

The International Treaty on Plant Genetic Resources for Food and Agriculture in the Context of Other Legal Instruments

(Presentation 1, Part 1)

Introduction

While controversies over the ownership, control and exchange of plant genetic resources for food and agriculture (PGRFA) are old, modern-day management of these resources is more complicated than ever before. Those in charge of the physical care of PGRFA could be forgiven for complaining that they need degrees in politics, law and genetics just to survive. And those who participate in policy-making face an equally bewildering environment. Trade relations, intellectual property rights, biosafety, indigenous communities and public–private sector relations are just a few of the topics that are always on the table. In addition, everyone faces the prospect of dealing with numerous laws, regulations, guidelines and policies, as well as following events in multiple fora, from those at the national level to those at the international level.

The consequences of not being up to date and knowledgeable about all these matters and fora can be costly, both personally and institutionally. One misstep and you can end up reading about yourself in the morning newspaper.

This learning module focuses on the International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as ‘the Treaty’). But the Treaty must be seen in the context of a complex network of interrelated international agreements. To help serve as a reference throughout the learning module, Table 1.1 provides a summary of the relevant instruments, their scope of coverage and their current status.

Different political and scientific interests compete for what they want or what they think is right. And yet, at the end of the day, it is clear that nations and people are interdependent for plant genetic resources. This simple fact dictates that we cooperate to ensure the conservation of PGRFA and its orderly management, including the facilitation of access and fair benefit sharing.

This learning module is intended primarily for those who have practical management and/or policy-making responsibilities for plant genetic resources —whose interest in the subject is practical rather than ‘academic’. It is intended to help you navigate through the policy environment in such a way as to promote the sound and scientific management of PGRFA, whether in your role as custodians and developers of this resource or as policymakers. The learning module and its associated workshops are not intended to be a political forum where policies and viewpoints are debated. Thus, we have focused not so much on the political issues that underlie existing laws, agreements and policies, as on how these can be understood, implemented and shaped.

We hope that the use of this learning module will help people become more knowledgeable, confident, sensitive and effective actors in the field of plant genetic resources.

Table 1.1. Legal Instruments for PGRFA, Their Coverage and Status

Law or Policy	Topic / Applicability	Status / Jurisdiction
International Treaty on Plant Genetic Resources for Food and Agriculture	<ul style="list-style-type: none"> Covers all PGRFA (does not regulate non-food and agricultural uses) and addresses diverse topics, including conservation, use, international cooperation, technical assistance and farmers' rights Establishes multilateral system for select crops (approx. 35 crops/crop complexes plus certain forages) Sets rules for access and benefit sharing for these materials, both <i>ex situ</i> and <i>in situ</i> Does not specify access and benefit-sharing rules for PGRFA not in the multilateral system (except for CGIAR and other international institutions' holdings of such crops that are covered under agreements signed with the Governing Body under Article 15 of the Treaty agreements) 	<ul style="list-style-type: none"> Entered into force on 29 June 2004 Legally binding for all ratifying countries (125 as of July 2010); will not apply to those not ratifying
Convention on Biological Diversity (CBD)	<ul style="list-style-type: none"> Covers all biodiversity Provides general principles for access and benefit sharing concerning materials accessed after the coming into force of the CBD, yet not covered by the Treaty on PGRFA (i.e., non-multilateral and non-CGIAR PGRFA) 	<ul style="list-style-type: none"> Entered into force in 1993 Legally binding for countries that have ratified (193 as of April 2010)
International Plant Protection Convention	<ul style="list-style-type: none"> Addresses phytosanitary issues with the transfer of plants and animals, including PGRFA 	<ul style="list-style-type: none"> Revised text entered into force in 2005 Legally binding for the countries that have ratified (172 as of April 2010)
International Undertaking on Plant Genetic Resources (IU)	<ul style="list-style-type: none"> Covered all PGRFA Addressed the exploration, preservation, evaluation and making available of PGRFA 	<ul style="list-style-type: none"> Adopted at FAO in 1983 Not legally binding for the countries that have adhered to the IU (113)
WTO-TRIPS Agreement	<p>Member States</p> <ul style="list-style-type: none"> Must comply with minimum standards of protection of intellectual property Must ensure protection of micro-organisms, non-biological and microbiological processes and plant varieties that meet protection criteria 	<ul style="list-style-type: none"> Entered into force January 1995 Legally binding for all WTO members that have ratified it (153 as of April 2010)
UPOV 1961, 1972, 1978, 1991 (Plant Breeders' Rights)	<ul style="list-style-type: none"> Through a succession of international laws, UPOV aims to harmonize national laws for protecting plant varieties 	<ul style="list-style-type: none"> Four versions (only 1991 still open for joining) Legally binding for ratifying countries (68 as of April 2010)
Regional Agreements (e.g., Andean Community)	<p>Coordinated laws/policies regarding some PGRFA-related topics:</p> <ul style="list-style-type: none"> EU (biotech, patenting) Andean Pact (access) 	<ul style="list-style-type: none"> Legally binding

Network Agreements	<ul style="list-style-type: none"> • Networks exist at both the regional and crop levels. Virtually all regions have multiple regional/subregional networks. Some have crop working groups • Crop networks relate to conservation, transfer of genetic resources and breeding/improvement; function for a wide array of crops at regional and supra-regional levels (See FAO's State of the World's Plant Genetic Resources—1998 and 2010—for a listing and description.) • FAO (through the IU) had an international network of <i>ex situ</i> collections. The FAO Commission on Genetic Resources oversaw and set policies for the network per se. CGIAR Centres and other international institutions holding collections of PGRFA have now placed those collections within the purview of the Treaty under agreements signed with the Governing Body of the Treaty (see below) • SADC and Nordic regions have centralized germplasm storage and agreements covering ownership and transfer of these materials • There are some NGO networks dealing with conservation and farmer-participatory crop improvement • There are also joint country/private-sector projects (e.g., Latin American Maize Project) involving germplasm conservation and evaluation 	
National laws	<ul style="list-style-type: none"> • National laws/regulations may address diverse topics such as conservation, use, access, benefit sharing, farmers' rights, quarantine, seed marketing standards, IPRs, etc. 	<ul style="list-style-type: none"> • Legally binding
Agreements entered into by the governing body of the Treaty and the CGIAR centres and other international institutions under Article 15 of the Treaty	<ul style="list-style-type: none"> • Agreements place the <i>ex situ</i> collections held in trust by the Centres and other international institutions within the purview of the Treaty • Agreements deal with the availability of both Annex 1 and non-Annex 1 PGRFA • A statement of the Alliance of CG Centres addresses concerns about the practical implementation of the agreement 	<ul style="list-style-type: none"> • 11 CG centres (those having <i>ex situ</i> collections) have signed binding agreements with the Governing Body • Agreements replace previous agreements signed with FAO placing the collections under the auspices of FAO
FAO Global Plan of Action (GPA)	<ul style="list-style-type: none"> • Contains specific 'activities' in regard to <i>in situ</i> conservation and development; <i>ex situ</i> conservation and utilization; and institutions and capacity building • The GPA is a rolling plan of action and is now in the process of being updated 	<ul style="list-style-type: none"> • Adopted 1996 by 4th Intl. Technical Conference on PGRFA (150 countries) • Not legally binding • Serves as framework, guide and catalyst for PGRFA efforts • Referenced in the Treaty: has bearing on and relation to a legally binding agreement • GPA now being updated

<p>Agreement for Establishment of the Global Crop Diversity Trust</p> <p>FAO/IPGRI Genebank Standards</p>	<ul style="list-style-type: none"> • Establishes the Global Crop Diversity Trust, which is an endowment fund set up to finance long-term <i>ex situ</i> conservation of PGRFA as part of a rational global system • Sets out recommended genebank storage standards for seeds of orthodox species only 	<ul style="list-style-type: none"> • Entered into force in 2004 • Now has some 26 signatories • Recommended by FAO and IPGRI to be used as the reference in national, regional and international genebanks • Endorsed in 1993 by FAO Commission on Plant Genetic Resources • Not legally binding • Note: <i>both FAO and IPGRI have published other 'standards' in the past, inter alia on design of genebanks, germination, information handling, regeneration and multiplication, as well as descriptor lists</i>
<p>FAO Code of Conduct for Plant Germplasm Collecting and Transfer</p>	<ul style="list-style-type: none"> • Deals with the etiquette of collecting and transfer of PGRFA • Has provisions on collectors' permits, responsibilities of collectors, sponsors, curators and users, as well as on reporting, monitoring and evaluating observance of the Code 	<ul style="list-style-type: none"> • Adopted by FAO Conference in 1993 • Not legally binding • Note: <i>both the Treaty and the CBD have provisions that add to or modify the guidance provided by the Code</i> • Article 12.3(h) provides that the Governing Body may set standards regarding access to PGRFA found in <i>in situ</i> conditions
<p>CGIAR policies/instruments</p>	<ul style="list-style-type: none"> • Centres' Guide to the Implementation of the Standard Material Transfer Agreement (SMTA) • Guidelines for germplasm acquisition • Model MTA for use with non-food/feed crops • Guidelines for acquisition and transfer of germplasm: micro-organism, animal and aquatic and marine • Ethical principles related to genetic resources • Guiding principles on Centres' Intellectual Assets • Principles involving centre interaction with the private sector • Position statements on biotechnology, the FAO-CGIAR agreements, 'genetic use restriction technologies' and the need to resolve certain issues concerning IPRs and genetic resources 	<ul style="list-style-type: none"> • Apply only to the CGIAR • Note: <i>some of the policies and instruments are related to the Governing Body-CGIAR agreements and specify actions that must be taken by centres to meet these contractual obligations</i>