

**GHANA'S PLANT BREEDERS BILL LACKS LEGITIMACY! IT MUST BE
REVISED**

20th February 2014

Rt. Hon. Speaker of the House, Edward Korbly Doe Adjaho,

**The Hon. Chairperson, Parliamentary Select Committee on Constitutional and Legal
Affairs, Alban Kingsford Sumana Bagbin,**

Hon. Members of Parliament,

We, the undersigned organizations from Africa and around the world are concerned with the conservation of agricultural biodiversity for livelihood security and food sovereignty, promoting farmers' rights and self-determination and citizen involvement in the decision-making process.

The undersigned organizations would like to express our solidarity with farmers and civil society groups in Ghana that have expressed serious concerns with the Plant Breeders' Bill pending in the Parliament ("the Bill").

The Bill is modeled on the International Convention for the Protection of New Varieties of Plants of 1991 (UPOV 1991) which a rigid and an inflexible regime for plant variety protection (PVP). It is worth noting that today out of the 71 UPOV members, only a fraction - about 22 developing countries are members of UPOV. Most of these developing countries (e.g. Brazil, China, Argentina, South Africa) and even some developed countries (e.g. Norway) are not members of UPOV 1991 but rather UPOV 1978, which is a far more flexible regime.

Ghana has full flexibility under the World Trade Organization (WTO) to develop an effective "*sui generis*" system for plant variety protection, i.e. to develop a unique system that suits its needs. In view of this, it is truly unfortunate and even irrational that instead of designing a PVP regime that reflects the agricultural framework and realities of Ghana as some other countries have done (e.g. India, Thailand, Ethiopia), Ghana is choosing to adopt and be bound by UPOV 1991 without any concrete evidence or impact assessment of the necessity and impacts of adopting such a regime.

As a member of the International Treaty on Plant Genetic Resources (ITPGRFA) we expect Ghana to take steps to realize farmers' rights to use, sell, save and exchange farm-saved seeds, to protect their traditional knowledge and to allow their participation in national decision-making.

It is thus extremely disappointing to see that the Bill is heavily tilted in favor of commercial breeders and undermines farmers' rights. The Bill does not allow farmers to sell and exchange seeds. Farmers' use of farm saved seed on its own holdings is limited to "personal use" and regulations by the Minister and may be subject to payment of royalties. Noting the widespread protests by farmer groups in Ghana earlier this year it is clear that farmers have not been consulted sufficiently in the development of the Bill.

We are of the view that it is entirely possible to have an effective law on plant variety protection without compromising Ghana's international obligations and farmers' rights. Today, several countries have used innovative approaches in their PVP legislation that balances the interests of the breeding industry and farmers' interests. India is one such

example.¹ The African Model Law for the Protection of the Rights of Communities, Farmers and Breeders discussed and endorsed at the African Union level also contains innovative approaches for consideration.²

The Memorandum to the Bill misleadingly argues that farmers have the right to use protected varieties as a source for further research and breeding activities. In actual fact under the Bill, if a protected variety is used for further breeding and where the variety developed from the protected variety is an essentially derived variety (EDVs), breeders' rights extend to the EDVs. This concept of EDVs is highly contentious and uncertain. Many advanced developed countries are still grappling with this concept and its implementation. What is or is not an EDV is a question subject to extensive court and arbitration disputes. These types of provision favor multinationals, which have immense financial resources at the expense of farmers and even local breeders. It is simply not necessary to include such a provision in the PVP legislation. Many developing countries with successful PVP regimes do not incorporate such a clause in their national legislation.

It is also being argued that the Bill will lead to the development of varieties that are suitable for the needs of Ghana and is important for food security.

In reality the Bill only incentivizes "uniform" varieties. The Food and Agricultural Organization (FAO) estimates that about 75% of the genetic diversity of agricultural crops has been lost due to proliferation of commercial uniform varieties replacing native land races. The erosion of crop genetic diversity poses a serious threat to food supplies as it reduces resistance to pests, diseases and changing weather patterns. Genetic diversity within crops is also decreasing.

Additionally it is erroneous to suggest as the Memorandum does that the Bill will develop varieties that are suitable for the needs of Ghana. PVP systems tends to incentivize and orientate development of new varieties where a commercial market exists and where significant profits can be made. It is definitely not the solution to addressing the nutritional and food security needs of Ghana.

The argument in the Memo that the Bill will "help farmers break out of their cycle of subsistence farming" is also flawed. The Special Rapporteur on the Right to Food has noted in a recent report that "This shift has led to grant temporary monopoly privileges to plant breeders.....through the tools of intellectual property, as a means to encourage research and innovation in plant breeding. In this process, however, the poorest farmers may become increasingly dependent on expensive inputs, creating the risk of indebtedness in the face of unstable incomes. The farmers' seed systems may be put in jeopardy, although most farmers in developing countries still rely on such systems, which, for them, are a source of economic independence and resilience in the face of threats such as pests, diseases or climate change."³

The Bill also contains a "presumption" whereby a plant breeder is considered to be entitled to intellectual property protection in the absence of proof to the contrary.⁴ Usually the onus is on the applicant to prove that he or she has complied with the necessary requirements and is thus entitled to protection. But in this case there is a presumption in favor of the plant breeder. This "presumption" provision and the lack of an explicit provision that calls for the disclosure of origin of the genetic material used in the development of the variety including information

¹ The Protection of Plant Varieties and Farmers Rights Act, 2001

² See <http://www.cbd.int/doc/measures/abs/msr-abs-oau-en.pdf>

³ See UN General Assembly Document A/64/170 titled "Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation"

⁴ Clause 10 of the Bill

of any contribution made by any Ghanaian farmer or community in the development of the variety creates opportunities for breeders to misappropriate Ghana's genetic resources using the PVP system and to exploit smallholder farmers.

It is important to note that Ghana is a member of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Convention on Biological Diversity and both these instruments champion fair and equitable sharing of benefits arising from the utilization of genetic resources. Including a disclosure of origin provision in the Bill is critical as it is widely recognized as an important tool to safeguard against biopiracy. Several countries have included such a provision in its PVP legislation and there is no reason why Ghana should not do the same.

The Bill also lacks provisions that will ensure that intellectual property protection will not be granted to varieties that adversely affect public interests.

The undersigned signatories strongly urge the Parliament to refrain from adopting the Bill. We are of the view that in its current form the Bill lacks credibility and legitimacy and does not benefit Ghana. Extensive consultations involving all stakeholders including the farming communities and civil society should be initiated urgently with the aim to develop a balanced and equitable legislation, with appropriate safeguards to protect the interests of smallholder farmers and public interests.

Signatories

1. Alliance For Food Sovereignty (AFSA)	A Pan African platform that represents small-holder farmers, pastoralists, hunter/gatherers, indigenous peoples, citizens and environmentalists from Africa. It comprises networks and farmer organizations working in Africa including the African Biodiversity network (ABN), Coalition for the Protection of African Genetic Heritage (COPAGEN), Comparing and Supporting Endogenous Development (COMPAS) Africa, Friends of the Earth- Africa, Indigenous Peoples of Africa Coordinating Committee (IPACC), Participatory Ecological Land Use Management (PELUM) Association, Eastern and Southern African Small Scale Farmers Forum (ESAFF), La Via Campesina Africa , FAHAMU, World Neighbours, Network of Farmers' and Agricultural Producers' Organizations of West Africa (ROPPA), Community Knowledge Systems (CKS) and Plate forme Sous Régionale des Organisations Paysannes d'Afrique Centrale (PROPAC).
2. African Biodiversity Network	Regional network that represents 36 member organizations in 12 African countries seeking African solutions to the ecological and socio-economic challenges that face the continent.
3. Abalimi Bezekhaya (South Africa)	An urban agriculture and environmental action association operating in the socio-economically neglected townships of Khayelitsha, Nyanga and surrounding areas on the Cape Flats, near Cape Town, South Africa.
4. Actions pour le Développement Durable/ Actions for sustainable Development NGO (Benin)	Working on issues of sustainable development

5. African Centre for Biosafety (South Africa)	Non-profit organization working on issues dealing with the genetic engineering, privatization, industrialization and corporate control of Africa's food systems.
6. Alliance for Agroecology and Biodiversity Conservation (Zambia)	An umbrella organization working on issues of biodiversity and GMO free agriculture.
7. Alternative Agriculture Network (Thailand)	Non governmental organization working with small scale farmers in Thailand focusing on the preservation of rice varieties to combat climate change and support local organic agriculture.
8. Berne Declaration (Switzerland)	A Swiss non-governmental organization with more than 20,000 members promoting more equitable, sustainable and democratic North-South relations.
9. Bia'lii, Asesoría e Investigación, A.C.(Mexico)	Non-profit organization, seeking to promote a culture of legality, democracy and substantive participation and active citizenship.
10. Bifurcated Carrots (the Netherlands)	Non-governmental organization seeking to promote biodiversity, environmental issues, and the rights of small farmers and independent plant breeders.
11. Biowatch South Africa	Non-governmental organization publicizing, monitoring and researching issues of genetic modification to promote biological diversity and sustainable livelihoods.
12. Both ENDS, (the Netherlands)	Non-governmental organization (NGO) working on identifying and strengthening civil society organizations (CSOs), mostly in developing countries, that come up with sustainable solutions for environmental and poverty-related issues.
13. Center for Health, Human Rights and Development (CEHURD)	An indigenous, non-profit, research and advocacy organization which is pioneering the enforcement of human rights and the justiciability of the right to health in Eastern Africa.
14. Community Mobilization Against Desertification (Kenya)	Non-governmental organization, working on agricultural extension and natural resource management programs and small holder capacity building.
15. Dachverband Kulturpflanzen- und Nutziervielfalt (Germany)	Umbrella organization for crop and livestock diversity
16. EcoNexus (UK)	Not-for-profit public interest research organization analyzing developments in science and technology and their impacts on environment and society.
17. Environmental Rights Action/Friends of the Earth Nigeria	Nigerian advocacy group dedicated to the defense of the human ecosystem in terms of human rights
18. Fambidzanai Permaculture Centre (Zimbabwe)	Development organization promoting food security through sustainable land use management (Permaculture) in Zimbabwe
19. Farm and Garden National Trust (South Africa)	A NGO that spreads knowledge, expertise and resources to emerging micro-farmers and gardeners nationally
20. Focus on the Global	Think tank providing analysis and building alternatives for just

South (India)	social, economic and political change.
21. Föreningen Sesam-Society For Protection Of Heirloom And Rare Vegetables And Crops (Sweden)	Non-profit organization seeking to preserve the existing diversity among kitchen garden and arable land plants.
22. Food Matters Zimbabwe	Volunteer movement focusing on food issues such as GMOs in Zimbabwe
23. Food Rights Alliance - Uganda (FRA)	Coalition of NGOs advocating for food security as a human right, sustainable agriculture systems and fair trade in Uganda.
24. Gaia Foundation (UK)	Foundation working with local communities to secure land, seed, food and water sovereignty.
25. GardenAfrica (UK)	Non-profit organization focusing on the establishment of productive organic training gardens, and growing nutritious food and medicinal herbs in Southern Africa.
26. GRAIN International	International non-profit organization working to support small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems.
27. Friends of the Earth (South Africa)	Non-profit environmental justice service and developmental organization in South Africa
28. Health of Mother Earth Foundation (HOMEF) (Nigeria)	Environmental/ ecological think tank and advocacy organization focusing on fossil fuels, the politics of hunger and creating spaces for knowledge generation and sharing.
29. Institute for Agriculture and Trade Policy (US)	Works locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems.
30. JA/Friends of the Earth Mozambique	Non governmental organization raising public awareness and campaigns against damaging environmental practices in Mozambique
31. Kasisi Agricultural Training Centre (Zambia)	Farmer training institution based in Lusaka, Zambia.
32. Les Amis de la Terre-Togo (FOE-Togo)	A voluntary non-profit organization, focusing on the protection of the environment with a view to sustainable development
33. MELCA Ethiopia (Movement for Ecological Learning and Community Action)	Non-profit organization working for the revival and enhancement of traditional ecological knowledge and protecting the rights of communities in Ethiopia.
34. National Association of Professional Environmentalists (NAPE) (Uganda)	Non-governmental organization, working on the sustainable use of natural resources in the areas of water and energy, as well as for the sustainable future of Uganda communities.
35. National Farmers Union (Canada)	Direct-membership organization made up of Canadian farm families working towards the development of economic and social policies that will maintain the family farm as the primary food-producing unit in Canada.

36. OGM Dangers (France)	Non profit organization working against GMOs in agriculture
37. Organic Growers of Ireland (OGI) (Ireland)	Organisation set up by growers in a voluntary capacity to represent and support organic growers.
38. Pan-Africanist International (Belgium)	Platform serving as a tool for the identification, defense, and the advancement of the interests of main street Africa
39. Participatory Ecological Land Use Management (PELUM) Association	A regional network of 220 organizations working with small-scale farmers in East, central and Southern Africa (Botswana, Ethiopia, Kenya, Lesotho, Malawi, Rwanda, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe).
40. PELITI (Greece)	Non-governmental organization working towards collection, preservation and distribution of local plant varieties.
41. Save Our Seeds (Europe/Germany)	European initiative in favor of the purity of seeds against genetically modified organisms (GMO)
42. South Asia Watch on Trade, Economics and Environment (Nepal)	A regional network of NGOs from five South Asian countries: Bangladesh, India, Nepal, Pakistan and Sri Lanka
43. Southeast Asia Regional Initiatives for Community Empowerment (SEARICE)	A regional non-government organization that promotes and implements community-based conservation, development and sustainable use of plant genetic resources in partnership with civil society organizations, government agencies, academic research institutions and local government units in Bhutan, Lao PDR, the Philippines, Thailand, Vietnam and Cambodia.
44. Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI-Uganda) and (SEATINI- South Africa)	Regional non-governmental organization strengthening the capacity of key stakeholders to take a more effective part in and influence global, regional and national agricultural trade and financial processes
45. Tanzania Alliance for Biodiversity (TABIO)	Alliance of civil society and private sector organizations concerned with the conservation of agricultural biodiversity for livelihood security and food sovereignty.
46. Terra Nuova (Italy)	Membership-based association supporting and implementing development co-operation projects in Africa and Latin America focusing on sustainable management of natural resources; and rural development.
47. The Ram's Horn (Canada)	A monthly newsletter with stories and analysis of what is happening in the food system, locally and globally.
48. Third World Network (Malaysia)	An international NGO working on issues relating to development and developing countries.
49. Unitarian Service Committee of Canada (USC Canada)	Non-profit international development organization, establishing programs in food security/ biodiversity, desertification, climate change and poverty alleviation.
50. Verein zur Erhaltung der Nutzpflanzenvielfalt- (Seed Savers' Association, Germany)	An association based in Germany working to promote GMO free crop diversity and GMO free seeds and breeding.
51. World Development Movement (UK)	Movement of local campaign groups in UK fighting for economic justice and end to global poverty