

**Consultative Committee****CC/94/10****Ninety-Fourth Session  
Geneva, October 25, 2017****Original: English  
Date: July 26, 2017**

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**INTERRELATIONS WITH THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (ITPGRFA)***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

## EXECUTIVE SUMMARY

1. The purpose of this document is to facilitate consideration of possible further action concerning interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and UPOV.
2. The Consultative Committee will be invited to:
  - (a) consider the views to be presented by observers at the ninety-fourth session of the Consultative Committee;
  - (b) consider the responses to Circular E-16/295 received from members of the Union and observers, as reproduced in Annexes I to VII of this document;
  - (c) consider the suggestions for possible further actions concerning interrelations between the ITPGRFA and UPOV, as collated in paragraph 8, with regard to:
    - (i) actions for UPOV,
    - (ii) joint initiatives; and
  - (d) if appropriate, make a recommendation to the Council on possible further actions and on communication of relevant information or proposals to the Governing Body of the ITPGRFA.

## BACKGROUND

3. At its ninety-second session, held in Geneva on October 27, 2016, the Consultative Committee considered document CC/92/11 "Interrelations with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)" (see document CC/92/20 "Report on the Conclusions", paragraphs 72 to 76).
4. The Consultative Committee received an oral report on the "Symposium on possible interrelations between the ITPGRFA and the UPOV Convention", held at UPOV Headquarters in Geneva, on October 26, 2016, from Mr. Raimundo Lavignolle, Vice-President of the Council. It noted that the Symposium had been attended by 147 participants, and had been opened by Mr. Francis Gurry, Secretary-General, UPOV and Mr. Kent Nnadozie, Secretary *ad interim* of the ITPGRFA.
5. In their closing remarks, the Co-Moderators: Mr. Muhamad Sabran, Chairperson of the Seventh Session of the Governing Body, ITPGRFA and Mr. Raimundo Lavignolle, Vice-President of the Council of UPOV, had concluded that:
  - We have seen the objectives and benefits of both treaties: UPOV Convention, ITPGRFA;
  - It is important to interpret and implement the two treaties in a mutually supportive way in the context of each Contracting Party;

- In order to succeed in these objectives, it is important for the two organizations to work together and to provide the necessary support;
- The Symposium highlights the need to involve all stakeholders in this process.

6. 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 ninety-third session.

7. On December 20, 2016, the Office of the Union issued Circular E-16/295 “Interrelations between the ITPGRFA and the UPOV Convention” to the UPOV Council members and observers with a request for suggestions on any possible further action concerning interrelations between the ITPGRFA and UPOV. Suggestions were received from the following members of the Union and observer organizations and copies are provided in Annexes I to VII, as indicated:

*Members of the Union*

Ecuador	Annex I
Norway	Annex II
Peru	Annex III
Russian Federation	Annex IV

*Observer organizations*

Association for Plant Breeding for the Benefit of Society (APBREBES)	Annex V
European Seed Association (ESA)	Annex VI
International Seed Federation (ISF)	Annex VII

COLLATION OF SUGGESTIONS

8. For the purposes of facilitating consideration by the Consultative Committee at its ninety-third session, to be held in Geneva on April 6, 2017, a summary of the suggestions received was collated into: suggestions concerning UPOV (UPOV Convention, UPOV bodies, UPOV guidance and information materials, FAQs, training) and suggestions concerning joint initiatives, as set out in the following section.

Suggestions concerning UPOV

*UPOV Convention*

Ecuador	Include in the UPOV Convention respect for farmers’ rights to keep, use, exchange and sell seed, participation in decision-making, protection of traditional knowledge relevant to the conservation and use of seeds, and the sharing of profits from the use of those seeds.
Ecuador	For the sake of food security, ease of access to plant genetic resources should be granted on the same terms as stipulated in ITPGRFA Article 12.3(a).  <i>[12.3 Such access shall be provided in accordance with the conditions below: a) Access shall be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses. In the case of multiple-use crops (food and non-food), their importance for food security should be the determinant for their inclusion in the Multilateral System and availability for facilitated access.]</i>

*UPOV bodies*

Norway	<p>“Norway proposes to prioritise the following topics to be prioritised in the next stage of the process of identifying possible interrelations:</p> <p>“[...]”</p> <p>“<i>Participation</i>. The Treaty recognises farmers' 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. This topic is also included in the Sustainable Development Goals: Ensure responsive, inclusive, participatory and representative decision-making at all levels (SDG 16.7). What is the status today regarding the participation of farmers and other stakeholders? What options are there to further strengthen the inclusiveness in decision-making in UPOV?”</p> <p>[...]”</p>
APBEBES	<p>(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.<sup>1</sup></p>

*UPOV guidance and information materials**Information documents*

ESA	<p>4. We think that in the discussions on the interrelations between the Treaty and UPOV several topics have been raised which are not strictly related to UPOV and thus cause confusion. In order to take away misperceptions and clarify misinterpretations, we also propose that UPOV develops some form of an information document which reflects, in particular, on the following matters: (i) there are different types of farmers and they may use different types of varieties or other genetic resources<sup>2</sup>; (ii) not all varieties used by farmers are covered by UPOV-type plant variety protection; (iii) variety registration and seed certification regulations on the one hand and plant variety protection laws (UPOV system) are two different things. These issues are still very often mixed in this discussion and would merit clarification.</p>
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<sup>1</sup> 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, APBEBES, 2016, available at [http://www.apbrebes.org/files/seeds/files/PE\\_farmers%20right\\_9-16\\_def-high.pdf?pk\\_campaign=part](http://www.apbrebes.org/files/seeds/files/PE_farmers%20right_9-16_def-high.pdf?pk_campaign=part)

<sup>2</sup> In this respect we refer to the table that was presented by ESA during the Symposium: [http://www.upov.int/edocs/mdocs/upov/en/upov\\_itpgrfa\\_sym\\_ge\\_16/upov\\_itpgrfa\\_sym\\_ge\\_16\\_ppt\\_3.pdf](http://www.upov.int/edocs/mdocs/upov/en/upov_itpgrfa_sym_ge_16/upov_itpgrfa_sym_ge_16_ppt_3.pdf)

*Explanatory notes on the UPOV Convention*

Norway	<p>“Norway proposes to prioritise the following topics to be prioritised in the next stage of the process of identifying possible interrelations:</p> <p>“<i>The saving, using, exchanging and selling of farm saved seeds.</i> The role of farm saved seeds in farmers' seed systems; the interlinkages between the formal seed system and farmers' seed systems; the contributions of farmers' varieties and improved varieties; the options to allow the use of farm saved seeds under different Acts of the UPOV Convention (incl. interpretation of "private and non-commercial use"); different categories of farmers (scale, role in management of crop genetic diversity, subsistence farming, indigenous peoples and local communities, etc). [...]"</p>
Norway	<p><i>Review and update the explanatory notes on exceptions to the breeder's right under the 1991 Act of the UPOV Convention.</i> These explanatory notes were adopted in 2009 and should be reviewed in order to reflect the results of the process of identifying possible interrelations between the ITPGRFA and the UPOV.</p>
APBRES	<p>(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.</p> <p>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 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.</p> <p>APBRES hopes to provide specific inputs for the revision process.</p> <p>(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.</p> <p>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.</p>
ESA	<p>1. Review the current FAQ on the possible acts subsistence farmers can carry out under the provisions of the UPOV Convention, in particular the private and non-commercial use exception. We are of the view that the wording of the current FAQ may be seen as too restrictive of certain practices which are carried out by subsistence farmers as part of their normal livelihoods. The answer to the FAQ could elaborate more on how this exception can be interpreted in a flexible manner to reflect and not to disturb existing practices.</p> <p>2. In line with the above proposal, we also propose to review the current Explanatory Note on exceptions to the breeder's right (UPOV/EXN/EXC/1 adopted on October 22, 2009), in particular in its content related to the private and non-commercial use exception.</p>

*General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants document (TG/1/3) / TGP documents*

Ecuador	Consider the possibility of including in the technical questionnaire the origin of biological resources used for new plant varieties.
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*Frequently Asked Questions (FAQs)*

ESA	see "Explanatory notes on the UPOV Convention" ESA points 1. and 2.
	3. We are aware that there is an FAQ on interrelations with other instruments relating to genetic resources which includes considerations on the Treaty. Nevertheless, given the importance of this discussion, we suggest that a specific FAQ is developed focusing only on interrelations between the Treaty and the UPOV Convention and elaborating more on the various ways how UPOV underpins the objectives of the Treaty (conservation and sustainable use as well as facilitated access to plant genetic resources).
ISF	ISF suggests that it could be useful to edit the Frequently Asked Questions (FAQs) currently provided on the UPOV website. Particular attention could be for example given to subsistence farmers. Perhaps these FAQs could also be referenced or included in the website of the ITPGRFA.

*Training*

ESA	5. Last, we propose that UPOV develops training modules on the above matters which should also be included in UPOV's train the trainer program and could also be used in other activities (such as capacity building projects etc.).
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Suggestions concerning joint initiatives

Norway	<p>“Norway proposes to prioritise the following topics to be prioritised in the next stage of the process of identifying possible interrelations:</p> <p>[...]</p> <p><i>Access and benefit sharing.</i> Exploring options for strengthening access: incentives for breeding of new varieties; breeders' exemption; inclusion of more material in the Multilateral system; access to and improvement of (genetic) information of germ plasm collections etc. Exploring options for strengthening benefit sharing: access to improved varieties; disclosure of origin; monetary benefit sharing; recognition of traditional knowledge of farming communities etc.”</p>
	<p>Norway strongly supports the continuation of the dialog between the ITPGRFA and the UPOV Convention, with participation of all relevant stakeholders. This could be facilitated by different means and Norway suggests the following actions:</p> <ul style="list-style-type: none"> <li>• Global Consultation. Encouraging Members of the Union and contracting parties of the Treaty as well as relevant organizations to take initiatives to convene global consultations addressing interrelations between the ITPGRFA and the UPOV. Such a consultation could make it possible to have a wide range of farmers and other stakeholders to actively participate, giving priority to sharing views and experiences.</li> <li>• Side events in conjunction to ordinary meetings to facilitate more discussions</li> <li>• Study. All the topics mentioned so far in the current process of identification of interrelations cannot be sufficiently addressed in meetings of various kinds, but need to be further analysed in a study. Members and observers to both the ITPGRFA and the UPOV should be invited to submit comments to the draft study before its publication.</li> <li>• Seminar. A seminar should be arranged after the study in order to present and discuss the findings. A broad participation of both member countries of the Treaty and the Union as well as farmers and other stakeholders should be invited.</li> </ul>
	<p><i>Explanatory note on Farmers' Rights.</i> The UPOV Council could invite the Governing Body of the ITPGRFA to consider developing voluntary guidelines (explanatory notes) for Article 9 on Farmers' Rights.</p>

Peru	<p>After a review of the documents and on the basis of our experience as an intellectual property office responsible for the System of Plant Variety Protection, we must note that we have had no difficulties in interpreting or implementing this intellectual property mechanism; accordingly, farmers' rights protected under the ITPGRFA are also guaranteed under article 15(2) of the UPOV Convention concerning the optional exception to the breeder's right. Those provisions are also consistent with article 26 of Decision No. 345.</p> <p>Nonetheless, it should be noted that while the ITPGRFA and the UPOV Convention must be mutually complementary, both must also be linked to the national legislation of each Contracting Party, in order to avoid difficulties in their interpretation and implementation.</p> <p>We further recommend the establishment of regional forums on topics similar to those considered during the Symposium, where member countries can discuss and share their experiences in implementing these agreements, with a view to furthering understanding.</p> <p>III. CONCLUSIONS</p> <ol style="list-style-type: none"> <li>1. We agree with the conclusions of the Symposium.</li> <li>2. Member countries should be called on to harmonize their national legislation in light of conventions and agreements.</li> <li>3. We recommend the establishment of regional forums where member countries can discuss and compare their experiences in the implementation of these agreements.</li> </ol>
ESA	<p>6. In addition to the above, we recommend that UPOV continues to actively follow and participate in the Treaty's work pertaining to the interrelations and provides the necessary input (such as GB sessions, Platform for Co-Development; Technical Committee on Sustainable Use and Farmers' Rights, the eventual future development of guidelines or best practices or a toolkit on the implementation of Farmers' Rights etc.).</p>
ISF	<p>ISF suggests that it could be useful to edit the Frequently Asked Questions (FAQs) currently provided on the UPOV website. Particular attention could be for example given to subsistence farmers. Perhaps these FAQs could also be referenced or included in the website of the ITPGRFA.</p>

#### REQUEST BY OBSERVERS FOR PARTICIPATION IN DISCUSSIONS

9. On March 28, 2017, the Association for Plant Breeding for the Benefit of Society (APBEBES) made a request to participate in the ninety-third session of the Consultative Committee, to be held in Geneva on April 6, 2017. In particular, APBEBES requested for its "representatives to be allowed to participate for the entirety of deliberations on the agenda item of interrelations as well as to make a statement on the subject given that APBEBES has made a submission on the matter". This matter was reported to the Consultative Committee by means of Circular E-17/062 of March 30, 2017.

10. Circular E-17/062 reported that, in considering with the President of the Council how to seek to respond to the request of APBEBES, it was noted that there was insufficient time to consider the matter by correspondence. On that basis, it was explained that the Office of the Union would reply to APBEBES that the Consultative Committee would be informed of the request of APBEBES and that the request of APBEBES would be considered at the opening of the ninety-third session of the Consultative Committee and the conclusion of the Consultative Committee communicated to APBEBES shortly thereafter.

11. At its ninety-third session, the Consultative Committee considered the request of APBEBES. The Consultative Committee agreed to invite APBEBES and other observers [the European Seed Association and the International Seed Federation (ISF)] that had provided submissions in reply to Circular E-16/295, to present their views at the relevant part of the item "Interrelations with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)", at its ninety-fourth session. The Consultative

Committee agreed that observers would not be present during the deliberations within the Consultative Committee (see document CC/93/9 "Report on the Conclusions", paragraphs 43 and 44).

12. Following the discussion on this matter, the Consultative Committee noted that there was insufficient time to consider the item of "Interrelations with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)" and agreed to postpone considerations on this item until its ninety-fourth session.

13. *The Consultative Committee is invited to:*

*(a) consider the views to be presented by observers at the ninety-fourth session of the Consultative Committee;*

*(b) consider the responses to Circular E-16/295 received from members of the Union and observers, as reproduced in Annexes I to VII of this document;*

*(c) consider the suggestions for possible further actions concerning interrelations between the ITPGRFA and UPOV, as collated in paragraph 8, with regard to:*

*(i) actions for UPOV,*

*(ii) joint initiatives; and*

*(d) if appropriate, make a recommendation to the Council on possible further actions and on communication of relevant information or proposals to the Governing Body of the ITPGRFA.*

[Annexes follow]

REPLY FROM ECUADOR  
(Original Spanish)

[...]

With respect to your e-mail of December 21, 2016 requesting suggestions for new measures that could be adopted to harmonize the ITPGRFA and the UPOV Convention, for consideration by the Consultative Committee at its ninety-third session, please see my suggestions below.

- Include in the UPOV Convention respect for farmers' rights to keep, use, exchange and sell seed, participation in decision-making, protection of traditional knowledge relevant to the conservation and use of seeds, and the sharing of profits from the use of those seeds.
- For the sake of food security, ease of access to plant genetic resources should be granted on the same terms as stipulated in ITPGRFA Article 12.3(a).
- Consider the possibility of including in the technical questionnaire the origin of biological resources used for new plant varieties.

[...]

[Annex II follows]

## REPLY FROM NORWAY

**Submission by Norway:  
Interrelations between the ITPGRFA and the UPOV Convention**

Norway welcomes the progress so far on the identification of possible interrelations between the ITPGRFA and the UPOV. This topic has been on the agenda in several forums, like the Ad hoc Working Group on Sustainable Use (ACSU) of the ITPGRFA, at the Global Consultation on Farmers' Rights in Indonesia in September 2016 and last, but not least at the joint symposium in Geneva in October 2016. With reference to UPOV Circular E-16/295 of December 20, 2016, Norway hereby submits suggestions for specific issues that should be further addressed in more detail as well as suggestions for specific actions on how to address those issues.

Kindly also consider our previous submissions regarding this process.<sup>3</sup> Attached in this submission are:

- Annex 1: The Co-chairs' summary of recommendations from the global consultation on Farmers' Rights held in Indonesia in September 2016, which will be discussed at the next session of the Governing Body of the ITPGRFA.
- Annex 2: The Chairman's paper is the outcome of informal consultations on possible interrelations between UPOV and the ITPGRFA in Oslo 27<sup>th</sup> – 28<sup>th</sup> March 2014

**Topics that need further attention**

The Symposium contained presentations by several experts and member states of both UPOV and ITPGRFA. The experts focused on the interrelations between Farmers' Rights and Plant Breeders' Rights under the ITPGRFA and the UPOV Convention. Their presentations illustrated that there are a wide range of opinions, perspectives and experiences regarding these interrelations.

Norway proposes to prioritise the following topics to be prioritised in the next stage of the process of identifying possible interrelations:

- ✓ *The saving, using, exchanging and selling of farm saved seeds.* The role of farm saved seeds in farmers' seed systems; the interlinkages between the formal seed system and farmers' seed systems; the contributions of farmers' varieties and improved varieties; the options to allow the use of farm saved seeds under different Acts of the UPOV Convention (incl. interpretation of "private and non-commercial use"); different categories of farmers (scale, role in management of crop genetic diversity, subsistence farming, indigenous peoples and local communities, etc).
- ✓ *Participation.* The Treaty recognises farmers' 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. This topic is also included in the Sustainable Development Goals: *Ensure responsive, inclusive, participatory and representative decision-making at all levels (SDG 16.7).* *What is the status today regarding the participation of farmers and other stakeholders? What options are there to further strengthen the inclusiveness in decision-making in UPOV?*
- ✓ *Access and benefit sharing.* Exploring options for strengthening access: incentives for breeding of new varieties; breeders' exemption; inclusion of more material in the Multilateral system; access to and improvement of (genetic) information of germ plasm collections etc. Exploring options for strengthening benefit sharing: access to improved varieties; disclosure of origin; monetary benefit sharing; recognition of traditional knowledge of farming communities etc.

In addition, there are still topics in the list of various questions provided by the ACSU that also could be further addressed.<sup>4</sup> Also the informal meeting in Oslo in March 2014 outlined several areas for increasing the mutual supportiveness between the ITPGRFA and the UPOV.

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<sup>3</sup> Annex 5: [http://www.upov.int/restrict/edocs/mdocs/upov/en/cc\\_91/cc\\_91\\_6.pdf](http://www.upov.int/restrict/edocs/mdocs/upov/en/cc_91/cc_91_6.pdf)

<sup>4</sup> Annex 1: [http://www.upov.int/restrict/edocs/mdocs/upov/en/cc\\_90/cc\\_90\\_11\\_corr.pdf](http://www.upov.int/restrict/edocs/mdocs/upov/en/cc_90/cc_90_11_corr.pdf)

### **Possible further action**

Norway agrees with the conclusion of the Co-Moderators in the Symposium:

- that it is important to interpret and implement the two treaties in a mutually supportive way in the context of each Contracting Party;
- that it is important for the two organizations to work together and to provide the necessary support;
- and that the Symposium highlights the need to involve all stakeholders in this process.

Norway strongly supports the continuation of the dialog between the ITPGRFA and the UPOV Convention, with participation of all relevant stakeholders. This could be facilitated by different means and Norway suggests the following actions:

- ✓ *Global Consultation.* Encouraging Members of the Union and contracting parties of the Treaty as well as relevant organizations to take initiatives to convene global consultations addressing interrelations between the ITPGRA and the UPOV. Such a consultation could make it possible to have a wide range of farmers and other stakeholders to actively participate, giving priority to sharing views and experiences.
- ✓ *Side events* in conjunction to ordinary meetings to facilitate more discussions
- ✓ *Study.* All the topics mentioned so far in the current process of identification of interrelations cannot be sufficiently addressed in meetings of various kinds, but need to be further analysed in a study. Members and observers to both the ITPGRFA and the UPOV should be invited to submit comments to the draft study before its publication.
- ✓ *Seminar.* A seminar should be arranged after the study in order to present and discuss the findings. A broad participation of both member countries of the Treaty and the Union as well as farmers and other stakeholders should be invited.

Furthermore, different activities and documents that are assisting countries in implementing the ITPGRFA and the UPOV should also bear in mind the interrelations between these international instruments. Norway therefore proposes the following:

- ✓ *Review and update the explanatory notes on exceptions to the breeder's right under the 1991 Act of the UPOV Convention.* These explanatory notes were adopted in 2009 and should be reviewed in order to reflect the results of the process of identifying possible interrelations between the ITPGRFA and the UPOV.
- ✓ *Explanatory note on Farmers' Rights.* The UPOV Council could invite the Governing Body of the ITPGRFA to consider developing voluntary guidelines (explanatory notes) for Article 9 on Farmers' Rights.

[Appendix 1 to Annex II follows]

APPENDIX 1

Annex 1 to Reply from Norway

***Global Consultation on Farmers' Rights, Bali, Indonesia 27th – 30th September 2016<sup>5</sup>***

**The Co-chairs' recommendations to the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture**

Participants at the Global Consultation on Farmers' Rights at Bali, Indonesia, 27–30 September 2016, shared views, experiences and examples of best practices related to the implementation of Farmers' Rights as addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture ('the International Treaty'). They also identified a range of issues that may affect the realization of Farmers' Rights, and discussed a draft list of recommendations to the Governing Body in this regard. Due to the large number of participants, limitation of time and that some participants represented organizations without a mandate to adopt recommendations, it was agreed to request the Co-chairs to formulate recommendations to the GB reflecting their interpretation of the discussions at the Consultation.

The following constitutes the Co-chairs' recommendations to the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture:

- i. Recalling the Resolutions 2/2007, 6/2009, 6/2011, 8/2013 and 5/2015 of the Governing Body of the International Treaty;
- ii. Recalling also the Informal International Consultation on Farmers' Rights in Lusaka, Zambia, in 2007 and the Global Consultation on Farmers' Rights in Addis Ababa, Ethiopia, 2010, which resulted recommendations that were presented to the Governing Body at its sessions in 2007 and 2011;
- iii. Noting that further progress in the implementation of Article 9 on Farmers' Rights is urgent as:
  - a. Farmers' Rights is a cornerstone in the International Treaty; their realization is essential for the conservation and sustainable use of crop genetic resources and traditional knowledge, as farmers are custodians and innovators of crop genetic diversity;
  - b. Farmers' seed systems provide reservoirs of plant genetic resources of great importance to agricultural production in light of climate change and other challenges in agriculture, such as emerging pests and diseases;
  - c. Farmers' seed systems constitute the backbone of agricultural production in many parts of the world, and are thus crucial to food security of local communities in many countries;
  - d. Farmers' seed systems are embedded in local cultures and provide important means to maintain identity and traditions;

the Governing Body is invited to consider:

1. Calling upon all Contracting Parties to adopt legislation, build capacity and create the institutional framework necessary for the realization of Farmers' Rights as provided in the International Treaty;
2. Establishing an *ad hoc* Working Group to guide and assist Contracting Parties in the implementation of Farmers' Rights. The terms of reference for the *ad hoc* Working Group may include:

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<sup>5</sup> The consultation was organized by Indonesia and Norway with assistance from the Secretariat of the International Treaty. It was co-chaired by Dr. Regine Andersen from Norway and Dr. Carlos Correa from Argentina.

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- a. Producing an inventory of national measures that may be adopted to enhance the realization of Farmers' Rights, including the right to save, use, exchange and sell farm-saved seed, subject to national law.
  - b. Developing, in an inclusive and participatory manner, voluntary guidelines on the realization of Farmers' Rights at the national level, having in view submissions of Contracting Parties and other stakeholders;
3. Requesting the Secretariat to provide organizational assistance to the *Ad Hoc* Working Group on Farmers' Rights, in particular to effectively involve in their work farmers' organizations and other relevant stakeholders from all regions;
  4. Inviting Contracting Parties to contribute to the work of the *Ad Hoc* Working Group on Farmers' Rights by organizational and financial support and by facilitating the participation of farmers' organizations and other relevant stakeholders.
  5. Inviting Contracting Parties to provide the Secretariat with electronic copies of legislation and other regulations they have adopted relating to the implementation of Farmers' Rights.
  6. Encouraging Contracting Parties and relevant organizations to take initiatives to convene biannual global consultations on the realization of Farmers' Rights, to bring together all relevant stakeholders, including policy-makers, farmers' and indigenous peoples' organization, government officials, scientists, consumers, public and private research institutions, civil society organizations and the seed industry.
  7. Calling on Contracting Parties to revise, as necessary, seed laws, intellectual property laws and other legislation that may limit the legal space or create undue obstacles for the realization of Farmers Rights.
  8. Encouraging Contracting Parties to take measures, including in their legislation and national policies, to protect and promote traditional knowledge that is relevant to plant genetic resources for food and agriculture (PGRFA), recognizing its dynamic nature and the need for a holistic approach that considers factors including livelihoods, cultures and landscapes.
  9. Adopting procedures to strengthen the participation of representatives of farmers as well as local and indigenous communities that contribute to the conservation and sustainable use of PGRFA in processes and initiatives relating to the International Treaty;
  10. Encouraging Contracting Parties to promote participatory approaches such as community seed banks, community biodiversity registries, participatory plant breeding and seed fairs as tools for realizing Farmer's Rights;
  11. Instructing the Secretariat of the International Treaty to provide inputs about Farmers' Rights to the Commission on Human Rights in the context of the ongoing negotiation of a UN declaration on the rights of peasants and other people working in rural areas.
  12. Requesting the Secretariat of the International Treaty to also provide information about Farmers' Rights, as appropriate, to UN fora dealing with the rights of indigenous people, such as the ILO Convention 169, the, United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Permanent Forum on Indigenous Issues.

Appendix 1, page 3

13. Recommending the United Nations to designate an annual international day to celebrate farmers of all regions who contribute to the conservation and sustainable use of crop genetic resources for food and agriculture and to the achievement of food security.

14. Requesting the assistance of FAO and other relevant international and national organizations in the provision of technical and financial support to national governments and organizations for the realization of Farmers' Rights.

[Appendix 2 to Annex II follows]

APPENDIX 2

Annex 2 to Reply from Norway

**CHAIRMAN'S paper**

Oslo, 27th - 28th March 2014

**Outcome of informal consultations on possible interrelations between UPOV and the ITPGRFA**

A few European delegates to the International Union for the Protection of New Varieties of Plants (UPOV) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) met in Oslo for informal consultations. The meeting was inspired by the decision of the Fifth session of the Governing Body of the ITPGRFA, which requested the Secretary of the Treaty to invite UPOV and WIPO to jointly identify possible areas of interrelations between their respective instruments.

**Major Outcome**

The group considered UPOV and the ITPGRFA to be complementary systems that do not exclude each other. To the contrary, the group felt it would be fruitful for both instruments to identify issues of mutual supportiveness and complementarity. Furthermore, the benefit of increased awareness of the different instruments was stressed. In order to identify how the international instruments could be implemented in support to each other, one starting point could be to point out some relevant challenges for parties of each agreement and then identify how the implementation of the other could contribute to meet those challenges.

**Identified challenges of relevance**

*To achieve the objectives of the Treaty*

- There is need for more funding to meet the objectives of the Treaty, particularly there is a need for more predictable and sustainable user-based benefit sharing.
- The objectives of the Treaty will benefit from more active use of the Multilateral system (MLS) of the Treaty by breeders and the terms of the MLS therefore needs to be attractive and well known by breeders.
- There is a need for further discussion about the elements of Farmers' Rights in the Treaty, the actual status of implementation in different regions and options for better guidance for national implementation where required by Contracting Parties.

*To achieve the objectives of UPOV*

- Plant breeding is crucial to meet the future challenges for sustainable agriculture. Still, there seems to be a lack of sufficient recognition of the importance of plant breeding and the crucial role of breeders.
- Breeder's'exception and non-commercial use are important parts of UPOV. They need to be better known at the international level, for example through wide dissemination of the revised FAQ document prepared by UPOV.
- There is also a need for more awareness on farmers as breeders and how they are recognised by UPOV.
- In the near future, there will be a stronger challenge for users of biological material to meet national and international requirements for disclosure of origin.

**In which ways could the ITPGRFA support UPOV?**

- Increased recognition of plant breeding and breeders?
  - In the Governing Body resolutions and documents
  - By continuing to strengthen the differentiation between plant breeders' rights and patents
  - By increased valuation of the non-monetary benefits of new varieties
- Establish the use of the standard material transfer agreement (SMTA) as a certificate of origin?
- The use of the SMTA will create more certainty for sending material to countries with no protection of plant varieties?
- Sharing examples on best practices of implementing Farmers' Rights in the ITPGRFA?

**How could UPOV support the ITPGRFA?**

- Share information and facilitate discussions on how to improve the participation by breeders in the MLS?
  - by including protected varieties into the MLS
  - by including expired varieties into the MLS
- Contribute to user-based benefit-sharing

Appendix 2, page 2

- Clarify the legal space for farm-saved seeds (exceptions to Plant Breeders' Rights)?
- Clarify the possible consequences of the UPOV regulations on farmers' practices?
- If the 1991 Act of the UPOV Convention is too restrictive for potential new UPOV members, it could be considered to create a less comprehensive system for Plant Breeders' Rights ("UPOV light") as an option to those countries. This will reflect the fact that the different acts of UPOV were developed in parallel with the development of the agricultural sector of OECD countries, while the agricultural sector of many new countries might not be as mature yet.

**Other issues raised**

- Farmers' access to appropriate varieties is an important farmers' right?
- Plant Breeders' Rights are not sufficient to ensure plant breeding for small markets (e.g. organic production) or for markets with low purchasing power, or to create propagating material that give higher priority to secure harvest rather than highest possible harvest?
- Seed regulations can sometimes be seen to pose strict standards and challenges to local farming practices. However, seed regulations can also support farmers by establishing testing requirements appropriate to areas where varieties are suitable for cultivation?
- Seed regulations should allow for the use of heterogeneous material by farmers?

**Possible next steps**

- Participants could share the outcome of this consultation.
- Both secretariats should be encouraged to involve their members to contribute to identify and discuss the possible interrelations between the two instruments, in particular Farmers' Rights and exceptions to Plant Breeders' Rights. The outcome of the above discussions could e.g. be included in a joint publication from the two secretariats and their members.
- Create increased awareness of the respective instruments in each fora e.g. by the organisation of (joint) symposiums/workshops/special events prior to their respective meetings.
- There should also be a similar process of identifying possible interrelations between the ITPGRFA and WIPO focusing on patents and their impact on plant breeding and Farmers' Rights.

[Annex III follows]

REPLY FROM PERU  
(Original: Spanish)

The Directorate of Inventions and New Technologies hereby provides comments and a recommendation regarding the interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the UPOV Convention, as requested by UPOV Circular No. E-16/295, dated December 20, 2016.

**I. BACKGROUND**

ITPGRFA is an independent international agreement established under Article XIV<sup>6</sup> of the FAO Constitution, whose objectives are the conservation and sustainable use of all plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising from their use, consistent with the Convention on Biological Diversity, for sustainable agriculture and food security. In Peru, the National Institute of Agricultural Innovation (INIA) of the Ministry of Agriculture is the national focal point.

With regard to the UPOV System of Plant Variety Protection, the Office for Inventions and New Technologies (DIN) of INDECOPI is the competent national authority responsible for performing the administrative duties set forth in Decision No. 345 of the Commission of the Cartagena Agreement, while the Sub-directorate of Genetic Resources and Biotechnology of the National Institute of Agricultural Innovation (INIA) is responsible for performing the technical tasks set forth in that Decision. It is to be noted that Peru deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants (UPOV Convention) on July 8, 2011, with entry into force on August 8, 2011.

The UPOV sessions held from October 24 to 28, 2016 – in which INDECOPI did not participate – saw a number of activities:

- seminar on propagating and harvested material in the context of the UPOV Convention, held in Geneva (October 24, 2016);
- meeting on the Development of a Prototype Electronic Form (October 24, 2016)
- seventy-third session of the Administrative and Legal Committee, held in Geneva (October 25, 2016);
- meeting of the Working Group on Variety Denominations (October 25, 2016);
- Symposium on possible interrelations between the ITPGRFA and the UPOV Convention (October 26, 2016);
- ninety-second session of the Consultative Committee, held in Geneva (October 27, 2016);
- Working Group on a Possible International System of Cooperation (October 27, 2016); and
- fiftieth ordinary session of the UPOV Council (October 28, 2016).

During the ninety-second session of the Consultative Committee, held on October, 27 2016, Mr. Raimundo Lavignolle, Vice-President of the Council, shared the conclusions of the Symposium on Possible Interrelations between the ITPGRFA and the UPOV Convention, drawing attention to the following:

- the objectives and benefits of both agreements (the UPOV Convention and the ITPGRFA) had been considered;
- it was important for the two agreements to be interpreted and applied such that they were mutually complementary in each Contracting Party;
- to achieve these objectives, it was important for the two organizations to work together and provide each other with the necessary assistance; and
- as emphasized during the Symposium, it was necessary for all interested parties to participate in this process.

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<sup>6</sup> Article XIV: Conventions and agreements.

Accordingly, with regard to the findings presented, the Consultative Committee agreed that UPOV members and observers should be invited to recommend any additional measures that might be adopted in respect of the interrelationship between ITPGRFA and the UPOV Convention, so that the Council could consider them at its ninety-third session.

In UPOV Circular E-16/295, Mr. Peter Button, Vice Secretary-General of UPOV, accordingly invited us to recommend any additional measure that might be adopted with regard to the interrelations between ITPGRFA and the UPOV Convention, establishing a deadline of January 15, 2017.

It should be noted that this report is limited to a reply with regard to the System of Plant Variety Protection, for which this Directorate is the competent authority.

## **II. ANALYSIS**

Although INDECOPI did not participate in the UPOV sessions of October 2016, the following presentations, made during the symposium, were available on the UPOV website:

- i. Overview of the UPOV Convention, prepared by Mr. Peter Button, Vice Secretary-General of UPOV;
- ii. Overview of ITPGRFA, prepared by the Secretary of ITPGRFA;
- iii. Analysis of the interrelations between farmers' rights and plant breeders' rights under the ITPGRFA and the UPOV Convention, prepared by Ms. Szonja Csörgő, Director, Intellectual Property and Legal Affairs, European Seed Association (ESA), Belgium;
- iv. Analysis of the interrelations between farmers' rights and plant breeders' rights under the ITPGRFA and the UPOV Convention, prepared by Mr. Bryan Harvey, Professor Emeritus, Plant Sciences Department, University of Saskatchewan, Canada;
- v. Analysis of the interrelations between farmers' rights and plant breeders' rights under the ITPGRFA and the UPOV Convention, prepared by Mr. Bram de Jonge, Seed Policy Officer, Oxfam Novib, Netherlands;
- vi. Analysis of the interrelations between farmers' rights and plant breeders' rights under the ITPGRFA and the UPOV Convention, prepared by Ms. Sangeeta Sashikant, Legal Advisor, Third World Network International Secretariat, Malaysia;
- vii. Analysis of the interrelations between farmers' rights and plant breeders' rights under the ITPGRFA and the UPOV Convention, prepared by Mr. Stephen Smith, Professor in Agronomy, Iowa State University, United States of America;
- viii. Experiences of the Contracting Parties in implementing the UPOV Convention and the ITPGRFA – Argentina, prepared by Mr. Raimundo Lavignolle, President, National Seeds Institute (INASE);
- ix. Experiences of the Contracting Parties in implementing the UPOV Convention and the ITPGRFA – Canada, prepared by Mr. Anthony Parker, Commissioner, Plant Breeders' Rights Office;
- x. Experiences of the Contracting Parties in implementing the UPOV Convention and the ITPGRFA – European Union, prepared by Ms. Päivi Mannerkorpi, Head of Sector – Unit E2, Plant Reproductive Material, Directorate General for Health and Food Safety (DG SANCO), European Commission;
- xi. Experiences of the United Kingdom in implementing the UPOV Convention and the ITPGRFA,, prepared by Mr. Andrew Mitchell, Head of Varieties and Seeds Policy, Department for Environment, Food and Rural Affairs, United Kingdom;
- xii. Experiences of the Contracting Parties in implementing the UPOV Convention and the ITPGRFA – Kenya, prepared by Mr. Simon Maina, Head, Seed Certification and Plant Variety Protection, Kenya Plant Health Inspectorate Service (KEPHIS);
- xiii. Experiences of the Contracting Parties in implementing the UPOV Convention and the ITPGRFA – Norway, prepared by Ms. Svahild-Isabelle Batta Torheim, Senior Advisor, Department of Forest and Natural Resource Policy, Ministry of Agriculture and Food;
- xiv. Overview of initiatives involving the ITPGRFA and UPOV, prepared by the Secretary of the ITPGRFA; and
- xv. Overview of initiatives involving the ITPGRFA and UPOV, prepared by Mr. Peter Button, Vice Secretary-General, UPOV.

After a review of the documents and on the basis of our experience as an intellectual property office responsible for the System of Plant Variety Protection, we must note that we have had no difficulties in interpreting or implementing this intellectual property mechanism; accordingly, farmers' rights protected

under the ITPGRFA are also guaranteed under article 15(2) of the UPOV Convention concerning the optional exception to the breeder's right. Those provisions are also consistent with article 26 of Decision No. 345.

Nonetheless, it should be noted that while the ITPGRFA and the UPOV Convention must be mutually complementary, both must also be linked to the national legislation of each Contracting Party, in order to avoid difficulties in their interpretation and implementation.

We further recommend the establishment of regional forums on topics similar to those considered during the Symposium, where member countries can discuss and share their experiences in implementing these agreements, with a view to furthering understanding.

### **III. CONCLUSIONS**

1. We agree with the conclusions of the Symposium.
2. Member countries should be called on to harmonize their national legislation in light of conventions and agreements.
3. We recommend the establishment of regional forums where member countries can discuss and compare their experiences in the implementation of these agreements.

Yours sincerely,

*[Signed]*

**Liliana Palomino Delgado**  
**Director, Office for Inventions and New Technologies**  
Lima, January 13, 2017

[Annex IV follows]

REPLY FROM THE RUSSIAN FEDERATION

MINISTRY OF AGRICULTURE OF THE RUSSIAN FEDERATION

STATE COMMISSION OF THE RUSSIAN FEDERATION  
FOR SELECTION ACHIEVEMENTS TEST AND PROTECTION

(State Commission)

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To: UPOV Office

January 27, 2017.

e-mail: [upov.mail@upov.int](mailto:upov.mail@upov.int)

Attention: Mr. P. Button, Vice Secretary-General

Subj: Comments of the Russian Federation in reply to the UPOV Circular E-16/295 of December 12, 2016.

Dear Mr. Button,

Please, note below our comments in reply to the UPOV Circular E-16/295 of December 12, 2016 concerning Interrelations between the ITPGRFA and the UPOV Convention.

Please, forgive us to be late with the comments' sending.

The national legislation of the Russian Federation is in compliance with the provisions of the Convention on Biological Diversity (CBD) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention), to which the Russian Federation joined on April 5, 1995 and April 24, 1998 respectively.

The provisions of these International Conventions provide for the preservation of the world's biodiversity, access to genetic resources for scientific, breeding and educational purposes and granting the breeder's right for new varieties (in accordance with the established requirements, to a certain scope, for a certain limited period, subject to appropriate exceptions to the rights and their exhaustion). It encourages the creation of new more productive varieties of agricultural plants, the equitable sharing of benefits between breeders, farmers and society to increase agricultural production and food security overall.

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) adopted by the FAO Conference of November 3, 2001 and the Standard Material Transfer Agreement *designate* indefinite deductions of the share of benefits from the commercialization of the product created with the genetic material what will *restrict* the use of appropriate genetic material for *breeding purposes*. In our view, ITPGRFA and the UPOV Convention are two conceptually different documents because access to genetic material and the breeder's right shall have different goals and scope.

We believe that sufficient information on this issue is provided in document C/37/20 of October 21, 2003 "Access to Genetic Resources and Benefit-Sharing".

Yours sincerely,

Y. Goncharov,  
Acting Chairman

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[Annex V follows]

REPLY FROM THE ASSOCIATION FOR PLANT BREEDING  
FOR THE BENEFIT OF SOCIETY (APBEBES)

**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 (APBEBES)

On 26<sup>th</sup> 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".<sup>1</sup>

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 92<sup>nd</sup> 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 93<sup>rd</sup> 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

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<sup>1</sup> <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.

APBEBES 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.<sup>2</sup>

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

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<sup>2</sup> 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, APBEBES, 2016, available at [http://www.apbrebes.org/files/seeds/files/PE\\_farmers%20right\\_9-16\\_def-high.pdf?pk\\_campaign=part](http://www.apbrebes.org/files/seeds/files/PE_farmers%20right_9-16_def-high.pdf?pk_campaign=part)

REPLY FROM THE EUROPEAN SEED ASSOCIATION (ESA)



**Mr. Peter Button**  
*Vice Secretary-General*

**International Union for the Protection of  
New Varieties of Plants (UPOV)**  
34, chemin des Colombettes  
CH-1211 Geneva 20  
Switzerland

e-mail: [upov.mail@upov.int](mailto:upov.mail@upov.int)

**Ref:** ESA\_17.0025

**Object:** ESA's input to UPOV Circular E-16/295 – Interrelations between the IT PGRFA and the UPOV Convention

**Brussels, 12.01.2017**

Dear Mr Button,

In response to the circular E-16/295 inviting UPOV members and observers to provide suggestions on possible further actions with regard to the interrelations between the ITPGRFA and the UPOV Convention, by the present letter, ESA would like to make a number of proposals for the consideration of the UPOV Consultative Committee.

We are of the view that the Symposium organized by the Treaty and UPOV on 26 October 2016 provided an interesting forum for a first in-depth exchange on the interrelations and ESA is once again thankful to the organizers for the opportunity to bring the views of the European seed industry into the discussion.

In particular, we think that the Symposium:

- provided a clear overview of the two international instruments, their objectives, achievements and relevant provisions;
- allowed for understanding various different views and perspectives on the interrelations between the two instruments, and in particular on the interrelations between Farmers' Rights on one hand and Breeders' Rights on the other;
- gave an insight to practices in national implementation of both instruments;
- allowed to conclude on the main areas where further considerations and actions may be necessary.

We consider that one of the main conclusions of the Symposium has been that the two international instruments must be implemented in a mutually supportive manner and that such implementation must be ensured on the national level. Even though the UPOV Convention is an international convention, we see an important role for UPOV as an international organization in this. We believe that the 1991 Act of the UPOV Convention is the most suitable existing *sui generis* intellectual property system for the protection of plant varieties and we are convinced that the provisions of the UPOV 1991 Convention can be implemented on the national level in a manner that is in harmony with and supporting the objectives and the implementation of the Treaty, and in particular Article 9 thereof, as

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it allows for the flexibility which is necessary to adapt the legal framework to the national needs and realities.

However, UPOV has an important role in providing the necessary explanation and guidance to its members and beyond in order to enable such a harmonious and mutually supportive implementation.

In the following we would like to propose a number of actions that UPOV could undertake to fulfil this role:

1. Review the current FAQ on the possible acts subsistence farmers can carry out under the provisions of the UPOV Convention, in particular the private and non-commercial use exception. We are of the view that the wording of the current FAQ may be seen as too restrictive of certain practices which are carried out by subsistence farmers as part of their normal livelihoods. The answer to the FAQ could elaborate more on how this exception can be interpreted in a flexible manner to reflect and not to disturb existing practices.
2. In line with the above proposal, we also propose to review the current Explanatory Note on exceptions to the breeder's right (UPOV/EXN/EXC/1 adopted on October 22, 2009), in particular in its content related to the private and non-commercial use exception.
3. We are aware that there is an FAQ on interrelations with other instruments relating to genetic resources which includes considerations on the Treaty. Nevertheless, given the importance of this discussion, we suggest that a specific FAQ is developed focussing only on interrelations between the Treaty and the UPOV Convention and elaborating more on the various ways how UPOV underpins the objectives of the Treaty (conservation and sustainable use as well as facilitated access to plant genetic resources).
4. We think that in the discussions on the interrelations between the Treaty and UPOV several topics have been raised which are not strictly related to UPOV and thus cause confusion. In order to take away misperceptions and clarify misinterpretations, we also propose that UPOV develops some form of an information document which reflects, in particular, on the following matters: (i) there are different types of farmers and they may use different types of varieties or other genetic resources;<sup>1</sup> (ii) not all varieties used by farmers are covered by UPOV-type plant variety protection; (iii) variety registration and seed certification regulations on the one hand and plant variety protection laws (UPOV system) are two different things. These issues are still very often mixed in this discussion and would merit clarification.
5. Last, we propose that UPOV develops training modules on the above matters which should also be included in UPOV's train the trainer program and could also be used in other activities (such as capacity building projects etc.).
6. In addition to the above, we recommend that UPOV continues to actively follow and participate in the Treaty's work pertaining to the interrelations and provides the necessary input (such as GB sessions, Platform for Co-Development; Technical Committee on Sustainable Use and Farmers' Rights, the eventual future development of guidelines or best practices or a toolkit on the implementation of Farmers' Rights etc.).

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<sup>1</sup> In this respect we refer to the table that was presented by ESA during the Symposium:  
[http://www.upov.int/edocs/mdocs/upov/en/upov\\_itgrfa\\_sym\\_ge\\_16/upov\\_itgrfa\\_sym\\_ge\\_16\\_ppt\\_3.pdf](http://www.upov.int/edocs/mdocs/upov/en/upov_itgrfa_sym_ge_16/upov_itgrfa_sym_ge_16_ppt_3.pdf)

Given that ESA has long-term experience in working both on the Treaty and UPOV and has been following this discussion, which is of high importance for breeders, since many years, we would be very much willing to contribute in any form to UPOV's further actions in this field.

We trust that you will submit our above proposals to the ninety-third session of the Consultative Committee for its due consideration.

I remain at your disposal for any question or further information on the above.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Szonja Csörgő', is centered on the page.

Szonja Csörgő

Director IP & Legal Affairs

REPLY FROM THE INTERNATIONAL SEED FEDERATION (ISF)



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Peter Button  
Vice-Secretary General  
UPOV  
34, chemin des Colombettes  
CH-1211 Geneva 20

Nyon, 20 January 2017

Ref: UPOV Circular E-16/295: Interrelations between the ITPGRFA and the UPOV Convention

Dear Mr Button,

Following your circular E-16/295 inviting UPOV Council members and observers to submit their comments regarding the interrelations between the ITPGRFA and the UPOV Convention, ISF, the voice of the global seed industry, would like to provide you with some input. The vision of ISF, supported by its 7500 members around the world, is to build "*a world where the best quality of seed is accessible to all supporting sustainable agriculture and food security*". The sustainable use of plant genetic resources and the effective protection of innovation are the two key contributors to the creation of new varieties with improved agronomic potential.

To better acknowledge the interrelations between the ITPGRFA and the UPOV Convention, it is important to understand the aims and objectives of each Treaty and to provide an exchange platform for the different stakeholders. These goals were accomplished during the Symposium that was held on 26 October 2016. During the Symposium, Secretaries General of each of the ITPGRFA and the UPOV Conventions presented clear overviews of the two international instruments and these relationships, common goals, and complementary strategies to accomplish them were also explained in greater detail by the participants.

The seed sector wants to recall its commitment to the 1991 Act of UPOV which provides for the most suitable intellectual property system for protection of plant varieties. Indeed, provisions of the UPOV Convention balance intellectual property protection with continued access thereby matching breeders' needs and the needs of society as stated in ISF View on IP: "*to achieve the right balance between protection as an incentive for innovation and access to enable others to further improve and innovate*".

Both Treaties aim to achieve food security and sustainable use of plant genetic resources in agriculture, through the continued development of plant genetic resources for the benefit of the society. It is the understanding of the seed sector that both Treaties can and should be implemented at the national or regional level in a mutually supportive manner. UPOV provides the flexibility for countries to implement the Convention in a manner that best fits their social, economic, and agricultural production needs, including the complete exemption of obligations upon subsistence farmers. Examples of the practical implementation of both instruments were presented during the Symposium by several UPOV members. As noted, Contracting Parties play an important role in the consistent implementation of both Treaties at the national level, providing flexibility to match the needs and realities of each country. To support this consistent implementation, ISF wishes to recall the availability of its ordinary members (national seed associations), to participate.

ISF welcomes positively the common initiatives already in place between the ITPGRFA and UPOV. ISF firmly supports the presence of UPOV as an observer at meetings of the ITPGRFA. At this time, ISF has a suggestion that may advance the understanding of the complementary nature of the two Treaties. ISF suggests that it could be useful to edit the Frequently Asked Questions (FAQs) currently provided on the UPOV website. Particular attention could be for example given to subsistence farmers. Perhaps these FAQs could also be referenced or included in the website of the ITPGRFA.

ISF has always played an active role in representing the global seed sector, including by attending the meetings as an observer of both Treaties. ISF is eager to continue in this open-dialog and to participate, in a constructive way, in any subsequent discussions relating to UPOV, the ITPGRFA, and their inter-relationships.

ISF remains at your disposal to further enter into exchanges on this topic and to provide you with any other useful information.

Best regards,



Michael Keller  
Secretary General

[End of Annex VII and of document]