



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 **UK Food Group** 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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28 November 2014



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Dear Dr Bhatti,

**Interrelations between the International Treaty, especially its Article 9,
and relevant instruments of UPOV and WIPO, pursuant to Resolution 8/2013**

We recognise the Treaty (ITPGRFA) as a potentially important legally-binding instrument for the realisation of Farmers' Rights. In its preamble it affirms

“that the rights recognized in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers' Rights, as well as the promotion of Farmers' Rights at national and international levels”

In this context, the Treaty's Contracting Parties should be examining the extent to which these rights are respected or undermined by other international instruments such as UPOV and WIPO and, indeed, by trade and commercial agreements and technologies that restrict use of PGRFA on-farm. We would support a detailed review by Contracting Parties and the Secretariat that assesses the potential impact on Farmers' Rights, as set out in the Treaty, by the UPOV Convention's requirements, WHO decisions, patent laws relevant to varietal and genetic trait protection, the intellectual and seed variety related clauses in trade agreements, and restrictive commercial agreements and technologies.

We also recall that the interpretation of Article 12.3(d) has never been fully resolved by the Governing Body:

“Recipients shall not claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received from the Multilateral System”.

Nor has Article 27.3 b of the WTO/TRIPS agreement been properly reviewed, in order to clarify what flexibilities in a *sui generis* system, especially with regard to the realisation of Farmers' Rights, are acceptable to WTO members:

“(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.”

This lack of clarity also hampers the realisation of Farmers' Rights.

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The UK Food Group is the main network of NGOs in the UK working on global food, agriculture and hunger issues, including development, environment, farmers and academic groups.

ACORD, Action Against Hunger, ActionAid, Agricultural Christian Fellowship, Baby Milk Action, CAFOD, Centre for Food Policy, Christian Aid, Compassion in World Farming, Concern Universal, Concern Worldwide, Consumers International, EcoNexus, Excellent Development, Find Your Feet, Friends of the Earth, Gaia Foundation, Garden Africa, Garden Organic, Global Witness, IIED, Mercy Corps, MRDF, nef, Oxfam GB, Permaculture Association, Pesticide Action Network UK, Pig Business, Practical Action, Progressio, Results UK, Save the Children, Scottish Crofting Federation, Self Help Africa, Send a Cow, Soil Association, Susila Dharma, Tearfund, Tree Aid, War on Want, WDM, Women's Environmental Network, World Family, WWF-UK
observers: Food Ethics Council, Greenpeace, ODI, RSPB, Sustain

UK Food Group is an independent network within
Sustain: the alliance for better food and farming (Charity No. 1018643; Company Reg. No. 02673194, England)

A detailed inventory of national and regional laws and regulations, of the relevant commercial environment and research activities, that impact on farmers' access to, and sustainable use of, PGRFA could help the Governing Body in understanding the current situation and might help it address the impediments that these present to the full realisation of Farmers' Rights and what steps are required internationally to ensure compliance.

The challenge of implementing Farmers' Rights is clearly significant but the GB5 Decision on Farmers' Rights provides a useful contribution to realising this important commitment of the Treaty.

The 1991 UPOV Convention, for reasons set out in our earlier letter, and reinforced by submissions made by farmers' organisations in response to this call for contributions, is an organisation whose statutes and activities most probably need to be substantially changed if it were to have any possible contribution to make to the realisation of Farmers' Rights.

Some farmers in the UK, members of the UK Food Group, are concerned that the restrictions in re-use limit their ability to adapt seeds to their local environment and markets. The inability of the Convention to provide regulations, which must be implemented by its members, for the defence of local varieties and diverse plant populations that are essential for local food security, is another impediment. Others in the UK Food Group who work with farmers in other regions see the impact of such norms in reducing availability and access to farm-saved seed. We are also concerned that the Convention gives greater relative power to commercial plant breeders, who mainly produce seeds for industrial production, rather than farmer breeders whose seeds are an important contribution to the sustainable use of PGRFA and to local food provision. It is also an issue that the Convention might limit access to publicly stored PGRFA in national and international collections and discourage the *in situ* and on-farm conservation of PGRFA. There are further concerns that biopiracy can also be facilitated, including through agreements being developed by WIPO, and made possible by ineffective implementation of the Treaty's articles.

The priority for the Treaty would therefore seem to be to address these fundamental issues, clarify the interpretation of Article 12.3(d), call on the WTO to resolve the interpretation of its contested TRIPS article, and resolve to implement its articles on Farmers' Rights and Sustainable Use and the key aspects in the MLS concerning biopiracy.

The identification of "interrelations" with UPOV and WIPO, should therefore be an objective assessment of, and explication about, the impacts, including negative, that those organisations' decisions and regulations can have on the realisation of Farmers' Rights. The assessment could also identify what would need to change in order that the Treaty's commitments can be realised. The findings of such an assessment would be informative to a wide range of interested parties and could help to inform better the Governing Bodies of the Treaty, UPOV and WIPO

This would, we believe, be a more useful interpretation of Para 3 of the GB5 Decision on Farmers' Rights. The process proposed by the Secretariat for taking this forward would therefore clearly need reorientation.

Finally, we are concerned that the Treaty Secretariat should be following up on all aspects of the Farmers' Rights Decision at GB5 and in monitoring the extent to which Contracting Parties are fully implementing the Treaty, especially with regard to the realisation of Farmers' Rights. In addition, we are very concerned that benefits are not flowing from the use of PGRFA by the plant breeding industry and commercial growers to those farmers who are conserving and sustainably using PGRFA on-farm. The operation of the MLS and the exemptions provided to materials protected by the 1991 UPOV Convention are clearly not facilitating the transfer of benefits. The realisation of Farmers' Rights requires resources.

Yours sincerely,

UK Food Group