



THE AFRICAN SEED TRADE ASSOCIATION

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AFSTA POSITION ON FARMERS' RIGHTS

(Adopted on 6th March 2009 by the AFSTA General Assembly)

The issue of "Farmers' rights" has brought concerns within the seed industry, farmer communities and policy makers especially in Africa. AFSTA would like therefore to express its view on this important subject.

The African Seed Trade Association (AFSTA) recognizes the contribution of farmer communities to the conservation and the improvement of plant genetic resources for food and agriculture. This has to be balanced with the important role of the African seed industry in maintaining and improving crop yields through continuous crop breeding to create superior varieties, which benefit farmers and to which they have access.

Accordingly, AFSTA fully supports access to genetic resources for breeding purposes by all breeders i.e. farmers themselves, public research institutes and seed companies and is not in favor of any regulations that prevent them from sustainably exploiting available plant genetic resources to add value to their crops.

In addition, breeders need to get a reasonable return on their investment in plant breeding so that they can continue developing novel products. Free use of farm-saved seed undermines this principle and would lead to less breeding efforts and eventually prevent the release of new varieties to the detriment of farmers and agricultural development as a whole. However, farmers still have the opportunity to use seeds of varieties that are not or are no longer protected, including landraces, without the consent of the breeder.

In Africa, lack of public and private investment in plant breeding has led to a shortage of improved varieties limiting the choice of farmers. To give incentives to breeders, there is need to protect new varieties using intellectual property rights as provided for under the UPOV 1991 Convention. This Convention gives adequate protection against inappropriate use of protected varieties while having provisions for free access and use for further breeding purposes i.e. breeders' exemption and the compulsory exception of acts done privately for non-commercial purposes (*Article 15 (1) of UPOV 1991 Convention*) allowing African subsistence farmers to save and use seed from their own harvests, specifically for their own use. As stipulated in article 9 (3) of the International Treaty on Plant Genetic Resources for Food and Agriculture (IT PGRFA), this right is subject to the national law in force in a given country where such acts may be prohibited or subject to specific requirements and/or limitations i.e. the right is not unconditional for farmers and the Article 9 does not intend to limit any rights granted to them at national level.

Under the UPOV 1991 Convention, national laws may allow farmers to replant on their own farm the seed produced on that same farm without the consent of the breeder of the protected variety. This exception however must remain within reasonable limits and is subject to the safeguarding of the legitimate interests of the breeder (*Article 15(2) of UPOV 1991 Convention*). This

optional exception to Plant Breeders' Rights should be limited to food and feed crops where farm-saved seed has been used traditionally and subject to the obligation that farmers provide information concerning the use to the breeder and to the payment of an equitable remuneration. However, this UPOV Convention has a provision that allows the free use of farm-saved seed of a protected variety for non commercial purposes by African subsistence farmers.

AFSTA therefore fully supports farmers' rights as mentioned in Article 9 of the International Treaty for Plant Genetic Resources for Food and Agriculture (IT PGRFA) taking into consideration farmers' contribution to the conservation of genetic resources and to the mutual benefits for farmers and breeders by sustainable use of plant genetic resources for further breeding while safeguarding the legitimate interest of the breeder. It is very important that governments and all seed stakeholders make efforts in Africa to promote the development of more improved varieties with a view to addressing the needs of the diversified agro-ecological zones of the continent, which is widely ignored by the rest of the world, through effective protection of new plant varieties with clear mechanism of royalty collection for the breeders.