



**Association for Plant Breeding for the Benefit of Society**

December 2019

## **Farmers' Rights vs. Breeders' Rights during the negotiations at the 8th Governing Body of the ITPGRFA.**

The clash between Farmers Right's and Plant Breeders Right's in line with UPOV 91 appeared at several occasions during the 8th Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) which was held at the FAO headquarter in Rome from November 11 – 16th. This article intends to give a short overview on this dispute:

### **Resolution 06/2019 on Farmers' Rights:**

- As an important step in the history of implementing Farmers' Rights, the Governing Body welcomed the [Inventory on National Measures, Best Practices and Lessons Learned on the Realization of Farmers' Rights](#), recognizing that it will be periodically reviewed and updated as necessary. This inventory refers to several submissions showing how Breeders Rights could be drafted in a sui generis way not in line with UPOV 91, but supporting the implementation of Farmers' Rights at the same time.
- As a main decision the Governing Body decided to reconvene the Ad Hoc Technical Expert Group (ATHEG) for the 2020-2021 biennium in order to complete its tasks, especially to develop options for encouraging, guiding and promoting the realization of Farmers' Rights. The ATHEG was expanded with two more representatives of farmer organizations (from three to five) particularly from the centers of origin and crop diversity.
- The European Union tried to incorporate a text in the Resolution encouraging the ATHEG to «finalize this work with particular attention paid to the compatibility of the proposed options [...] with other existing international instruments such as the UPOV Convention.» European Countries as well as Ecuador and the US spoke against this proposal which was finally rejected.

### **Resolution 12/2019 on the Cooperation with other International Bodies and Organizations:**

Following a letter<sup>1</sup> sent by Peter Button, the Vice Secretary General of UPOV, to Kent Nnadozie, the Secretary of the ITPGRFA, the draft Resolution prepared by the secretariat incorporated a

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<sup>1</sup> The letter could be found as Annex 3 of UPOV Document CC/96/7. This restricted document is not accessible at the UPOV Website but could be downloaded from the APBRES Website at

part requesting the Secretary to explore „a possible new initiative proposed by UPOV to develop brief explanations of the objectives and mutual supportiveness of the International Treaty, the CBD and the UPOV Convention.“ Peter Button writes in his letter that „During UPOV’s most recent discussions on the interrelations with the ITPGRFA, it was agreed that“ this would be a helpful initiative. Interestingly the Consultative Committee, the UPOV body discussing the interrelations with the Treaty, never agreed on such an initiative. During its session in 2018 the „Consultative Committee requested the Vice Secretary-General to consult the Executive Secretary of the CBD and the Secretary of the ITPGRFA on how the objectives of the CBD and ITPGRFA might be reflected in the FAQ, and to explore means on how to facilitate the exchanges of experiences and information on the implementation of the UPOV Convention, the CBD and the ITPGRFA.“ There was no request regarding a possible new initiative to develop brief explanations of the mutual supportiveness.

During the Governing Body several Parties rejected the proposal that the Secretary should be requested to explore such an initiative on mutual supportiveness. APBEBES, on behalf of the Civil Society Organizations present at the meeting, made an intervention in this regard (see Annex 1). The European Union and Australia nevertheless supported the idea. After long discussions in an informal group, the proposal to develop brief explanations on mutually supportiveness was finally deleted from the Resolution. The Secretary was requested to « continue cooperating with the Executive Secretary of the Convention on Biological Diversity and the Vice-Secretary General of UPOV on the review of the FAQ on the interrelations between the International Treaty, the Convention on Biological Diversity and UPOV as a basis to explore means to facilitate exchanges of experiences and information on the implementation of the UPOV Convention, the Convention on Biological Diversity and the International Treaty»

#### **Resolution 04/2019 on the Implementation of the Global Information System (GLIS):**

In this Resolution the Governing Body encouraged UPOV „to explore possibilities for free access to and use of the information in the PLUTO database, including downloading information, for example by linking PLUTO to GLIS.“ This decision goes in the opposite direction to the decision taken by the Consultative Committee of UPOV during its last session in October 2019, when the Committee decided to restrict access to the PLUTO Database that provides information about applied and granted plant breeders rights starting November 2020. There will still be a free option, where the user will have a search function. But the search results would be limited to an on-screen display of a single page of results. There would be no facility to download search results or data from the PLUTO database unless users are able and willing to pay a fee of 750 CHF per year to access all data and features. APBEBES, in its [Report from the 2019 UPOV Session](#), has sharply criticized this decision by the Consultative Committee as a move against the transparency and accountability of UPOV. It will be interesting to see, if UPOV will change its policy in this regard.

## The Multilateral System on Access and Benefit-Sharing

The IISD Reporting Services<sup>2</sup> summarized the outcome of Governing Body in the following way: „The main item under discussion concerned a package of measures to enhance the functioning of the MLS, which has been under negotiation for six years and would have resulted in revising the coverage of the MLS and the Standard Material Transfer Agreement (SMTA) used for exchanges of genetic resources in the MLS. Delegates, however, could not reach consensus on such measures, nor on continuing intersessional work on this issue.

[...] as many noted with frustration, failure to enhance the MLS indicated it is time for sober contemplation on the future of the Treaty.“

This decision has also an impact on the realization of Farmers' Rights. A main goal of the revision of the SMTA was to increase user-based payments to the Benefit Sharing Fund in a sustainable and predictable long-term manner. And the money in this Benefit-Sharing Fund „should flow primarily, directly and indirectly, to farmers in all countries, especially in developing countries, and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.“ (Art. 13.3 of the Treaty). The right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture is also a Farmers' Right enshrined in Art. 9.2 of the Treaty. As the current system results in practically zero user-based payments, the failure to reform the Multilateral System also needs to be seen as a failure to implement Farmers' Rights.

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## Annex 1

### CSO- Intervention on 15.4 – Cooperation with other international bodies

Madame Chair, distinguished delegates

I am speaking on behalf of the civil society organizations present at this meeting.

We like to draw your attention specifically to point 10 in the Resolution of Doc 15.4/1, where the secretary is requested to explore a possible new initiative proposed by UPOV to develop brief explanations of the objectives and mutual supportiveness of the International Treaty, the CBD and the UPOV Convention.

We believe that such an initiative would be inappropriate. The **majority** of contracting parties to the Treaty have **not** ratified the UPOV Act of 1991. Instead, many of these parties enacted a sui generis plant variety protection law, which tries at least to balance breeders rights and farmers rights thus trying to satisfy the requirements of Art. 9 and Art. 6 of the Treaty. These countries have implemented specific chapters on farmers rights, are protecting farmer varieties and traditional knowledge. In the opening ceremony the honourable indian agricultural minister presented the plant variety and farmers rights act of India as one example, allowing farmers to save, use, exchange and sell protected seeds.

Wouldn't it be very strange if the Governing Body were now to request the secretary to develop brief explanations on mutual supportiveness with UPOV ? a system which cannot be described

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<sup>2</sup> The whole Reporting at <https://enb.iisd.org/biodiv/itpgrfa/gb8/>.

supportive of the Treaty, especially when compared to other PVP sui generis laws implemented by contracting parties of the Treaty ? We do not think that such an initiative would be appropriate. What makes sense, would be to analyse various pvp laws from all Treaty contracting parties – and to examine the different levels of supportiveness.

Ladies and Gentlemen, it would be a devastating signal to give credit to a pvp system like UPOV 91 while not to give greater recognition to the numerous contracting parties that have enacted sui generis pvp law including farmers rights that contribute more significantly to the implementation of the Treaty.

Thank you very much for your attention