irrespective of caste, creed, color, profession, generation, religion, country or continent, many people hailing from different communities are deprived of their basic rights. That is why we debate on the rights of these marginalized and deprived groups. They largely hail from women, children, farmers and certain other segments of society. These groups are the vulnerable entities among the whole lot of human beings. Some of them are even more vulnerable as compared to the vulnerable groups themselves.

Farmers are marginalized communities in almost all the developing countries who are fast becoming victims of globalization, particularly the World Trade Organization (WTO) regime that snatches their basic right to choose and right to know, right to store, reuse, recycle and share their seed and plant varieties. They are also facing acute problems due to withdrawal of subsidies on their crops. Their vulnerability is growing with emergence of corporatization of farming in one or the other way. It is a fact that new multilateral agreements under WTO regime are violating the rights of the farmers protected in natural law, the UN Declaration of Human Rights 1948, International Convention on Economic, Social and Cultural Rights 1966, International Convention on Civil and Political Rights, 1966, the Convention on Biological Diversity (CBD) and similar other international, regional, bilateral and country level human rights conventions and laws by allowing monopolies in the agriculture sector. In this regard the patents on life forms are serious violations of the rights of the farming communities.

This paper examines the vulnerabilities of the farming communities, violation of their rights by the state operators and the international multilateral monetary and commercial agreements giving monopoly to multinational corporations (MNCs) over the local knowledge system in the farming sector. The awareness on human rights and the rights based-approach to discuss farmers' rights could reduce vulnerability of farming communities in the mountainous regions.

The concept of the rights of fellow human beings was first emerged with the very advent of farming in human history in the second wave (agricultural wave) that affected the mankind after the first wave (slave/stone wave). The agricultural wave paved way for the third the industrial and the fourth information wave. Now, we are passing through the fourth (information) wave. Still the agricultural wave prevails with modernization despite the efforts of the harbingers of the third and the fourth waves to monopolize the agriculture.

Awareness of human rights: Rights approach reduces vulnerability

With the emergence of worldwide rights movements, awareness of human rights and a widespread rights-based approach to settle disputes and vulnerabilities are creating space across communities and countries. The trend now is to give rights an explicit legislative basis, and to incorporate them into a wide range of agreements and policy including commercial contracts and labour agreements. A number of major commercial entities and communities are committing themselves to upholding basic human rights by joining the United Nations sponsored initiatives in this regard.

John Handmer of Risk and Community Safety Research Initiative, RMIT University, Melbourne, Australia, in a paper prepared for the Annual Hazards Workshop, University of Colorado, Boulder. July 2001 writes: “Our awareness of human rights has been greatly enhanced by globalization of media and the spread of North Atlantic notions of democracy.”

To some commentators this reflects a resumption of the US led post World War II project - interrupted for 40 years by the cold war (Cately, 1997). This project included the spread of human rights expressed through democratic institutions of the US model and global free trade and financial systems. Global trade and finance are formally represented by the Bretton Woods institutions of the IMF and World Bank, and by GATT (now the World Trade Organization or WTO).

The concept of rights not only covers individual freedom of expression, voting and trade, but basic needs of human beings including food, housing, employment opportunities, a clean environment and increasingly gender and cultural rights, and security. With the widespread public outrage against the policies of the Breton woods institutions that harm the interests of the labour and the farming communities, various groups and activists and certain governments across the rich and the poor countries are contesting these basic rights.

The worldwide human rights groups and activists and movements promoting vulnerable people’s rights have created awareness of fundamental rights violations of which cause vulnerabilities among stakeholders. In an era of globalization, particularly the globalization of economy, multinational corporations and corporatized atmosphere gradually monopolizing trade and agriculture in the name of trade liberalization thus rendering marginalized segments more vulnerable. The globalization is fast creating losers as a result of enhanced competition for capital and trade and the now easy relocation of commercial activity. It has been observed that the globalization by creating vulnerable communities worldwide is causing loss of livelihoods and environmental degradation.

The rights approach

There is a consensus among the human rights groups that a rights approach could help reduce vulnerability provided legal instruments support the approach. Existing human rights, and rights related law appear to cover many of the components of vulnerability. In addition, long established international humanitarian law sets out obligations in times of war (Plattner, 1992), and there is currently debate over the existence of much broader rights to humanitarian assistance (Kent, 2000). Some times laws and acts give protection to the people’s rights and the other times certain traditions and customs or practices provide protection to the people.

There are numerous international conventions in the areas of human rights, as well as those concerning health, children, violence, labour law, etc. In general, these laws and conventions have relevance to vulnerability. Everyone has the right to life, liberty and security of person (Article 3, Universal Declaration of Human Rights adopted and proclaimed by the UN General Assembly, 10 December 1948). While this has traditionally applied to arbitrary arrest and detention, it may be arguable that protecting the "security of the person" requires protection from other forms of harm. The Convention on the Rights of the Child is more specific. It requires signatory states to "ensure to the maximum extent possible the survival and development of the child." The Convention emphasizes the right of children to the highest attainable standard of health (Article 24.1), and requires states to "pursue full implementation of this right" (Article 24.2). The International Convention on Economic, Social and Cultural Rights deals mostly with many of the constituents of vulnerability: it protects the right to adequate food, nutrition, shelter, clothing, education and health and medical services (Article 11). However, there is clearly a massive implementation gap because certain government in the name of security and national interest or otherwise does not implement these international human rights instruments. Majority of the countries now a days are giving importance to sovereignty and perceived national or partisan political interests as rights can easily be set aside if governments decide they conflict with security issues, and certain groups or categories of the people can be excluded from the normal operation of the law.

With the promotion of the World Trade Organization's agreement and emergence of post September 11, 2001 situation, people in general and Muslims in particular are becoming vulnerable in the West and particularly in the United States. Enforcement of international law is very limited unless the issue is within the ambit of the WTO (World Trade Organization) - and the WTO has yet to be generally seen as promoting a rights approach. Many of the constituents of vulnerability come within the ambit of human rights law. Considerable vulnerability reduction could be achieved by slight increases in compliance with existing rights law through exhortation, shaming, trade pressure, diplomatic persuasion and citizen activity. Governments around the world need to be reminded about what they have signed in good faith - and they need support to achieve these standards. Much of that support will need to come from NGOs including religious, professional and community groups, and from locally based and global commerce. Even in the absence of the key institutions mentioned above, human rights law could be a powerful advocacy tool in the hands of civil society.

Farmers' Rights

Five hundreds generations ago, the first change in the organization of human society began. (Boyden, op. cit., p.4). The agricultural wave was the first economic and social change in human society when our ancestors picked some crude implements, sharpened them and went to fields. By sowing first crop, they laid a new foundation for power structure, concept of ownership and sharing in the crop. As an economic and power factor, farming expanded the human horizons and created the concept of farmers rights that include:

- The right to have implements and skills to sharpen them
- Right to acquire skills in cultivating and reaping the crop
- Right to acquire piece of land and knowledge about soil and protection against eviction and displacement
- Right to have store crop and seed
- Right to reuse and share the plant varieties
- Right to protect their indigenous knowledge, plant and seed varieties

- Right to have sufficient water

These are the basic fundamental rights of farmers. These centuries and generations old fundamental rights of the farming communities are being snatched by allowing multinational corporations (MNCs) the monopoly over agricultural inputs including plants and seed varieties and reducing choices of the farming communities. Introduction of corporate farming thus depriving small subsistence farmers of their right to cultivation and displacement of land less farmers from the state owned farms, withdrawal of subsidies in the name of globalization or liberalization are massive violations of the fundamental human rights of the farmers.

The reason why human rights are being undermined by the soft-states is the dictations of the multinational corporations and their mentors in the North. If we look into the process of multilateral talks under WTO regime, we find that the WTO and its functionaries are hardly concerned about the principals set by the natural law and international conventions on human rights rather they consider human rights as a hindrance to trade liberalization. International Federation of Human Rights League (FIDH) in its report 320/2, November 2001 says Human Rights are only considered in an indirect connection with the facilitation or hindrance of trade liberalization.

Under WTO regime, trade is not required to conform to the notion of human rights rather it opts for the reverse despite the fact that the preamble to the Agreement establishing WTO has duly incorporated the spirit of the Article 55(a) of the UN Declaration of Human Rights.

The first paragraph of the preamble of the WTO document reads: “Relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand.”

The Article 55(a) of the UN charter reads: “The United Nations shall promote higher standards of living, full employment and conditions of economic and social progress and development in the economic and social order.”

By incorporating the spirit of the Article 55(a) in the document that provided basis for WTO’s establishment, the authors duly recognized that WTO rules were subordinated to the principles of the UN charter. But in practice how WTO talks are being conducted is a clear violation of the UN charter rather it makes mockery of the globally acknowledged UN Universal Declaration of Human Rights (UDHR).

Principle of human rights primacy and its pre-eminence over trade, non-trade and other obligations

The bases for the international human rights law have been provided in the United Nations Charter along with the Universal Declaration of Human Rights. The UN Charter sets human rights as a founding stone that must be abided by, as the privileged means of reaching the United Nations’ fundamental goals.

Article 55 (c) of the Charter provides that the UN will encourage:

“Universal respect for, and observance of, human rights and fundamental freedoms for all, without discrimination as to race, sex, language and religion.”

Article 56 defines a concrete obligation to cooperate to promote universal and effective respect for human rights:

“All members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55”

Article 103 of the Charter urges upon member states to give preference to the obligations under the Charter over other international agreements. Confirming the pre-eminence of this obligation, the Article reads:

“In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other International Agreement, their obligations under the present Charter shall prevail.”

The article described above clearly states that no agreement whatsoever could be framed at international level confronting the UN Charter, which validates and qualifies the Universal Declaration of Human Rights (UDHR), to guarantee human rights and respect for human rights. While interpreting the UDHR, we find a link between the Charter and the UDHR, which necessitates that the international agreements and regimes including the WTO should not violate the basic principle and spirit of the UDHR. The principle of pre-eminence concerns economic, cultural and social rights as guaranteed in the Articles from 21 to 27 of the UDHR.

The UDHR is considered to be a guiding principle of International Customary law if not a peremptory norm of the International law. It is a fact that whenever multilateral discussions or talks are held at the United Nations or other fora on certain international treaties, the UDHR is referred to as a fundamental source. The UDHR also features in the legislative and judicial proceedings of a large number of countries. This proves that the UDHR has become a part of International Customary law. One of the authors of the UDHR says: “Today the bill is binding on all countries, including those which did not approve it in the first place in 1948. (John Humphrey, No distant millennium: the International Law of human rights- Paris, Unesco, 1955).

Certain norms being part of the International Customary law are considered as binding “erga omnes”, which means that all states have a vested legal interest in the protection of such rights. Some authors and researchers consider the UDHR as a binding principle of “jus cogens” within the meaning of the Article 53 of the Vienna Convention on the law of treaties. The Article 53 reads:

“A peremptory norm of general international law is a norm accepted and recognized by the International community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

The UDHR’s preamble at the end refers to itself as “ a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society shall strive to secure their universal and effective recognition and observance.” This part of the preamble means that the promotion of human rights is not confined to government alone. Any individual or institutional action that failed to uphold basic liberties must be opposed.

This very commitment applies to multilateral institutions including Breton Woods institutions and transnational corporations (TNCs), particularly dealing with the farming sector.

This legal recognition of the primacy principle means that obligations under human rights must systematically prevail on all other obligations. The states must make sure that all their commitments, including economic, trade, agriculture and commerce are compatible with the universal principles of human rights law. If we apply the primacy principle to the Agreement on Agriculture in the WTO regime, we find that the said agreement confront with the commitments made under the UDHR.

Mauritius in a submission to the WTO Committee on Agriculture at a session in 2000 underlined the relevance of International obligations (under the International Covenant on Economic, Social and Cultural Rights) when negotiating WTO agreements. It underlined the fact that the Agreement on Agriculture must be interpreted in conjunction with other obligation under Article 11 of the International Covenant on Economic, Social and Cultural Rights.

The Article 11 calls for “the right of everyone to an adequate standard of living for himself and his family including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

In the light of the human rights agenda, Mauritius has categorically said, “the text of the WTO agreement appears to have been ...drafted so as to avoid countries having to make commitments which would contradict their obligations under other multilateral frameworks.” In this way, Mauritius has indicated that it intends to fulfill its obligations under human rights regime and oppose to the implementation of the WTO regime.

The dispute settlement bodies, whether they are sponsoring talks under WTO regime or the United Nations, when faced with a dispute must widen the scope of the clauses and should interpret them under the primacy and pre-eminence of human rights laws over trade agreements. Now it is the duty of the member states involved in trade talks and the WTO itself to abide by the fundamental principles of human rights and promote them.

Amid monopolistic trends seen at the WTO Ministerial meetings, it has been observed that the North with their view to see human rights as hindrance to trade liberalization did not consider the human rights as an important issue during these talks. Therefore, it has become essential that now the South should raise the issue of linking the validity of trade agreement to the observance of human rights and the UDHR norms must serve as a reference. It is proposed that a “human rights clause” should be incorporated in all the WTO agreements to ensure unconditional observance of the International human rights norms set out by the UDHR.

Farmers Rights and the UN Charter, Universal Declaration of Human Rights

As described above the WTO trade talks and agreements dealing with agriculture do violate the basic spirit of the UDHR and deprive the farmers of their fundamental right to choose. If we see the rights of the farmers in the parameters of the primacy and pre-eminence of the international human rights law, we would find that the farmers’ rights are the human rights.

David Wood in his article on “*Real Rights for Farmers*” published in *Biotechnology and Development Monitor* said:

“Over the past 15 years, efforts have been made to develop Farmers’ Rights as a system to acknowledge the contribution of farmers to the conservation and improvement of plant genetic resources. He suggests that these rights should establish farmers’ individual ownership of the varieties they develop. Farmers’ Rights as property rights can stimulate plant breeding and conservation of agricultural biodiversity.

Farmers’ Rights as formulated in 1989 by the Food and Agriculture Organization (FAO) were defined as “rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources (...) These rights are vested in the International Community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers, and supporting the continuation of their contributions (...)”

The Farmers’ Rights are actually the concrete benefits for farmers. During the last decade, ideas on genetic resources have changed substantially. The Convention on Biological Diversity (CBD) and Intellectual Property Rights (IPR) have endorsed national sovereignty over all biological resources, including genetic resources for agriculture, as private rights on plant materials. It has now become a global issue within the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The continuing decline of public sector plant breeding emphasized the expanding role of the private sector with an obvious impact on intellectual property regimes. The private sector and multinational companies in agricultural research, plant breeding, and biotechnology are trying to achieve two objectives: stronger global intellectual property regimes to protect their own inventions; and weak or no protection over their raw materials, the bio resources of others, including farmers’ varieties and their local knowledge system. Here comes the discrimination against and violations of the farmers’ rights at the hands of the multinational corporation (MNCs). They want to protect their own inventions and do not want to allow similar protection to the farmers on whose local knowledge, skills and plant varieties they had developed their own varieties after doing some research.

These developments are placing the original concept of Farmers’ Rights under stress. At the same time, this also opens new possibilities of **promoting Farmers’ Rights as an equitable benefit-sharing mechanism**. Conservation can be stimulated by ownership, a lesson learned from protected areas. Local communities with an ownership stake in biodiversity have a greater interest in conservation. A possibility would be to encourage farmers to maintain and develop varieties through property rights. Farmers’ Rights allowing farmers to own the varieties they develop makes Farmers’ Rights equivalent to *Plant Breeders’ Rights* (PBR).

Farmers developing a new, distinct, variety would own it, just as plant breeders would own varieties they have developed. Access to the variety would be under farmers’ control. A simple system of registration could be introduced nationally and internationally by the deposition of new varieties. “Perhaps the model should be a “copyright” system, similar to the *Bern Convention for the Protection of Literary and Artistic Works*. Registering a book with the national library makes unauthorized copy or “bootleg” publication a breach of the author’s copyright. Similarly, depositing a new variety in a gene bank could establish ownership rights for farmers, suggested David Wood.

As a property right, a farmer's interest in a variety could be sold. Many breeders pass on such rights to seed companies and concentrate on breeding; farmers can do likewise. Farmer ownership of varieties is also fully in line with the TRIPS requirement for countries to introduce *sui generis* systems for intellectual property protection; a variety ownership by farmers is such a system. It is also endorsed by the *International Union for the Protection of New Varieties of Plants* (UPOV), which says, "if a farmer develops plant material that is clearly different from his starting material, the developed material could be protected."

Farmer ownership of varieties is also fully consistent with the CBD, and, as with Plant Breeder Rights, with national sovereignty. *Biotechnology and Development Monitor* in its editorial on "Comparing *sui generis* rights systems" writes, "Before the review of the *World Trade Organizations* (WTO) Agreement on *Trade-Related Aspects of Intellectual Property Rights* (TRIPS) in 1999, attention is increasingly drawn to the formulation of *sui generis* systems for the legal protection of plant varieties." The Latin term "*sui generis*", meaning "of its own kind of class", leaves broad space for interpretation. Therefore, *sui generis* systems are not only discussed in relation to the TRIPS Agreement, but also in relation to enforcing the rights of local communities and with regards to other international treaties such as the *Convention on Biological Diversity* (CBD).

P. Balakrishna in his article on "The Need for a "TRIPS PLUS Regime" published in *Biotechnology and Development Monitor* No: 36 says, "The *Convention on Biological Diversity* (CBD) has three major goals: conservation of biodiversity; sustainable use of biodiversity; and equitable sharing of benefits arising out of such use. While there is considerable progress with reference to the first two goals, initiatives relating to equitable sharing of benefits have been inadequate."

Subsequent to the implementation of the CBD, the *World Trade Organization's* (WTO) **Agreement on Trade Related Intellectual Property Rights (TRIPS) has also come into force. Under the agreement, "Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof".** With the strengthening and widening of the Intellectual Property Rights (IPR) regime, industrialized countries have been attempting to patent materials based on traditional knowledge and genetic strains particularly obtained from developing countries. For example, traditional medicinal crops such as "*neem*" and turmeric have been subjected in recent years to IPR claims in the industrialized countries. Even plant materials of well established geographical identity such as basmati rice grown in Pakistan and India, has also been subjected to IPR claims.

"There is an urgent need to harmonize the provisions of TRIPS with the equitable benefit sharing and *Prior Informed Consent* (PIC) provisions of the CBD. There is a need for a new global trade and transactions order, a "*TRIPS Plus*". The "Plus" refers to equity and ethics in IPR claims," suggested P. Balakrishna.

Since the same governments are members of both the WTO and the CBD, there is a need for coordinated action in matters relating to biodiversity. In this context, the *World Intellectual Property Organization* (WIPO) has been considering the recognition of traditional knowledge systems and informal innovations. In November 1997, the WIPO established a *Global Intellectual Property Issues Division* (GIPID) to examine newly emerging IPR issues. This includes the traditional knowledge which was originally not with WIPO's mandate.

One of the ways in which new insights can possibly be achieved could be through the development of local, national and international codes of conduct to address the issue of integrating equity provisions into the "TRIPS Plus" Regime. This could be of immediate necessity for several countries that are members of both the CBD and WTO.

The CBD marks a transition from an exploitative and inequitable relationship between the source of biodiversity and the "outsiders" seeking to use such biodiversity. One of the first steps to ensure equity in the TRIPS principles in relation to genetic resources will be the disclosure of country of origin of the germplasm and an agreement to provide compensation for input of traditional knowledge, product development and use of resources. There is also a need to develop an *Information Transfer Agreement (ITA)* and a *Knowledge Transfer Agreement (KTA)*.

Farmers' Traditional Resource Rights

Knowledge and traditional resources are central to the maintenance of identity for indigenous and local communities embodying traditional lifestyles. Therefore, control over these resources is of central concern in their struggle over land and territory. Effective links between external forces and local communities is likely to be through the development of sui generis system(s) that must first protect indigenous and local communities and ensure their control over land, territory and resource before issues of access and transfer can be discussed.

Equitable benefit sharing from the wider use and application of the knowledge, innovations and practices of indigenous peoples and local communities, as well as the biological resources conserved on their lands and territories, can then be negotiated. **Adequate and effective protection and benefit sharing mechanisms inevitably require a shift from economic or ecological-determined legal and political frameworks to a rights-driven system.**

The term Traditional Resource Rights (TRR) has emerged to define "bundles of rights" that can be used for protection, compensation, and conservation. The change in terminology from Intellectual Property Rights (IPR) to Traditional Resource Rights reflects an attempt to build on the concept of IPR protection and compensation, while recognizing that traditional resources - both tangible and intangible - are also covered under a significant number of international agreements that can be used to form the basis for a sui generis system.

"Traditional resources" include plants, animals, and other material objects that may have sacred, ceremonial, heritage, or aesthetic qualities. "Property" for indigenous peoples and local communities frequently has intangible, spiritual manifestations, and, although worthy of protection, can belong to no human being. Indigenous and traditional communities are increasingly involved in market economies, and are seeing an ever-growing number of their resources traded in those markets. Even so, for many, privatization or commoditization of their resources is not only foreign, but also incomprehensible or even unthinkable.

TRR is an integrated rights concept which recognizes the inextricable link between cultural and biological diversity, and is guided by human rights principles including: basic human rights; the right to self-determination; collective rights; land and territorial rights; religious freedom; the right to development; the right to privacy and prior informed consent; environmental integrity; intellectual property rights; neighboring rights; the right to enter into legal agreements; rights to protection of

cultural property, folklore and cultural heritage; the recognition of cultural landscapes; recognition of customary law and practice, and; farmers' rights.

A table setting out these rights and others with the international agreements, which support them, can be found below.

Traditional Resource Rights

Table-1

RIGHT (bundle)	SUPPORTING AGREEMENTS	SUPPORTING DOCUMENTS
	Legally binding	Non legally binding
Human rights	ICESCR, ICCPR, CDW, CERD, CG, CRC, NLS	UDHR, DDRIP, VDPA
Right to self-determination	ICESCR, ICCPR	DDRIP, VDPA
Collective rights	ILO169, ICESCR, ICCPR	DDRIP, VDPA
Land and territoria	ILO169, NLS	DDRIP
Right to religious freedom	ICCPR, NLS	UDHR
Right to development	ICESCR, ICCPR, ILO169	DDHRE, DDRIP, DHRD,
Right to privacy	ICCPR, NLS	UDHR
Prior informed consent	CBD, NLS	DDRIP, DICED
Environmental integrity	CBD, CCD	D, DDHRE
Intellectual property rights	CBD, WIPO, GATT, UPOV, NLS	
Neighboring rights	RC, NLS	
Right to enter into legal agreements (contracts/covenants)		NLS
Cultural property rights	UNESCO-CCP, NLS	
Right to protection of folklore	NLS	UNESCO-WIPO, UNESCO-F
Right to protection of cultural heritage	UNESCO-WHC, NLS	UNESCO-PICC
Recognition of cultural landscapes		NESCO-WHC
Recognition of customary law and practice	CBD, ILO169, NLS	DDRIP
Farmers' Rights		TPGR

These rights are mutually supportive and entirely consistent with the Convention on Biological Diversity since the destiny of traditional peoples largely determines and is determined by, the state of the world's biological diversity. Significantly, they are consistent, too, with the requirements of GATT/WTO and FAO/ITPGR. Financial and political support for indigenous and local communities can also be provided through new guidelines for policies and projects. To protect traditional resources all such projects and policies should be planned and implemented in collaboration with indigenous and local communities affected. This will require the development of new guidelines and laws for defining and implementing prior informed consent, as well as pushing for the expansion of Farmers' Rights in the FAO/ITPGR and TRR in WTO and the CBD.

UN Commission on Human Rights questions TRIPS as violation of human rights

In August 2000, the United Nations Commission on Human Rights questioned the balance of rights between those promoted by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) and the broader human rights of people and communities, including farmers and indigenous peoples worldwide. In its first-ever scrutiny of an important WTO agreement, the UN Sub-Commission for the Protection and Promotion of Human Rights unanimously adopted a resolution on “Intellectual Property Rights and Human Rights” on 17 August 2000. This resolution (E/CN.4/Sub.2/2000/L.20) highlights the human rights impact of the TRIPS agreement. The resolution calls on the UN High Commissioner for Human Rights to undertake an analysis of these impacts and asks the UN Secretary General to prepare a report on the implications of the TRIPS Agreement and options for further action by the Sub-Commission.

The resolution further recommends to the World Intellectual Property Organization (WIPO), the World Health Organization (WHO), the United Nations Development Programme (UNDP), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP) and other relevant United Nations agencies to analyze the impacts of the TRIPS Agreement, with human rights perspective. The resolution requests the World Trade Organization, in general, and the Council on TRIPS during its ongoing review of the TRIPS Agreement, in particular, “to take fully into account the existing state obligations under international human rights instruments.” This resolution is a serious effort to impress upon the WTO and the Council on TRIPS that under the primacy of the international human rights commitments, they could not cross over the limits while negotiating the trade agreements sans human rights. The UN Sub-Commission’s resolution recognizes that there is a conflict between the ‘private’ interests of intellectual property rights (IPR) holders, championed by TRIPS, and the ‘social’ or ‘public’ concerns embodied in international human rights law.

Article 27, paragraph 2, of the Universal Declaration of Human Rights and article 15, paragraph 1 c), of the International Covenant on Economic, Social and Cultural Rights say, “The right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author is a human right, subject to limitations in the public interest.” The UN resolution declares that “since the implementation of the TRIPS Agreement does not adequately reflect the fundamental nature and indivisibility of all human rights, including the right of everyone to enjoy the benefits of scientific progress and its applications, the right to health, the right to food, and the right to self-determination, there are apparent conflicts between the intellectual property rights regime embodied in the TRIPS Agreement, on the one hand, and international human rights law, on the other.”

The resolution notes that the Human Development Reports of 1999 and 2000 identify circumstances “attributable to the implementation of the TRIPS Agreement that constitute contraventions of international human rights law.” In view of that ‘disconnect’ between individual and public rights, and the fact that the former are “subject to limitations in the public interest,” the UN resolution requests Governments “to integrate into their national and local legislations and policies, provisions, in accordance with international human rights obligations and principles, that protect the social function of intellectual property.”

The inter-governmental organizations have also been requested, “to integrate into their policies, practices and operations, provisions, in accordance with international human rights obligations and principles, that protect the social function of intellectual property.” If we analyze the violations of the farmers rights in the light of the resolution of the UN Sub Committee, we see that the TRIPS requirements for an ‘effective’ system of intellectual property protection for plant varieties violate Farmers’ Rights to save, exchange, re-use and sell seed from their own harvests.

In the United States, Canada and other countries, the Monsanto Company (recently acquired by Pharmacia, Inc.) has employed Pinkerton detectives to find and prosecute farmers who are harvesting seed from its patented crops. If replicated throughout the world, such enforcement of intellectual property rights would violate the human rights of hundreds of millions of farming families who depend on recycling seed for survival. This is a direct violation of Article 1 of the Covenant on Economic, Social and Cultural Rights which stipulates that: “In no case may a people be deprived of its own means of subsistence. The UN resolution based on the provisions of both the UN Covenant on Economic, Social and Cultural Rights and the UN Convention on Biological Diversity signifies the resolve of the UN human rights programme to monitor the work of the WTO by firmly affirming the primacy of human rights and environmental obligations over the commercial and profit-driven motives upon which agreements such as TRIPS are based.

Strengthening the Role Of Farmers under Chapter 32 of the Agenda 21

The UN documents describe the Chapter 32 of the Agenda 21 as a final, advanced version of a chapter of Agenda 21, as adopted by the Plenary in Rio de Janeiro, on June 14, 1992. All references in this chapter to "farmers" and "farming" include all rural people who derive their livelihood from activities such as farming, fishing and forest harvesting.

Sub clause 32.2 recognizes agriculture as an activity, which occupies one third of the land surface of the Earth, and is the central for much of the world's population. Rural activities take place in close contact with nature, adding value to it by producing renewable resources, while at the same time becoming vulnerable to overexploitation and improper management.

32.3. The rural household, indigenous people and their communities, and the family farmer, a substantial number of whom are women, have been the stewards of much of the Earth's resources. Farmers must conserve their physical environment as they depend on it for their sustenance. Over the past 20 years there has been impressive increase in aggregate agricultural production. Yet, in some regions, this increase has been outstripped by population growth or international debt or falling commodity prices. Further, the natural resources that sustain farming activity need proper care, and there is a growing concern about the sustainability of agricultural production systems.

32.4. A farmer-centered approach is the key to the attainment of sustainability in both developed and developing countries and many of the programme areas in Agenda 21 address this objective. A significant number of the rural population in developing countries depends primarily upon small-scale, subsistence-oriented agriculture based on family labour. However, they have limited access to resources, technology, alternative livelihood and means of production. As a result, they are engaged in the overexploitation of natural resources, including marginal lands.

32.5. The sustainable development of people in marginal and fragile ecosystems is also addressed in Agenda 21. The key to the successful implementation of these programmes lies in the motivation and attitudes of individual farmers and government policies that would provide incentives to farmers to manage their natural resources efficiently and in a sustainable way. Farmers, particularly women, face a high degree of economic, legal and institutional uncertainties when investing in their land and other resources. The decentralization of decision-making towards local and community organizations is the key in changing people's behaviour and implementing sustainable farming strategies. This programme area deals with activities, which can contribute, to this end.

Objectives

32.6. The following objectives are proposed:

- (a) To encourage a decentralized decision-making process through the creation and strengthening of local and village organizations that would delegate power and responsibility to primary users of natural resources;
- (b) To support and enhance the legal capacity of women and vulnerable groups with regard to access, use and tenure of land;
- (c) To promote and encourage sustainable farming practices and technologies;
- (d) To introduce or strengthen policies that would encourage self-sufficiency in low-input and low-energy technologies, including indigenous practices, and pricing mechanisms that internalize environmental costs;
- (e) To develop a policy framework that provides incentives and motivation among farmers for sustainable and efficient farming practices;
- (f) To enhance the participation of farmers, men and women, in the design and implementation of policies directed towards these ends, through their representative organizations.

Activities

- (a) Management-related activities

32.7. Governments should:

- (a) Ensure the implementation of the programmes on sustainable livelihoods, agriculture and rural development, managing fragile ecosystems, water use in agriculture, and integrated management of natural resources;
- (b) Promote pricing mechanisms, trade policies, fiscal incentives and other policy instruments that positively affect individual farmer's decisions about an efficient and sustainable use of natural resources, and take full account of the impact of these decisions on household food security, farm incomes, employment and the environment;
- (c) Involve farmers and their representative organizations in the formulation of policy;
- (d) Protect, recognize and formalize women's access to tenure and use of land, as well as rights to land, access to credit, technology, inputs and training;
- (e) Support the formation of farmers' organizations by providing adequate legal and social conditions.

32.8. Support for farmers' organizations could be arranged as follows:

- (a) National and international research centres should cooperate with farmers' organizations in developing location-specific environment-friendly farming techniques;

(b) Governments, multilateral and bilateral development agencies and non-governmental organizations should collaborate with farmers' organizations in formulating agricultural development projects to specific agro-ecological zones.

(b) Data and information

32.9. Governments and farmers' organizations should:

(a) Initiate mechanisms to document, synthesize and disseminate local knowledge, practices and project experiences so that they will make use of the lessons of the past when formulating and implementing policies affecting farming, forest and fishing populations;

(b) Establish networks for the exchange of experiences with regard to farming that help to conserve land, water and forest resources, minimize the use of chemicals and reduce or reuse farm wastes;

(c) Develop pilot projects and extension services that would seek to build on the needs and knowledge base of women farmers.

(c) International and regional cooperation

32.10. FAO, IFAD, WFP, the World Bank, the regional development banks and other international organizations involved in rural development should involve farmers and their representatives in their deliberations, as appropriate.

32.11. Representative organizations of farmers should establish programmes for the development and support of farmers' organizations, particularly in developing countries.

Means of implementation

(a) Financing and cost evaluation

32.12. The financing needed for this programme area is estimated in chapter 14 entitled "Promoting sustainable agriculture and rural development", particularly in the programme area entitled "Ensuring people's participation and promoting human resource development". The costs shown under chapters 3, 12 and 13 on combating poverty, combating desertification and drought, and sustainable mountain development are also relevant for this programme area.

(b) Scientific and technological means

32.13. Governments and appropriate international organizations, in collaboration with national research organizations and non-governmental organizations, should as appropriate:

(a) Develop environmentally sound farming technologies that enhance crop yields, maintain land quality, recycle nutrients, conserve water and energy and control pests and weeds;

(b) Conduct studies of high-resource and low-resource agriculture to compare their productivity and sustainability. The research should preferably be conducted under various environmental and sociological settings;

(c) Support research on mechanization that would optimize human labour and animal power and hand-held and animal-drawn equipment that can be easily operated and maintained. The development of farm technologies should take into account farmers' available resources and the role of animals in farming households and the ecology.

(d) Human resource development

32.14. Governments, with the support of multilateral and bilateral development agencies and scientific organizations, should develop curricula for agricultural colleges and training institutions that would integrate ecology into agricultural science. Interdisciplinary

programmes in agricultural ecology are essential to the training of a new generation of agricultural scientists and field-level extension agents.

(a) Capacity-building

32.15. Governments should, in the light of each country's specific situation:

- (a) Create the institutional and legal mechanisms to ensure effective land tenure to farmers. The absence of legislation indicating land rights has been an obstacle in taking action against land degradation in many farming communities in developing countries;
- (b) Strengthen rural institutions that would enhance sustainability through locally managed credit systems and technical assistance, local production and distribution facilities for inputs, appropriate equipment and small-scale processing units, and marketing and distribution systems;
- (c) Establish mechanisms to increase access of farmers, in particular women and farmers from indigenous groups, to agricultural training, credit and use of improved technology for ensuring food security.

End of Text

Recognizing And Strengthening The Role Of Indigenous People And Their Communities under Chapter 26

This is a final, advanced version of a chapter of Agenda 21, as adopted by the Plenary in Rio de Janeiro, on June 14, 1992. This document will be further edited, translated into the official languages, and published by the United Nations for the General Assembly this autumn.

Basis for action

26.1. Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities.

26.2. Some of the goals inherent in the objectives and activities of this programme area are already contained in such international legal instruments as the ILO Indigenous and Tribal Peoples Convention (No. 169) and are being incorporated into the draft universal declaration on indigenous rights, being prepared by the United Nations working group on indigenous populations. The International Year for the World's Indigenous People (1993), proclaimed by the General Assembly in its resolution 45/164 of 18 December 1990, presents a timely opportunity to mobilize further international technical and financial cooperation.

Objectives

26.3. In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives:

- (a) Establishment of a process to empower indigenous people and their communities through measures that include:
 - (i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;
 - (ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;
 - (iii) Recognition of their values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development;
 - (iv) Recognition that traditional and direct dependence on renewable resources and ecosystems, including sustainable harvesting, continues to be essential to the cultural, economic and physical well-being of indigenous people and their communities;
 - (v) Development and strengthening of national dispute-resolution arrangements in relation to settlement of land and resource-management concerns;
 - (vi) Support for alternative environmentally sound means of production to ensure a range of choices on how to improve their quality of life so that they effectively participate in sustainable development;
 - (vii) Enhancement of capacity-building for indigenous communities, based on the adaptation and exchange of traditional experience, knowledge and resource-management practices, to ensure their sustainable development;
- (b) Establishment, where appropriate, of arrangements to strengthen the active participation of indigenous people and their communities in the national formulation of policies, laws and programmes relating to resource management and other development processes that may affect them, and their initiation of proposals for such policies and programmes;
- (c) Involvement of indigenous people and their communities at the national and local levels in resource management and conservation strategies and other relevant programmes established to support and review sustainable development strategies, such as those suggested in other programme areas of Agenda 21.

Activities

26.4. Some indigenous people and their communities may require, in accordance with national legislation, greater control over their lands, self-management of their resources, participation in development decisions affecting them, including, where appropriate, participation in the establishment or management of protected areas. The following are some of the specific measures which Governments could take:

- (a) Consider the ratification and application of existing international conventions relevant to indigenous people and their communities (where not yet done) and provide support for the adoption by the General Assembly of a declaration on indigenous rights;
- (b) Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices.

26.5. United Nations organizations and other international development and finance organizations and Governments should, drawing on the active participation of indigenous

people and their communities, as appropriate, take the following measures, inter alia, to incorporate their values, views and knowledge, including the unique contribution of indigenous women, in resource management and other policies and programmes that may affect them:

- (a) Appoint a special focal point within each international organization, and organize annual interorganizational coordination meetings in consultation with Governments and indigenous organizations, as appropriate, and develop a procedure within and between operational agencies for assisting Governments in ensuring the coherent and coordinated incorporation of the views of indigenous people in the design and implementation of policies and programmes. Under this procedure, indigenous people and their communities should be informed and consulted and allowed to participate in national decision-making, in particular regarding regional and international cooperative efforts. In addition, these policies and programmes should take fully into account strategies based on local indigenous initiatives;
- (b) Provide technical and financial assistance for capacity-building programmes to support the sustainable self-development of indigenous people and their communities;
- (c) Strengthen research and education programmes aimed at:
 - (i) Achieving a better understanding of indigenous people's knowledge and management experience related to the environment, and applying this to contemporary development challenges;
 - (ii) Increasing the efficiency of indigenous people's resource management systems, for example, by promoting the adaptation and dissemination of suitable technological innovations;
- (d) Contribute to the endeavours of indigenous people and their communities in resource management and conservation strategies (such as those that may be developed under appropriate projects funded through the Global Environmental Facility and Tropical Forestry Action Plan) and other programme areas of Agenda 21, including programmes to collect, analyse and use data and other information in support of sustainable development projects.

26.6. Governments, in full partnership with indigenous people and their communities should, where appropriate:

- (a) Develop or strengthen national arrangements to consult with indigenous people and their communities with a view to reflecting their needs and incorporating their values and traditional and other knowledge and practices in national policies and programmes in the field of natural resource management and conservation and other development programmes affecting them;
- (b) Cooperate at the regional level, where appropriate, to address common indigenous issues with a view to recognizing and strengthening their participation in sustainable development.

Means of implementation

- (a) Financing and cost evaluation

26.7. The UNCED Secretariat has estimated the average total annual cost (1993-2000) of implementing the activities of this chapter to be about \$3 million from the international community on grant or concessional terms. These are indicative and order of magnitude estimates only and have not been reviewed by governments. Actual costs and financial terms, including any that are non-concessional, will depend upon, inter alia, the specific strategies

and programmes governments decide upon for implementation. (b) Legal and administrative frameworks

26.8. Governments should incorporate, in collaboration with the indigenous people affected, the rights and responsibilities of indigenous people and their communities in the legislation of each country, suitable to the country's specific situation. Developing countries may require technical assistance to implement these activities.

(c) Human resource development

26.9. International development agencies and Governments should commit financial and other resources to education and training for indigenous people and their communities to develop their capacities to achieve their sustainable self-development, and to contribute to and participate in sustainable and equitable development at the national level. Particular attention should be given to strengthening the role of indigenous women.

Conclusion

After going through all the human rights regimes, it could easily be recommended that the farming communities are becoming more vulnerable due to monopoly and competition regimes under the World Trade Organization (WTO)'s agreements. Particularly the Agreement on Agriculture and Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) that govern the production and trade of food are harming the human rights of the farmers. Under these two agreements, Southern countries are forced to reduce support to agriculture while Northern countries continue to give massive subsidies to their farmers. Similarly, Southern countries have to increase the access of Northern countries to their markets while Northern countries retain high trade barriers that discourage imports from the South. On the other hand, transnational corporations (TNCs) are using new patent laws to increase their control over the resources required to produce food in the South. The TNCs will be allowed under these agreements to claim the rights to profit from the sale of food produced from plants that have been developed and grown in the South for centuries.

Both of these laws do not subscribe to what has already been said under the topic primacy of human rights laws over other International laws, regimes and agreements. The Principle of human rights primacy and its pre-eminence over trade, non-trade and other obligations clearly states that no agreement whatsoever could be framed at international level confronting the UN Charter, which validates and qualifies the Universal Declaration of Human Rights (UDHR), to guarantee human rights and respect for human rights. While interpreting the UDHR, we find a link between the Charter and the UDHR, which necessitates that the international agreements and regimes including the WTO should not violate the basic principle and spirit of the UDHR. The principle of pre-eminence concerns economic, cultural and social rights as guaranteed in the Articles from 21 to 27 of the UDHR.

This legal recognition of the primacy principle means that obligations under human rights must systematically prevail on all other obligations. The states must make sure that all their commitments; including economic, trade, agriculture and commerce are compatible with the universal principles of human rights law. If we apply the primacy principle to the Agreement on Agriculture and the TRIPs agreement in the WTO regime, we find that the said agreement confront with the commitments made under the UDHR.

Moreover, the UN Commission on Human Rights in its resolution (August 2000, E/CN.4/Sub.2/2000/L.20) has questioned TRIPS as violation of human rights highlighting the human rights impact of the TRIPS agreement. The resolution calls on the UN High Commissioner for Human Rights to undertake an analysis of these impacts and asks the UN Secretary General to prepare a report on the implications of the TRIPS Agreement and options for further action by the Sub-Commission.

The UN binds WTO in formulating its further agreements and accepts farmers' rights as human rights on the primacy and vulnerability principles. In contrast to the TRIPs, the CBD provides safeguards for farming communities. The preeminence and primacy principles under the UDHR and the Chapters 32 and 26 of the Agenda 21 can promote the rights based approach, which can reduce the vulnerability of the farming communities thus recognizing and protecting their rights as human rights.

Since both the TRIPS agreement and the Agreement on Agriculture are subject to periodic reviews under WTO negotiations, the groups advocating the farmers' rights should lobby in the countries of South and the North to create an equitable atmosphere during the trade talks at WTO Ministerial level. They should particularly focus the Southern governments so that they could understand the implications of these two agreements on their agriculture production in terms of the security of food and livelihoods. Recognizing farmers' rights as human rights through promotion of a rights based approach could reduce vulnerability of the farming communities both in the plains and the mountains. This could help check monopolistic designs of the TNCs thus empowering the farmers ensuring them their centuries old right to produce, store, share and reuse the seed and plant varieties and discouraging patent regimes over the life forms. There is a need for a sustained campaign so that the farmers' rights could be recognized as human rights for being vulnerable to monopolistic policies of the Northern TNCs. There is a need to recognize the fact that farmers in mountain areas are more vulnerable and marginalized as compared to the vulnerability of the farmers in the plains. The farmers in mountains should be given preference in national policies on agriculture and conservation of biodiversity.

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Legally binding agreements in force (with number of State Parties)

- CBD** Convention on Biological Diversity States Parties: 182 as of 7 January 2002 (including European Union)
- CCD** Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994).
States Parties: 178 as of 7 January 2002 (including European Union)
- CDW** Convention on the Elimination of all Forms of Discrimination Against Women (1979).
States Parties: 168 as of 7 January 2002
- CERD** Convention on the Elimination of all Forms of Racial Discrimination (1966). States Parties: 161 as of 7 January 2002
- CG** Convention on the Prevention and Punishment of the Crime of Genocide (1948)
States Parties: 133 as of 7 January 2002
- CRC** Convention on the Rights of the Child (1989) States Parties: 191 as of 7 January 2002
- GATT** Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (1994) 144 World Trade Organization member countries as of 1 January 2002
- ICESCR** UN International Covenant on Economic, Social and Cultural Rights (1966) States Parties: 145 as of 7 January 2002
- ICCPR** UN International Covenant on Civil and Political Rights (1966) States Parties: 147 as of 7 January 2002
- ILO169** International Labour Organisation Convention 169: Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1989). States Parties: 14 as of 15 October 2001 (Argentina, Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Holland, Honduras, Mexico, Norway, Paraguay, Peru)
- ITPGR** FAO International Treaty on Plant Genetic Resources for Food and Agriculture (2001)
- NLs** National laws
- RC** Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961). States Parties: 68 as of 15 July 2001
- UNESCO-WHC** UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972). States Parties: 166 as of 18 October 2001
- UNESCO-CCP** UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970). States Parties: 91 as of 1 December 1999
- UPOV** International Union for the Protection of New Varieties of Plants (1961, revised in 1972, 1978 and 1991). States Parties: 50 as of 7 December 2001
- WIPO** The World Intellectual Property Organisation, which administers international IPR agreements, such as:
- The Convention of Paris for the Protection of Industrial Property (1883, revised most recently in 1967) States Parties: 162 as of 15 October 2001
 - The Berne Convention for the Protection of Literary and Artistic Works (1886, revised most recently in 1971) States Parties: 148 as of 15 October 2001
 - The Madrid Agreement Concerning the International Registration of Trademarks (1891, revised most recently in 1967 and amended in 1979)

- State Parties: 70 as of 11 December 2001
- The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958, revised most recently in 1979) State Parties: 20 as of 15 October 2001
- The Patent Cooperation Treaty (1970) States Parties: 115 as of 15 October 2001

Non legal documents

- DDHRE** UN Draft Declaration of Principles on Human Rights and the Environment (1994)
- DDRIP** UN Draft Declaration on the Rights of Indigenous Peoples (formally adopted by the UN Working Group on Indigenous Populations in July 1994)
- DHRD** UN Declaration on the Human Right to Development (1986)
- DICED** Draft International Covenant on Environment and Development (1995)
- RD** Rio Declaration on Environment and Development (1992)
- UDHR** Universal Declaration of Human Rights (1948)
- UNESCO-F** UNESCO Recommendations on the Safeguarding of Traditional Culture and Folklore (1989)
- UNESCO-PICC** UNESCO Declaration on the Principles of International Cultural Cooperation (1966)
- UNESCO-WIPO** UNESCO-WIPO Model Provisions for National Laws on Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions (1985)
- VDPA** UN Vienna Declaration and Programme of Action (1993)