



ESA

**Farmers' Rights & Breeders' Rights:
A false conflict**

*Symposium on possible interrelations between the IT
PGRFA and the UPOV Convention*

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Szonja Csörgő
Director IP & Legal Affairs



Agenda

- 🌱 Why is this debate important?
- 🌱 The rights concerned
- 🌱 The interrelations
- 🌱 My conclusions

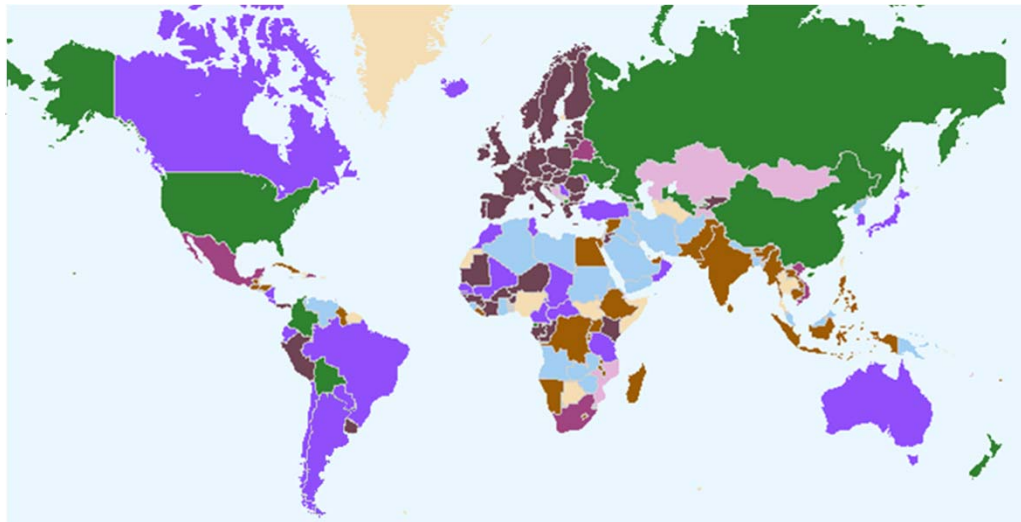


Why is this debate important?

- Perceived conflict between breeders' rights & farmers' rights
- Overlapping membership of UPOV & the Treaty

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- UPOV/ITPGRFA/NP
- UPOV/ITPGRFA
- UPOV/NP
- UPOV only
- ITPGRFA/NP
- ITPGRFA only
- NP only

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Why is this debate important?

- ✿ Perceived conflict between breeders' rights & farmers' rights
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With regard to both elements clarification is needed

ON:

- ✿ Perceptions & misperceptions
- ✿ Concepts & contexts
- ✿ Obligations & pathways for their harmonious implementation



The rights concerned

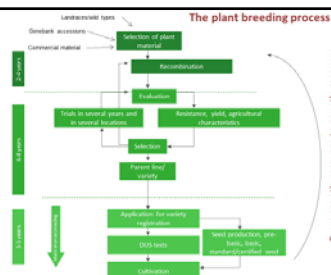
PLANT BREEDERS' RIGHTS

- ✿ Plant breeding = time-consuming, costly but very innovative process
- ✿ Results in biological material (new plant variety)



Easy to copy → system to ensure return on investment & thus incentives needed

- ✿ Open-source system – breeders' exemption
- ✿ Has always stimulated quick innovation in plant breeding



ESA **The rights concerned**

FARMERS' RIGHTS

- ✿ Article 9 IT PGRFA
- ✿ Historical context

- ✿ Recognize the past, present and future contribution of farmers to sustainable use & development of PGRs



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ESA **The rights concerned**

FARMERS' RIGHTS

Elements of Farmers' Rights

- ✿ Protection of traditional knowledge
- ✿ Right to equitable benefit-sharing
- ✿ Right to participate in decision-making on the national level in matters related to conservation and sustainable use
- ✿ Rights that farmers have to save, use, exchange and sell farm-saved-seed



Subject to national law & as appropriate

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Right to participate in decision-making is central to Farmers' Rights



ESA **The interrelations**

Two conventions, two sets of objectives



Encourage the development of
new plant varieties for the
benefit of society



Conservation & sustainable use
of PGRFA; access and benefit-
sharing

- 🌱 No article by article scrutiny but exploring how they fit & can coexist
- 🌱 *"The Treaty and other international agreements relevant to this Treaty should be mutually supportive with a view to sustainable agriculture and food security"*

ESA The interrelations

System created by UPOV underpins the goals of the Treaty:

- It stimulates plant breeding = conservation & sustainable use
- Brings considerable benefits via the breeders' exemption
- It boosts availability of modern varieties to the farmer

Areas of interrelations between elements of Article 9 & UPOV

- Protection of TK: UPOV has no relevance
 - Participation: Treaty context is very precise; UPOV has no relevance
- BUT: participation at UPOV level ensured

ESA The interrelations

Participate in benefit-sharing:
Breeders' exemption

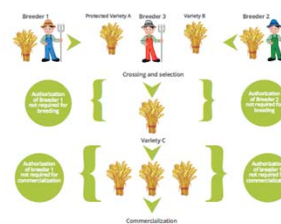


The benefit-sharing value of the breeders' exemption



What is the breeders' exemption?

The breeders' exemption is a compulsory exception to the UPOV-type plant breeder's right which provides that all varieties protected by such right can be freely used for further breeding of new plant varieties by anybody, be it breeders, farmers, public research institutes, gene banks, amateurs or others. The resulting variety can be freely commercialized.



Who benefits and how?

Who benefits?	How?
Consumers and society	Continuous provision of improved, safer, healthier and less expensive food, less environmental harm and better choice of products developed by a diverse breeding industry working in a healthy competition.
Farmers and growers	Having a rich choice from a wide range of new and improved varieties.
Everybody who engages in breeding	Having the possibility to use newly developed, improved varieties for further breeding work without any obligations to ask for a license from or pay royalties to the right holder.

Fast track innovation!
Free access to the newly developed variety for further breeding means gaining time and resources as development will be quicker.

Immediate information & technology transfer!
Via the free availability of new varieties for further breeding all the information and technology developed in the variety is also readily available for the next developer. The fact that the variety is physically available directly enables breeding by others.

Increasing plant diversity!
The free availability of these newly developed genetic resources provides the best materials for their continuous use and is a constant contribution to biodiversity. This non-competitive system also preserves and promotes a diversified breeding industry consisting of a wide range of breeding companies of different size.



The interrelations

Right that farmers have to save, use, exchange and sell farm-saved-seeds

Type of farmer	Types of varieties used	Purpose of use	Legal situation
Subsistence	Old varieties, landraces, farmers' varieties	Conservation, maintaining their livelihoods	Not under protection
	Protected varieties	Development, adaptation to local circumstances, improving livelihoods	Breeders' exemption; private and non-commercial use (all acts allowed)
Small scale	Old varieties, landraces	Conservation, adaptation	Not under protection
	Protected varieties	Adaptation to local circumstances	Breeders' exemption
	Protected varieties	Save & use FSS (reproduction) not linked to conservation	Agricultural exemption (save & use allowed with exemption from payment; exchange & sales not allowed)
Large scale	Old varieties landraces	Conservation, adaptation	Not under protection
	Protected varieties	Reproduction (save & use FSS) not linked to conservation	Agricultural exemption (save & use allowed against payment; exchange & sales not allowed)



Conclusions

1. Useful to have this discussion
2. Common understanding of concepts & contexts
3. No *a priori* conflicts between the instruments examined
4. Implementation – national needs & realities to be taken into account → no one size fits all solution
5. This exercise must focus on balanced ways of implementing obligations under both treaties

« 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 »



Thank you for your attention!



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CONTACT US

ESA European Seed Association
Rue du Luxembourg 23
B 1000 Brussels
T. +32 (0)2 743 28 60
szonjacsorgo@euroseeds.eu

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