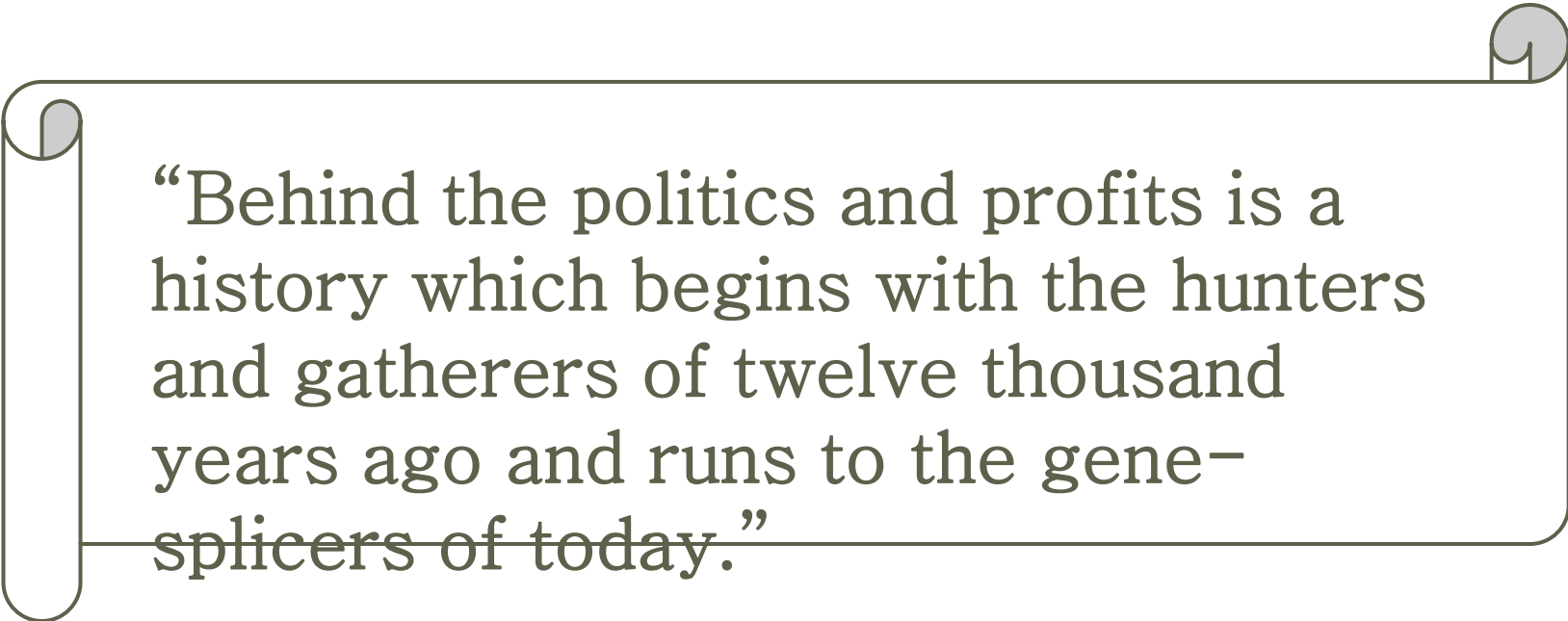




# Relevant policies for the conservation of CWR

Ehsan Dulloo, Leader Conservation and Availability Programme  
Bioversity International

Regional Training Workshop, In situ conservation of CWR,  
Le Meridien Pointe aux Piments, Mauritius, 10-13 November 2014



“Behind the politics and profits is a history which begins with the hunters and gatherers of twelve thousand years ago and runs to the gene-splicers of today.”

**Shattering: Food, Politics, and the Loss of Genetic Diversity** by Cary Fowler & Pat Mooney, University of Arizona Press, 1990.

# The Evolution of law and policy

- Evolution in response to change
- Technological & scientific breakthroughs can change the nature of the conflicts over rights and responsibilities, in turn causing legal regimes to change and evolve accordingly

# Paradigm shift

- Common Heritage

- unrestricted access
- public breeding
- no IPRs
- International undertaking 1983



- National Sovereignty

- controlled access
- private breeding
- IPRs (PBR & patents)
- Convention on Biological Diversity 1993
- (ITPGRFA)

# The Food and agriculture Organisation (FAO)

- The Food and Agriculture Organization of the United Nations responded in 1983 by establishing the Global System for the Conservation and Utilization of Plant Genetic Resources. The System consisted of:
  - A Commission on Plant Genetic Resources was created to oversee the Global System
  - The International Undertaking on PGRFA (re-negotiated)
  - Network of *Ex Situ* Collection

# Convention on Biological Diversity

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- CBD entered into force in 1993, as of November 2002 it has 186 Parties
- CBD applies to all types of genetic resources, both wild and domesticated
- CBD establishes international legal principles for access to genetic resources held in *in situ* and *ex situ* conditions; however, it only applies to genetic resources held in *ex situ* conditions acquired after its entry into force (and not covered by FAO Treaty)



# Article 8 – in situ conservation

- Establish Protected areas
- Guidelines for management
- Regulate and management of PA
- Promote protection ecosystems, natural habitats and the maintenance of viable populations
- Promote environmentally sound and sustainable development adjacent to PA
- Rehabilitate and restore degraded ecosystems ; recovery of threatened species
- living modified organisms resulting from biotechnology
- Prevent the introduction of, control or eradicate alien species
- compatibility between present uses and the conservation
- maintain knowledge, innovations and practices of indigenous and local communities; ABS
- Develop or maintain necessary legislation and/or other regulatory provisions
- Cooperate in providing financial and other support for in-situ conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries

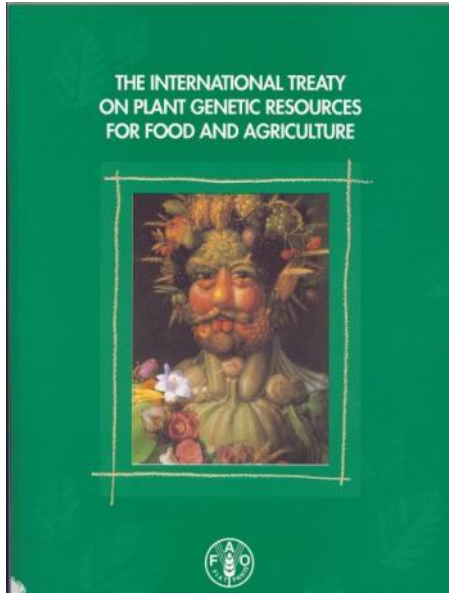
# Agriculture sector - International policy context

- CBD Agricultural Biodiversity Programme of Work (1999) and the Global Strategy for Plant Conservation (2002)
- CGRFA at its 11<sup>th</sup> Regular session (2007) - Multi-Year Programme of Work (MYPOW) which includes work on PGRFA
- Establishment of the GCDT in 2004
- Entry into force of the ITPGRFA in 2004
- Launch of new FAO Strategy “SAVE AND GROW” where crop diversity has major role to play (2011)





# International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)



- Came into force in 2004 and currently 127 State parties (including the European Union) had ratified or acceded to it.

The objectives of the Treaty are :

- Conservation and sustainable use of plant genetic resources for food and agriculture; and
- Fair and equitable sharing of benefits arising out of their use, in harmony with the CBD for sustainable agriculture and food security.

# Key elements of ITPGRFA

- General provision for the ex situ and in situ conservation and use of PGRFA
- Recognizes the Farmers right's
- Protection of traditional knowledge
- **Multilateral system of access and benefit-sharing'**
- **Standard material transfer agreement (SMTA)**
- Funding Strategy for the implementation of the Treaty, including a Benefit-sharing Fund, Global Crop Diversity Trust

# Global Plan of Action on PGRFA

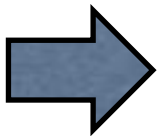


- 1996: First Global Plan of Action for the Conservation and Sustainable Utilization of PGRFA - adopted at the Leipzig International Technical Conference
  - ✓ Internationally agreed framework with 20 Priority Activities
  - ✓ Is part of the FAO Global System for PGRFA
  - ✓ Created impetus for development of ITPGRFA
- 2009: The Commission on Genetic Resources for Food and Agriculture agreed to update the rolling Global Plan of Action
  - ✓ Based on gaps and needs identified in the *Second Report on the State of the World's PGRFA* (FAO, 2009)
  - ✓ It is a supporting component of the ITPGRFA (Art. 14)

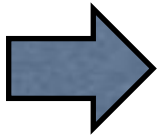


# The Second GPA

- Provides a set of 18 inter-related Priority Activities to enhance the efficiency of PGRFA conservation and improve the utilization of plant diversity
- 4 main groups of priority activities:
  1. *In Situ* Conservation and Management
  2. *Ex Situ* Conservation
  3. Sustainable Use
  4. Building Sustainable Institutional and Human Capacities



Comprehensive and flexible framework for countries to adopt supportive policies and programmes for optimal harnessing of PGRFA



Second GPA provides the framework for the implementation of the ITPGRFA.

# Intellectual Property Rights: National and International Trends

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- The application of modern biotechnologies to biological materials has brought new economic opportunities and the growth and subsequent consolidation in industry concerned with bio-industrial products
- Mirroring larger trends in globalization and consolidation of world markets, many private sector interests, national governments and intergovernmental organizations are making concerted efforts to "harmonize" IPRs - .  
*The TRIPS Agreement and the evolution of the International Convention for the Protection of New Varieties of Plants (UPOV) reflect these efforts*

# UPOV

- ❖ *Sui generis* system of intellectual property rights for the protection of plant varieties
- ❖ “DUS” Requirements: Distinct, Uniform, Stable
- ❖ Four versions, only 1991 open for new Parties. Trend has been towards increasing strength of right's holder and increasing number of Parties
- ❖ Breeders' Rights and Farmers' privilege



# WIPO

- ✓ **Intergovernmental organization established in 1967 to promote intellectual property rights worldwide**
- ✓ **In March 1998, the WIPO General Assembly approved a reinvigorated programme for the Global International Property Issues Division that would address biodiversity, human rights and indigenous rights issues through activities such as research, publication and consultations**
- ✓ **WIPO Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore**

## ***Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES):***

- Recent adoption on 21 December 2010, by the United Nations 65th General Assembly (UNGA),
- A new international body is aimed at catalyzing a global response to the loss of biodiversity and world's economically-important forests, coral reefs and other ecosystems, in a similar manner as the Intergovernmental Panel on Climate change (IPCC).

# ***Other legal instruments***

- International Plant Protection Convention
- The International Undertaking on Plant Genetic Resources
- WTO-TRIPS Agreement
- UPOV
- Regional agreements
- Networks agreements
- National Laws
- Agreement between Governing Body of The Treaty and CGIAR Centres and other International Organizations
- FAO Global Plan of Action
- FAO code of conduct to plant germplasm collecting and transfer
- CGIAR policies and instruments



# At National Level

# Capacity Building at National Level

- FAO/Treaty Secretariat and Bioversity International created Joint Programme to coordinate capacity building activities with national partners
- Welcomed by 3<sup>rd</sup> and 4<sup>th</sup> sessions of the Governing Body of the ITPGRFA
- Objective - Strengthen capacities of countries to implement/participate in the MLS of the Treaty

# How did it work?

- Awareness raising
- Targeted research
- Identification of policy options
- Support national processes for policy development



# Common Challenges

- Insufficient policy/legal 'space' to implement the MLS
  - pre-existing ABS regs, under environment ministry, covering all GR
- Uncertainty about whether there is policy/legal space
  - Patchwork of regulations and mandates are unclear as to who has authority re: PGRFA
  - ABS policy/law is under development
- Uncertainty about what concrete steps can be taken without new laws, with existing competencies/authorities
- Uncertainty about what materials are automatically in the MLS
  - are they in the management and control of the contracting party and 'in the public domain'
- Uncertainty about how to encourage natural and legal persons to include MLS materials
  - and how to provide legal space for them to do so

# Common Challenges Cont.

- How to deal with ‘in situ’ materials that are in the MLS.
- Disengagement of some stakeholder groups
  - In some countries that farmers don’t see themselves as primary beneficiaries.
  - Absence of strong engagement from civil society groups
- Desire to “wait and see” what happens under the Nagoya Protocol negotiations, with the benefit sharing fund before moving ahead
- Lack of regionally-based leadership for smaller countries to follow

# Common Challenges Cont.

- Complexity of processes required to attain certainty or create legal space
- Competing demands on policy makers
- Lines of authority and decision-making (to consider, approve/reject requests for access) for different collections and in situ areas must be clearly established
- Progress is not possible if decision making is blocked by purely legalistic issues

# Common Challenges Cont.

- Involvement of representatives of all stakeholders is necessary
  - Additional capacity building for farmers groups (and others?) is necessary to ensure meaningful participation
- Support from Ministry implementing the CBD is indispensable

# What is required?

- Complementary, country-focused research is important to investigate/demonstrate benefits of participation in the MLS
  - Interdependence studies
  - germplasm flows and bottlenecks
  - Predicting climate change-related stresses and identifying sources of genetic resources to adapt
  - Links to seed systems (formal & informal)
  - There should be formal recognition of germplasm contributions from countries that were brought into the MLS through international ex situ collections

# Summary of international flows of rice landrace ancestors, selected countries

<b>Country</b>	<b>Own landraces</b>	<b>Borrowed landraces</b>		<b>Total landrace progenitors in all released varieties</b>
<i>Bangladesh</i>	4	229	98%	233
<i>Brazil</i>	80	380	83%	460
<i>Burma</i>	31	411	93%	442
<i>China</i>	157	731	82%	888
<i>India</i>	1559	2358	60%	3917
<i>Indonesia</i>	43	420	91%	463
<i>Nepal</i>	2	140	99%	142
<i>Nigeria</i>	15	180	92%	195
<i>Pakistan</i>	0	195	100%	195
<i>Philippines</i>	34	484	93%	518
<i>Sri Lanka</i>	64	322	83%	386
<i>Taiwan</i>	3	17	85%	20
<i>Thailand</i>	27	127	82%	154
<i>USA</i>	219	106	33%	325
<i>Vietnam</i>	20	497	96%	517



# Summary

- Paradigm shift from a “Common heritage” to “National sovereignty”;
- Convention of Biological Diversity
- International treaty on PGRFA - Multilateral agreement; Standard Material transfer
- Other policy relevant
- Joint Programme to coordinate capacity building activities
- Common challenges



# Thank you

[www.biodiversityinternational.org](http://www.biodiversityinternational.org)

