

**Trade-Related Aspects of Intellectual Property Rights
(TRIPs) Agreement:
Impact on Food Security of the People Living in HKH**

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Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement:

Impact on Food Security of the people living in HKH

Abid Qaiyum Suleri and Qasim Shah

Abstract

Pakistan's part of Hindu Kush Himalayan (HKH) region comprises more than 50 percent of the total area of the country and 21.32% of total population. As many as 31.13 million people live in HKH. The region faces shortage of staple foods due to low local production, high transport cost and restricted access to food in many areas during snow season. Food security of the people living in HKH is not only affected by limited patches of flat land and extreme weather, it is also affected by "Trade Related intellectual Property Rights (TRIPs) agreement" of The World Trade Organization (WTO). The TRIPs agreement covers patents in articles 27-34. It says all inventions including those based on the exploitation of biological resources are patentable. Hence the agreement stands for monopoly rights even upon the life forms, ownership of seed, plant and animal varieties. The national and household food security is also affected by the TRIPs agreement. Moreover, this agreement promotes "bio-piracy" in the resource rich HKH region as it does not require the patent holder to either disclose the source of origin, get prior informed consent from the genetic resource/knowledge holder, or ensure that there is an equitable benefit sharing. This policy brief focuses on the impacts of the TRIPs agreement on HKH region of Pakistan and demands that nothing in the TRIPs agreement should affect the sovereignty of governments to take measures to protect their health and food security.

In Pakistan, HKH spreads over parts of North Western Frontier Province (NWFP), Federally Administrated Tribal Areas (FATA), Northern Areas, Azad Jammu and Kashmir (AJK), and 12 districts of Balochistan. In Pakistan, total HKH area comprises 489988 sq km (more than 50% of the total area of Pakistan) and 31.13 million people (21.32% of the total population)¹. The Hindu Kush rises South West of Pamirs. It is considered to extend from Wakhjir pass at the junction of the Pamirs and Karakoram to Khawak Pass, north of Kabul. Its first region extends from Wakhjir Pass separating Hunza from Wakhan and up to Dorah Pass (320 kms in length). Its second region lies beyond Dorah Pass in Afghanistan. The third region, which runs for 240 kms, lies in Pakistan and extends into Swat and Kohistan. On the East, it is separated from Karakoram by Indus River. Highest of Hindukush is Tirich Mir (7708). The Western Himalayas is situated between Kashmir valley in the East and Indus River in the North. It is dominated by Nanga Parbat massif with the highest peak, rising at 8125 metres.

Livelihood strategies of farmers living in HKH region of Pakistan

Local communities, to a considerable extent, are subsistent on the agro-pastoral economy. The majority of the population comprises subsistence farmers that are meeting only the barest needs of food, fodder and fibre for their households. The average landholding per household rarely exceeds one hectare. Cropping pattern varies with altitude. Maize is widely cultivated followed by wheat, millet, barley, buckwheat and rice. Alfalfa is the main fodder crop, while the area under potato crop

1. ICIMOD, 1998.

is increasing every year. The plantation of fruit trees and orchards is also a common practice. Livestock farming has traditionally been more important than crop farming, with the high pastures playing a central role in resource use pattern (Munir, 2002). Environmental conditions and ecological risks of resource utilization are intimately linked together in this high mountain region. Rapid population growth that increases pressure on natural resources, and causes the consequent danger of environmental degradation, raises questions about sustainable livelihood strategies of the farmers living in HKH region in relation to contemporary land-use and land cover change. The regional land-use system in northern Pakistan is based on irrigated crop cultivation in valley bottoms, combined with animal husbandry and forest utilization in the upper altitudinal belts (Nusser, 2000).

Communities in HKH area face a lot of trouble because of growing social and economic inequalities and imbalances. The level of access to resources and livelihood opportunities is different among various vulnerable and settled groups. The resources are not even-handedly distributed among communities. The people in HKH area have to face declining access to public distribution services, such as health, education, food, roads and power, due to certain state policies. These people are amongst the country's poorest (WFP, 1999). The HKH zone faces shortage of staple foods due to low local production, high transport cost and restricted access to food in many areas (such as Chitral) during snow season. Local people store grain for winter season. With little flat land and extreme weather, agriculture activity is limited. With few opportunities to make a living, and high prices for transporting grain from the plains, the people rely on local produce. (WFP, 1999)

The TRIPs Agreement

The TRIPs agreement is the most contentious agreement ever agreed. It gives exclusive rights of any commodity with a novel character to the person who brings in the novelty. Section five of the TRIPs agreement obliges member states to provide patent protection for all inventions, both products and process. The TRIPs agreement covers patents in its articles 27-34. It says that all inventions are patentable, including those based on the exploitation of biological resources. Article 27.3(b) of the TRIPs agreement obliges the WTO member countries to provide some form of intellectual property protection (effective *sui generis* system) on plants, animals and biological processes and new varieties of plants. This provision stands for monopoly rights even upon the life forms. In this way, the TRIPs agreement affects ownership of seeds, plants and animals. It also impacts national and household food security. (Suleri, 2001)

Developing countries were supposed to comply with the TRIPs Agreement till December 1999, and the least developed countries till December 2005. The Article 27.3 (b) was due for revision in 1999. The debates among WTO member states on whether the review should focus only on implementation of the Article or on its substance resulted in a deadlock. Due to Seattle debacle, there was no ministerial consensus on it. Even Doha ministerial declaration is quiet on the review of the substance of Article 27.3(b) and its paragraph 19 merely instructs the Council for TRIPs to review implementation on the TRIPs agreement as well as to examine the relationship between the TRIPs Agreement and the Convention on Biological Diversity. It means that countries would have to have patents on life forms or some sort of "effective" *sui-generis* system for the intellectual property protection of plants and animal varieties. Most of the developing countries have opted for the *sui-generis* system in the form of Plant Breeders' Rights Act (PBR Act). Pakistan has also agreed to opt for a PBR Act for which a draft was ready for promulgation as an ordinance. However, due to the pressure from certain advocacy groups and various stakeholders, the government refrained to promulgate it. Having said, it does not imply that the plans to enact this draft have been abandoned as the government seems committed (and is bound to do so under TRIPs Agreement) to save rights of plant breeders. This Act ignores the rights of farmers, tillers, and farm workers. The PBR Act would put the food security of small farmers at risk as it may stop the farmers in Pakistan to save, use, sow, exchange, share or sell their farm produce including seed of a variety. Secondly, it would

serve the interests of multinational seed companies thus threatening the livelihoods of farm workers. This threat becomes more severe for the fragile and vulnerable areas such as HKH region where livelihood depends upon local produce and the people have to save the grain and seeds for future consumption.

How TRIPs agreement affects Food Security

The TRIPs Agreement allows the owner of a patented product to prevent third party from making, using, offering for sale or importing that product without their prior consent. The owner of a patented process could prevent the use of the process as well as the commercialisation of a product manufactured by using that process. Thus, if a process to produce a plant variety is patented, the owner of the patent enjoys exclusive rights over the plants obtained by using the process. Farmers are not allowed to use any seeds coming from such a plant. Most importantly, in contrast with normal legal practice, the TRIPs Agreement shifts the burden of proof in a dispute over process of patents to the defendant who must show that an infringement has not occurred (Suleri, 2001). Even in developed countries, individual farmers are not able to safeguard their interest against the corporate greed of trans-national corporation (TNCs). The famous case of a Canadian farmer “Percy Schmeiser” is a good example, where in he was accused of using Monsanto seeds illegally and in April 2001 Supreme Court of Canada ordered him to pay eighty thousand Canadian dollars to Monsanto for violating the patent laws, although the truth was that infringement was accidental, taken place through flight of pollens from Monsanto fields to the farmers’ fields (Hasnain, 2001). Keeping Percy’s case in mind one can imagine the plight of poor farmers in Pakistan once the PBR Act is promulgated and enforced as law.

Prior to the Uruguay Round, Intellectual Property Legislation was a matter of domestic policy. Now, the WTO virtually brings all the agreements together under one umbrella; and membership in the organization implies accession to all of them. Thus TRIPs agreement is much more powerful than the older agreements and is a cause of widespread concern.

Hindu Kush Himalayan region of Pakistan faces two kinds of disadvantages from patenting on the genetic resources for food and agriculture (GRFA). From ancient times, this area has been the source of genetic resources for many kinds of flora and fauna. However, due to lack of capacities and resources, indigenous people of these areas are not in a position to fully catalogue the natural resources of biomaterials they currently possess. Second, there is a growing concentration of TNCs in biotech industries, notably in the seed sector and the corporations are exerting monopoly. Dependence on TNCs for such a critical input like seeds are feared to bring-in a chain of developments, which undermine the very survival of small farmers’ economy. Moreover, seeds of “improved varieties” are always not compatible with the local needs. It is assumed that patents and other form of intellectual property protection on the GRFA decrease the farmer’s access to seed, reduce efforts in publicly funded plant breeding, increase the loss of genetic resources, prevent seed sharing and could put farmers out of business. It gives rise to restrictions on the free exchange of information, and increased privatisation of research will lead to further internalisation (secrecy) of research results. As a consequence, the current problem of global food supply may be further aggravated and are likely to influence the fragile communities such as those living in HKH region (Rastogi, 1998). Thus in the context of vulnerability and fragility of the people living in HKH region, could we think of food security when TRIPs would guide the world as to who could produce-what, when, and where- and who did not have the right to produce anything.

Conflicting International Agreements: TRIPs and the Convention on Biodiversity

The Convention on Biological Diversity (CBD) agreed at the Rio Earth Summit in 1992, recognises the sovereign rights of the states over their biological and genetic resources. The convention requires parties to protect and promote the rights of communities, farmers and indigenous people vis-à-vis

their customary use of biological resources and knowledge systems. However, in practice TRIPs Agreement does not reinforce the provisions of the CBD. It does not require the patent holder to either disclose the source of origin, get prior informed consent from the genetic resource/knowledge holder (thus encouraging bio-piracy), or ensure that there is an equitable benefit sharing. This leads to a large-scale bio piracy from the centres of floral biodiversity such as HKH region.

Recommendations

SDPI proposes:

- “There should be no patents on life” and nothing in the WTO agreements should affect the livelihood of farmers living in HKH region.
- A substantive review of Article 27.3(b) of the TRIPs agreement should be done to make it consistent with the CBD provisions on prior informed consent and benefit sharing with regards to access to genetic resources.
- The TRIPs Agreement itself should be reviewed outside any “Doha Round of Negotiations” to address the concerns of developing countries on WTO regime.
- Nothing in the TRIPs Agreement should affect the sovereignty of governments to take measures to protect health and food security in their respective countries.
- Articles 7 and 8 of the Agreement should be activated to ensure primacy of food security and nutritional concerns vis-à-vis security of private intellectual property rights.
- The provisions of TRIPs Agreement should not hinder achievements of various international targets agreed upon during a series of UN conferences in 1990 including the World Food Summit. These targets include poverty eradication, sustainable development, social justice, gender equality, human rights, conservation and sustainable use of biological resources and food security.
- The proposed Plant Breeders’ Rights Act should not jeopardise the farmers’ traditional practices of saving, breeding and selling seeds. Moreover, this act should ensure registration of farmers’ varieties.
- Technical assistance provided under WTO should also address the needs of mountain communities.

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