



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



**INFORMATION ON POSSIBLE INTERRELATIONS BETWEEN THE
INTERNATIONAL TREATY AND RELEVANT INSTRUMENTS OF
UPOV AND WIPO**

Note by the Secretary

*This document contains the submission by **The Development Fund - Norway** on possible interrelations between the International Treaty, in particular its Article 9 (Farmers' Rights), and the relevant instruments of UPOV and WIPO.*

*The submission is presented in the form and language, in which it was received on **28 November 2014**.*

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**SUBMISSION OF VIEWS AND EXPERIENCES ON THE
IMPLEMENTATION OF FARMERS' RIGHTS**

NAME: Teshome Hunduma Mulesa

ORGANIZATION: The Development Fund - Norway

WEBSITE: <http://www.utviklingsfondet.no/>

EMAIL: post@utviklingsfondet.no

OTHER CONTACT DETAILS:

Utviklingsfondet

Mariboegs gate 8, 0183 Oslo

Tel.: +47 23 10 96 00

STAKEHOLDER GROUP: Civil Society Organization

SUBMISSION SENT ON BEHALF OF: The Development Fund - Norway

Submission of information on interrelations between the International Treaty, especially its Article 9 on farmers' rights, and relevant instruments of UPOV and WIPO, pursuant to Resolution 8/2013

The International Treaty recognizes the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centers of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world. While the implementation of Farmers Rights is left to national laws and regulations, the treaty indicates the following measures to be taken for the implementation of farmers' rights at national level. These are:

- Farmers' right to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate;
- The protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- The right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and
- 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.

The Development Fund of Norway (DF) supports a program on Agricultural Biodiversity and Climate Change Adaptation in Africa, Asia and Central America. Participatory varietal development, community seed banking and community based seed production and distribution is the core of our work. In addition the program provides capacity building through training community facilitators, technical staff and lead farmers on proven Community Based Biodiversity Management Tools developed by Bioversity International and DF's partners. DF is also collaborating with Global Forum on Agricultural Research (GFAR) and its partners to build capacities of stakeholders on farmers' rights implementation at national level. Please refer to our submission in 2012 for more information:

http://www.planttreaty.org/sites/default/files/Development%20Fund%20FR_submissions.pdf

The Treaty doesn't define farmers' rights. As defined by the project on farmers' rights implemented at Fridtjof Nansens Institute, farmers' Rights consist of the customary rights of farmers to save, use, exchange and sell farm-saved seed and propagating material, their rights to be recognized, rewarded and supported for their contribution to the global pool of genetic resources as well as to the development of commercial varieties of plants, and to participate in decision-making on issues related to crop genetic resources.

Though the above definition and measures suggested by the Treaty to promote farmers' rights depicts the realities' of farmers in the management of PGRFA on the ground, farmers and their stakeholders face a number of challenges including limited capacity to conserve and sustainably use PGRFA and lack of legislations that provide incentives for their work.

The Development Fund is happy that the Governing Body adopted Resolution 8/2013 to bring the issue of farmers' rights under the ITPGRFA and breeders' rights under the UPOV system as well as WIPO's role to promote farmers' rights to the fore front. We believe that a dialogue between these inter-governmental organizations will contribute to a common knowledge for contracting parties on how to provide incentives for farmers to continue to develop conserve and sustainably use PGRFA. With this the Development Fund of Norway would like to provide information on areas of interrelations between the ITPGRFA's Article 9, and relevant instruments of UPOV and WIPO that we see is important to look into to promote implementation of farmers' rights at national level based on our experience in Africa, Asia and Central America.

UPOV Convention

The UPOV regime was conceived for the agricultural systems and the modalities of seed production prevailing in the developed countries i.e. commercial seed system. In developing countries it is still the informal seed sector taking the lions share to meet the seed demand. Farm-saved seeds account for about 80 % or more of farmers' total seed requirements. Though at the beginning, only developed

countries dominated the UPOV membership, developing countries are now increasingly joining UPOV because of the pressure from developed countries and donors to include intellectual property protection on new plant varieties as part of the trade agreement package. Sometimes WTO's TRIPS agreement is used as an argument in order for developing countries to provide plant variety protection in trade agreements.

In principle, countries should be able to choose whether to provide or not an intellectual property protection to plant varieties as well as what form of protection they confer, depending on the nature of their agriculture and seed supply systems. However, countries who want to join UPOV have no other choice than following UPOV's standardized and rigid modelling of national laws. The UPOV Convention has been revised several times and all of its acts from 1961, 1972 and 1978 are closed for membership and countries who would like to join UPOV can only become member to UPOV 91. UPOV 91 narrows down the genetic diversity in the fields by suppressing farmers' traditional practices of saving and exchanging plant materials as it significantly expanded and strengthened plant breeders' rights at the expense of farmers' rights to save, exchange and sell seeds from protected varieties by removing 'the farmers' privilege', a key component of Farmers' Rights under UPOV 78. The limited (optional) exception allowed by UPOV 1991 would not allow national laws to permit 'small scale farmers to freely exchange or sell farm-saved seed/propagating material even if the breeders' interests are not affected (e.g. small amounts or for rural trade). UPOV, therefore, weakens States' capacities to comply with other legal obligations, such as compliance obligations regarding farmers' rights.

Countries have no obligation to Join UPOV 91 under WTO. It is not in support of UPOV's mission to benefit society if UPOV continues to close membership for its 1978 act and developing countries can only join UPOV 91.

There are a number of processes and capacity building going on to promote the UPOV convention and the formal seed sector. For instance, the Common Market for Eastern and Southern Africa (COMESA) Seed Trade Harmonization Regulations and the African Regional Intellectual Property Organization (ARIPO) regional harmonized policy and legal framework on Plant Variety Protection (PVP), are heavily promoting UPOV Convention with out addressing issues of farmers' right and the informal seed sector. There is no such big process to promote farmers rights to support the informal seed sector which is the dominant source of planting material on the continent. Besides, the application of a harmonized PVP regime harmonized to UPOV standards to countries with significant differences in their agricultural systems is a conflicting approach to law making for public interest and undermine the farmers' right to participate on decision making as they are rarely represented in the centralized process.

Flexibilities should be made available in order for developing countries to effectively implement farmers' rights and continue their work in the management of PGRFA and its sustainable use. In order to identify such flexibilities in the future, an analysis that looks into the requirements of UPOV 78 and 91 separately should be done and, it should identify the impacts of these requirements on implementation of farmers' rights at national level. Another issue to be raised as an area of interrelation with UPOV is about farmers' rights to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture. UPOV could not accept conditions like providing information concerning the breeding history and genetic origin of the variety when granting protection for new plant varieties. These makes access and benefit sharing under the multilateral system of the ITPGRFA very difficult and hamper development of new plant varieties for adapting to changing climate.

WIPO

After 10 years of negotiation the proposal from developing countries submitted to the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) regarding a disclosure obligation for genetic origin of IPR protected products has not reached on international legal instruments. In this regard, the processes going on in WIPO and the contribution of WIPO's technical assistance to promote farmers' rights especially on the protection of traditional knowledge and equitable sharing of benefits arising from the utilization of plant genetic resources for food and agriculture need to be analyzed.