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## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

### CONSULTATIVE COMMITTEE

#### Eighty-Eighth Session Geneva, October 15, 2014

ADDENDUM TO:

INTERRELATION WITH THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE (ITPGRFA)

*Document prepared by the Office of the Union*

*Disclaimer: this document does not represent UPOV policies or guidance*

1. On September 18, 2014, Mr. Francis Gurry, in his capacity as Director General of WIPO and Secretary-General of UPOV, received a copy of an "Open letter to the Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)" (Open letter), reproduced in the Annex to this document.
2. On October 14, 2014, the Office of the Union received an e-mail from the Office of the Secretary of the ITPGRFA, summarizing latest developments in relation to the invitation from the ITPGRFA to UPOV and WIPO to jointly identify possible areas of interrelations among the respective international instruments of UPOV, WIPO and the ITPGRFA, as follows:

"Last year, at its Fifth Session, held in Muscat, Oman, the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture had 'invite[d] UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments'.

"Pursuant to the Governing Body's request, the Treaty Secretariat sent an invitation letter to the Secretary-General of UPOV and Director General of WIPO. At its 31<sup>st</sup> extraordinary session, the UPOV Council expressed its appreciation to the Governing Body of the Treaty for its past cooperation and confirmed its continuing commitment to mutual supportiveness.

"The Consultative Committee considered the above-mentioned letter with the invitation from the Governing Body and requested the Office of UPOV to identify with the Secretary of the Treaty and the Secretariat of WIPO possible areas of interrelations among the respective international instruments. It also requested to present proposals for consideration by the Consultative Committee at its 88<sup>th</sup> session. Following this positive response from the Consultative Committee, a meeting with the Treaty and WIPO Secretariats was scheduled on the occasion of the 10<sup>th</sup> Anniversary of the Treaty in July. The Secretary of the Treaty transmitted initial comments received from the Treaty membership and a summary of the meeting was circulated to UPOV members recently.

"Following the comments from Treaty member countries as well as from civil society organizations [see Annex to this document], the Treaty intends to refer the matter to the Treaty's Ad Hoc Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture. The Committee will meet in the first quarter of 2015 and includes a representative range of Treaty stakeholder participation. Based on a compilation of comments of Treaty Contracting Parties and stakeholders, the identification of interrelations between the Treaty and the relevant instruments will be added to the agenda of the meeting. After the Committee processes the identified interrelations, it will transmit the interrelations identified to UPOV and WIPO. Based on the interrelations thus identified, a joint report will be prepared by a small

team of 3-4 experts agreed with the Treaty, UPOV and WIPO. Public comments will be invited and incorporated both on the draft outline and draft joint report prepared by the experts. The joint report would then be submitted to the Governing Body.”

3. *The Consultative Committee is invited to note the contents of this document and its Annex.*

[Annex follows]

ANNEX

OPEN LETTER TO THE SECRETARY OF THE INTERNATIONAL TREATY ON PLANT  
GENETIC RESOURCES FOR FOOD AND AGRICULTURE ON FARMERS RIGHTS

18<sup>th</sup> September 2014

Dr. Shakeel Bhatti  
Secretary  
International Treaty on Plant Genetic Resources  
for Food and Agriculture (ITPGRFA)

cc. Francis Gurry, Director General of WIPO, Secretary-General of UPOV  
cc. Member States of ITPGRFA

Dear Dr. Bhatti,

We the undersigned organizations from around the world are keen to see full implementation of Farmers Rights. The Preamble of the Treaty and Article 9 on Farmers' Rights, recognizes the contribution that local and indigenous communities and farmers of all regions of the world have made and will continue to make for the conservation and development of plant genetic resources for food and agriculture (PGRFA). It also explicitly recognizes that Treaty Members have the responsibility of realizing farmers' rights. This includes the right to save, use, exchange and sell farm-saved seed/propagating material; the right to participate in decision making on matters related to the conservation and sustainable use of PGRFA; the right to participate in the fair and equitable sharing of benefits arising from, the use of plant genetic resources as well as protection of traditional knowledge relevant to PGRFA. The treaty acknowledges that these elements are fundamental to the realization of Farmers' Rights and the promotion of Farmers' Rights at national and international levels.<sup>1</sup>

"Farmers' Rights" is a core component of the Treaty, and as such its full implementation is a prerequisite to achieving the Treaty objectives. However, there is much concern that the instruments and/or activities of UPOV and WIPO are not supportive of Farmers rights, and even undermine those Rights, thereby hindering implementation of the Treaty provisions.

In September 2013, the 5<sup>th</sup> Session of the Governing Body adopted Resolution 8/2013 on implementation of Article 9, which in Paragraph 3 requests the Secretary to "*to invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments*"<sup>2</sup>

In your letter<sup>3</sup> addressed to Dr. Francis Gurry, the Secretary-General of UPOV to operationalize paragraph 3, you state: "*Without intending to prejudge its outcome, this consultation process could for example lead to joint publication by UPOV, WIPO and the International Treaty on interrelated issues regarding innovation and plant genetic resources among our respective instruments.*"

We are of the view that a publication such as that suggested in the letter is certainly not what should be expected as an outcome of Paragraph 3 of the Resolution. The Resolution concerns implementation of Article 9, thus the identification of interrelations should be with regard to Farmers' Rights and be supportive of the implementation of Article 9 and the Treaty. Discussing innovation and plant genetic resources is inconsistent with the mandate given by the Resolution.

Further, we are of the view that the implementation of Paragraph 3 of the Resolution requires a thorough and evidence based analysis of the actual and potential effects including negative impacts of

<sup>1</sup> See the Preamble and Article 9 of the Treaty.

<sup>2</sup> See paragraph 3 of Resolution 8/2013.

<sup>3</sup> Published in the Annex of UPOV Document CC87/7 which is available on APBREBES website at [http://www.apbrebes.org/files/seeds/cc\\_87\\_7.pdf](http://www.apbrebes.org/files/seeds/cc_87_7.pdf)

UPOV and WIPO's instruments and activities with regard to realization of Farmers' Rights. Some key questions to be addressed in such an analysis are:

- What is the impact of UPOV's requirements (esp. of Art. 14 and 15 of UPOV 1991) on farmers' rights to save, use, exchange and sell farm-saved seed and other propagating material? The analysis should differentiate between the requirements of UPOV 1978 and UPOV 1991.
- What is the scope and content of WIPO's technical assistance with regard to plant genetic resources for food and agriculture especially when it receives technical assistance requests from its Members in connection with patents and plant variety protection?
- What is the impact of WIPO's technical assistance on farmers' rights to save, use, exchange and sell farm-saved seed and other propagating material?
- How do UPOV and WIPO "*recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world*"<sup>4</sup>?
- To what extent do the instruments and activities of UPOV and WIPO support or undermine the "*protection of traditional knowledge relevant to plant genetic resources for food and agriculture*"<sup>5</sup>?
- To what extent are the negotiations of the WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore taking into account the need to uphold farmers' rights?
- In which way do UPOV and WIPO support or restrict the "*right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture*"<sup>6</sup>? Are there any measures in place in the instruments administered by UPOV and WIPO to facilitate fair and equitable sharing of benefits and to prevent misappropriation of plant genetic resources for food and agriculture?
- How are UPOV and WIPO upholding the "*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*"<sup>7</sup>? Do they insist on the implementation of this right when providing technical assistance and have discussions taken place in UPOV and WIPO on supporting the implementation of this right.

**We are of the strong view that the current suggestion by the Treaty Secretariat i.e. to undertake a joint publication with the described content is not in line with the Resolution 8/2013 taken by the governing body, and request that you take immediate steps to halt this flawed process.**

**Instead the Treaty Secretariat should take lead and invite UPOV and WIPO to agree to the setting up of an independent Commission that will investigate implementation of Article 9 by UPOV and WIPO with regard to their respective instruments and activities. Some key questions to be investigated have been highlighted above. To ensure a rigorous investigation, such a Commission should also invite written submissions and hold public hearings. This process would be in line with the mandate of the Resolution.**

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<sup>4</sup> See Article 9 of the Treaty

<sup>5</sup> See Article 9 of the Treaty

<sup>6</sup> See Article 9 of the Treaty

<sup>7</sup> See Article 9 of the Treaty

**We look forward to hearing from you on the next steps taken in the implementation of the Resolution.**

On behalf of the signatories

Sangeeta Shashikant, Third World Network  
François Meienberg, Berne Declaration

## Signatories

### International Organisations

La Via Campesina  
Oxfam International  
Third World Network

### Africa

The Alliance For Food Sovereignty in Africa (AFSA)  
- The Pan African platform comprising 10 networks and farmer organisations  
JINUKUN – COPAGEN, Benin  
Food sovereignty Ghana  
Ethio-organic Seed Action (EOSA), Ethiopia  
Commons for EcoJustice (EcoJustice), Malawi  
Never Ending Food, Malawi  
Fahamu Africa, Senegal  
African Center for Biosafety, South Africa  
SECAAR (Service Chrétien d'Appui à l'Animation Rurale), Togo  
Alliance for Agro-Ecology and Biodiversity Conservation, Zambia  
Caritas Zambia  
Community Technology Development Trust (CTDT), Zimbabwe  
Food Matters, Zimbabwe

### Asia

Farmer Seed Network, China  
CENESTA (Centre for Sustainable Development), Iran  
Consumer Rights for Safe Food, Philippines  
Negros Island sustainable agriculture and rural development foundation, Philippines  
SEARICE, Philippines

### Americas

*La Red Por una América Latina Libre de Transgénicos* (Network for a GE-Free Latin America)  
Centro de Agricultura Alternativa do Norte de Minas, Brasil  
ETC Group, Canada  
USC, Canada  
Asociación Red de Coordinación en Biodiversidad - Costa Rica  
Asociación ANDES, Perú  
PLANT (Partners for the Land & Agricultural Needs of Traditional Peoples, USA  
*La Red Por una América Latina Libre de Transgénicos*

### Europe

ARCHE NOAH, Austria  
APRODEV, Belgium – The Association of World Council of Churches related Development Organisations in Europe with 15 Member Organisations  
Pan-Africanist International, Belgium

Réseau Semences paysannes, France  
Agrar Koordination, Germany  
Agrecol Association (Agrecol e.V.), Germany  
Campaign for Seed-Sovereignty, Germany  
Dachverband Kulturpflanzen- und Nutztiervielfalt, Germany  
INFOE - Institute for Ecology and Action Anthropology, Germany  
Misereor, Germany  
Save Our Seeds, Germany  
Slow Food Deutschland e.V., Germany  
Verein zur Erhaltung der Nutzpflanzenvielfalt, Germany  
The Development Fun, Norway  
Resembrando e Intercambiando, Spain  
alliancesud, Switzerland  
Berne Declaration, Switzerland  
Biovision Foundation, Switzerland  
Brot für alle – Pain pour le prochain – Pane per tutti, Switzerland  
Fastenopfer, Switzerland  
HEKS - Swiss Church Aid, Switzerland  
Swissaid, Switzerland  
Uniterre, Switzerland  
International Institute for Environment and Development (IIED), UK  
UK Food Group, UK - The leading UK network for non-governmental organisations (NGOs) working on global food and agriculture issues with 49 members