



Updates on Plant Variety Protection

Issue #3 – 18 October 2013

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1. Editorial: Third issue of APBREBES Newsletter - Updates on Plant Variety Protection – 18 October 2013

The third issue of the Updates on Plant Variety Protection highlights the public availability of UPOV Restricted Area documents, decisions of the Governing Body of the ITPGRFA regarding UPOV, and protests against PVP legislation in Chile. Feedback and further items for publication from our readers are welcomed and appreciated.

2. Freedom of Information legislation puts UPOV's Restricted Area in question – 18 October 2013

UPOV does not make all its documents accessible to the public, but UPOV member states that have freedom of information legislation provide access to Restricted Area documents.

UPOV keeps meeting documents restricted to its member states, a policy unknown in other international organisations, not even UPOV's host organisation WIPO. However, many countries have a freedom of information legislation, whereby government administration files – with some restrictions - are to be made accessible and can be made publicly available, for example on a website. APBREBES now makes UPOV Consultative Council documents available [here](#). It is hoped that UPOV bodies will soon decide to lift the unnecessary restriction.

3. ITPGRFA Governing Body takes decisions regarding UPOV – 3 October 2013

The 5th session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) convened from 24 to 28 September 2013 in Muscat, Oman. The UPOV Convention was again, and more intensely than ever before, a topic of discussions and resolutions.

Farmers' Rights

A proposal was tabled by the European Region (ERG) to hold joint consultations on areas of interface between the ITPGRFA and UPOV. On requesting the Secretariat to organize side events on Farmers' Rights during UPOV Council meetings, Brazil suggested ensuring participation of farmers and farmers' organizations. ERG proposed instead to request the ITPGRFA Secretariat to invite UPOV to jointly identify areas of interface. The Africa region preferred to request the ITPGRFA Secretariat to organize open roundtables on Farmers' Rights with UPOV and WIPO, ensuring the participation of farmers and farmers' organizations. The Near East region drew attention to possible incompatibility between the Treaty's provisions on Farmers' Rights and UPOV, with the Group of Latin American and Caribbean countries (GRULAC) suggesting a request to the ITPGRFA Secretariat to prepare studies on harmonization between ITPGRFA provisions on Farmers' Rights and UPOV 91. Australia opposed all of these proposals.

Finally, the Parties agreed that "The GB (Governing Body) requests the Secretariat to: invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments."

Other parts of the Resolution on Farmers' Rights which may impact PVP laws include:

"The GB further invites parties to:

- consider developing national action plans for the implementation of Article 9, as appropriate and subject to national legislation, in line with the implementation of Articles 5 and 6, in particular the measures in Articles 5.1 (c and d) and 6.2 (c, d, e, f, and g);
- consider reviewing and, if necessary, adjusting national measures affecting the realization of Farmers' Rights, to protect and promote these rights."

For the full Resolution on Farmers' Rights see ANNEX to this article.

Implementation of the Multilateral System and the Funding Strategy

The most important decision taken by the GB5 was to start a reform process of the Multilateral System for Access and Benefit-sharing (MLS). Under the current MLS, the obligation for mandatory payments under the SMTA does not extend to PVP varieties. Taking into account the innovative approaches discussed in the ad hoc advisory committee on the funding strategy and the position especially of the G77 at GB5, this could well change in the future. The following terms of reference

have been agreed for the Ad Hoc Working Group to Enhance the Functioning of the MLS:

- “To develop a range of measures for consideration and decision by GB6 that will
- a) increase user-based payments and contributions to the Benefit-sharing Fund in a sustainable and predictable long-term manner, and
 - b) enhance the functioning of the MLS by additional measures.”

Cooperation with other organizations

The European Region noted resource constraints for cooperation activities, suggesting deletion of a request to the ITPGRFA Secretariat to continue participation in relevant meetings of UPOV, the World Health Organization, WIPO and the World Trade Organization. Brazil objected to limiting the discretion of the Secretariat in this regard, noting the relevance of developments under UPOV for the Treaty. Finally, the Contracting Parties agreed on the following wording:

„The GB requests the Secretariat to:

- consider participation in UPOV, and other relevant international organizations”

Identifying benefit flows

In the run up to the GB5, the ITPGRFA Secretariat published a book on “Identifying Benefit Flows - Studies on the Potential Monetary and Nonmonetary Benefits Arising from the International Treaty on Plant Genetic Resources for Food and Agriculture”, see <http://www.planttreaty.org/es/content/identifying-benefit-flows>

Among the conclusions and recommendations for further research, it is stated:

“The feasibility of applying informatics-based approaches such as those tested in Chapter 4 would dramatically improve if:

- (i) patent and PVP applications for plant variety innovations were required to provide information on the source of parental material used in an innovation, or if intellectual property regulations were amended to make it mandatory for applicants to acknowledge their possible use of material under SMTA conditions; and
- (ii) if a standardized system of nomenclature or coding were developed and applied for all transfer of Multilateral System materials from international and national genebanks and repositories.”

This conclusion shows again that the disclosure of origin – a demand discussed at WIPO, WTO and the CBD – is also of relevance for the ITPGRFA and for UPOV and PVP legislation.

This article is partially based on the report of the Earth Negotiation Bulletin. For the complete ENB summary of GB5 see <http://www.iisd.ca/biodiv/itpgrgb5/intro.html>.

See also the report by Third World Network, "[FAO: Fixing seed treaty's access and benefit-sharing system](#)"

ANNEX

RESOLUTION: IMPLEMENTATION OF ARTICLE 9, FARMERS' RIGHTS

The Governing Body:

Recalling the recognition in the International Treaty of the enormous contribution that the local and indigenous communities and farmers of all regions of the world have made, and will continue to make, for the conservation, development and use of plant genetic resources as the basis of food and agriculture production throughout the world;

Welcoming the submissions of views and experiences from Contracting Parties and other stakeholders, as compiled in document IT/GB-5/13/Inf.8;

Recognizing also the submissions of views and experiences that have been compiled prior to previous sessions of the Governing Body;

Also recalling resolutions 2/2007, 6/2009 and 6/2011,

1. Requests the Secretary to review the knowledge, views, experiences and best practices that have been submitted since the entering into force of the ITPGRFA and to date, including those submitted by farmers' organizations in order to derive examples in a systematic way as options for national implementation of Article 9 on Farmers' Rights, as appropriate and according to national legislation, to be presented at the next session of the Governing Body;
2. Requests the Secretary to report on relevant discussions that relate to Farmers' Rights within FAO fora including the Committee on Food Security;
3. Requests the Secretary to invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments;
4. Invites each Contracting Party to engage farmers' organizations and relevant stakeholders in matters related to the conservation and sustainable use of plant genetic resources for food and agriculture, and consider their contributions to awareness raising and capacity building towards this aim;
5. Invites each Contracting Party to consider developing national action plans for the implementation of Article 9 as appropriate and subject to national legislation, in line with the implementation of Articles 5 and 6, in particular the measures in Articles 5.1 (c and d) and 6.2 (c, d, e, f, and g);
6. Invites each Contracting Party that have not already done so, to consider reviewing and, if necessary, adjusting its national measures affecting the realization of Farmers' Rights, as set out in Article 9 in the International Treaty, to protect and promote Farmers' Rights;
7. Invites Contracting Parties to promote access to genetic resources under the Multilateral System by local and indigenous communities and farmers;
8. Invites Contracting Parties and relevant organizations to take initiative to convene regional workshops and other consultations including with farmers' organizations for the exchange of knowledge, views and experiences to promote the realization of Farmers' Rights, as set out in the Treaty, and present results at the next session of the Governing Body;
9. Requests the Secretary to facilitate support to such initiatives upon request;
10. Invites Contracting Parties and development cooperation organizations to consider providing financial and technical support for the implementation of Farmers' Rights as set out in Article 9 of the Treaty in developing countries, and to enable farmers and representatives of farmers' organizations to attend meetings under the International Treaty;
11. Appreciates the participation of farmers' organizations in the work of the Governing Body, as appropriate, according to the Rules of Procedure of the Governing Body and invites them to continue to actively participate in the sessions of the Governing Body and relevant intersessional processes;

12. Requests the Secretary to facilitate support to Contracting Parties in building capacity for the implementation of Farmers' Rights as set out in the Treaty upon their request and depending on available resources;
13. Welcomes the offer from a farmers' organization at the Fifth Session of the Governing Body to provide a report on the implementation of Farmers' Rights to the next session of the Governing Body;
14. Requests the Secretary to report at the Sixth session of the Governing Body on the implementation of this resolution.

4. Sustainable Societies Foundation: The planned Plant Breeders' Bill in Chile would harm environment and society – 2 October 2013

The Plant Breeders Bill, Bulletin 6355-01, was approved in March 2010 by the Chilean Deputy Chamber and is now before the Senate. It will implement the UPOV 91 accession of Chile. Large demonstrations took place in around twenty Chilean cities against this bill (for more information see the article by further below).

Chile has in 1996 joined the 1978 Act of the UPOV Convention to meet the WTO/TRIPS requirement for intellectual property rights protection of plant varieties. This agreement is implemented by The Law of Plant Breeders Rights N° 19.342 of 1994.

Chile signed a free trade agreement with the U.S. which came into force on January 1, 2004, by which Chile had to join the 1991 Act of the UPOV Convention. Therefore, in January 2009, entered the Chamber of Deputies the bill Bulletin 6355-01, replacing Law No. 19.342, and in May 2011 approved the accession of Chile to UPOV 91.. Accession to UPOV 91 is not mandatory for Chile because it has already subscribed to a previous act, and this has generated much debate in the country.

The difference between UPOV 78 and UPOV 91 is substantial. UPOV 91 provides enlarged rights to breeders and restricts the rights of farmers compared to UPOV 78.

The following table details these differences.

Issue	UPOV 1978	UPOV 1991
Varieties to protect	Each country is free to designate the varieties it wants to protect .	Mandatory protection extends to all plant varieties and essentially derived varieties.
Protection Period	Minimum 15 years (18 years for vines and trees)	20 years (25 for vines and trees)
Protection scope	Restricted to the reproductive material of the variety	Expands to the commercial use of the material of the variety. Includes reproductive material, harvesting, products made from that crop (flour, wine). It vastly increases the chances of profit on protected varieties.
Use of protected varieties to create new ones	Is possible	Subject to the payment of fees for their use.
Reuse seeds	Farmers can do this	Right is subject to national legislation, can be suppressed by governments or used "only within certain limits." Denies the "farmers' privilege".
Double protection through patents and PBR.	Is forbidden	Is permissible, this means that a variety can be protected by both patents and PBR.

BILL BULLETIN 6355-01

The bill Bulletin 6355-01, which would replace Law No. 19,342 has serious flaws:

- **Inequality before the Law**

The Chilean Constitution, Art.19 No. 2. declares equality before the law. However, the bill establishes an inequality between the rights of breeders and farmers' rights by restricting their rights over seeds.

The Article 48 of the Bill would only allow the use of protected seeds within the farm, limited to certain species determined by the regulation. The Bill would limit the rights of farmers to save, use, exchange, select, enhance, market, multiply seeds freely, which has been an ancient practice from the beginnings of agriculture, the "farmers' privilege" recognized by FAO's Plant Genetic Resources Treaty (Art. 9).

- **UPOV does not recognize the work of farmers**

UPOV does not recognize the innovative work of farmers, peasants and indigenous peoples of thousands of years to create the basis for the plant varieties that exist today. UPOV recognizes only as inventive and worthy of profit what breeders develop on the basis of farmer varieties.

The Convention on Biological Diversity (CBD) signed by Chile in 1995, recognizes the right of compensation to farmers, rural and indigenous communities for the use of their genetic resources. CBD Art. 1 and 15 set rules for access, prior informed consent and equitable sharing of benefits to the farmer or the community that provides the genetic resources that lead to an innovation. The CBD also agreed in 2012 the Nagoya Protocol on Access to Genetic Resources and Benefit Sharing.

- **The bill would facilitate intellectual property on local varieties**

The Constitution provides in Art 19 No. 8: The right to live in a pollution-free environment and makes the State responsible to promote the conservation of nature.

The bill would allow breeders rights on all plant species in Art 3. - "The breeder's right can be granted on any type or varieties of any plant species and their hybrids". There is no clause in this bill that explicitly would exempt IPRs on native or endemic species, wild species and farmers' varieties. This would foster biopiracy.

- **Novelty of the variety**

The bill in Art.6 would establish the concept of novelty in the market. This means that a new variety must not have been marketed previously. It must not have been marketed for the past one year in the country where the right is applied for, or, depending on the species, four or six years in other countries. Traditional varieties, however, are often not officially marketed.

- **Distinctness**

The bill in Art.7 would rule that the variety has to be distinguishable from existing varieties of common knowledge. Registration of the new variety in any official registry gives it the status of common knowledge. To prove the existence of the same traditional variety would be difficult if it is not registered.

- **The bill would promote the loss or appropriation of local varieties**

The planned bill would facilitate private appropriation of peasant and indigenous plant varieties of historical use in our country, when it considers "new" or "distinct" any variety that has not been widely marketed or registered in official records. Normally traditional old varieties are not marketed or placed in registers.

The project law would foster the loss of local varieties, replacing them by protected varieties, sold at a higher price.

- **The bill would promote transgenic plants and genetic contamination**

The project law would not limit PBR over varieties with negative environmental impacts, such as transgenic plants that contaminate other plants via pollen. It also would facilitate seed companies prosecuting farmers who violate the provisions of the law, which are likely to involve destruction of crops and confiscation of goods. Monsanto has prosecuted and ruined hundreds of farmers in the U.S. and Canada for using their patented seeds or for accidental contamination of plants in their properties.

For example in Argentina, currently all soybeans on the market are patented and genetically modified. When companies take control of seed production of a country, the protection of local variety diversity is discouraged, and dependency on patented seeds becomes likely, which would threaten national food sovereignty and security.

- **The bill would harm Chile's organic production**

The bill threatens the organic production of Chile that is protected by Law No. 20,089 of 2006 which does not allow the use of GM seeds.

- **The bill would promote imbalance between trade and biodiversity**

Chile advances rapidly in the privatization of genetic resources following the global trade agenda that favors corporate interests. But Chile is well behind on matters critical to the protection of their own resources, such as:

- Law on conservation of biodiversity,
- Law on conservation of genetic resources and variety diversity,
- Law on access to genetic resources and traditional knowledge protection,
- Strengthening the rights of farmers,
- Promotion of organic agriculture and food security.

Therefore, the imbalance between biodiversity protection and trade promotion would be deepened.

Chile has not yet assessed the impact of UPOV 1978 and Law 19.342

Chile moves toward greater restriction of the rights of farmers, but has not yet assessed the impact of UPOV Act 1978 and Law 19.342 in traditional agriculture. 80% of the world's farmers save seeds for the next season. They do not need seeds covered by intellectual property rights. The PBR is mostly used by industrialized countries and corporations to protect their own technologies. Among the more than 700 varieties protected by plant breeders' rights in Chile, 95% are from foreign companies; very few new varieties are developed domestically. A thorough impact assessment of the UPOV 78 based legislation is due before Chile embarks on implementing UPOV 91 legislation.

UPOV 91 before the Constitutional Court

In May 2011, 17 senators challenged the constitutionality of the adoption of UPOV 91 before the Constitutional Court (Tribunal Constitucional). It convened a public hearing with the participation of civil society organizations, farmers, peasants and indigenous peoples, among others.

Although the Constitutional Court rejected the challenge by six votes to four, in its judgment in June 2011, it requires the Chilean State to protect the seeds and the rights of indigenous and peasant communities and "set limitations when Congress has to discuss the bill to apply this treaty"(Senator A. Navarro). The details of the judgment are presented in <http://www.tribunalconstitucional.cl/wp/ver.php?id=1987>.

PROPOSALS

Sustainable Societies Foundation recommends that parliamentarians in the Senate NOT PASS THIS BILL as it is unnecessary for the country and harms its citizens and its environment. Instead, we recommend to:

- Advance urgent action to rescue and conserve old traditional crops and create laws to protect genetic resources.
- Implement the Convention on Biological Diversity.
- Ratify the Nagoya Protocol on Access and Benefit Sharing.
- Promote the recognition and protection of the community rights of indigenous and local communities to their genetic resources and associated knowledge.
- Consult the bill among rural and indigenous people.

Contact the author: María Isabel Manzur, Biologist, PhD, Sustainable Societies Foundation, Santiago, Chile, Email: mimanzur@chilesustentable.net

Citizens Throughout Chile Voted Against the Monsanto Law

By Lucía Sepúlveda

Source: www.periodismosanador.blogspot.com

Translation: Elizabeth Anne Bort, for RAP-Chile and Yo No Quiero Transgénicos in Chile Campaign

Santiago, Chile, August 23.- The "Monsanto Law," on which the Chilean Senate will vote at the end of August, incited a massive rejection by citizens in 20 cities throughout the country in response to the campaign Yo No Quiero Transgénicos en Chile (YNQT). Last weekend, on August 17, a mass amount of marches were conducted in Valparaíso, Santiago, Talca, Chillán, Concepción and Temuco. Informational activities and/or seed exchanges took place in La Serena, Arica, Iquique, Vallenar,

Ovalle, Melipilla, Rancagua, Curicó, San Fernando, Casablanca, Cauquenes, Tomé, Puerto Montt, Valdivia, Ancud and even on the island Robinson Crusoe (of the Juan Fernández archipelago). Families with children at the national march affirmed that the future of the young and vulnerable was at stake. 11 year-old Vicente Colío read his poem "Terrestrial Hope" and concluded stating "We will not give up," moving the young and old who filled the plaza and streets close to the Central Market.

Senators Ximena Rincón and Juan Pablo Letelier voted against the bill in the Agricultural Commission, while senators Fulvio Rossi, Jaime Quintana, José Antonio Gómez, Alejandro Navarro and Antonio Horvath announced their rejection of the initiative when their time to vote comes. Others who have yet to share their positions include Isabel Allende, Camilo Escalona, Guido Girardi, Ricardo Lagos and Eugenio Tuma. Adding to the list are Pedro Muñoz, Soledad Alvear, Eduardo Frei, Mariano Ruiz Esquide, Hossain Sabag, Jorge Pizarro, Patricio Walker, Ignacio Walker, Andrés Zaldívar, along with independents Carlos Bianchi and Carlos Cantero. It is presumed that the RN and UDI parties members of the governing coalition under President Sebastián Piñera, will vote in favor of Monsanto, as did Hernán Larraín, J. Antonio Coloma and José García Ruminot in Agricultural Commission.

The campaign Yo No Quiero Transgénicos en Chile (www.yonoquierotransgenicos.cl, Yo No Quiero Transgénicos en Chile on facebook, @YNQTransgenicos) brought forth by social organizations, farmers, environmentalists, and professionals of health and education, spreads awareness of the risks of GMOs to communities, universities and organizations spanning the country. The campaign also reports on the role of transnational producers of GMOs, such as Monsanto, Dupont/Pioneer, Syngenta and Dow, the primary beneficiaries of the Seed Savers Law (Bulletin 6355-01), an imperative step for the implementation of the addition of Chile to the UPOV 91 agreement already approved by the Senate. The present seed law recognizes the intellectual property of patented varieties, which makes the new law unnecessary. The Monsanto law maximizes the profits and rights of the producers of genetically modified seeds, a business already highly profitable and heavily subsidized by the State.

Rights vs. restrictions

The spokespersons of the campaign in Valparaíso (Joel González), Santiago (Lucía Sepúlveda) and the BioBio region (Guillermo Riveros) agree that this law makes it possible for the producers of GMOs to patent all varieties of seeds, dispossessing farmers of their rights to save and exchange seeds freely. Therefore local seeds used for generations, and endemic seeds, will disappear due to lack of usage, given that the market and the State entities will privilege, as they have been doing, the sale and use of patented seeds.

There are no laws in Chile to protect its genetic heritage, permitting transnational companies to declare vulnerable varieties as "novel," neglecting the rights of farmers. None of the local varieties should be "discovered" by a breeder given that they are the result of the work and selection of many generations of farmers and originary peoples. At the same time, according to the law, the definition of the "novel seed" refers to what has not been commercialized by conglomerates such as Seminis and Anasac, offspring of Monsanto, putting at risk local varieties exchanged through barter, and medicinal herbs.

"The final and concealed objective of this law is to expunge the farmer and the indigenous communities from the field, whom when confronted by the high prices created by the cartel led by Monsanto will be forced to migrate to the city. Therefore transnational companies will be able to use Chilean fields for the use of GMOs, which they misleadingly promote as a means of "innovation and development" so Chile can produce what few countries accept: medicinal drugs obtained from crops," states Lucía Sepúlveda, from Red de Accion en Plaguicidas (RAP-Chile).

Preserving food sovereignty

"We will not accept that they transform Chile into a GMO country. On the contrary, organic and sustainable agricultural production is what distinguishes us as a country and gives us a standard of quality. We have to produce healthy foods obtainable for everyone and preserve food sovereignty," states Guillermo Riveros, president of BioBio Orgánico. In turn, Joel González, from the organization "Tierra Nueva," teacher and musician in Limache, announced the following steps of the campaign: "We will remain permanently mobilized, until Monsanto and their minions withdraw their dirty hands from our territory. We should overwhelm the Senate with our presence when they vote on the bill, with millions of voices outside of Congress, so they may realize that Chile is not at the service of transnational business. This will have a great electoral and social impact."

At the front of the touristic icon of the Chilean's food industry, the Central Market of Santiago, where the march commenced, Francisca Rodríguez, leader of the Asociación Nacional de Mujeres Rurales e Indígenas, ANAMURI, declared to Telesur: "The millions of seeds that exist are a product of the indigenous people and farmers. This law threatens the existence of these seeds in order to consolidate the agribusiness that is in the hands of transnational companies."

The national press greatly ignored the gathering and mobilizing, internationally covered by TeleSur, Hispan TV, Global Voices and RT and even by Associated Press AP and Chinese news agency Xinhua. The massive manifestations forced the national media duopoly and radio to report on an issue which had been ignored despite imminent approval of the bill by the Senate.

Throughout the country an enormous diversity of social networks and organizations, such as the collective Pacto Mundial Consciente, Tierra Nueva, Exige Vivir Sano, Colectivo Socio Ambiental Symbiosis, Red Socio Ambiental del Norte, Caravana Ahimsa, Revolución de la Cuchara, Red Socio Ambiental Semillas, OLCA, RAP-Chile, Red de Semillas Libres, Colectivo Ecológico de Acción, Grupo de Trabajo Social, Marcha Mundial de Mujeres, AMAPACH, Chiloé Libre, Greenpeace, Red de Soberanía Alimentaria Sexta Región, PALTTA, Red de Soberanía Alimentaria Región del BioBio, BioBio Orgánico, Chiloe Orgánico, UNE (Unión Nacional de Estudiantes), Grupo Tun, organizations for the defense of the Mapuche, along with ordinary citizens and activists of the campaign YNQT, with banners and performances showed their disapproval of the Monsanto law. "Vénganse a marchar, póngase a sembrar" (come to march, start planting) was happily chanted through the streets while grotesque representations of Monsanto and their toxic products were displayed. "Seeds without patents, food without GMOs" declared the gatherers. The organizers evaluated that the first sprouts of this harvest against Monsanto are blooming with the spring that blooms on our territory.

More information: www.yonoquierotransgenicos.cl facebook: Yo No Quiero Transgénicos en Chile

Calendar of Events

- 21 to 25 October 2013: [UPOV bodies](#) will meet in Geneva, Switzerland. Part of the session is a [seminar on Essentially Derived Varieties](#). It is scheduled for 22 October and will be open to the public.

See also the [Upcoming Events](#) on our website.

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Feedback & Contact

Susanne Gura, APBREBES Coordinator

T: 0049 228 9480670

Mob: 0049 177 6691400

Email: contact@apbrebes.org

www.apbrebes.org