



Food and Agriculture
Organization of the
United Nations



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

**Views, Experiences and Best Practices as an example of possible options for
the national implementation of Article 9 of the International Treaty
Submitted by Contracting Parties and Relevant Organizations**

Note by the Secretary

This document presents the views, experiences and best practices on the implementation of Farmers' Rights, as set up in Article 9 of the International Treaty submitted by Canada on 28 June 2018.

The submission is presented in the form and language in which it was received.

Agriculture and Agri-Food Canada
Science and Technology Branch

June 28, 2018

Mr. Kent Nnadozie
Secretary, International Treaty on Plant Genetic Resources for Food and Agriculture
Viale delle Terme di Caracalla, FAO
00153 Rome, Italy

Via e-mail: PGRFA-Treaty@fao.org
Kent.Nnadozie@fao.org

Re: Notification NCP GB8-05 Farmers' Rights

Dear Mr. Nnadozie,

Thank you for the opportunity to share Canada's views, experiences, and best practices, with respect to national implementation of Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), in response to the Treaty's Resolution 7/2017 and the Secretariat's invitation dated 9 May 2018. Canada recognizes that no country is self-sufficient in plant genetic resources, and that all countries are dependent on access to crop genetic diversity. As such, the ITPGRFA is a very important international instrument to support sustainable agricultural productivity and global food security. It is important to note that the preamble of the ITPGRFA speaks directly as to how the Treaty is intended to be interpreted and implemented by all Contracting Parties:

"Recognizing that this Treaty and other international agreements relevant to this Treaty should be mutually supportive with a view to sustainable agriculture and food security" and "Affirming that nothing in this Treaty shall be interpreted as implying in any way a change in the rights and obligations of the Contracting Parties under other international agreements"

Furthermore, Article 9 ITPGRFA specifically states that:

"the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments."

Canada is of the view that this is an important consideration, as individual Contracting Parties require the flexibility, based on their own needs and priorities, to best apply the realization of "farmers' rights" within their respective jurisdictions. With these important principles in mind, Canada wishes to share the following information regarding our experiences and practices implementing Article 9 of the ITPGRFA:

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Article 9.2 (a): Protection of traditional knowledge associated with plant genetic resources for food and agriculture (TKa)

Canada is of the view that all communities create culture and some of these cultural expressions may be considered traditional knowledge (TK). Indigenous communities in Canada possess TK that has been cultivated through cultural expression and interaction with their environment. This includes TK on plant genetic resources for food and agriculture. This knowledge evolves over time and may differ from one community to the next. To a large extent, decisions regarding what is protected TK are taken in Canada by key individuals and/or the community as a whole. In many cases, how an indigenous community achieves prior informed consent for access to TK within its own community is privileged information, and therefore not for disclosure to users, the public, governments or the Contracting Parties of the Plant Treaty. As such, Canada's perspective is that each Contracting Party is best positioned to understand and determine the measures necessary to protect TK within their respective jurisdictions. In Canada, examples of such protection can be found in relation to copyright law, patent law, industrial design law, trademark law, and indigenous law. Additionally, trade secrets law may be of use to holders of traditional knowledge if such knowledge is susceptible to commercial application. Canada supports a non-prescriptive approach which allows each Contracting Party flexibility in determining the most appropriate measures to protect TK within their jurisdiction, unique to their own situation and set of circumstances.

Article 9.2 (b): Equitably participation in benefit sharing arising from utilization of genetic resources

Canadian farmers equitably participate and share in the benefits arising from the use of plant genetic resources. Canadian plant breeding programs, both public and private, develop new crop cultivars that are better suited to the challenges of overcoming pests and diseases, ensuring environmental sustainability, adapting to climate change and creating new market opportunities. The ongoing release of new and improved varieties helps ensure the economic and ecological sustainability of Canadian farmers. In addition, many research projects conducted in the public sector are aimed at increasing the diversity of crop species and enhancing agro-ecosystem diversity. The development of new and improved cultivars from both public and private sectors depends in part upon access to plant genetic resources under the Treaty's Multilateral System, in particular from the "Plant Gene Resources of Canada (PGRC)" gene bank maintained by Agriculture and Agri-Food Canada (AAFC). The ongoing access to genetic resources for the steady development of new and improved varieties for Canadian farmers is also dependent on our domestic *Plant Breeders' Rights Act*. In particular, Section 5.2 (1) (c) of this *Act*, in conformity with Article 15 (1) (iii) of the 1991 *Act of UPOV* known as the "breeders' exemption", ensures that protected varieties are available to breed new varieties without requiring authorization of the rights holder. The Treaty recognizes the importance of the UPOV "breeders' exemption" in Article 13.2. (d) (ii) which states that genetic resources should be "*available without restrictions to others for further research and breeding...*". Further interpretation of this article is elaborated in ITPGRFA guidance material:

"Insofar as the breeder's exemption clause allows for further agricultural research and breeding, a PBR can be interpreted as not restricting access to PGRFA according to the terms of the International Treaty (FAO, 2011)

The ITPGRFA does not operate in isolation, and other international instruments such as UPOV play a significant role in improving and disseminating genetic resources globally. Consequently, Canada is of the view that the ITPGRFA and UPOV should be viewed as complementary instruments, with ultimately complementary objectives. By implementing the ITPGRFA and UPOV in a “mutually supportive” manner, both instruments can effectively contribute to the development of new and innovative plant varieties. Our Canadian farmers are highly dependent on the continuous release of new and improved varieties to ensure their viability and prosperity. Therefore our farming community is the primary beneficiary resulting from the continuous accessibility and utilization of plant genetic resources.

Article 9.2 (c): Participate in decision making related conservation and use of genetic resources

In Canada, farmers play an instrumental role in decision making, not solely with respect to plant genetic resources, but in the development and implementation of all agricultural policies. The Government of Canada employs several mechanisms for farmers participation in parliamentary, legislative, and regulatory processes, as well as, policy development and program implementation. The following is a non-exhaustive list of the ways in which farmers participate in agricultural decision making process:

Parliamentary

Standing Committee on Agriculture and Agri-Food (SCAAF) is a committee established by Standing Orders of the House of Commons to examine any issue related to Canada’s agriculture and agri-food industry. Farmers are afforded a venue to provide testimony and share their perspectives on agriculture matters under examination by the Committee.

Standing Committee on Agriculture and Forestry (SCAF) is similar to SCAAF, but is the Senate committee mandated to examine issues related to Canada’s agriculture and forestry sectors. Again, similar to the House of Commons committee, Farmers are afforded a venue to provide testimony and share their perspectives on agriculture matters under examination by the Committee.

Legislative

Plant Breeders’ Rights Advisory Committee (PBRAC) is a legislatively mandated committee with the function of advising the Commissioner in the application of the *Plant Breeders’ Rights Act*. Section 73 of the Act, requires the Minister of Agriculture to constitute a committee from representatives of “*breeders of plant varieties, dealers in seeds, growers of seeds, farmers, horticulturists...*”.

Regulatory

Canada Gazette is the official newspaper of the Government of Canada and publishes new statutes, regulations, proposed regulations, decisions of administrative boards and government notices. It serves as a vehicle which facilitates the process of engaging the public in voicing any concerns about proposed regulations. All Canadians, including farmers, can actively contribute to the regulatory process by sending their comments or concerns on the subject under consultation, to the appropriate department or agency.

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Agricultural Programming

Agriculture Value Chain Roundtables bring together federal/provincial/territorial policy makers with industry leaders across the value chain, including input suppliers, farmers, processors, food service industries, retailers, traders, and associations, to enhance the competitiveness and profitability of various segments of the agricultural sector. The federal government has established sixteen agriculture value chain roundtables, including one specifically for discussing seed related matters.

Canadian Agricultural Partnership is an agreement that outlines the policy and program priorities in the agricultural sector that will be delivered by the federal, provincial, and territorial governments during the five-year period 2018-2023. The Government of Canada consulted with farmers and others on its policy and programming framework.

Variety Registration – Recommending Committees (VR-RC) are committees which test, evaluate the merit of, and recommend varieties for registration in Canada (e.g. cereals, pulses, oilseeds, etc.). Variety registration by the Canadian Food Inspection Agency (CFIA) is a national listing of varieties which meet value for cultivation and use criteria, and can be legally sold in Canada. Each recommending committee reflects the full value chain, including farmers, in crop specific variety development.

It is Canada's view that input from the farm community forms the basis of effective legislative, regulatory, and policy initiatives designed to advance the agriculture and agri-food sector. In our situation, farmers are involved in every step of the process, and are the direct beneficiaries of these initiatives, including matters related to plant genetic resources. Furthermore, Canada supports the view that Contracting Parties require flexibility when implementing Article 9.2 (c). A non-prescriptive approach is useful, as each Contracting Party is in the best position to determine the most appropriate approach for farmer involvement in their decision making processes related to genetic resources.

Article 9.3: Right to save, save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate

Canada has experienced a successful implementation of Article 9.3. Farmers have the ability to save, use, exchange, and sell farm-saved seed, however consistent with Article 9.3 this is subject to domestic laws, namely the *Plant Breeders' Rights Act* and the *Seeds Act*.

Plant Breeders' Rights (PBR) are a form of intellectual property rights protection by which plant breeders can protect their new varieties. The Canadian *PBR Act* includes the "farmers' privilege" which is an exception to the breeder's right, allowing farmers to save and re-plant farm-saved seed harvested from protected varieties on their own land without requiring permission from the holder of the right. Under this law, a farmer may not sell or exchange seed of a protected variety without authorization from the holder of the PBR. The genetic material as such, is, however, freely available for use in breeding, research and for education, and such available without restrictions in the sense of the ITPGRFA. Canada is a member of the International Union for the Protection of New Varieties of Plants (UPOV) and ratified the 1991 Act of the Convention in 2015.

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The *Seeds Act* is a pre-market assessment function performing a “gate keeper” role by allowing oversight of the varieties available in the marketplace. The purpose of variety registration is to ensure that health and safety requirements are met and that information is available to regulators to prevent fraud, as well as facilitating seed certification, and the international seed trade. Most agricultural crops are subject to variety registration, a national listing of varieties which meet value for cultivation and use criteria, and can therefore be legally sold in Canada. Notable exceptions include corn, chickpeas, sorghum, food-type soybeans and turf grasses.

It is important to note that varieties subject to the *Plant Breeders’ Rights Act* and *Seeds Act* only represent a fraction of the total plant genetic resources available in the Canadian context. Once PBR protection has expired (or is surrendered voluntarily) for a variety, it is considered “public domain” and the genetic material can therefore still be used without restriction. Furthermore, consistent with Article 12 of the ITPGRFA, once PBR protection has been surrendered or has expired for many of the publically bred varieties, they can be then released into the PGRC gene bank reference collection and subject to the Multilateral System.

It is our hope that this information will prove useful to the deliberations of *Ad Hoc* Technical Expert Group on Farmers’ Rights (AHTEG), and we request to be informed if the Secretariat will publish all views submitted on the Treaty website. Once again, thank you for the opportunity to share Canada’s perspectives and experiences on Article 9 of the ITPGRFA.

Yours sincerely,



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