

**CIVIL SOCIETY RECOMMENDATIONS
TO THE FIRST SESSION OF THE GOVERNING BODY OF
THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Civil Society Organisations present at this meeting recognise the historical moment of this First Session of the Governing Body of the International Treaty. It is a step forward although the way in which Farmers Rights have been dealt with by the Treaty is one of the reasons why many in Civil Society and Farmers Organisations have withdrawn from the process.

Urgent matters that the Governing Body must address include:

- Implementing Farmers' Rights at national and international levels
- Securing benefit sharing through the Standard Material Transfer Agreement
- Operationalising Articles 5 and 6
- Improving relations with Civil Society + Farmers' Organisations
- Ensuring the Treaty has an effective Secretariat and a productive relationship with the CGRFA

FARMERS RIGHTS

The Treaty recognises the importance, basis and scope of Farmers' Rights in its preambular text and that they need to be promoted at national and international levels. In order to do this, the Governing Body should require governments to report on the implementation and status of Farmers Rights at the next session of the Governing Body. At the next session there should be a discussion on creating a Working Group on Farmers Rights that would be inclusive of Parties, Civil Society and Farmers' Organisations. Specifically the Secretariat should be mandated to seek the views of Farmers' Organisations prior to the next session of the Governing Body on how to move forward on Farmers Rights. The Secretariat should find ways to facilitate participation Farmers Organisations at the next session of the GB. CSOs were pleased with the Decision of CBD/COP8 to support the moratorium on Terminator. We noted that the CBD will be requesting this Governing Body to examine the potential impacts of GURTs. We believe that it might be more appropriate for the Governing Body to ask the CGRFA to take the lead on this, especially concerning the market and economic impacts of GURTs on farming systems.

SECURING BENEFIT-SHARING THROUGH THE SMTA

One of the three main goals of the Treaty – the equitable sharing of benefits – is under threat. There is a risk that the proposals of some Parties will reduce the benefits which will be shared through the Treaty to zero.

(SMTA Art. 6.11) CSOs present at the First Session of the Governing Body welcome the African proposal for a simpler and broader mechanism for benefit-sharing based on a percentage of all sales of seeds of any crop listed in Annex 1. According to Art. 13.2 (d) of the Treaty, during the next Session of the Governing Body the possibility to extend the mandatory payment to all products will have to be tabled. CSOs are in favour of this extension of the mandatory payment, which will also help to put the funding for the conservation activities on a broader basis.

(SMTA Art. 2) It has to made clear that a patented product cannot be included in the definition of “Available without restriction”. Industry representatives and some Parties are trying to promote an interpretation that a patent received in a country which includes a research exemption in its patent law does not restrict the availability of a product to others for further breeding. This interpretation denies the fact that behind every breeding activity is the aim to bring seeds to market and that there is a big difference between a research exemption in patent law and the breeders exemption in PVP laws. It was quite clear during the negotiations for the Treaty that “without restriction for further research and breeding” means that a product is available for further breeding by a “breeders exemption”, as defined in PVP laws which allow the breeder the right to sell new varieties developed from this product without restriction. This is not the case if patented traits or plants are used. It is clear that there will be almost no obligation to share any benefits if patents are included in this definition of “available without restriction”.

(SMTA Art. 2) The definition of “Product” must be as simple and clear as possible. CSOs support the proposal that a Product “incorporates Material or any of its genetic parts or components”. Using terms such as “commercial value”, or a specific percentage of material

accessed, to define a Product will only lead to new uncertainties. But “Product” should not only be limited to commercial propagation material. Markers for example, used as a tool for marker assisted breeding, are also PGRFA and would be excluded in this case.

(SMTA Art. 4.3) Monitoring : Monitoring by a third party beneficiary of the fulfilment of the requirements of SMTAs is necessary to make sure that the rules are followed. To improve the quality of monitoring the third party beneficiary should also be allowed to receive complaints by other stakeholders (e.g. CG-Centers or CSOs). The third party beneficiary should be obliged to evaluate these complaints and report the findings to the Governing Body and the compliance mechanisms. It would be better to incorporate an effective monitoring system, than to be humiliated by others who will point to the failings of the Governing Body in implementing the Treaty properly. We should keep in mind the role CSOs have played in monitoring the CBD and reporting, for example, biopiracy cases. To allow other stakeholders to monitor, the notification system should be made public.

(SMTA Art. 6.9) We welcome the proposal that the owner of an IP Protection **shall** make the product available to the multilateral system after the abandonment or expiry of the protection. It should also be envisaged that the same requirement should be made for products which are withdrawn from the market e.g. when they are removed from seed lists.

IMPROVING RELATIONS WITH CIVIL SOCIETY + FARMERS' ORGANISATIONS

If the Treaty is to be implemented effectively and its objectives realised, it is essential that the Governing Body and Secretariat find improved ways to include civil society, farmers organisations and women's organisations in its work. It is unacceptable that the Civil Society Organizations are excluded as observers from the Contact Group negotiating the SMTA, when Industry is allowed to participate. During all the negotiations of the Treaty the representation of both CSOs and Industry has been maintained. It is incomprehensible that Working Group I ignored the well established practice for the inclusion of Observers. **Therefore CSOs ask for the immediate and ongoing participation in the Contact Group negotiating the SMTA as observers.**

OPERATIONALISING ARTICLES 5 and 6

Articles 5 and 6 are concerned with the conservation and sustainable use of all PGRFA. They provide the legal framework for the implementation of the Leipzig Global Plan of Action. A decade ago when the GPA was negotiated, estimates for implementing it were put at around \$300m per year. These funds are urgently needed and will not be realised through royalties. The GB should be calling for renewed commitments to funding the GPA that are essential for realising the objectives of the Treaty. We support proposals that the next session of the GB should discuss this matter. In preparation for this we propose that Governing Body ask the Secretariat to conduct a study of relevant activities, including work by farmers, and the funds currently available for both *in situ* / on-farm and *ex situ* conservation and sustainable use of PGRFA.

SECRETARIAT AND CGRFA

The future of the Treaty will depend to some extent on the importance given to it by the FAO Secretariat. The Governing Body must insist that the Secretariat of the Treaty has a high profile within FAO and be sufficiently staffed. Its Secretary, nominated by the GB, should be appointed, by DG FAO, at a sufficiently senior grade, at least at D1 level, in order to have the necessary authority to implement the decisions of the GB and to realise the objectives of the Treaty. CSOs are concerned that governments have not given sufficient attention to the formation of the Secretariat and they need to be thinking of excellent candidates, women and men, from all regions for this post of Secretary. CSOs are relieved to know that Clive Stannard and the other staff of the CGRFA will continue to act as the interim Secretariat once Dr Esquinas retires. The Governing Body must also ensure that the Treaty relates effectively with the CGRFA. The CGRFA is going through a generational transformation over the next few years and we welcome decision to move the Secretariat of the Commission to the Sustainable Development division in FAO but we would insist that its Secretariat maintains its current status within FAO and in its relations with Members of the Commission.

Berne Declaration, CBDC Network, ETC group, Global Forest Coalition, IFOAM, ITDG/PracticalAction, SEARICE, SEEDS, Sobrevivencia Paraguay

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