



INTERNATIONAL CONTRADICTIONS ON FARMERS' RIGHTS:

The interrelations between the International Treaty, its Article 9 on Farmers' Rights, and Relevant Instruments of UPOV and WIPO

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FOREWORD

The fifth session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (the International Treaty), which was held in September 2013 in Oman, adopted Resolution 8/2013 on "Implementation of Article 9, Farmers' Rights." The Resolution requests the Secretary of the Treaty "to invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments." This resolution was motivated by concerns that the activities of UPOV and WIPO were not supportive of the implementation of Article 9 of the International Treaty on "Farmers' Rights," or may even subvert those rights.

Third World Network and the Berne Declaration have been actively following developments in all three forums, and concluded long ago that there is an urgent need to examine the activities of UPOV and WIPO and their impact on the implementation of farmers' rights. As such, Third World Network and the Berne Declaration have been keenly monitoring the implementation of the Resolution.

In January 2014, in a letter to the UPOV Secretariat regarding the implementation of the FAO Resolution, the Treaty Secretary suggested a "joint publication on interrelated issues regarding innovation and plant genetic resources." However, civil society and farmer organizations protested, pointing out that the proposal would not be in line with the text of the Resolution. A copy of the protest letter sent to the Secretary is attached as Annex of this paper.

In the follow-up to this protest, the Secretary changed the process to implement the Resolution, and published a notification inviting "Contracting Parties, stakeholders, and others to share any relevant information on the identification of interrelations between the International Treaty and relevant instruments of UPOV and WIPO pursuant to Resolution 8/2013."

In response to the invitation, Third World Network and the Berne Declaration submitted detailed comments to the Treaty Secretariat on the matter. The submission was supported by the African Centre for Biosafety, now African Centre for Biodiversity (ACB), and Southeast Asia Regional Initiatives for Community Empowerment (SEARICE). This paper is predominantly based on this submission by Third World Network and the Berne Declaration.

It is the view of Third World Network and the Berne Declaration that for a thorough and reliable analysis of the interrelations between the International Treaty, UPOV,

WIPO, and their respective international instruments with regard to the implementation of farmers' rights, it is important for the assessment to be conducted by an independent panel of experts who are familiar with farmers' rights, to be evidence-based, and to be supported by a transparent and participatory process including public hearings.

In the two years since the adoption of the FAO Resolution, the Treaty Secretariat has not been able to conclude the implementation of the Resolution. A major hurdle in its effective implementation is whether UPOV and WIPO are willing to subject their instruments and related activities to an independent assessment as mentioned above.

Given this context, it will be imperative for the 6th Governing Body to re-emphasize the importance of analyzing the interrelations between the Treaty, UPOV and WIPO with regard to the implementation of farmers' rights, and to call for an independent assessment as suggested above, commissioned and led by the International Treaty.

We hope that this paper will help identify the core questions that have to be addressed by such an assessment. Ample literature has raised concerns over the contradictions between the International Treaty that obligates realization of farmers' rights and the activities of Geneva-based intellectual property institutions, where such rights are not fully recognized and in fact may be undermined. We are of the view that until and unless there is independent assessment of the interrelations and measures taken to address these contradictions, and to fully realize farmers' rights, the key objectives of the International Treaty cannot be achieved.

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INTRODUCTION

“Farmers’ rights” is a core component of the International Treaty on Plant Genetic Resources for Food and Agriculture (hereafter referred to as “the Treaty”), and as such its full implementation is a prerequisite for achieving the Treaty objectives. However, there is much concern that the activities of UPOV and WIPO are not supportive of farmers’ rights, and even undermine those rights, thereby hindering implementation of the Treaty provisions.

At the fifth session of the Governing Body of the International Treaty on Plant Genetic Resources, which was held in September 2013 in Oman, Resolution 8/2013 was adopted. It requested the Secretary of the Treaty, among other things, “to invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments.”¹

Thus the work on Resolution 8/2013 and any follow-up Resolution should question the way in which UPOV and WIPO support or hinder implementation of Article 9 of the Treaty. With this paper we identify some of the key questions that have to be addressed by such an assessment. Furthermore, it will be crucial to propose solutions in order to eliminate the contradictions.

¹ Resolution 8/2013, available at www.planttreaty.org/sites/default/files/RES8_2013_en.pdf

ARTICLE 9 OF THE TREATY

The identification of interrelations was made in the context of the implementation of Article 9, which pertains to farmers' rights. As such, the starting point should be to understand the scope of Article 9 of the Treaty.

Article 9.1 states that Parties to the Treaty "recognize the **enormous contribution** that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres 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."

Article 9.1 is essentially recognition of the important past contributions of farmers, as well as an acknowledgement of the important role they will play not only in the conservation but also in the "development of plant genetic resources" that constitute the foundation for food and agriculture globally.

Existing literature provides irrefutable evidence of the contribution of farmers – particularly small-scale farmers – to the development of plant genetic resources for food and agriculture (PGRFA) as well as to food security.²

Article 9.2 places the responsibility of realizing farmers' rights in the hands of national governments. It further states that each party should, "as appropriate" and "subject to national legislation," "take measures to protect and promote farmers' rights **including**":

- a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and
- c) 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.

Article 9.2(c) should not be read as being applicable only to decision-making processes at the national level. Regional and international processes often result in agreements with far-reaching impacts at the national level. Thus, Article 9.2(c) should be interpreted as including participation in processes, which will directly affect the national level.

The use of "including" suggests that **the list** of what is considered to be farmers' rights **is non-exhaustive/open**.

Furthermore, though not mentioned in Article 9.2, the Preamble recognizes the most fundamental aspect of farm-

ers' rights. It states: "**Affirming also 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 level.**"

The importance of this fundamental aspect is reinforced by Article 9.3, which states: "Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate."

Thus, the right to freely save, use, exchange and sell farm-saved seed and other propagating material should be considered to be an important right of farmers.

There are various aspects throughout the Treaty that are important with regard to the **implementation of farmers' rights**, such as:

- Article 6.1(a): pursuing fair agricultural policies that promote, as appropriate, the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources;
- Article 6.1(c): promoting, as appropriate, plant breeding efforts which, with the participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties particularly adapted to social, economic and ecological conditions, including in marginal areas;
- Article 6.1(d): broadening the genetic base of crops and increasing the range of genetic diversity available to farmers;
- Article 6.1(e): promoting, as appropriate, the expanded use of local and locally adapted crops, varieties and underutilized species;
- Article 6.1(f): supporting, as appropriate, the wider use of diversity of varieties and species in on-farm management, conservation and sustainable use of crops, and creating strong links to plant breeding and agricultural development, in order to reduce crop vulnerability and genetic erosion, and promote increased world food production compatible with sustainable development; and
- Article 6.1(g): reviewing, and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution.

Implementation of these elements is fundamental to the realization of farmers' rights.

2 Putting family farmers first to eradicate hunger, FAO Press Release (16 October 2014). Available at www.fao.org/news/story/en/item/260535/icode/

A. INTERRELATION BETWEEN UPOV AND THE TREATY WITH REGARDS TO THE IMPLEMENTATION OF FARMERS' RIGHTS

A.1. THE RIGHT TO SAVE, USE, EXCHANGE AND SELL FARM-MADE SEED AND OTHER PROPAGATING MATERIAL.

It is noted in the preamble of the Treaty that the right to save, use, exchange and sell farm-made seed and other propagating material is fundamental to the realization of farmers' rights, as well as the promotion of farmers' rights at the national and international levels. As such, it is a crucial farmers' right.

There are major differences between the UPOV Acts of 1978 and 1991 regarding the right to save, use, exchange and sell farm-made seeds and propagating materials. Relevant features of UPOV's instruments (the scope of breeders' rights and exceptions) and the implications for farmers' right to save, use, exchange and sell farm-made seed and other propagating material are discussed below.

UPOV 1978

Article 5 of UPOV 1978 provides for breeders' rights, but it is limited to "production for purposes of commercial marketing, the offering for sale and the marketing of the reproductive or vegetative propagating material, as such, of the variety." It is generally accepted that farmers using the protected varieties have the freedom to save and exchange farm-made seed/propagating material. However, the sale of the protected variety's propagating material requires the authorization of the right holder. **In contrast to UPOV 1991 (discussed below), UPOV 1978 offered greater leeway to implement farmers' rights. It is worth noting that though UPOV 1978 provided more flexibility, there are limitations to the implementation of farmers' rights.**

For example, Section 39(1)(iv) of the Indian PVP Law states: "a farmer shall be deemed to be entitled to save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act: Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act."

UPOV was not convinced that the Indian PVP legislation was in conformance with the 1978 Act. It said in its comment on the legislation: "An explanation is needed on how the possibility for a farmer to "exchange, share or sell his farm produce including seed" can be reconciled with Article 5(1) of the 1978 Act, which requires the breeder's

prior authorization for the production for purposes of commercial marketing, offering for sale or the marketing of the reproductive or vegetative propagating material, as such, of the variety."³

In any case, the ratification of UPOV 1978 is no longer possible for *new* members joining UPOV; new members must be in line with UPOV 1991. UPOV members that have only ratified the 1978 Act do not have any obligation to ratify the Act of 1991.

UPOV 1991

UPOV 1991 greatly expands the scope of breeders' rights and severely limits farmers' rights. Breeders' rights are expanded to "producing, conditioning, offering for sale, selling or other marketing, exporting, importing or stocking for purposes of propagating material of the variety."⁴ These rights also extend to acts in relation to harvested material if obtained through an unauthorized use of propagating material, unless the breeder has had reasonable opportunity to exercise his/her right in relation to the propagating material.⁵

An optional exception to breeders' rights is provided under Article 15.2 of UPOV 1991, which states: "to be defined in national law, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, [...] in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety."

UPOV advocates the following interpretation for this article: "The Diplomatic Conference recommendation indicates that the optional exception was aimed at those crops where, for the member of the Union concerned, *there was a common practice of farmers saving harvested material for further propagation*. [...] The wording 'product of the harvest' indicates that the *optional exception may be considered to relate to selected crops where the product of the harvest is used for propagating purposes, for example small-grained cereals where the harvested grain can equally be used as seed* i.e. propagating material. [...] Examples of factors which might be used to establish reasonable limits and to safeguard the legitimate interests of the breeder are the size of the farmer's holding, the area of crop concerned grown by the farmer, or the value of the harvested crop. Thus, '*small farmers' with small holdings (or small areas of*

3 See UPOV doc. CC/64/2. Available at www.upov.int/restrict/edocs/mdocs/upov/en/cc/64/cc_64_2.pdf

4 Article 14(1) of UPOV 1991.

5 Article 14(2) of UPOV 1991.

crop) might be permitted to use farm-saved seed to a different extent and with a different level of remuneration to breeders than 'large farmers'. [...] For those crops where the optional exception is introduced, a requirement to provide remuneration to breeders might be considered as a means of safeguarding the legitimate interests of the breeders."⁶

It is important to note that the exception only allows a farmer using a protected variety to save seed and replant on his/her own holdings. Exchange and sale of seeds or propagation material is not allowed. This very limited exception is subject to conditions (e.g. payment of remuneration). Furthermore, following the interpretation contained in UPOV's Guidance document, application of this limited exception is restricted to certain circumstances.

Another relevant exception to discuss is Article 15(1) (i), which states that breeders' rights shall not extend to "acts done privately *and* for non-commercial purposes."

The Article itself does not define the scope of the exception. UPOV's interpretation of the exception's scope is extremely restrictive and narrow. The UPOV Guidance document states that: "[...] acts which are *both* of a private nature *and* for non-commercial purposes are covered by the exception. Thus, non-private acts, even where for non-commercial purposes, may be outside the scope of the exception [...]. Furthermore, [...] private acts which are undertaken for commercial purposes do not fall within the exception. Thus, a farmer saving his own seed of a variety on his own holding might be considered to be engaged in a private act, but could be considered not to be covered by the exception if the said saving of seed is for commercial purposes. The wording [...] suggests that it could allow, for example, the propagation of a variety by an amateur gardener for exclusive use in his own garden (i.e. no material of the variety being provided to others), since this may constitute an act which was both private and for non-commercial purposes. Equally, for example, the propagation of a variety by a farmer exclusively for the production of a food crop *to be consumed entirely by that farmer and the dependents of the farmer living on that holding*, may be considered to fall within the meaning of acts done privately and for non-commercial purposes. Therefore, activities, including for example "subsistence farming," where these constitute acts done privately and for non-commercial purposes, may be considered to be excluded from the scope of the breeder's right, and farmers who conduct these kinds of activities freely benefit from the availability of protected new varieties."⁷

This interpretation is extremely limited. Even the multiplication of the protected variety to produce a food crop to be consumed by a neighbor (not living on the holding) is

not seen as falling within the scope of the exception. The interpretation applied by UPOV does not address the needs and realities of subsistence farmers, who in their daily lives exchange seeds/propagating material with neighbors and sell seeds at the local market.

In response to increasing criticisms over the adverse implications of UPOV's provisions for farmers' rights, in October 2014, UPOV's Council adopted the following Question and Answer as part of a list of "Frequently Asked Questions."⁸

QUESTION: *Is it possible for subsistence farmers to exchange propagating material of protected varieties against other vital goods within the local community?*

ANSWER: Since the 1991 and 1978 Acts do not specifically address or define subsistence farmers, it is necessary to consult the legislation of each UPOV Contracting Party for the answer to this question specific to that UPOV member. Within the scope of the breeder's right exceptions provided under the UPOV Conventions, UPOV Contracting Parties have the flexibility to consider, where the legitimate interests of the breeders are not significantly affected, in the occasional case of propagating material of protected varieties, allowing subsistence farmers to exchange this against other vital goods within the local community.

The APBEBES Report⁹ called the response "legally incorrect and deliberately misleading." It argued that the response cannot be supported by either the interpretation of Article 15(1) that has been applicable thus far, nor by the practices of UPOV, which has consistently rejected national draft PVP legislation that allows exchanges of seeds/propagating material. In addition, there are conditions incorporated in the Response (such as "the legitimate interests of the breeders are not significantly affected" or "in the occasional case") that cannot be justified under Article 15(1). Furthermore, the Response is also not supported by the text of Article 15(2) of the Act.

APBEBES argues that the suggestion that each UPOV Contracting Party has flexibility to interpret Article 15 of the 1991 Act, which addresses exceptions to breeders' rights, is misleading. When examining conformity of nations' PVP legislation with the 1991 Act, the UPOV Secretariat tends to require strict compliance with the content of the 1991 Act, refusing to accept any interpretation of the exception, other than the narrow interpretation contained in the UPOV Guidance document.

6 Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention (UPOV/INF/6/3), available at www.upov.int/edocs/infdocs/en/upov_inf_6_3.pdf

7 Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention (UPOV/INF/6/3), available at www.upov.int/edocs/infdocs/en/upov_inf_6_3.pdf

8 See www.upov.int/about/en/faq.html#Q1

9 See APBEBES Report on the UPOV Autumn Session, Newsletter Issue #11 November 18, 2014, available at www.apbrees.org/files/seeds/files/newsletter11%2018nov2014short.pdf

APBEBES gives the example of Malaysia. In examining the conformity of Malaysian PVP legislation with UPOV 1991, the Secretariat expressly stated “the exchange of protected material for propagating purposes would not be covered by the exceptions under Article 15 of the 1991 Act,” and on that basis recommended deletion of Section 31(1)(e) of the Malaysian Protection of New Plant Varieties Act, which contained the following exception: “any exchange of reasonable amounts of propagating materials among small farmers.”¹⁰

The discussion shows that the provisions of UPOV 1991 are not conducive to the implementation of the right to freely use, save, exchange and sell seed/propagating material.

UPOV has consistently disapproved of provisions in national legislation that promote the freedom to save, exchange and sell seed/propagating material, even if among small-scale farmers. One such example is that of Malaysia. In the case of the Philippines, UPOV found the farmers' exception in Section 34(d) of the PVP legislation to be incompatible with the 1991 Act. Section 34(d) states: “The Certificate of Plant Variety Protection shall not extend to: [...] d) The traditional right of small farmers to save, use, exchange, share or sell their farm produce of a variety protected under this Act, except when a sale is for the purpose of reproduction under a commercial marketing agreement. The Board shall determine the condition under which this exception shall apply, taking into consideration the nature of the plant cultivated, grown or sown. This provision shall also extend to the exchange and sell of seeds among and between said small farmers: Provided, [t]hat the small farmers may exchange or sell seeds for reproduction and replanting in their own land.”¹¹

In its comments, UPOV noted, among other things, that “The exchange and sale of seeds among and between the said small farmers in their own land, as provided in the third sentence of Section 43(d) of the Law, go beyond the exception of Article 15(2) of 1991 Act.”¹² UPOV also calls for the Section to be amended.

Alternative *Sui Generis* PVP Legislation

Several countries (e.g. India, Malaysia, Thailand, Ethiopia) have opted to depart significantly from the “one size fits all” model of UPOV 1991 and adopt innovative national PVP laws that balance the different interests (public interests, interests of commercial breeders, and the interests of small-scale farmers), as well as implement the requirements and obligations of the Treaty, the Convention on Biological Diversity (CBD) and the Nagoya Protocol on Access and Benefit Sharing.

This shows it is entirely possible to put in place *sui generis* PVP legislation that advances implementation of Article 9. However, it has also been shown (in Section A.6 below) that there are significant pressures on Treaty Members to adopt the UPOV 1991 model and forgo farmers' rights.

It would be beneficial if the assessment of interrelations would include a comparison between the UPOV Acts and non-UPOV PVP laws regarding the implementation of farmers' rights.

IN SUMMARY

UPOV 91 hinders the implementation of farmers' rights to freely use, save, exchange and sell seeds/propagating material, which is fundamental to the realization and promotion of farmers' rights. When using a protected variety, farmers may save seeds for replanting on their own holdings, but this Article 15(2) exception is restricted to seeds of certain crops grown on their own farm, and even in this case remuneration to breeders may be required to safeguard the legitimate interests of the breeders. Farmers are prohibited from selling and exchanging farm-saved seeds/propagating material.

The effects of restrictions on farmers' rights to freely use, save, exchange and sell seeds/propagating material can be quite devastating. A human rights impact assessment of UPOV (referred to hereafter as “HRIA of UPOV”) that examined the potential impact of UPOV in the Philippines, Peru and Kenya concludes that “UPOV91 restrictions on the use, exchange and sale of farm-saved PVP seeds will make it harder for resource-poor farmers to access improved seeds. This could negatively impact on the functioning of the informal seed system, as the beneficial inter-linkages between the formal and informal seed systems will be cut off. Moreover, selling seeds is an important source of income for many farmers. From a human rights perspective, restrictions on the use, exchange and sale of protected seeds could adversely affect the right to food, as seeds might become either more costly or harder to access. They could also affect the right to food, as well as other human rights, by reducing the amount of household income which is available for food, healthcare or education.”¹³

To facilitate implementation of Article 9 of the Treaty, it would be important to revise UPOV 1991 and provide greater flexibility to governments to implement the right to freely use, save, exchange and sell farm-saved seed/propagating material.

10 See UPOV doc. C(Extr.)/22/2 available at www.upov.int/edocs/mdocs/upov/en/c_extr/22/c_extr_22_2.pdf

11 See UPOV doc. C(Extr.)/24/2 available at www.upov.int/edocs/mdocs/upov/en/c_extr/24/c_extr_24_02.pdf

12 See UPOV doc. C(Extr.)/24/2 available at www.upov.int/edocs/mdocs/upov/en/c_extr/24/c_extr_24_02.pdf

13 “Owning Seeds, Accessing Food—A human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines,” October 2014. Available at www.evb.ch/fileadmin/files/documents/Saatgut/2014_07_10_Owning_Seed_-_Accessing_Food_report_def.pdf

A.2 THE RIGHT TO EQUITABLY PARTICIPATE IN SHARING BENEFITS ARISING FROM THE UTILIZATION OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (ARTICLE 9.2(B) OF THE TREATY)

Disclosure of origin and evidence of compliance with access and benefit-sharing requirements in IP applications is widely seen as a crucial tool to prevent misappropriation of genetic resources and traditional knowledge,¹⁴ and to facilitate the implementation of prior informed consent and fair and equitable benefit sharing arising from the utilization of the genetic resources or traditional knowledge. There are numerous documented cases of such misappropriation.¹⁵ For example, with regard to PGRFA, Hammond found that Seminis (a subsidiary of Monsanto) planted farmers' carrot seeds from Turkey, and through a simple process of selection – mainly selecting plants that were slow to bolt and that had a desirable root shape and shade of purple (associated with health benefits) – introduced a new carrot variety over which it has obtained PVP protection in the United States and Europe.¹⁶

Hammond also highlights the case of a purple rice variety named Blanca Isable, protected by plant breeders' rights, and promoted by Rush Rice Products. Research publications state the variety owes its color and other characteristics to Hitan Kitan, a Sri Lankan farmer's variety. Hammond concludes: "In the case of Blanca Isabel, the willingness of the US Plant Variety Protection Office [...] to grant intellectual property (plant breeder's rights in this case) over a seed whose salable traits are of an essentially unknown origin has led to biopiracy. Blanca Isabel thereby illustrates the importance of requiring disclosure of origin of genetic resources in plant breeder's rights application."¹⁷

Disclosure requirements have been incorporated into IP legislation in many countries, and have been advocated by many different countries in international forums such as the World Trade Organization (WTO), the Convention on Biological Diversity (CBD) and the World Intellectual Property Organization (WIPO).

In the case of UPOV, in 2003 its Council stated in a reply to the Executive Secretary of the CBD: "[I]f a country decides, in the frame of its overall policy, to introduce a mechanism for the disclosure of countries of origin or geographical origin of genetic resources, such a mechanism

should not be introduced in a narrow sense, as a condition for plant variety protection [...] With regard to any requirement for a declaration that the genetic material has been lawfully acquired or proof that prior informed consent concerning the access of the genetic material has been obtained, [...] the UPOV Convention requires that the breeder's right should not be subject to any further or different conditions than [distinctness, uniformity, stability and novelty] in order to obtain protection."¹⁸

The effect of this reply is that national laws that incorporate disclosure requirements as a condition for plant variety protection would be considered to be inconsistent with the 1991 Act. See the examples of Malaysia and Peru below, in Section A.6.

IN SUMMARY

As UPOV has taken the position that disclosure requirements are incompatible with its provisions, UPOV reduces countries' ability to effectively implement their obligations (including the obligation for a fair and equitable benefit-sharing) under the Treaty, the CBD and its Nagoya Protocol, and the UN Declaration on the Rights of Indigenous Peoples.

Furthermore, UPOV does not have any mechanism to prevent misappropriation and facilitate benefit sharing arising from the utilization of plant genetic resources developed by farmers.

To facilitate implementation of Article 9.2(b) of the Treaty, disclosure requirements in PVP applications are imperative. This will require a change in UPOV's position on that matter.

14 Ibid, p. 42

15 McGown, J., (2006). "Out of Africa: Mysteries of Access and Benefit Sharing," Edmonds Institute, Washington, available at <http://bit.ly/1uSCXHa>; Hammond, E., (2013). "Biopiracy Watch: A compilation of some recent cases," Vol. 1. Third World Network, Penang; Hammond, E. (2014), "Biopiracy of Turkey's purple carrot," Third World Network, Penang, available at www.twn.my/title2/intellectual_property/info.service/2014/ip140212.htm

16 Hammond, E., (2014). "Biopiracy of Turkey's purple carrot," Third World Network, Penang, available at www.twn.my/title2/intellectual_property/info.service/2014/ip140212.htm

17 Hammond, E., (2014). "Mardi Gras Misappropriation: Sri Lankan Purple Rice Served up at Louisiana Celebration," Third World Network, available at www.twn.my/title2/intellectual_property/info.service/2014/ip141005.htm

18 UPOV (International Union for the Protection of New Varieties of Plants). 2003. Access to genetic resources and benefit-sharing. Reply of UPOV to the Notification of June 26, 2003, from the Executive Secretary of the Convention on Biological Diversity (CBD). Geneva, available at www.upov.int/export/sites/upov/news/en/2003/%20pdf/cbd_response_oct232003.pdf

A.3 THE RECOGNITION OF THE ENORMOUS CONTRIBUTION THAT THE LOCAL AND INDIGENOUS COMMUNITIES AND FARMERS OF ALL REGIONS OF THE WORLD, PARTICULARLY THOSE IN THE CENTRES 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. (ARTICLE 9.1)

The word “farmer” does not appear in UPOV 1978. In UPOV 1991, “farmer” is only mentioned in Article 15.2 with regard to the limited farm-saved seed exception. There is nothing in the Acts that could be interpreted as recognition of the contribution farmers and local and indigenous communities have made and continue to make with regard to plant genetic resources. Such recognition or consideration of farmers’ rights is similarly lacking in the decisions taken during UPOV Sessions, as well as in the activities of the UPOV Secretariat.

Instead, the UPOV’s instruments and activities are heavily tilted in favor of commercial breeders, to the detriment of farmers’ rights and interests. For example, most varieties bred by farmers (and which tend to be not uniform or stable) could not be protected under UPOV. (According to Article 5 of UPOV 1991, breeders’ rights shall only be granted where the variety is novel, distinct, uniform and stable.)

Furthermore, the definition of “novelty” in UPOV 1991 is narrow. If a variety “has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety” (Art. 6 UPOV 1991), it is considered to be “new.” This suggests that varieties in farmers’ fields may not destroy novelty. This facilitates misappropriation of farmer varieties.

Another observed inequality regards essentially derived varieties (EDVs). Article 14(a) of UPOV 1991 extends breeders’ rights to varieties that are essentially derived from the protected variety. This means that if a farmer makes a small derogation from a protected variety (e.g. by selection), he needs authorization from the breeder (of the protected variety) to commercialize the newly bred variety (which would be considered to be an EDV). The given rationale for EDVs is to prevent claims for plant breeder rights (PBRs) on newly bred varieties, which are essentially similar to the initial protected variety.

However, if a public or private commercial breeder uses a variety bred by farmers (but not protected by PBRs) to breed a new plant variety, the breeder may obtain PBRs but the farmer has no rights. As noted above, UPOV refuses to

allow the introduction of a disclosure of origin requirement, and does not have any mechanism to prevent misappropriation and facilitate benefit sharing arising from the utilization of plant genetic resources developed by farmers.

In addition, as discussed above, UPOV undermines farmers’ right to freely use, save, exchange and sell seeds/propagating material that facilitated farmer experimentation and breeding, which has underpinned their contribution to the conservation and development of plant genetic resources.

IN SUMMARY

UPOV’s instruments and activities fail to give due recognition to the contribution of farmers and local and indigenous communities, or acknowledge their continuing important role in the development of plant genetic resources. While safeguarding the interests of commercial breeders, its instruments (especially UPOV 1991) are detrimental to the interests of farmers and local and indigenous communities.

A.4 THE PROTECTION OF TRADITIONAL KNOWLEDGE RELEVANT TO PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (ARTICLE 9.2(A))

The HRIA of UPOV¹⁹ shows that traditional knowledge is applied by farmers in the selection, preservation and storing of seed. Traditional knowledge is the basis of local innovation and in situ seed conservation. It is also the basis of the informal seed system, which is crucial to achieve food security in many developing countries.²⁰ Relevant literature confirms the importance of traditional knowledge – especially traditional knowledge held by women – for food security and conservation of agrobiodiversity.²¹

However, the wealth of practices that farmers use and develop at the local level, including the preservation, sustainable use and creation of agrobiodiversity, goes largely unnoticed and unacknowledged by UPOV. UPOV 1991 does not acknowledge farmer know-how regarding varietal selection nor the knowledge systems of women in the management of plant genetic resources. Farmers’ varieties in most cases cannot be protected (as they often cannot meet the uniformity or stability criteria). There is no provision recognizing that breeders have (over generations) been sourcing, and continue to source, their genetic material from farming communities. In addition, UPOV does not allow disclosure of origin and legal provenance in PVP applications – an im-

19 Owing Seeds, Accessing Food—A human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines, October 2014. Available at www.evb.ch/fileadmin/files/documents/Saatgut/2014_07_10_Owning_Seed_-_Accessing_Food_report_def.pdf

20 See for example Joseph M. Wekundah, Why Informal Seed Sector is Important in Food Security, published by the African Technology Policy Studies Network (ATPS), Nairobi 2012

21 IAASTD (International Assessment of Agricultural Knowledge, Science and Technology for Development). 2009. Synthesis Report –A Synthesis of the Global and Sub-Global IAASTD Reports (edited by B. McIntyre). Island Press, Washington, D.C; FAO (Food and Agriculture Organization). 2005b. Building on Gender, Agrobiodiversity and Local Knowledge – a training manual. FAO, Rome. ftp.fao.org/docrep/fao/009/y5956e/y5956e00.pdf

portant tool to deal with the misappropriation of traditional knowledge – nor does it have any mechanism to facilitate benefit sharing arising from the utilization of plant genetic resources developed by farmers (see Section A.2 above).

Moreover, the implementation of UPOV 1991 restrictions on saving, exchanging and selling protected seed comes at the expense of farmers gradually losing their know-how related to seed selection and seed preservation.²² They would also gradually lose their ability to make informed decisions about what to grow and on which type of land, how to respond to pest infestations, and how to adapt their seed system to changing climatic conditions.²³ The process of “deskilling” farmers – which is already underway with the decline of local agrobiodiversity – could become more acute with restrictions on the use of seeds introduced through UPOV 91-style laws.²⁴

IN SUMMARY

UPOV does not protect traditional knowledge relevant to PGRFA. In fact, the UPOV system that was crafted to further the interests of commercial breeders, with its restrictions on saving, exchanging and selling protected seeds, could have a detrimental effect on the protection of traditional knowledge.

A.5 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 (ARTICLE 9.2(C))

As explained above, UPOV (especially the 1991 Act) is a restrictive regime. To be a member of the UPOV family, the PVP law has to conform strictly to the 1991 Act. It offers limited flexibility to governments to implement provisions that governments feel are necessary to implement the Treaty obligations. Thus, once a country decides to join UPOV 1991 – and as shown below (in Section A.6), there is enormous pressure on countries to adopt UPOV 1991 – any participation in decision-making related to the conservation and sustainable use of PGRFA is of limited value.

The HRIA of UPOV²⁵ examined the extent of participation of farmers and farmer organizations in the drafting of national PVP laws. Findings from case studies in Peru, Kenya and the Philippines showed that processes for drafting the national PVP law were deficient in all three countries. Nevertheless, comparing the three case studies, it

also found that in the case of the Philippines, the law was amended by the parliament to include exceptions to breeders' rights in order to better protect farmers' rights. This is probably not a coincidence, because the process in the Philippines was the only one where adherence to UPOV 1991 was not an implicit goal of the reform of the PVP law. If it had been the implicit goal, there would have been almost no room for maneuver, because the law would have to be in compliance with UPOV 1991. In such a case, even if stakeholders were consulted, they would not have had a big impact, as UPOV 91 does not allow much flexibility in national implementation.

For a meaningful participatory process with regard to PVP law, it is crucial to undertake thorough consultations as well as objective and evidence-based investigations on the type of PVP regime (if any) that is suitable for the prevailing agricultural conditions in the country. Such a process would also objectively study and assess the suitability of UPOV 1991 as the basis for the national PVP law.

However, amid the pressure applied by donor countries and international entities, consultations with farmers at the national level – when they do take place – often tend to be superficial, and attempt to explain to farmers the benefits of UPOV 1991 while disregarding any concerns that farmers or their representatives may have.

Furthermore, when a developing country wishes to design a legal framework for PVP, it is likely to seek assistance from the UPOV Secretariat, thinking it would receive objective advice. Sometimes a developing country approaches the WIPO Secretariat for assistance, but WIPO will simply refer the country to the UPOV Secretariat.

UPOV's mandate is to promote UPOV 1991, and thus its assistance is focused on how to develop a legal framework based on UPOV 1991. In providing technical assistance, UPOV does not objectively evaluate the suitability of UPOV 1991 for the particular country, thus this “one size fits all” model is promoted equally to all countries (developed and developing countries and LDCs), irrespective of the size of the formal sector, the type of agricultural system, the existence of a commercial market, local commercial breeders and the seed industry. It has been noted above that if the starting point for developing a PVP legal framework is UPOV 1991, participation in decision-making processes is of limited value, as there is limited flexibility with regard to national implementation.

Apart from the lack of evaluation in providing technical assistance and support, UPOV also does not require the beneficiary country (where such a country is a member of the Treaty) to guarantee participation of farmers in decision-making processes. In fact, UPOV is known to support

22 Owing Seeds, Accessing Food—A human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines, October 2014. Available at www.evb.ch/fileadmin/files/documents/Saatgut/2014_07_10_Owning_Seed_-_Accessing_Food_report_def.pdf

23 Ibid

24 Ibid

25 Owing Seeds, Accessing Food—A human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines, October 2014 – Page 37ff, more references are included in the original text, available at www.evb.ch/fileadmin/files/documents/Saatgut/2014_07_10_Owning_Seed_-_Accessing_Food_report_def.pdf

processes that are not participatory or inclusive of farmers or their representatives.

For example, the UPOV Secretariat has provided extensive technical assistance to the African Regional Intellectual Property Organization (ARIPO) on the development of a regional protocol on plant variety protection. The UPOV Secretariat prepared the draft ARIPO Protocol on plant variety protection,²⁶ participated as experts in various ARIPO meetings, and assisted/cooperated with ARIPO to organize at least two regional workshops on the same matter. However the entire process has been criticized for being dominated by foreign interests: the US Patent & Trademark Office (USPTO), the Community Plant Variety Office of the European Union (CPVO), the seed industry (e.g. the African Seed Trade Association (AFSTA) and the French National Seed and Seedling Association (GNIS). The process was also criticized for failing to adequately inform and include farmers' groups from across the ARIPO region.²⁷

Regional processes have significant implications nationally. The draft ARIPO Protocol is about adopting a centralized system for the grant and administration of PBRs modeled on UPOV 1991. Issues such as compulsory licenses, cancellation and nullification, which are usually in the hands of national governments, would be determined centrally by the ARIPO authority. This raises questions about national sovereignty, with implications for national agricultural systems including the informal seed sector and farmers. As such, it would be imperative for the entire process of developing the draft ARIPO Protocol to be transparent and inclusive at the national as well as the regional level. But, as noted above, participation at the regional level was not inclusive.

At the national level, discussions on the draft ARIPO Protocol were similarly not transparent or inclusive. For example, the HRIA of UPOV²⁸ found organizations in Kenya (a ARIPO member), such as the Kenya National Federation of Farmers Union (KENFAP), that were not aware of, involved in, or consulted in the ARIPO process. And although informed observers expressed concern that implementation of UPOV 91 would have "significant adverse consequences for small-scale farmers that dominate the

agricultural landscape of ARIPO Member States (including Kenya), as well as for food security, agricultural biodiversity, and national sovereignty in Africa," the Kenyan research team of the HRIA could find no evidence that the government mandated any assessments of the likely impacts of the UPOV 91-based draft ARIPO Protocol.

The draft ARIPO Protocol has raised significant concerns because of the flawed, non-participatory and non-transparent process, whereby the views and interests of small-scale farmers that dominate more than 80 % of the agricultural systems of ARIPO member states have not been taken into account.²⁹ The draft Protocol is also considered to be unbalanced and not suitable for ARIPO's 19 member states (13 of which are least developed countries). Concern has also been raised that the content of the draft ARIPO protocol undermines the Treaty and the Convention on Biological Diversity, as it limits the ability of the Members to those instruments to effectively and fully meet obligations undertaken.³⁰

In view of these criticisms, UPOV should have insisted that the ARIPO processes be participatory, and ensured that farmers across the ARIPO region participate in the decision-making processes for the development of the draft PVP Protocol. However this was not the case, although UPOV has had significant influence over the ARIPO process.

From the above discussion, it is apparent that UPOV enables and supports the non-fulfillment of the Treaty obligations under Article 9.

It is worth recalling that the UN Special Rapporteur on the Right to Food has also recommended that governments "Put in place mechanism[s] ensuring the active participation of farmers in decisions related to the conservation and sustainable use of plant genetic resources for food and agriculture particularly in the design of legislation covering [...] the protection of plant varieties so as to strike the right balance between the development of commercial and farmers' seed systems."³¹

In addition, in sharp contrast to practices of other international bodies such as WIPO, the Convention on Biolog-

26 ARIPO Document (ARIPO/CM/XIII/8) dated 30 September 2011 prepared for the 13th session of the Council of Ministers in Ghana states: "Following the decision of the Council of Ministers, the ARIPO Secretariat requested technical assistance from UPOV in the preparation of policy and legislative frameworks on the protection of new varieties of plants. As a result of the request, UPOV prepared draft legislative framework for the Organization."

27 AFSA Press Release (3 November 2014): AFSA Appeals to ARIPO Member States For Postponement of Diplomatic Conference and National Consultations, available at afsafrica.org/afsa-appeals-to-aripo-member-states/; AFSA Press Release (3 April 2014) AFSA Strongly Condemns Sleight of Hand Moves By ARIPO to JOIN UPOV 1991, Bypass National Laws and Outlaw Farmers' Rights, available at afsafrica.org/afsa-strongly-condemns-sleight-of-hand-moves-by-aripo-to-join-upov-1991-bypass-national-laws-and-outlaw-farmers-rights/; AFSA Press Release (6 October 2014) ARIPO's Plant Variety Protection Law Based on UPOV 1991 criminalises Farmers' Rights and Undermines Seed Systems in Africa, available at afsafrica.org/aripos-plant-variety-protection-law-based-on-upov-1991-criminalises-farmers-rights-and-undermines-seed-systems-in-africa/

28 *Owning Seeds, Accessing Food – a human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines*, October 2014 – page 37, more references are included in the original text.

29 Civil Society Concerned With ARIPO's Draft Regional Policy and Legal Framework for Plant Variety Protection. See www.tinyurl.com/a4v5gte; AFSA's Comments on ARIPO's Responses to civil Society: Draft Legal Framework for Plant Variety Protection. www.acbio.org.za/images/stories/dmdocuments/AFSA-letter-ARIPO-March2014%20.pdf; AFSA Submission for Urgent Intervention in respect to Draft ARIPO Protocol. tinyurl.com/ka2ad7k

30 Ibid. See also Civil Society Letter to UPOV Members on the ARIPO's Draft Protocol for the Protection of New Varieties of Plants ("DRAFT Protocol") Undermines Farmers' Rights, Lacks Credibility & Legitimacy, 9 April 2014. Available at www.apbrebes.org/files/seeds/Open%20Letter%20to%20UPOV%20Members%20on%20ARIPO.pdf

31 See UN General Assembly Document A/64/170 titled "Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation"

ical Diversity and the FAO Seed Treaty, which encourage participation of a broad spectrum of stakeholders and interests, UPOV has a high number of observers representing private sector interests, as opposed to those focused primarily on the public interest in food security and sustainability. In particular, participation of farmers inside UPOV is weak. Until recently, participation in UPOV was dominated by the seed industry.

On 21 October 2009, UPOV's Consultative Committee rejected an application by the European Coordination Via Campesina (ECVC) for observer status in UPOV bodies.³² ECVC is a member of La Via Campesina, the biggest international movement of peasants, small- and medium-sized producers, landless, rural women, indigenous people, rural youth and agricultural workers. This decision was overturned in 2010.

However in 2012, the UPOV Council adopted new observer rules that will exacerbate the current imbalance in the representation of stakeholder groups. For example, one of the new rules states that "In the case of an international NGO with different coordination entities, observer status will be granted to only one coordination per organization." Such a provision is not found in the rules of any other international organization. This rule was aimed at targeting farmer groups such as La Via Campesina, which has "regional coordination entities" as part of its structure.

In 2010, only the European Coordination Via Campesina (ECVC) obtained observer status in UPOV bodies. The new rule will prevent other coordination entities such as Latin American Coordination of Countryside Organizations (CLOC-Via Campesina) from obtaining observer status, although La Via Campesina is the biggest and most important organization of farmers worldwide.

In contrast, regional and sectoral organizations of the seed industry are allowed. Companies such as Monsanto or Syngenta are represented several times. Syngenta, for example, is represented in UPOV by CropLife, the International Seed Federation, the European Seed Association, CIOFORA, the African Seed and Trade Association, and the Asian and Pacific Seed Association. This multiple representation of multinational seed companies does not pose any problem to UPOV, but the small and only potential possibility of a double representation of a farmer organization inspired UPOV to adopt a new rule to prevent such double representation.

IN SUMMARY

UPOV is involved in many processes on national and regional levels where the farmers' right to participate in making decisions on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture is ignored.

In our view, UPOV should only take part in national and regional discussions when it is ensured that the process is in line with Article 9.2 (c) of the Treaty, and the participation of farmers in the decision-making process is guaranteed.

A.6 PRESSURE TO GIVE UP FARMERS' RIGHTS

It is often argued that the responsibility for realizing farmers' rights rests with national governments. In theory, Treaty members are free to implement farmers' rights should they wish to do so. In reality, the situation is very different.

Today there is enormous pressure on developing country governments to adopt the UPOV 1991 model for the protection of plant varieties. In particular, developed countries negotiating bilateral and regional North-South free trade agreements make it a requirement for developing countries to adopt the UPOV 1991 model and/or become a party to the 1991 Act.³³ Donors (e.g. Japan, US, EU) also provide aid on the condition that the beneficiary country adopts the UPOV 1991 model. Furthermore, as shown below, WIPO, which is one of the biggest providers of technical assistance on IP, also stresses the adoption of the UPOV 1991 legal framework. This pressure is accompanied by one-sided information – often even inaccurate or misleading – about the benefits of the UPOV system. Usually, no information is provided on alternative *sui generis* PVP systems, the importance of the informal sector, or the Treaty or farmers' rights.

Countries joining UPOV 1991 have very little room to maneuver. Article 34(3) of the 1991 Act requires a new Member to present its legislation to the UPOV Council "to advise it in respect of the conformity of its laws with the provisions of this Convention." Only if the decision is positive (in conformity) can the country become a Member of UPOV 1991. To assess conformity, the UPOV Secretariat peruses the country's legislation, rejecting any clause that, in its view, is inconsistent with its understanding of the 1991 Act.

A case in point is Malaysia, which acceded to the Treaty in 2003. In its 2004 PVP law,³⁴ Malaysia incorporated

³² See viacampesina.org/en/index.php/main-issues-mainmenu-27/biodiversity-and-genetic-resources-mainmenu-37/782-upov-denies-participation-to-farmers-and-civil-organizations

³³ GRAIN (18 November 2014), Trade deals criminalize farmers seed, available at www.grain.org/article/entries/5070-trade-deals-criminalise-farmers-seeds. See also www.grain.org/attachments/3247/download

³⁴ Malaysia's Protection of New Plant Varieties Act 2004 Act 634.

exceptions to breeders' rights intended to safeguard farmers' rights. This includes: "any exchange of reasonable amounts of propagating materials among small farmers" (Section 31(1)(e)) and "the sale of farm-saved seeds in situations where a small farmer cannot make use of the farm-saved seeds on his own holding due to natural disaster or emergency or any other factor beyond the control of the small farmer, if the amount sold is not more than what is required in his own holding" (Section 31(1)(f)). Furthermore, Section 12 of the PVP law also requires: that an applicant disclose the source of the genetic material or the immediate parental lines of the plant variety; that the application be accompanied by the prior written consent of the authority representing the local community or the indigenous people in cases where the plant variety is developed from traditional varieties; and that the application be supported by documents relating to the compliance of any law regulating access to genetic or biological resources. The Malaysian PVP law adopts many of the UPOV 1991 provisions, but it also includes provisions to accommodate aspects of farmers' rights.

However, Malaysia is continuously under pressure to dismantle the provisions on farmers' rights by joining UPOV 1991.³⁵ In 2005, under pressure to become a member of UPOV 1991, Malaysia submitted its legislation to the UPOV Council for assessment of conformity with UPOV 1991. The Secretariat recommended significant changes to the entire text, including deleting Section 31(1)(e) and removing Section 31(1)(f) from the list of exceptions.³⁶ It also did not accept disclosure requirements in Section 12. Currently, in the context of the Trans-Pacific Partnership Agreement negotiations, Malaysia is being asked to ratify UPOV 1991, and should it do so, it would have to remove provisions from its PVP legislation that safeguard farmers' rights.³⁷

Another case is that of Peru, also a member of the Treaty. The disclosure requirement was initially integrated into the Peruvian PVP regulation.³⁸ Article 15(e) of the PVP regulation stated that applications for granting a Breeder's Certificate shall contain "the geographical origin of the raw plant material of the new variety to be protected, including, as the case may be, the document that proves the legal origin of the genetic resources, issued by the Competent National Authority as regards access to genetic resources." Ten years later, the US-Peru Free Trade Agreement, signed on 12 April 2006, forced Peru to join UPOV 1991 by 2008. In order to fulfill the requirement of the US-Peru FTA, Peru changed its PVP regulation and deleted Article 15(e). The new draft decree was examined by the UPOV Council on 3

April 2009 and it was concluded that the draft was in conformity with the provisions of UPOV 91. Clearly, in view of the UPOV Council's position on disclosure, it was most likely that Article 15(e) of the Peruvian PVP regulation would not be accepted if Peru were to ask the UPOV Council to advise it on the conformity of its laws with UPOV 91.

The lack of a disclosure requirement in its PVP legislation reduces the ability of Peru to fulfill its obligations under the Treaty, the CBD and the Nagoya Protocol, and it allows for PVP rights to be given to a person or an entity that may not be legally entitled to them. In addition, it also reduces Peru's capacity to fulfill its obligations under the United Nations Declaration on the Rights of Indigenous Peoples, as far as traditional knowledge and/or resources held by indigenous peoples are concerned.³⁹

IN SUMMARY

Increasingly, developed countries (particularly the US, EU and Japan) and institutions such as UPOV, WIPO and the Community Plant Variety Office (CPVO) employ different methods and means to pressure developing countries to adopt strengthened breeders' rights at the expense of farmers' rights, including the right to use, save, exchange and sell farm-saved seed/propagating material. This limits the flexibility of Treaty members to take the necessary steps to implement the Treaty obligations, including farmers' rights.

Article 9 of the Treaty stipulates "that the responsibility for realizing farmers' rights, as they relate to plant genetic resources for food and agriculture, rests with national governments." However, the implementation of Article 9 is not possible due to the incoherence of the international legal system. Thus, it is imperative to interpret and revise the UPOV Convention to make it compatible with the recognition of farmers' rights.

35 For example in the context of the US-Malaysia Free Trade Agreement negotiations (presently suspended). See also Proposed Malaysia-United States Free Trade Agreement (MUFTA): Implications for Malaysian Economic and Social Development, Third World Network, available at www.twn.my/title2/par/MUFTA.doc

36 See UPOV doc. C(Extr.)/22/2 available at www.upov.int/edocs/mdocs/upov/en/c_extr/22/c_extr_22_2.pdf

37 wikileaks.org/tpp-ip2/tpp-ip2-chapter.pdf

38 Supreme Decree 008-1996-ITINCI of May 1996, based on Decision 345 of the Andean Community.

39 See Articles 26 and 31 of UNDRIP in regard to indigenous peoples' rights on (genetic) resources and their traditional knowledge. www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

B. INTERRELATIONS BETWEEN WIPO AND THE TREATY WITH REGARDS TO THE IMPLEMENTATION OF FARMERS' RIGHTS

B.1. GENERAL

WIPO became a specialized agency of the UN with the signing of the UN-WIPO Agreement.⁴⁰ Yet there are many concerns with regard to the orientation of WIPO and its activities (e.g. technical assistance and norm-setting).

In 2004, a group of developing countries⁴¹ known as the Group of Friends of Development (GFOD) submitted a "Proposal to Establish a Development Agenda for WIPO" to the WIPO Assembly.⁴² According to the proponents, the main purpose of the proposal was to incorporate "the development dimension into WIPO's work." The proponents argued "Experience demonstrates that WIPO has concentrated its efforts in the diffusion of standardized approaches to IP policies that assume, from an uncritical standpoint, that development follows suit as intellectual property rights protection is strengthened. Current worldwide debate questioning the appropriateness of such an approach has not been reflected in WIPO's work. Rather, discussions in WIPO have overlooked the importance of a systematic assessment of the implications of increased and standardized IPR protection in terms of access to and diffusion of science, technology and related knowledge and know-how, especially for LDCs and developing countries."⁴³

The GFOD also raised concerns about the underlying philosophy, content and process of WIPO's technical assistance, in particular: 1) that IP is often seen as an objective in itself, with broader policy concerns addressed in a very limited manner; 2) there is a tendency to over-emphasize the benefits of intellectual property, while giving very little attention to the limitations and actual costs; 3) the content of the technical assistance programs mostly focused on the implementation and enforcement of obligations, and not on the use of built-in rights and flexibilities in international treaties for developing countries; 4) little attention has been given to different levels of development and cultural differences; and 5) there has been little independent eval-

uation of the technical assistance provided by WIPO, including to determine the impact and effectiveness of the assistance programs.

The GFOD proposal led to three years of intensive discussions on the "Development Agenda" in WIPO, resulting in the adoption of 45 Development Agenda (DA) recommendations in 2007.⁴⁴

B.2 TECHNICAL ASSISTANCE

Generally, WIPO's technical assistance is subject to much criticism. In 2011, an independent External Review of WIPO's technical assistance was completed for the first time. This Review found significant shortcomings and deficiencies in the orientation, management and coordination of the technical assistance activities of WIPO.⁴⁵ In particular, the experts found that WIPO's staff and activities lacked a development orientation, including a clear understanding of the overall purposes of WIPO's development cooperation activities. The experts also highlighted the lack of detailed information, transparency and appropriate accountability (monitoring, evaluation and oversight) mechanisms over those technical assistance activities.⁴⁶

Plant Variety Protection

With regard to the implementation of farmers' rights (Article 9), a relevant issue is the kind of legal framework in place for plant variety protection. As shown above, a restrictive legal framework such as UPOV 1991 can adversely impact the implementation of farmers' rights.

Article 27.3(b) of the TRIPS Agreement expressly allows WTO Members to provide for the protection of plant varieties by an effective *sui generis* system. This means that countries have full flexibility to implement a legal PVP framework that suits their agricultural conditions. In addition, the WTO grants members that are least developed countries

40 Agreement between the United Nations and the World Intellectual Property Organization available at www.wipo.int/treaties/en/text.jsp?file_id=305623

41 Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela

42 See WIPO doc. WO/GA/31/11 and IIM/1/1 available at http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_31/wo_ga_31_11.pdf and www.wipo.int/meetings/en/doc_details.jsp?doc_id=42376

43 See WIPO doc. WO/GA/31/11 and IIM/1/1 available at www.wipo.int/edocs/mdocs/govbody/en/wo_ga_31/wo_ga_31_11.pdf and www.wipo.int/meetings/en/doc_details.jsp?doc_id=42376

44 www.wipo.int/ip-development/en/agenda/recommendations.html

45 An External Review of WIPO Technical Assistance in the Area of Cooperation for Development (CDIP/8/INF/1). Available at www.wipo.int/meetings/en/doc_details.jsp?doc_id=182842.

46 Sangeeta S., "Technical assistance criticized for shortcomings," at www.twn.my/title2/intellectual_property/info.service/2011/ipr.info.111105.htm and Sangeeta S., "Expert Review Calls For Technical Assistance Reforms, Further Investigation," at www.twn.my/title2/intellectual_property/info.service/2011/ipr.info.111106.htm

(LDCs) a transition period until 1 July 2021, during which time the LDCs need not implement TRIPS provisions, except for Articles 3, 4 and 5. This transition period was granted in view of the vulnerabilities and constraints that LDCs face. This transition period may be extended.

Despite the policy space available with regard to the formulation of a legal framework, WIPO's technical assistance is all about promoting the adoption of a PVP legal framework based on UPOV 1991.

An area where WIPO provides technical assistance is the development of a national IP strategy, which presumably would guide development of national laws, policies and practices. To this end, WIPO has developed a set of tools on the Methodology for the Development of National Intellectual Property Strategies. The tools are: the Process (Tool 1), Baseline Questionnaire (Tool 2) and Benchmarking Indicators (Tool 3).

Tools 2 and 3 contain an entire chapter on plant variety. Chapter 6 in Tool 3, entitled "Plant Variety Rights and Seed Industries," provides an incomplete and misleading view about PVP protection. Essentially, it champions UPOV as the legal framework for the protection of PVP. There is no mention that, under the TRIPS Agreement, countries have full freedom to adopt alternative *sui generis* systems of protection, or to develop such alternative systems of protection (e.g. as implemented in India, Thailand, Malaysia, etc.). It makes no mention of LDCs and the policy space (transition period) available to them. The chapter speaks of the success of PVP protection in Kenya, but the information is misleading and not supported by empirical data. It also fails to explain that the claimed PVP growth began before Kenya became a member of UPOV, and continued as Kenya was implementing UPOV 1978, which in comparison to UPOV 1991 provides greater leeway for the implementation of farmers' rights. The chapter shows no appreciation of the differences between UPOV 1991 and UPOV 1978, and fails to explain that membership to UPOV 1978 is no longer possible.

The section entitled "Agricultural Policy and Strategy" simply ignores the realities prevailing in LDCs and most other developing countries, i.e. that the informal seed sector and small-scale farmers are the backbone of the agricultural system supported by practices of freely using, sharing, saving, exchanging and selling seeds and other propagating material. As recognized by the Treaty, farmers and the freedom of freely using, sharing, saving, exchanging and selling seeds/propagating material constitutes the basis of food and agriculture production throughout the world, and they are critical for sustainable agriculture and food security. The issues the Treaty champions (e.g. farmers' rights, fair agricultural practices, recognition of diverse farming systems), though relevant, are simply disregarded by the chapter.

The primary concern of the tools is to guide countries to become a member of UPOV. This is reinforced by Cluster 5

in Tool 2 (Baseline Questionnaire), which asks "Is the country a member of the International Union for the Protection of New Varieties of Plants (UPOV) or has it initiated the procedure to become a member of UPOV?" None of the questions in Tool 2 are directed towards understanding the makeup of the agricultural system, especially the role of farmers (particularly small-scale farmers) and the informal seed sector. Furthermore, in Tool 2, the words "farmer" and "farmers' rights" do not even appear. The Questionnaire asks about partnerships between breeders, research organizations and industry, but not about partnerships with farmers – which certainly would be important when drafting a national PVP law.

Apart from the tools, the various technical assistance missions of WIPO are also about promoting UPOV 1991. For example, the technical assistance database of WIPO mentions a "Mission to Nay Pyi Taw, Myanmar, to provide presentations on the Plant Variety Protection system in line with the UPOV Convention and to participate in the consultation meeting for the drafting of the PVP legislation, from January 7 to 9, 2014."⁴⁷ The meeting was organized by WIPO, Japan and Myanmar. In 2013, WIPO supported ARIPO to co-organize (with USPTO and UPOV) a regional workshop on a legal framework for PVP in Malawi. In 2014, WIPO co-organized with ARIPO and UPOV another regional workshop in Harare, on 29-31 October, and described it as "a critical step in the ARIPO roadmap to becoming a UPOV member."⁴⁸ It has been noted above that many concerns have been raised with regard to this draft legal framework, in particular the suitability of UPOV 1991 for ARIPO, especially since most of its members are LDCs. And yet, the regional workshops only discussed the UPOV 1991 model as the basis for the legal framework.

WIPO's technical assistance and support is always about the introduction of PVP laws modeled on UPOV 91, even if such a model is unsuitable for the beneficiary country. WIPO's "one size fits all" approach does not take into account the specific needs and circumstances of developing countries, nor does it consider that other PVP laws could be more supportive of farmers' rights (including their right to save, use, exchange and sell farm-saved seed) and the implementation of Article 9 of the Treaty.

WIPO's assistance including tools is based on the assumption that PVP frameworks based on UPOV 1991 are a prerequisite for the development plant varieties. This is not surprising, considering that the information promoted and contained in the tools is based on information produced by UPOV. WIPO completely ignores the work of many independent research institutions or commissions (Wageningen University, Bioversity International, UK Commission on IPR⁴⁹), which have questioned the suitability of the UPOV 1991 model for developing countries and LDCs, and have always taken into account or even pro-

47 www.wipo.int/tad/en/activitysearchresult.jsp

48 www.wipo.int/tad/en/activitydetails.jsp?id=7426

49 www.iprcommission.org/

moted alternatives to UPOV. The technical assistance given is not evidence-based, but rather takes an ideological approach.

WIPO's technical assistance on plant variety protection is inconsistent with the spirit and intent of the WIPO Development Agenda, particularly Recommendations 1⁵⁰, 6⁵¹, 12⁵², 13⁵³ and 24.⁵⁴ These recommendations require WIPO's technical assistance to be development-oriented, transparent, and to take into account the needs and levels of development of developing countries and LDCs. The WIPO staff and consultant are to be neutral and accountable, and WIPO is to offer advice on the use of flexibilities contained in the TRIPS Agreement.

Patents

The TRIPS Agreement allows WTO members to exclude "plants" from patentability. However many countries limit such exclusion to "plant varieties," thereby allowing for the patenting of plants and their parts and components. In addition, even in countries where the legislation excludes plants and plant varieties from patent protection, patents have been sought and granted on genetic constructs, cells and other parts and components of plants. Exclusive rights granted by patents prevent farming practices that freely use, save, exchange and sell seeds, as well as preventing the option of using protected material as a source for further improvement of a plant variety.

There is a need for clarity about WIPO's technical assistance on plant genetic resources, particularly what specifically is advocated by WIPO with regard to patenting of plant genetic resources. There would then be a need to assess the impact of this assistance on the implementation of farmers' rights and the Treaty objectives.

IN SUMMARY

WIPO's technical assistance is undermining the implementation of Article 9, and consequently also the achievement of the Treaty's objectives. As a specialized UN Agency, WIPO has a responsibility to provide technical assistance that enables the realization of farmers' rights at the national and regional levels.

B.3 THE RECOGNITION OF THE ENORMOUS CONTRIBUTION OF LOCAL AND INDIGENOUS COMMUNITIES AND FARMERS OF ALL REGIONS OF THE WORLD, PARTICULARLY THOSE IN THE CENTRES 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 (ARTICLE 9.1)

The above-mentioned Benchmarking Indicators (Tool 3) concerning the Methodology for the development of National IP Strategies is a good indicator of WIPO's thinking with regard to the role of farmers and local and indigenous communities and their contribution to PGRFA.

It states: "Most decision makers in African countries have also realized that traditional agricultural practices have limitations, and have led to poverty, hunger and food insecurity."

This view is flawed. It also shows that WIPO has little understanding of issues dealing with PGRFA, and that WIPO does not share the Treaty's views with regard to farmers and local and indigenous communities and their role in the conservation and development of PGRFA, which constitutes the basis of food and agriculture production globally and the importance of farmers' rights.

WIPO also promotes UPOV 1991 as the *sui generis* PVP legal framework that countries should adopt. And as discussed above, UPOV's instruments and activities fail to give due recognition to the contribution of farmers and local and indigenous communities, or acknowledge their continuing important role in the development of plant genetic resources.

IN SUMMARY

WIPO's thinking and orientation on farmers' rights, and its contribution to PGRFA, are *not* consistent with the Treaty's provisions and objectives.

50 DA Recommendation 1: WIPO technical assistance shall be, inter alia, development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes of technical assistance programs should be country specific.

51 DA Recommendation 6: WIPO's technical assistance staff and consultants shall continue to be neutral and accountable, by paying particular attention to the existing Code of Ethics, and by avoiding potential conflicts of interest.

52 DA Recommendation 12: To further mainstream development considerations into WIPO's substantive and technical assistance activities and debates, in accordance with its mandate

53 DA Recommendation 13: WIPO's legislative assistance shall be, inter alia, development-oriented and demand-driven, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion.

54 DA Recommendation 14: Within the framework of the agreement between WIPO and the WTO, WIPO shall make available advice to developing countries and LDCs, on the implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement.

B.4 THE RIGHT TO EQUITABLY PARTICIPATE IN SHARING BENEFITS ARISING FROM THE UTILIZATION OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (ARTICLE 9.2(B))

Patents and PBRs are often obtained on PGRFA, but without prior informed consent and fair and equitable benefit sharing. As discussed above, disclosure in IP applications (patent and PVP applications) is an important mechanism to prevent misappropriation of genetic resources.

The Intergovernmental Committee on Genetic Resources, Traditional Knowledge & Folklore (IGC) has been negotiating a treaty on genetic resources and associated traditional knowledge, focused on disclosure of origin and evidence of compliance with access and benefit-sharing requirements. Despite many years of negotiations, little headway has been made.⁵⁵

Furthermore, WIPO's treaties on patents currently do not require disclosure of origin and evidence of compliance with access and benefit-sharing requirements.

In addition, WIPO also promotes UPOV 1991 as the *sui generis* PVP legal framework that countries should adopt. And as discussed above, UPOV has taken the position that disclosure requirements are incompatible with its provisions.

IN SUMMARY

The above leads to the conclusion that WIPO's instruments, activities and assistance do not support – but rather undermine – the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture mentioned in Article 9.2(b) of the Treaty.

B.5 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 (ARTICLE 9.2(C))

The examples below show that WIPO's actions and activities are not supportive of Article 9.2(c).

WIPO tools created for the development of national IP strategies make no mention of Article 9(c). Tool 1 on the process for developing national IP strategies makes no specific mention of involving farmers in making decisions.⁵⁶ Furthermore, Chapter 6 of Tool 3 on benchmarking indicators contains a list of plant breeding and seed associations,

but no information is available on farmers' groups and the civil society organizations working with them. This perhaps suggests that for WIPO, the main stakeholders on the issue are plant breeding and seed associations.

In 2013, WIPO co-organized a regional workshop in Malawi with ARIPO, the US Patent and Trademark Office (USPTO) and UPOV. The topic of the workshop was the ARIPO Legal Framework for the Protection of New Varieties of Plants. In 2014, WIPO co-organized another regional workshop, on 29-31 October in Harare, with ARIPO and UPOV. It has been noted above that the process for developing the regional draft PVP Protocol for ARIPO has been criticized as being not inclusive of farmers, and non-transparent. Clearly, WIPO has not required ARIPO to ensure compliance with Article 9.2(c) prior to supporting ARIPO.

WIPO hosted a workshop on Intellectual Property, Innovation and Food Security, focused on East Africa, and particularly Tanzania, that took place in Geneva on 10–11 May 2012.⁵⁷ Following the workshop, Tanzanian civil society organizations and others raised concerns in a letter addressed to Francis Gurry, dated 18 July 2012. The letter said that, among other things, "The program and participants list suggest that participants representing the interests of the industry in particular the multinational corporations heavily dominated the workshop," adding that the "program and participants list shows hardly any representation of civil society organizations that champion farmers' rights or even key national farmer organizations such as the Tanzania based Eastern and Southern Africa Farmers Forum (ESAFF), and MVIWATA (representing farmers associations in Tanzania). In addition, the program fails to reflect the full range of views that exist on the topic of IP and food security such as critical views about the IP system relating to the adverse impacts on food security or agro-biodiversity."

IN SUMMARY

The above-mentioned examples show that WIPO's actions and activities are not supportive of Article 9.2(c), or even ignore it.

55 See Gopakumar, Failure to reach consensus, "no decision" adopted on four issues, Third World Network. Available at www.twn.my/title2/intellectual_property/info.service/2014/ip141001.htm See also www.ip-watch.org/2014/07/09/wipo-meeting-on-tk-protection-ends-with-no-agreement-draft-texts-heading-to-assembly/ and www.ip-watch.org/2014/10/01/inauspicious-start-to-gurrys-second-term-as-ip-policymaking-hits-wall-at-wipo/

56 www.wipo.int/export/sites/www/freepublications/en/intproperty/958/wipo_pub_958_1.pdf

57 www.wipo.int/meetings/en/details.jsp?meeting_id=26182

ANNEX

OPEN LETTER TO THE SECRETARY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE ON FARMERS RIGHTS

18th September 2014

Dr. Shakeel Bhatti,
Secretary
International Treaty on Plant Genetic Resources
for Food and Agriculture (ITPGRFA)

cc. Francis Gurry, Director General of WIPO,
Secretary-General of UPOV
cc. Member States of ITPGRFA

Dear Dr. Bhatti,

We the undersigned organizations from around the world are keen to see full implementation of Farmers Rights. The Preamble of the Treaty and Article 9 on Farmers' Rights, recognizes the contribution that local and indigenous communities and farmers of all regions of the world have made and will continue to make for the conservation and development of plant genetic resources for food and agriculture (PGRFA). It also explicitly recognizes that Treaty Members have the responsibility of realizing farmers' rights. This includes the right to save, use, exchange and sell farm-saved seed/propagating material; the right to participate in decision making on matters related to the conservation and sustainable use of PGRFA; the right to participate in the fair and equitable sharing of benefits arising from, the use of plant genetic resources as well as protection of traditional knowledge relevant to PGRFA. The treaty acknowledges that these elements are fundamental to the realization of Farmers' Rights and the promotion of Farmers' Rights at national and international levels.⁵⁸

"Farmers' Rights" is a core component of the Treaty, and as such its full implementation is a pre-requisite to achieving the Treaty objectives. However, there is much concern that the instruments and/or activities of UPOV and WIPO are not supportive of Farmers rights, and even undermine those Rights, thereby hindering implementation of the Treaty provisions.

In September 2013, the 5th Session of the Governing Body adopted Resolution 8/2013 on implementation of Article 9, which in Paragraph 3 requests the Secretary to "to invite UPOV and WIPO to jointly identify possible areas of

interrelations among their respective international instruments"⁵⁹

In your letter⁶⁰ addressed to Dr. Francis Gurry, the Secretary-General of UPOV to operationalize paragraph 3, you state: "*Without intending to prejudge its outcome, this consultation process could for example lead to joint publication by UPOV, WIPO and the International Treaty on inter-related issues regarding innovation and plant genetic resources among our respective instruments.*"

We are of the view that a publication such as that suggested in the letter is certainly not what should be expected as an outcome of Paragraph 3 of the Resolution. The Resolution concerns implementation of Article 9, thus the identification of interrelations should be with regard to Farmers' Rights and be supportive of the implementation of Article 9 and the Treaty. Discussing innovation and plant genetic resources is inconsistent with the mandate given by the Resolution.

Further, we are of the view that the implementation of Paragraph 3 of the Resolution requires a thorough and evidence based analysis of the actual and potential effects including negative impacts of UPOV and WIPO's instruments and activities with regard to realization of Farmers' Rights. Some key questions to be addressed in such an analysis are:

- What is the impact of UPOV's requirements (esp. of Art. 14 and 15 of UPOV 1991) on farmers' rights to save, use, exchange and sell farm-saved seed and other propagating material? The analysis should differentiate between the requirements of UPOV 1978 and UPOV 1991.
- What is the scope and content of WIPO's technical assistance with regard to plant genetic resources for food and agriculture especially when it receives technical assistance requests from its Members in connection with patents and plant variety protection?
- What is the impact of WIPO's technical assistance on farmers' rights to save, use, exchange and sell farm-saved seed and other propagating material?
- How do UPOV and WIPO "*recognize the enormous contribution that the local and indigenous communities and*

58 See the Preamble and Article 9 of the Treaty.

59 See paragraph 3 of Resolution 8/2013.

60 Published in the Annex of UPOV Document CC87/7 which is available on APBREBES website at www.apbrebes.org/files/seeds/cc_87_7.pdf

farmers of all regions of the world, particularly those in the centres 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"⁶¹?

- To what extent do the instruments and activities of UPOV and WIPO support or undermine the “*protection of traditional knowledge relevant to plant genetic resources for food and agriculture*”⁶²?
- To what extent are the negotiations of the WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore taking into account the need to uphold farmers’ rights?
- In which way do UPOV and WIPO support or restrict the “*right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture*”⁶³? Are there any measures in place in the instruments administered by UPOV and WIPO to facilitate fair and equitable sharing of benefits and to prevent misappropriation of plant genetic resources for food and agriculture?
- How are UPOV and WIPO upholding the “*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*”⁶⁴? Do they insist on the implementation of this right when providing technical assistance and have discussions taken place in UPOV and WIPO on supporting the implementation of this right.

We are of the strong view that the current suggestion by the Treaty Secretariat i.e. to undertake a joint publication with the described content is not in line with the Resolution 8/2013 taken by the governing body, and request that you take immediate steps to halt this flawed process.

Instead the Treaty Secretariat should take lead and invite UPOV and WIPO to agree to the setting up of an independent Commission that will investigate implementation of Article 9 by UPOV and WIPO with regard to their respective instruments and activities. Some key questions to be investigated have been highlighted above. To ensure a rigorous investigation, such a Commission should also invite written submissions and hold public hearings. This process would be in line with the mandate of the Resolution.

We look forward to hearing from you on the next steps taken in the implementation of the Resolution.

On behalf of the signatories

*Sangeeta Shashikant, Third World Network
François Meienberg, Berne Declaration*

SIGNATORIES

International Organisations

- La Via Campesina
- Oxfam International
- Third World Network

Africa

- The Alliance For Food Sovereignty in Africa (AFSA)
- The Pan African platform comprising 10 networks and farmer organisations
- JINUKUN – COPAGEN, Benin
- Food sovereignty Ghana
- Ethio-organic Seed Action (EOSA), Ethiopia
- Commons for EcoJustice (EcoJustice), Malawi
- Never Ending Food, Malawi
- Fahamu Africa, Senegal
- African Center for Biosafety, South Africa
- SECAAR (Service Chrétien d’Appui à l’Animation Rurale), Togo
- Alliance for Agro-Ecology and Biodiversity Conservation, Zambia
- Caritas Zambia
- Community Technology Development Trust (CTDT), Zimbabwe
- Food Matters, Zimbabwe

Asia

- Farmer Seed Network, China
- CENESTA (Centre for Sustainable Development), Iran
- Consumer Rights for Safe Food, Philippines
- Negros Island sustainable agriculture and rural development foundation, Philippines
- SEARICE, Philippines

Americas

- La Red Poruna América Latina Libre de Transgénicos (Network for a GE-Free Latin America)

61 See Article 9 of the Treaty

62 See Article 9 of the Treaty

63 See Article 9 of the Treaty

64 See Article 9 of the Treaty

- Centro de Agricultura Alternative do Norte de Minas, Brasil
- ETC Group, Canada
- USC, Canada
- Asociación Red de Coordinaciónen Biodiversidad – Costa Rica
- Asociación ANDES, Perú
- PLANT (Partners for the Land & Agricultural Needs of Traditional Peoples, USA

Europe

- ARCHE NOAH, Austria
- APRODEV, Belgium – The Association of World Council of Churches related Development Organisations in Europe with 15 Member Organisations
- Pan-Africanist International, Belgium
- Réseau Semences paysannes, France
- AgrarKoordination, Germany
- Agrecol Association (Agrecole.V.), Germany
- Campaign for Seed-Sovereignty, Germany
- Dachverband Kulturpflanzen- und Nutztiervielfalt, Germany
- INFOE – Institute for Ecology and Action Anthropology, Germany
- Misereor, Germany
- Save Our Seeds, Germany
- Slow Food Deutschland e.V., Germany
- Verein zur Erhaltung der Nutzpflanzenvielfalt, Germany
- The Development Fun, Norway
- Resembrando e Intercambiando, Spain
- alliancesud, Siwtzerland
- BerneDeclaration, Switzerland
- Biovision Foundation, Switzerland
- Brot für alle – Painpour le prochain – Pane per tutti, Switzerland
- Fastenopfer, Switzerland
- HEKS – Swiss Church Aid, Switzerland
- Swissaid, Switzerland
- Uniterre, Switzerland
- International Institute for Environment and Development (IIED), UK
- UK Food Group, UK – The leading UK network for non-governmental organisations (NGOs) working on global food and agriculture issues with 49 member

