

Proposals for further action by UPOV on interrelations between the ITPGRFA and the UPOV Convention

Submission by Association for Plant Breeding for the Benefit of Society (APBREBES)

On 26th October 2016, a symposium on the interrelations between the ITPGRFA and the UPOV Convention was held in Geneva. This symposium was held in the context of the Resolutions of the Governing Body of the ITPGRFA on Implementation of Article 9 of the ITPGRFA that concerns “Farmers’ Rights”. Experts presenting at the symposium revealed how certain provisions and interpretations of the UPOV Conventions especially the 1991 Act as well as the activities of the Office of the Union conflicts with and undermines implementation of provisions concerning “Farmers’ Rights” (Article 9) of the ITPGRFA.

An expert highlighted a study published by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of the German Federal Ministry for Economic Cooperation and Development in June 2015 titled “The UPOV Convention, Farmers’ Rights and Human Rights - An integrated assessment of potentially conflicting legal frameworks” which concluded that “UPOV 91-based PVP laws were found to not advance the realisation of Farmers’ Rights; rather they are effective in the opposite direction”.¹

Several participants of the symposium stressed on the need for governments to have policy space to realize Farmers’ Rights in particular to allow farmers greater freedom to operate with regard to the protected variety, to implement mechanisms to prevent misappropriation of farmer’s varieties, to recognize the contribution of farmers in the development of plant genetic resources and to protect traditional knowledge.

Farmers’ Rights recognized by the ITPGRFA includes:

- recognition of the enormous contribution that local, indigenous communities, farmers have made and will continue to make to the conservation and development of plant genetic resources for food and agriculture (PGRFA);
- protection of traditional knowledge relevant to PGRFA;
- the right to equitably participate in sharing benefits arising from the utilization of PGRFA;
- the right to participate in making decisions, at the national level;
- the right to save, use, exchange and sell farm-saved seed/propagating material.

At its 92nd session, the Consultative Committee agreed that members of the Union and observers be invited to provide suggestions on any possible further action concerning interrelations between the ITPGRFA and the UPOV Convention for the consideration by the Consultative Committee at its 93rd session.

As a starting point and in the immediate term, the Consultative Committee should take the following actions:

- (1) To revise the Explanatory Note on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention (UPOV/EXN/EXC/1) and the Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (UPOV/INF/6/4) with regard to Article 15 of the 1991 Act.

The aim of the revision should be *inter alia* to incorporate within the scope of the exceptions all acts of smallholder farmers in relation to the protected variety i.e. to freely save, use, exchange and sell farm saved seed/propagating material as well as to clarify

¹ <https://www.giz.de/fachexpertise/downloads/giz2015-en-upov-convention.pdf>

that all breeding activities of farmers, including breeding by selection, would fall within the scope of breeders' exemption. The latter aspect may also require revision of the Explanatory Note on Essentially Derived Varieties under the 1991 Act.

APBREBES hopes to provide specific inputs for the revision process.

- (2) To adopt a decision recognizing the right of governments to implement in its PVP legislation provisions to realize fair and equitable benefit sharing, in particular to require as part of the application process for an applicant to disclose the origin of the variety including the pedigree information and associated passport data, on the lines from which the variety has been derived, along with information relating to the contribution of any farmer, community, institution or organization upon which the applicant relied to derive the new variety, evidence that the material used for breeding, evolving or developing the variety for which protection is sought has been lawfully acquired, and that the applicant has complied with prior informed consent and benefit-sharing requirements.

The decision should be applicable to all UPOV Members and be followed by a revision of the Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (UPOV/INF/6/4), to reflect the abovementioned decision.

- (3) To adopt a decision that the Office of the Union as well as all UPOV Members will respect, promote and implement Farmers' Right to participate in decision-making processes in all UPOV activities and subsequently develop guidelines to implement Farmers' Right to participate in decision-making in relation to activities of the UPOV secretariat (especially its technical assistance activities on plant variety protection) and of UPOV Member states. The guidelines should be developed through a credible, transparent and participatory process involving farmers and build on the good practices of the UN system for participatory mechanisms and processes, paying special attention to participation by disadvantaged groups, in particular smallholder farmers.²

This submission is made without prejudice to the right of APBREBES to make further proposals and clarifications on further action concerning interrelations between the ITPGRFA and the UPOV Convention.

² Chee Yoke Ling et al., Farmers' Right to Participate in Decision-making – implementing Article 9.2 (c) of the International Treaty on Plant Genetic Resources for Food and Agriculture, Working Paper, APBREBES, 2016, available at http://www.apbrebes.org/files/seeds/files/PE_farmers%20right_9-16_def-high.pdf?pk_campaign=part