

Panel Explores Relation Between Plant Breeders' Convention And Plant Treaty

16/11/2016 by [Catherine Saez](#), Intellectual Property Watch

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When countries belong to several international instruments, some aspects of those instruments may run contradictory to one another. A symposium held recently by the International Convention for the Protection of New Varieties of Plants (UPOV) sought to explore the interrelations between the convention and the international treaty on plant genetic resources for food and agriculture. Farmers' rights lie at the intersection of the two treaties and while some find the treaties complementary, some others view them as contradictory on farmers' rights. Meanwhile, farmers themselves have been blocked from participating in deliberations.

[The symposium](#) [pdf] on possible interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and UPOV took place on 26 October. It gathered speakers from the two treaties, and representatives of governments, plant breeders, academia, and civil society. Farmers, however, were not represented among the speakers.

Francis Gurry, secretary general of UPOV as well as director general of the World Intellectual Property Organization, opened the symposium. He said the ITPGRFA and UPOV share a common objective, which is to support plant breeding activities, but through different means.

The plant treaty facilitates access to genetic resources, and UPOV encourages innovation and the development of new varieties of plant, by protecting breeders' rights, he said.

Peter Button, vice-secretary general of UPOV, gave a presentation of the UPOV system and said the ultimate aim of UPOV is to benefit farmers and meet the needs of society. He said technological progress and scientific plant breeding have led to a sharp increase in yields.

UPOV currently has [74 members](#) [pdf], covering 93 states, he said, and insisted on the fact that a large spectrum of plant varieties are not covered or regulated by UPOV.

The latest version of the [UPOV Convention](#) (1991) system provides exceptions to the breeders' right in Article 15, to allow further research and has taken into account the specific needs of farmers, he said, including a compulsory exception and for private and non-commercial purposes. and an optional exception to permit farmers to use harvested material on their own holdings of a protected variety.

Farmers, too, develop their own new varieties, he said. "Anybody can be a

breeder,” he added.

Kent Nnadozie, secretary ad interim of the ITPGRFA said agricultural production has to increase by 70 percent to meet the increasing world population by 2050. The treaty has 141 contracting parties, he said, soon to be joined by [United States](#). Bolivia also joined recently.

The treaty has an article (9) dealing with farmers’ rights, he said, but is dependent on countries putting into place the formal structure to implement that right. The treaty provides for the conservation, access to plant genetic resources, and the fair and equitable sharing of the benefits deriving from commercial use of those resources. Benefit-sharing does not just include monetary benefits, but also access to materials and information, and the transfer of technology, Nnadozie said.

Perceived Conflict is False, Breeders Say

Szonja Csörgő, director, Intellectual Property and Legal Affairs, at the European Seed Association (ESA) in Belgium, said the perceived conflict between breeders and farmers’ rights is a “false conflict.”

Plant breeding is time consuming and costly, she said, with between 8 to 12 years to get a new variety. There is a need for a system providing sufficient incentive to continue this innovation and provide return on investments, she said.

Farmers’ rights as presented in the plant treaty include the protection of traditional knowledge, the right to benefit-sharing, their participation in decision-making, and the ability to save, use, exchange, and sell farm-saved seeds, subject to national laws, she noted. On the participation of farmers in decision-making it is a matter of implementation at the national level, she said.

There should not be article-by-article scrutiny, she said, but to see how the two instruments fit together and how they can coexist.

On interrelations between the two instruments, Csörgő said UPOV has no relevance when it comes to the protection of traditional knowledge in the context of farmers’ rights, neither does the matter of the participation of farmers in decision-making at the national level. But, she added, the participation of farmers in the decision-making of UPOV is ensured.

The right to benefit-sharing is also provided by the UPOV system, she said, notably through the breeders’ exemption. On the right to save, exchange and selling farm-saved seed, there are different categories of farmers, she said. If farmers use protected plant varieties, there is an interrelation between the two instruments, and there UPOV becomes relevant. In this case, there is a need to know for which purposes those varieties are used to know if there might be a conflict between the two instruments, she said.

Academics: Need to Improve Yields

Bryan Harvey, professor emeritus, Plant Sciences Department, University of Saskatchewan, Canada, said in the face of a growing population, diminishing arable land, and the hurdles of climate change, there is a need to supply human kind with a secure supply of nutritious food.

He underlined the fact that no country can be self-sufficient, and breeding

programmes must have financial resources to exist. As for the interrelations between the two instruments, he said they both recognise the special nature of crop genetic resources and their vital role in feeding humankind.

Harvey also commented on the difficulty to understand the source of plant genetic resources, and given the global spread of those resources over the centuries, to pinpoint to which group of people might have contributed more to the species.

Stephen Smith, professor in agronomy, Iowa State University, United States, insisted on the need to improve agricultural yields, and the importance of improved seeds to save land. Mentioning that the US is about to become part of the ITPGFA, he said the UPOV system is quite flexible and its flexibility depends upon how individual countries implement it.

Civil Society: Let Small Farmers Use Farm-Saved Seeds

Bram de Jonge, seed policy officer at Oxfam Novib, the Netherlands, said the farmer seed system provides most of the total food crop used by farmers. It is a very important system for securing seed security and food security, he said. Small farmers would like to access certified seeds, he added, but agro-dealers might be miles away, and the seeds are mostly unaffordable.

If the definition of subsistence is restricted to farmers cultivating land for their own use, it is invalid, said de Jonge. "No farmer in the world would be a subsistence farmer," he said. "Any farmer after a good season would try to sell the harvest surplus." So he asked where the line be drawn.

He urged UPOV to establish an explicit balance between farmers' rights and plant breeders' rights. The ability to save, exchange and sell farm-saved seeds is the main interface between the ITPGRFA and UPOV, he said.

De Jonge remarked on the importance of including farmers in discussions and on the fact that the symposium did not include any representative of small farmers.

Sangeeta Shashikant, legal advisor for the non-profit Third World Network, said farmers' rights as described in the ITPGRFA cannot be fully implemented in view of the obligations required by UPOV91, which is the latest version of the convention.

She cited two examples where national laws of UPOV91 candidates were found not in conformity with UPOV91. According to her, UPOV asked Malaysia to delete the exception provided by the Malaysia Protection of new Plant Varieties Act of 2004 reading "any exchange of reasonable amounts of propagating materials among small farmers," as it was incompatible with the 1991 Act. She added that the same happened with the Philippines plant variety protection law.

Shashikant said the conflicts between the two instruments need to be recognised and addressed, in particular by allowing smallholder farmers to freely save, use, exchange and sell farm-saved seed and propagating material, and allowing governments to put in place provisions and mechanisms to recognise the contributions of farmers, to protect traditional knowledge and to implement fair and equitable benefit sharing, including disclosure of origin and evidence of prior informed consent.

Parties of the ITPGRFA should design plant variety protection systems that are more suited to their local conditions, she said.

She mentioned the FAO [Voluntary Guide](#) for National Seed Policy Formulation of 2015. According to the FAO's website, the guide explains what seed policies are and how they differ from seed laws, and it describes the participatory process of seed policy formulation, the nature and layout of seed policy documents, and the key elements contained in seed policies.

Farmers Not Invited


Guy Kastler from La Via Campesina International, a global association of small farmers, speaking from the audience, said La Via Campesina asked to join the symposium as a speaker, since the symposium was going to discuss farmers' rights, but did not get any answer to that request.

He remarked on the "propaganda" saying that farmers' seeds yields are disastrous. If farmers had not selected and improved varieties, yields would have remained the same as a century ago, he said. There are multiple examples showing that farmers' seeds, in particular through organic agriculture, led to the same yields as certified seeds. However, they cannot meet UPOV's criteria of stability and homogeneity, he added.

He then underlined "a threat" from new patents on genetic information. This is a major threat for farmers because it allows patenting of the seeds they have been selecting and are cultivating in their fields. It is also a threat for the multilateral treaty system, he said because protection granted by these patents extend to all genetic resources in the multilateral system. It is also a threat for UPOV, he said, as some patents will cover some genetic information that might prevent a breeder to protect a new variety.

Speakers from Argentina, the European Union, Kenya, members of UPOV91, and Norway, still operating under UPOV78, described their experiences in implementing the UPOV Convention and the ITPGRFA in their country or region.

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