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Legal "Terminator" Threatens Francophone Africa's Farmers

RIGHT TO SAVE SEED IN POOR COUNTRIES MAY BE ELIMINATED AS 15 AFRICAN STATES ARE PRESSURED TO ACCEPT UPOV '91

Fifteen Francophone African states, among them some of the poorest countries in the world, are under pressure to sign away the right of more than 20 million small-holder farmers to save and exchange crop seed. The decision to abandon Africa's 12,000-year tradition of seed saving will be finalized at a meeting February 22-25 in the Central African Republic. The 15 governments have been told to adopt draconian intellectual property legislation for plant varieties in order to conform to a provision in the World Trade Organization (WTO) that obliges signatories to "protect" plant varieties. The legislation (a kind of legal "Terminator" because it prohibits farmers from replanting "protected" seed) is also known, euphemistically, as "Plant Breeders' Rights". If adopted, the legislation will throw some of Africa's poorest countries into an intellectual property cartel dominated by a handful of OECD states led by the USA, the UK, and Japan.

During meetings in East Africa a few days ago, RAFI's Pat Mooney and Hope Shand learned that OAPI (l'Organisation Africaine de la Propriete Intellectuelle/African Intellectual Property Organization) has agreed to adopt "UPOV 91" – the world's most restrictive form of Plant Breeders' Rights. The Convention is managed by the Union for the Protection of New Varieties of Plants (UPOV) – a subsidiary treaty of the Geneva-based World Intellectual Property Organization (WIPO).

"Francophone African countries are being bullied into adopting UPOV'91", says Pat Mooney, "even though the WTO is about to conduct a review of its plant variety 'protection' clause." Adds Hope Shand, "The review is not expected to be completed before 2001. Many analysts predict that a whole new trade negotiating round may be launched before the review is completed." "African patent offices are being asked to climb on a wagon other countries in other regions may never accept," agrees Pat Mooney, "Conceivably, a new trade round could render compliance unnecessary. Since six of the 15 OAPI states are "least developed countries" (according to UNDP definitions), regardless of the review or a new negotiating round, they have until at least 2006 before they have to introduce any kind of legislation." "In a worst case scenario," Hope Shand concludes, "OAPI members would still have the option to accept legislation that would allow farmers to save, re-use, and even sell purchased seed. Where is the pressure coming from and why are sovereign countries selling off the historic rights of their farmers?"

Urgent Action: RAFI is writing to each of the 15 OAPI countries, contacting both Ministers of Agriculture and Ministers responsible for patent offices. "Depending on the country," Pat Mooney notes, "between one-fifth and one-half of all the farmers are small-holders who depend heavily on their ability to save seed in order to keep production reliable and costs low. There are at least 20 million such farmers in OAPI states," Mooney says, "Next week's decision could be a major blow to the region's food security. We suspect that most Agriculture Ministers don't even know what their patent offices are proposing to do."

What is OAPI? The precursor to OAPI was established on September 13, 1962, by 12 francophone African heads of state. It was called the "Office Africain et Malgache de la Propriete Industrielle (OAMPI). The agreement establishing OAMPI was revised in Bangui, Central African Republic on March 27, 1977, and gave birth to OAPI, the "Organisation Africaine de la Propriete Intellectuelle". It has 15 members: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Djibouti, Gabon, Guinea, Ivory Coast, Niger, Mali, Mauritania, Senegal, Togo. Of these, the following are considered least developed countries by UNDP: Burkina Faso, Central African Republic, Guinea, Mali, Mauritania, and Togo.

What is UPOV 91? The original international Plant Breeders' Rights convention was adopted in Paris in 1961. Since then, the Convention has been amended several times and two forms of PBR are now in common use. Most UPOV members, in fact, adhere to its 1978 convention, which is widely interpreted by governments to allow farmers to save and exchange seed. UPOV's 1991 convention, however, assumes

that farmers cannot save seed unless governments permit specific exceptions. Around the world, 1.4 billion people depend on the ability of small-holder farmers to save seed for their family food security. To date, the only UPOV members to confirm the 1991 convention are Bulgaria, Denmark, Germany, Israel, Japan, Netherlands, Moldova, Russia, Sweden, UK, and USA. If OAPI bows to WTO and UPOV pressure during the meeting February 22-25, the 15 francophone African States will more than double the Convention's roster of members.

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