



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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## THIRD MEETING OF THE *AD HOC* TECHNICAL COMMITTEE ON SUSTAINABLE USE OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Vienna , Austria, 24 and 25 October 2016

### UPOV and WIPO: possible areas of interrelations among their respective international instruments

1. At its Fifth Session, the Governing Body requested the Secretary to “invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments”.<sup>1</sup> Contracting Party regions and civil society organizations provided their inputs and views on the implementation of this request and the Secretary exchanged views with the Office of the International Union for the Protection of New Varieties of Plants (UPOV) and with the Secretariat of the World Intellectual Property Organization (WIPO).

2. Based on these discussions and inputs, the Secretary was advised by the Bureau of the Sixth Session of the Governing Body to refer the matter to the *Ad Hoc* Technical Advisory Committee on Sustainable Use (ACSU), which had dealt with issues related to Farmers’ Rights in the past and has a mandate to provide advice to the Secretary on “cooperation with ... international processes and institutions in the field of sustainable use of PGRFA”.<sup>2</sup>

3. In preparation for the second meeting of the ACSU in March 2015, the Secretary invited Contracting Parties, stakeholders and others to share any relevant information on the identification of interrelations between the International Treaty, especially its Article 9, and the relevant instruments of UPOV and WIPO. All submissions received were compiled and made available in document IT/ACSU-2/15/Inf.5.

4. The ACSU reviewed a tentative list of some of the issues that were mentioned in these submissions and recommended to forward the entire list in slightly amended form to UPOV and WIPO. It advised grouping the issues under the four elements of Article 9 of the Treaty, namely, the rights mentioned in its subparagraphs 9.2a), 9.2b), 9.2c) and 9.3. It also noted that the different instruments recognize and promote different forms of innovation in the use of plant genetic resources for food and agriculture by farmers and breeders, including formal and informal systems.

5. The Secretary, accordingly, brought to the attention of UPOV and WIPO the list of possible issues contained in *Appendix 1*. Following the Resolution of the Sixth Session of the

<sup>1</sup> Paragraph 3, Resolution 8/2013. *Implementation of Article 9, Farmers’ Rights*.

<sup>2</sup> IT/ACSU-1/12/Report.

Governing Body on Farmers' Rights 5/2015,<sup>3</sup> it was decided, as a starting point, to organize a symposium on possible interrelations between the Treaty and the UPOV Convention. The symposium and its draft outline programme have been discussed by the Consultative Committee of UPOV and approved by the Council of UPOV in March 2016.

6. The “Symposium on possible interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (the International Treaty) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention)” will therefore be held on 26 October 2016 at UPOV Headquarters in Geneva, Switzerland. The Symposium will be open to Contracting Parties and observers of the International Treaty and UPOV, as well as to the general public.

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<sup>3</sup> Resolution 5/2015 <http://www.fao.org/3/a-bl144e.pdf>

*Appendix 1****PRELIMINARY LIST OF ISSUES ON INTERRELATIONS OF THE INTERNATIONAL TREATY AND THE RELEVANT INTERNATIONAL INSTRUMENTS OF UPOV AND WIPO, AS PROCESSED BY THE AD HOC TECHNICAL COMMITTEE ON SUSTAINABLE USE AT ITS SECOND MEETING IN MARCH 2015:*****Art. 9.2a of the Treaty (protection of traditional knowledge relevant to plant genetic resources for food and agriculture):**

- a) The protection of traditional knowledge relevant to plant genetic resources for food and agriculture (PGRFA) in relation to the UPOV Convention, as revised in 1978 and 1991.

**Art. 9.2b of the Treaty (the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture):**

- b) The right of farmers to equitably participate in sharing benefits arising from the utilization of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- c) The concept of “Farmers’ Rights” as a collective right in comparison to the generally individual character of intellectual property rights in the instruments of UPOV and WIPO.
- d) The DUS (distinct, uniform, stable) and novelty criteria of UPOV and farmers’ varieties, farmers’ informal seed systems and farmers’ traditional knowledge.
- e) The “breeders’ exemption” under the UPOV Convention and the right of farmers to equitably participate in benefit sharing under Article 9 of the Treaty.

**Art. 9.2c of the Treaty (the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture):**

- f) The right of farmers to participate in making decisions on matters related to the conservation and sustainable use of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- g) The participation of farmers in decision-making processes, at the regional level, on matters related to the conservation and sustainable use of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- h) Impact of the technical assistance provided by WIPO relating to PGRFA on the implementation of Farmers’ Rights and the objectives of the Treaty.
- i) Impact of WIPO’s instruments and processes, including the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC), on the implementation of Farmers’ Rights.

**Art. 9.3 of the Treaty (right to save, use, exchange and sell farm-saved seed/propagating material):**

- j) The implementation of Farmers' Rights under the Treaty in light of obligations that countries have under the International Convention for the Protection of New Varieties of Plants (UPOV Convention), as revised in 1978 and 1991.
- k) The implementation of rights of farmers to save, use, exchange and sell farm-saved seed/propagating material, in light of the UPOV Convention, as revised in 1978 and 1991.
- l) The implementation of rights of farmers to save, use, exchange and sell farm-saved seed/propagating material, in light of relevant sui generis national legislation.
- m) The "farmers' privilege" under UPOV 1991 in comparison to the concept of "Farmers' Rights" under the Treaty.
- n) The concept of "essentially derived varieties" under UPOV 1991 in relation to the concept of "Farmers' Rights" under the Treaty, especially with regard to farmer- breeders and to informal seed systems.
- o) Recognition of farmers as breeders under the Treaty and relevant instruments of UPOV and WIPO.
- p) Patents in plants or plant varieties and their possible impact on Farmers' Rights.
- q) The enforcement provisions and mechanisms in the three instruments, with special regard to the potential enforcement of Farmers' Rights.