



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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Item 6 of the Draft Provisional Agenda

SECOND MEETING OF THE *AD HOC* TECHNICAL COMMITTEE ON SUSTAINABLE USE OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Rome, Italy, 2-3 March 2015

INTERRELATIONS BETWEEN THE INTERNATIONAL TREATY AND RELEVANT INSTRUMENTS OF UPOV AND WIPO

I. INTRODUCTION:

1. In Resolution 8/2013, *Implementation of Article 9, Farmers' Rights*, adopted by the Governing Body at its Fifth Session in Muscat, Oman, the Governing Body, *inter alia*, "request[ed] the Secretary to invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments."

2. Contracting Party regions as well as civil society organizations provided their inputs and thoughts on the implementation of Resolution 8/2013. In accordance with the request of the Governing Body, the Secretary also exchanged preliminary views on the implementation of this request with the Office of the International Union for the Protection of New Varieties of Plants (UPOV) and with the Secretariat of the World Intellectual Property Organization (WIPO).

3. Based on these preliminary discussions and inputs, the Secretary consulted the Chair and Vice-chairpersons of the Sixth Session of the Governing Body, who provided advice and guidance on how to proceed.

The Secretary was advised to refer the request of the Governing Body to the *Ad Hoc* Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture (ACSU). A small team of experts will then be agreed upon with UPOV and WIPO, who will commence the preparation of a draft report, with the possibility for the wider public to provide comments at different stages.

4. The ACSU has already dealt with issues related to Farmers' Rights in the past.¹ Moreover, pursuant to its Terms of Reference, the ACSU has a mandate to provide advice to the Secretary on "cooperation with ... international processes and institutions in the field of sustainable use of PGRFA".²

¹ See Report of the First Meeting of the ACSU, IT/ACSU-1/12/Report.

² IT/GB-5/13/Report, Resolution 7/2013, Annex 2, para. 1

II. SUBMISSIONS ON INTERRELATIONS WITH UPOV AND WIPO:

5. After consulting the Bureau of the Sixth Session of the Governing Body, the Secretary has invited Contracting Parties, stakeholders, and others to share any relevant information on the identification of interrelations between the International Treaty, especially its Article 9 (Farmers' Rights), and relevant instruments of UPOV and WIPO. This invitation was issued through Notification GB6-028 as well as through the "Farmers' Rights Comments Submissions" webpage of the International Treaty.³

6. All submissions received by the Secretary until 5 February 2015 have been compiled and made available in document IT/ACSU-2/15/Inf.5, *Compilation of Information Received on Interrelations Between the International Treaty and Relevant Instruments of UPOV and WIPO*.

7. In order to facilitate the processing of the interrelations by the ACSU, below is an indicative list of issues mentioned in the submissions. The ACSU might wish to take this list into account when discussing Agenda Item 5.

8. Some of the issues on possible interrelations of the International Treaty and the relevant instruments of UPOV and WIPO, which are mentioned in the submissions received by the Secretary in response to Notification GB6-028 and through the "Farmers' Rights Comments Submissions" webpage and which are compiled in document IT/ACSU-2/15/Inf.5, can be summarized as follows:

- a) The implementation of Farmers' Rights under the International Treaty in light of obligations that countries have under the International Convention for the Protection of New Varieties of Plants (UPOV Convention), as revised in 1978 and 1991.
- b) The implementation of rights of farmers to save, use, exchange and sell farm-saved seed/propagating material, in light of the UPOV Convention, as revised in 1978 and 1991.
- c) The implementation of rights of farmers to save, use, exchange and sell farm-saved seed/propagating material, in light of relevant *sui generis* national legislation.
- d) The protection of traditional knowledge relevant to plant genetic resources for food and agriculture (PGRFA) in relation to the UPOV Convention, as revised in 1978 and 1991.
- e) The right of farmers to equitably participate in sharing benefits arising from the utilization of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- f) The right of farmers to participate in making decisions, at the *national* level, on matters related to the conservation and sustainable use of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- g) The participation of farmers in decision making processes, at the *regional* level, on matters related to the conservation and sustainable use of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- h) The "farmers' privilege" under UPOV 1991 in comparison to the concept of "Farmers' Rights" under the Treaty.
- i) The concept of "essentially derived varieties" under UPOV 1991 in relation to the concept of "Farmers' Rights" under the Treaty, especially with regard to farmer-breeders and to informal seed systems.

³ <http://www.planttreaty.org/content/farmers-rights-submissions>

- j) Recognition of farmers as breeders under the Treaty and relevant instruments of UPOV and WIPO.
- k) The concept of “Farmers’ Rights” as a collective right in comparison to the generally individual character of intellectual property rights in the instruments of UPOV and WIPO.
- l) The DUS (distinct, uniform, stable) criteria of UPOV and farmers’ varieties, farmers’ informal seed systems and farmers’ traditional knowledge.
- m) The “breeders’ exemption” under the UPOV Convention and the right of farmers to equitably participate in benefit sharing under Article 9 of the Treaty.
- n) Patents in plants or plant varieties and their possible impact on Farmers’ Rights.
- o) Possible impact of the technical assistance provided by WIPO relating to PGRFA on the implementation of farmers’ rights and the objectives of the Treaty.
- p) Possible impact of WIPO’s instruments and processes, including the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC), on the implementation of Farmers’ Rights.
- q) The enforcement provisions and mechanisms in the three instruments, with special regard to the potential enforcement of Farmers’ Rights.

III. ADVICE SOUGHT

9. Based on a review of the submissions on possible interrelations between the International Treaty, and the relevant international instruments of UPOV and WIPO, which have been compiled by the Secretary in document IT/ACSU-2/15/Inf.5, the ACSU is invited to:

- a. Identify issues of interrelations between the International Treaty and the relevant international instruments of UPOV and WIPO, that it wishes to be brought to the attention of UPOV and WIPO and the experts team, which will draft the report for consideration by the Governing Body;
- b. Provide further advice to the Secretary on the implementation of Paragraph 3 of Resolution 8/2013, based on the advice the Secretary has received from the Bureau of the Sixth Session of the Governing Body as presented in this document.