

PROGRESS FOR FARMERS' RIGHTS AT GB5 IN OMAN

By Regine Andersen¹

Former Senior Research Fellow at FNI (on leave)

Since the first time Farmers' Rights came up in the negotiations under the FAO, it has been difficult to reach consensus as to how such rights can be secured and promoted. Substantial progress was made under the negotiations at the Fifth Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (GB5) in Oman in September 2012. Inter alia, The Secretary is to develop options for national implementation of Article 9 on Farmers' Rights and present these to the Governing Body at its next session, and contracting parties are to review their seed legislation and to develop national action plans for the implementation of Farmers' Rights. These are some of the provisions, which represent a great move forwards in the negotiations on Farmers' Rights.

The negotiation process at the Fifth Session of the Governing Body

The Fifth Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (GB5) took place in Muscat, Oman from 24 until 28 September 2013. Farmers' Rights was on the agenda, as it has been each time since GB2. The Secretariat had prepared a document which presented views and experiences that had been submitted during the past biannual period. There was no draft resolution text like for the other agenda items, and thus uncertainty among delegates as to whether it would be possible to develop such a text and reach consensus on it during the week.

However a zero-draft framework resolution text was prepared on a voluntary basis the first day and offered to delegations from most regional groups as a basis for negotiations. Developing countries were well prepared for the negotiations and demanded substantial progress with regard to decisions to be made at GB5. The Group of Latin American and Caribbean Countries (GRULAC) took a particular lead in fronting demands with regard to Farmers' Rights.

Based on the first round of negotiations in the plenary on Wednesday evening, the Secretariat presented a draft resolution text the next day, with the suggestions proposed by the delegations the day before. In particular Canada and Australia had difficulties in agreeing on central points in the draft, and a 'Friends of the Chair Group' was established to negotiate the resolution text. As the draft resolution on Farmers' Rights was linked to a draft resolution on sustainable use of plant genetic resources for food and agriculture (Article 6), the friends of the chair group was also tasked to negotiate relevant parts of the other resolution text. The group was not able to reach consensus on all points, and a new group was established, with limited representation – only two representatives from each region. After long and intensive discussions, this group reached consensus on texts that represent the most substantial achievements with regard to the negotiations on Farmers' Rights so far. The resolutions on Farmers' Rights and sustainable use were adopted with applause on Friday 27 September 2013.

¹ See <http://www.fni.no/cv/cv-ra.html>

Main relevant content of the resolutions

The Secretary to develop options for national implementation of Farmers' Rights

Since 2007 developing countries, along with some developed countries have demanded that voluntary guidelines be prepared to guide countries in the implementation of Farmers' Rights. There was strong resistance against that from several developed countries. At the other hand, views and experiences related to the implementation of Farmers' Rights had been submitted to the secretariat since GB2. A question among delegates at GB5 was thus, how to process all this information and how it could be utilized to guide and assist countries in the implementation of Farmers' Rights at the national level. The result was a decision that comes close to the development of voluntary guidelines.

The Secretary is requested to review the knowledge, views, experiences and best practices that have been submitted since the entering into forces of the ITPGRFA, including those submitted by farmers' organizations. The aim with the review is to derive examples in a systematic way as options for national implementation of Article 9 on Farmers' Rights. These options are to be presented to the Governing Body at its next session in two years.

In addition to these provisions, the resolution on sustainable use provided that an *ad hoc* technical committee should be established to provide advice to the Secretary on matters related to sustainable use. The committee is also mandated to prepare a set of options that contracting parties may consider for national implementation of Farmers' Rights as set out in the Treaty. This means that the Secretary and the *ad hoc* technical committee are to carry out similar tasks, and linking the two processes will probably be useful. With the two provisions, a great step forward may be achieved in guiding countries in the implementation of Farmers' Rights at the national level.

The Secretary to identify interrelations with other regimes

Intellectual property rights may pose substantial barriers to the realization of Farmers' Rights, dependent on their coverage and design. This has been at the core of the controversies surrounding Farmers' Rights, since the topic first came up in the FAO in 1986. At GB5, the Contracting Parties requested the Secretary to invite the Union for the Protection of New Varieties of Plants (UPOV) and the World Intellectual Property Organization (WIPO) to jointly identify possible areas of interrelations among their respective international instruments. Furthermore, the Secretary is requested to report on relevant discussions that relate to Farmers Right within FAO fora, including the Committee on Food Security.

The countries to review seed legislation and to report back to the Governing Body

Article 6.2.g of the Plant Treaty provides that countries may review and if necessary adjust *inter alia* legislation concerning variety release and seed marketing. This is an important provision, since seed legislation pose a substantial barrier to Farmers' Rights in many countries, and thus a barrier too to the sustainable use of crop genetic resources. Whereas the majority of countries have pushed for a follow-up of this provision in previous GB sessions, this has been met with great resistance from some other countries, in particular Canada. At GB3, a resolution was adopted in which countries were invited to review, and if necessary adjust their national measures concerning Farmers' Rights. This was the furthest possible step at that time.

At GB5, this formulation was reiterated. However, through another resolution on compliance with the Plant Treaty, a reporting format was adopted to monitor such compliance. Here countries are

requested to report on the implementation of Article 6.2.g. They are also to report on Article 9.3, which addresses any rights that farmers have to save, use, exchange and sell farm saved seed. Furthermore, the resolution on sustainable use provides that the *ad hoc* technical committee develops a tool box to assist the countries in implementing Article 6, which will necessarily address Article 6.2.g.

This way the necessity of reviewing, and if necessary, adjusting seed legislation will become an issue in countries, which have not already done so through the three interrelated resolutions.

Countries are to provide farmers with access to seeds

Much attention has been paid to how plant breeders can achieve access to plant genetic resources for food and agriculture under the Plant Treaty's Multilateral System for Access and Benefit Sharing. The system is designed for this purpose, without much attention to how farmers' can have access. Therefore it is important that farmers' access to seeds and propagating material under the Multilateral System is improved. This is not least central aspect with regard to Article 9.2.b on the right to participate in benefit sharing. As stated in Article 13, access to genetic resources is an important benefit. For the first time in the history of the Governing Body, the contracting parties were invited to promote access to genetic resources under the Multilateral System by local and indigenous communities and farmers. This is an important first step with regard to making the Multilateral System relevant for farmers and ensuring their participation in benefit sharing.

National action plans for Farmers' Rights to be developed

In the GB5 resolution on Farmers' Rights, the Governing Body for the first time invites each Contracting Party to consider developing national action plans for the implementation of Article 9 on Farmers' Rights. This task is to be seen in line with the implementation of Articles 5 on conservation and Article 6 on sustainable use. In particular, this should be done in line with the implementation of the measures provided in other Articles of the Treaty. Reference is made to Articles 5.1 c (promote and support farmers and local communities' efforts to manage and conserve on-farm their crop genetic resources), 5.1.d (promote *in situ* conservation of wild relatives and wild plants for food production by supporting indigenous and local communities), 6.2.c (promoting participatory plant breeding), 6.2.d (broadening the genetic base of crops and the range of genetic diversity available to farmers), 6.2.e (promoting the expanded use of local and locally adapted crops, varieties and underutilized species, 6.2.f (support the wider use of diversity of varieties and species in on-farm management, conservation and sustainable use of crops and creating strong links to plant breeding and agricultural development) and 6.2.g (reviewing and adjusting breeding strategies and regulations concerning variety release and seed distribution). Such a comprehensive approach to developing national action plans is regarded as crucial to making progress with regard to the implementation of Farmers' Rights. Implementing conservation and sustainable use is seen as 'the other side of the coin' of Farmers' Rights, and thus essential for the implementation of these rights.

Contracting parties and relevant organizations to convene consultations on Farmers' Rights

Contracting parties and relevant organizations are invited to convene regional workshops and other consultations on Farmers' Rights. Such workshops and consultations are aimed at exchanging knowledge, views and experiences to promote the realization of Farmers' Rights. The participation of farmers' organizations in such workshops and consultations is emphasized. The importance of

convening workshops and consultations on Farmers' Rights is underlined in the resolution by requesting the Secretary to facilitate support to such initiatives upon request.

Support needed for the implementation of Farmers' Rights

Developing countries have in various consultations repeatedly requested support for the implementation of Farmers' Rights. In a response to that, the Governing Body invited Contracting parties and development organizations to support the implementation of Farmers' Rights by financial or technical means in its resolution. Furthermore it requested the Secretary to facilitate support to contracting parties in building capacity for the implementation of Farmers Rights, upon their request and depending on available resources. Facilitating support means, for example, to identify donors that may provide support to a party in need of such support, and facilitate contact between the two.

Contracting parties to engage farmers' organizations in decision making

The appreciation and importance of farmers' participation in decision making at the national level as well as in the Governing Body has been stressed at all sessions since GB2. At GB 5, the Governing Body invited 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. Furthermore, the Governing Body reiterated its appreciation of the participation of farmers' organizations at its sessions and relevant international processes, and invited them to continue to actively participate. It also invited contracting parties and development cooperation organizations to support the participation of farmers' organizations in meetings under the Plant Treaty.

Civil society to present a report at GB6

The civil society organizations present at GB5 offered to present a state of the world report on the realization of Farmers' Rights at GB6. This was welcomed by the Governing Body.

Secretary to report back at the Sixth Session

Finally the Secretary is requested to report back on all provisions of the resolution. This report will provide the basis for further follow-up of the Governing Body. This also means that the Secretary will have to draft a resolution for GB6 on the implementation of Farmers' Rights. This will be the first time that such a draft text is presented by the Secretary prior to a GB session. So far the initiative always came from contracting parties during the sessions. When the resolution text is presented prior to the GB session along with all the other draft resolution texts, it enables a more thorough and considerate processes for delegations in preparing their contributions to the negotiations on Farmers' Rights. This enhances the prospects for making progress also at GB6.

How can this progress be explained?

Probably we can now see the fruits of many years of active work from various sides to show the importance of plant genetic resources for food and agriculture and how their conservation and sustainable use are intimately interlinked with Farmers' Rights. Particularly Europe has undergone great changes in this regard. Whereas there was major resistance from countries like Germany and France during the first sessions of the Governing Body, the European Group had a joint position at GB5, which was supportive of Farmers' Rights. Only Canada and Australia of all the contracting parties had major problems in accepting the first draft text on Farmers' Rights. Except for them the contracting parties are now speaking with more or less one voice with regard to these rights.

Two factors may contribute to explaining the change of the European position. First, plant breeders in Europe are getting more critical to patents on plants, as they pose major hurdles for further plant breeding. Thus their position in this regard is more in line with Farmers' Rights. Second, there has been a huge debate in the EU related to the evaluation of the seed legislation and the development of new legislation on variety release and seed marketing. In this context, the authorities have become sensitized to the needs of farmers engaged in the management of plant genetic resources for food and agriculture as well as small scale plant breeders. In general the understanding of the challenges related to the management of crop genetic diversity, and the role of farmers seems much greater now than only few years ago. Thus, the European Group is now more in line with the demands from developing countries when it comes to Farmers' Rights. This is probably an important factor in explaining the progress made at GB5.

The role of Norway in facilitating agreement on the resolution text should also be mentioned in this regard.

However, the progress would not have been possible without the agency of GRULAC. Their active work for a progressive resolution on Farmers' Right and diplomatic skills in this regard were essential for the result.

What matters now

Real progress is only made if the contracting parties and other stakeholders follow up on the provisions, take initiative, and ensure that they are implemented. Two years is a short period of time in this context, and thus it is important to get started soon, if achievements are to be made before GB6. Whether progress will be made in real terms during these two years depends on the initiatives of contracting parties and relevant stakeholders.

The resolutions:

- Resolution 8/2013 on Farmers' Rights:
http://planttreaty.org/sites/default/files/RES8_2013_en.pdf
- Resolution 7/2013 on sustainable use of plant genetic resources for food and agriculture, with the annex that addresses Farmers' Rights:
http://planttreaty.org/sites/default/files/RES7_2013_en.pdf
- Resolution 9/2013 on compliance with the International Treaty:
<http://planttreaty.org/content/resolution-92013-procedures-and-operational-mechanisms-promote-compliance-and-address-issues>

For more information on Farmers' Rights

- 'Realising Farmers' Rights to Crop Genetic Resources: Success stories and best practices' edited by Regine Andersen and Tone Winge (2013):
<http://www.routledge.com/books/details/9780415643849/>