



Food and Agriculture
Organization of the
United Nations



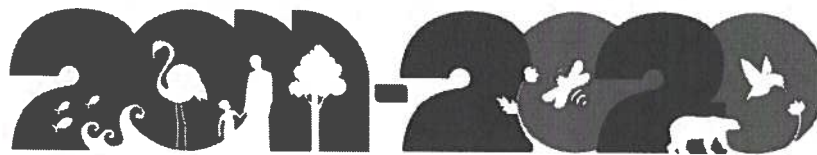
The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

**Views, Experiences and Best Practices as an example of possible options for
the national implementation of Article 9 of the International Treaty
Submitted by Contracting Parties and Relevant Organizations**

Note by the Secretary

This document presents the views, experiences and best practices on the implementation of Farmers' Rights, as set up in Article 9 of the International Treaty submitted by the Executive Secretary of the Convention on Biological Diversity on 17 August 2018.

The submission is presented in the form and language in which it was received.



United Nations Decade on Biodiversity

Ref.: SCBD/SPS/AS/VN/JS/RKi/87507

16 August 2018

Dear Mr. Nnadozie,

Reference is made to notification NCP GB8-05 Farmers' Rights, dated 7 May 2018, inviting views, experiences and best practices as examples of possible options for national implementation of Article 9 of the International Treaty, and information regarding the arrangements for the Ad Hoc Technical Expert Group on Farmers' Rights.

I am pleased to bring to your attention the outcomes of the thirteenth meeting of the Conference of the Parties to the Convention and the tenth meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity as well as information prepared for the second meeting of the Subsidiary Body on Implementation, held from 9 to 13 July 2018, which may be of relevance to the work of the Ad Hoc Technical Expert Group on Farmers' Rights under the International Treaty.

I would be very grateful if you would make the attached available for the upcoming meeting of the Ad Hoc Technical Expert Group on Farmers' Rights.

I wish you a very successful meeting.

Yours sincerely,

Cristiana Paşca Palmer, PhD
Executive Secretary

Attachment

Mr. Kent Nnadozie
Secretary
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
Rome, Italy
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cc: PGRFA-Treaty@fao.org



**SUBMISSION OF THE EXECUTIVE SECRETARY
OF THE
CONVENTION ON BIOLOGICAL DIVERSITY
DR. CRISTIANA PAȘCA PALMER**

**TO THE
INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND
AGRICULTURE**

Ad Hoc Technical Experts Group on Farmers' Rights

11 to 14 September 2018
FAO Headquarters
Rome, Italy

1. The following provides information on developments related to indigenous peoples and local communities (IPLCs) under the Convention on Biological Diversity (CBD) and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (Nagoya Protocol) which may be of relevance to the work of the International Treaty on Plant Genetic Resources for Food and Agriculture on farmers' rights (International Treaty). As reflected in Article 8(j) and related provisions of the Convention of Biological Diversity, the Parties to the Convention have had a long history of working with indigenous peoples, as well as local and traditional communities, especially women from these communities, many of which are small farmers.

2. The Secretariat has acquired some experience that may be of assistance in the International Treaty's work concerning those farmers, and in particular, Article 9.2 of the International Treaty which speaks to the protection of traditional knowledge relevant to plant genetic resources for food and agriculture; the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and 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. Additionally, Article 9.3 of the International Treaty alludes to the rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

Recent Decisions of the Conference of the Parties

3. With respect to the protection of traditional knowledge and the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources (for food and agriculture), the

Conference of the Parties (COP) at its thirteenth meeting has adopted: the MO'OTZ KUXTAL¹ VOLUNTARY GUIDELINES. These guidelines are intended to guide Parties and other governments in the development of mechanisms, legislation or other appropriate initiatives to ensure the prior and informed consent² of indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge.

4. The guidelines, if implemented effectively at the national level, will assist in achieving Aichi Target 18 of the CBD's Strategic Plan for Biological Diversity (2011-2020), which provides that:

By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.

5. As such the MO'OTZ KUXTAL VOLUNTARY GUIDELINES are a substantial contribution to protecting traditional knowledge as envisaged under Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples, which is:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Working Group on Article 8(j)

6. The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) at its tenth meeting, held from 13 to 16 December 2017 in Montreal, Canada, made several recommendations for consideration by the fourteenth meeting of the Conference of the Parties³ which may be relevant to the rights of small farmers concerning the protection of their traditional knowledge as well as the equitable sharing of benefits arising from the use of such knowledge, in particular the following:

Rec. 10/1, The Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge Relevant for the Conservation and Sustainable Use of Biological Diversity

7. The Repatriation Guidelines may be relevant for small farmers. In particular, the section "preparedness to receive" suggests that "from an indigenous peoples and local community perspective 'preparedness to receive' includes the ability of the relevant indigenous peoples and local communities to receive, store and restore traditional knowledge and the development of local mechanisms for the protection and promotion (including intergenerational transfer) of traditional knowledge and safeguard strategy. This may involve the reintroduction, re-establishment or restoration of related biological resources, such as traditional crops and animal breeds, in accordance with national legislation".

¹ Which means "roots of life" in the Maya indigenous language

² This term should be understood as "prior and informed consent", "free, prior and informed consent" or "approval and involvement", depending on national circumstances (Mo'otz Kuxtal Voluntary Guidelines).

³ The recommendations will be considered by the Conference of the Parties at its fourteenth meeting from 17 to 29 November 2018, in Sharm El-Sheikh, Egypt.

Rec. 10/4, Resource mobilization: assessing the contribution of collective actions of indigenous peoples and local communities and safeguards in biodiversity financing mechanisms.

8. Parties to the Convention are considering guidance to assist Governments in assessing the collective contributions of IPLCs such as *in-situ* conservation, food security and community conservation to national financial reporting. These recommendations will also be considered for adoption by the fourteenth meeting of the Conference of the Parties.⁴

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity

9. The Nagoya Protocol, which entered into force on 12 October 2014, was adopted to support the implementation of one of the three objectives of the Convention: the fair and equitable sharing of benefits arising out of the utilization of genetic resources. As such, it also supports the implementation of Article 15 (Access to Genetic Resources) and Article 8(j) (Traditional Knowledge) of the Convention. The Protocol contributes to equity and balance between the custodians of biodiversity and the users of genetic resources (e.g. scientific and business community). As recognized in the preamble to the Protocol, public awareness of the economic value of ecosystems and biodiversity and the fair and equitable sharing of the concomitant benefits with the custodians of biodiversity are key incentives for the conservation and sustainable use of biodiversity.

10. The Protocol covers both genetic resources and the associated traditional knowledge that is held by IPLCs, as well as the benefits arising from utilization of both. It provides greater legal certainty and transparency for both providers and users of genetic resources and associated traditional knowledge. It helps to ensure the sharing of benefits, including where there is transboundary movement of genetic resources, and it establishes more predictable conditions for access to genetic resources and associated traditional knowledge. By enhancing legal certainty and promoting benefit-sharing, the Nagoya Protocol encourages the advancement of research on genetic resources which could lead to new discoveries for the benefit of all.

11. With respect to the rights of IPLCs, Parties to the Nagoya Protocol are required to take measures to ensure that traditional knowledge associated with genetic resources held by IPLCs as well as genetic resources over which they have established rights, are accessed with the communities' prior informed consent, and that benefits arising from their use are shared in a fair and equitable way with these communities. In doing so, Parties are to take into consideration IPLCs' customary laws and community protocols and procedures, and as far as possible, they should not restrict the customary use and exchange of genetic resources. In addition, the Protocol, in its preamble, recognizes that it is the right of IPLCs to identify the rightful holders of traditional knowledge within their communities.

12. A number of the Protocol provisions aim to support IPLCs in order for them to benefit from the use of their traditional knowledge and/or genetic resources over which they have established rights. The Protocol provides for the involvement of IPLCs in the implementation of the Protocol. It also requires Parties to support the capacity needs and priorities of IPLCs, emphasizing the capacity needs and priorities of women. Parties are also to support the development by IPLCs, including women within these communities, of community protocols, minimum requirement for mutually agreed terms and model contractual clauses with a view to promote the fair and equitable sharing of benefits when negotiating agreements with users of genetic resources or associated traditional knowledge.

⁴ These recommendations can also be found in UNEP/CBD/WG8J/10/11.

13. The Protocol contains seven final preambular paragraphs which directly relevant to IPLCs. They address the following: the interrelationship between genetic resources and traditional knowledge and their inseparable nature for indigenous and local communities; the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components and for the sustainable livelihoods of these communities; the right of indigenous and local communities to identify the rightful holders of their traditional knowledge associated with genetic resources, within their communities; noting the United Nations Declaration on the Rights of Indigenous Peoples, and affirming that nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities.

14. Additionally, the substantive articles of the Protocol speak to the rights of indigenous and local communities concerning access to genetic resources (Article 6), where they have the established right to grant access to such resources, and the rights of indigenous and local communities concerning access and use of their traditional knowledge (Article 7). The sharing of benefits arising from the utilization of genetic resources over which they have established rights and from the utilization of traditional knowledge associated with genetic resources (Article 5) as well as compliance with domestic legislation or regulatory requirements on access and benefit-sharing for traditional knowledge associated with genetic resources (Article 16) are also important developments under the Protocol of relevance to the rights of indigenous peoples and local communities.

15. Finally, in describing what can be construed as benefits under the Protocol, the Annex to the Protocol lists non-monetary benefits such as: collaboration, cooperation and contribution in education and training, contributions to the local economy, research directed towards priority needs, such as health and food security, food and livelihood security benefits and intellectual property rights. These recognized benefits are relevant to the advancement of human rights, to education, the right to a “standard of living adequate for health and well-being [...] including adequate food, clothing and housing, and to the continuous improvement of living conditions”⁵, the right to “enjoy the benefits of scientific progress and its applications”⁶, and the right to “benefit from the protection of the moral and material interests resulting from any scientific production of which he is author”.⁷

16. There are various relevant sources of information on the implementation of IPLCs related provisions of the Protocol by Parties. The Access and Benefit-sharing (ABS) Clearing-House is a platform established under Article 14 of the Protocol to exchange information on access and benefit-sharing. Among others, the ABS Clearing-House includes information on relevant authorities and access and benefit-sharing measures adopted to implement the Protocol. Information on IPLCs’ community protocols and procedures and customary laws as well as capacity-building resources is also available in the virtual library of the ABS Clearing-House.

17. In addition, with a view to inform the first assessment and review of the Protocol to be undertaken by the Parties at their third meeting in November 2018 in Sharm El-Sheikh, Egypt, the CBD Secretariat has prepared several documents which may be of relevance to the Ad Hoc Technical Experts Group on Farmers’ Rights:

- Document CBD/SBI/2/INF/3 contains information on implementation by Parties and non-Parties of their obligations under the Protocol related to genetic resources and the associated traditional knowledge that is held by IPLCs based on the information provided through interim national

⁵ UDHR Article 25(1); ICESCR Article 11(1).

⁶ ICESCR Article 15(1)b).

⁷ ICESCR Article 15(1)c).

reports and the ABS Clearing-House. It includes information on measures developed as well as challenges and difficulties encountered (section G); and

- Document CBD/SBI/2/INF/8 contains information on the development and use of indigenous peoples and local communities' customary laws, community protocols and procedures, including a list of community protocols developed or being developed as well as challenges and lessons learned.

18. **Considering Article 9.2(b) of the Treaty on 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, the long experience of the Secretariat, as well as the Parties to the Convention, concerning the effective participation of IPLCs in the work of the Convention at various levels may also be relevant.

19. The Convention on Biological Diversity is the only Multilateral Environment Agreement to have established a voluntary fund for the participation of IPLCs in meetings held under the Convention. Furthermore, under the auspices of the Working Group on Article 8(j), the Convention has adopted enhanced participation mechanisms for IPLCs, which are now under consideration by other subsidiary bodies.

20. Also, of relevance to the International Treaty, in 2011 the Secretariat facilitated an ad hoc Expert Group Meeting of Local Community Representatives⁸, which provided a report containing common characteristics of local communities and advice about specific outreach to further engage local communities and promote their effective participation under the Convention, which was welcomed in COP-decision XI/14, B, paragraphs 17-21.

21. Additionally, the Conference of the Parties has made several decisions encouraging Parties to include the effective participation of IPLCs in the revision and implementation of the National Biodiversity Strategic Action Plans. The most recent recommendations regarding this matter can be found in the first decision of the thirteenth meeting of the Conference of the Parties⁹.

22. The thirteenth meeting of the Conference of the Parties, in decision XIII/1, paragraphs 8 and 9, in summary, urges Parties to update their national or regional biodiversity strategies and action plans using a participatory approach and encourages Parties to undertake the activities referred to, with the full and effective participation of indigenous peoples and local communities, in accordance with national circumstances, recognizing the contribution of the collective actions of indigenous peoples and local communities, and the role of their holistic systems for the conservation and sustainable use of biological diversity.

23. The International Treaty's Article 9.3 alludes to the rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate. Of direct relevance to this issue is the adoption of the CBD's global Plan of Action on Customary Sustainable Use of Biological Diversity, in COP-decision XII/12. The Plan of Action's objective is to promote, within the framework of the Convention, a just implementation of Article 10(c) (customary sustainable use), at local, national, regional and international levels and to ensure the full and effective participation of indigenous peoples and local communities at all stages and levels of implementation.

⁸ 14 - 16 July 2011, Montreal, Canada.

⁹ UNEP/CBD/COP/13/6, Report of the Subsidiary Body on Implementation on its first meeting.

24. Also of relevance is the CBD's programme of work on agricultural biological diversity (decision III/11), which calls for the provisions of opportunities for farmers and local communities and other stakeholder groups to participate in the development and implementation of national strategies, plans and programmes for agricultural biodiversity through decentralized policies and plans and local government structures.

25. Both the Plan of Action on Customary Sustainable Use and the programme of work on agricultural biodiversity speak to the underlying importance of *in-situ* conservation, through the collective contributions of IPLCs, including small or family farmers.

26. Finally, in relation to the matters addressed above, the Secretariat is a leading member of the United Nations Inter-Agency Support Group on Indigenous Peoples' Issues and contributes directly to the United Nations' Secretary General's System-Wide Action Plan to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples¹⁰. Within this framework, it is committed to reporting annually on matters within the mandate of the Secretariat including the participation of IPLCs in the work of the Convention, and progress on the respect, preservation, protection and promotion of traditional knowledge as well as the protection and encouragement of customary sustainable use of biological resources and on the participation of IPLCs in the work of the Convention.

27. Local actions, in particular the collective contributions of indigenous peoples, local and traditional communities, many of whom, especially women, are small farmers, are central to the success of the Convention on Biological Diversity, the Strategic Plan for Biodiversity 2011-2020 and its twenty Aichi Biodiversity Targets.

¹⁰ A/RES/69/2, paragraph 31.