

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

18th 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.¹

"Farmers' Rights" is a core component of the Treaty, and as such its full implementation is a pre-requisite 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 5th 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*"²

In your letter³ 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

¹ See the Preamble and Article 9 of the Treaty.

² See paragraph 3 of Resolution 8/2013.

³ Published in the Annex of UPOV Document CC87/7 which is available on APBEBES website at http://www.apbrees.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*"⁴?
- 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*"⁵?
- 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*"⁶? 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*"⁷? 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.

⁴ See Article 9 of the Treaty

⁵ See Article 9 of the Treaty

⁶ See Article 9 of the Treaty

⁷ 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 Alternative 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
Agrécol Association (Agrécol 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