

**REPORT OF THE CONSULTATIVE COMMITTEE (CC)**

**DEVELOPMENTS OF RELEVANCE TO UPOV IN OTHER INTERNATIONAL FORA (CC/93/13)**

Mr. President, Mr. Secretary-General, distinguished delegates

**I have a question regarding the Eight Session of the Governing Body of the ITPGRFA and one regarding the Farmers Right Expert Group in the Treaty:**

**Regarding the Governing Body:** We note that the Consultative Committee, at its next meeting, will hopefully discuss the request by the Eighth Session of the Governing Body of the ITPGRFA «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.»

As you know APBEBES a year ago criticized the decision to have a premium access for the ones who could afford it and a normal access for other ones. The information collected in the Pluto Database has been collected by Member States. It should be common property, accessible to all on a non-profit basis and free of charge. In this regard we have the following question:

- We would like to know If the secretariat is prepared to report next year on the extent to which paid access to the database has proven to be a source of income (since the additional income was the reason to implement the paid access)? We think that this information would be beneficial to an informed discussion.

**Regarding the Farmers' Rights Expert Group in the Treaty :**

UPOV was represented in the Ad Hoc Technical Experts Group on Farmers' Rights (AHTEG) of the ITPGRFA with a member of the UPOV Secretariat. Also several UPOV Member States, were present as experts. APBEBES participated as an observer. It was astonishing to observe how the UPOV secretariat took a very dedicated position on the issues discussed. We observe that this marks a major departure from the traditional role of other secretariats of multilateral organizations that tend to play a neutral role in international negotiations. In this case, the UPOV secretariat for example picked out one submission from an UPOV member on national plant variety protection laws and proposed to integrate it into the Options Paper being discussed. Submissions of other UPOV members on the same topic were not mentioned by the Secretariat.

In addition, at the end of the meeting, the UPOV Secretariat representative objected to the proposal by the Co-Chairs and the Treaty Secretariat, that they would prepare a revised version of the Options Paper for the next meeting. This was objected by the UPOV Secretariat despite the fact that this proposal was supported by the majority of experts present in the room, several of them from UPOV member States. This was a situation I have never observed in other international fora.

Hence it is not surprising that many people in the expert group wondered how it was possible that the Secretariat of the Union openly disagreed with the opinions of several of its member states. Further, the basis of the mandate under which the UPOV Secretariat was making interventions in the expert group was unclear. Hence my questions to the Office of the Union are the following:

- What was the mandate of the UPOV Secretariat for the negotiations in the Ad Hoc Technical Experts Group on Farmers' Rights (AHTEG) of the Treaty?

- And who gave this mandate?

I thank you very much for answering my questions.

## **REPORT ON AN INITIATIVE CONCERNING SMALLHOLDER FARMERS (CC97/9)**

Mr. President, Mr. Secretary-General, distinguished delegates

We are pleased to hear that the work on the interpretation of "private and non-commercial use" will continue. Already in the follow-up to the Symposium "on the interrelations between the ITPGRFA and the UPOV Convention" in 2016, APBREBES requested to revise the Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention. The current Explanatory Note simply does not make sense, as it is based on an image of small-holder farmers which does not correspond to reality and thus criminalizes the actions of many small farmers, when they re-use, exchange or sell seeds on the local market.

Nevertheless we were surprised that during the meeting yesterday, the Consultative Committee did not seem to have taken a decision to revise the Explanatory Note, but only about drafting guidance. And we are also disappointed that the process to develop this guidance is kept in the Consultative Committee and thus not inclusive of other stakeholders.

For the coming process to be successful, it must meet the following requirements:

- The goal must be to revise the Explanatory Notes on Exceptions to the Breeder's Right. Nothing else makes sense. A new FAQ or any kind of new guidance would merely create discrepancies to the existing Explanatory Note and thus increase legal uncertainty.
- It seems that you are not asking for comments by farmers or Civil Society. This seems strange to us, as you will take into account the proposal of some other stakeholders such as Euroseed, Plantum and Oxfam. All observers should have the right to comment.
- It must be an inclusive process. These discussions should take place in a working group under the Administrative and Legal Committee and involve all stakeholders and especially farmers' organizations because it directly affects their life and work
- The process should be taken forward rapidly. The establishment of the working group on EDVs shows that this is possible.

And one final word: As I said, this initiative was started in the context of the discussions on the Interrelations between the ITGRFA and the UPOV Convention. But we would like to be clear that even a new, improved definition of private and non-commercial use does not amount to an implementation of farmers' rights, in particular the right recognized in the Treaty to save, use, exchange and sell farm-saved seed and other propagating material. The implementation of these rights cannot be "provided for" under a "private and non-commercial use" exception, but would require a substantial revision of the UPOV Convention.

Thanks a lot for your attention