

FOURTH SESSION OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 14-18 MARCH 2011

The fourth session of the Governing Body (GB 4) of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) opens today and will continue until 18 March 2011, in Bali, Indonesia. It was preceded by a High-Level Ministerial Conference, organized by the Government of Indonesia (11 March 2011) and two days of regional consultations (12-13 March 2011).

The Governing Body is expected to review implementation of the Treaty's Multilateral System (MLS) on access and benefit-sharing (ABS), adopt procedures and operational mechanisms to promote compliance and address issues of non-compliance, and provide further guidance on the next project cycles of the Treaty's benefit-sharing fund. The meeting will also address: the financial rules of the Governing Body; implementation of the Treaty's Funding Strategy; operation of the Third Party Beneficiary; farmers' rights; implementation of Article 6 (Sustainable Use of Plant Genetic Resources); the draft business plan for the Treaty's implementation; cooperation with relevant organizations; and the work programme and budget for 2012-2013.

A BRIEF HISTORY OF THE ITPGR

Negotiated under the auspices of FAO, the ITPGR is a legally binding instrument that targets the conservation and sustainable use of plant genetic resources for food and agriculture (PGRFA) and equitable benefit-sharing, in harmony with the 1992 Convention on Biological Diversity (CBD), for sustainable agriculture and food security. The Treaty contains sections on general provisions, farmers' rights, supporting components, and financial and institutional provisions. It establishes an MLS for facilitated access to a specified list of PGRFA including 35 crop genera and 29 forage species (Annex I), balanced by benefit-sharing in the areas of information exchange, technology transfer, capacity building and commercial development. The Treaty entered into force on 29 June 2004, and currently has 127 parties.

NEGOTIATION PROCESS: The Treaty's negotiations were based on the revision of the non-binding International Undertaking on PGRFA (IU). The IU was originally based on the principle that PGRFA should be "preserved ... and freely available for use" as part of the common heritage of mankind. This was subsequently subjected to "the sovereignty of States over their plant genetic resources," according to FAO Resolution

3/91. In April 1993, the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA) decided that the IU should be revised to be in harmony with the CBD.

Negotiations spanned seven years. From 1994 to 1998, the CGRFA met in five extraordinary and two regular sessions to develop the structure of, and refine, a draft negotiating text. From 1999-2001, a contact group consisted of 41 countries, chaired by Amb. Fernando Gerbasi (Venezuela), held six sessions to address contentious issues, including the list of crops to be included in the MLS, benefit-sharing, intellectual property rights (IPRs) to materials in the MLS, financial resources, genetic materials held by the International Agricultural Research Centers (IARCs) of the Consultative Group on International Agricultural Research (CGIAR) and definition of key terms. The 121st FAO Council and an Open-ended Working Group held under its auspices (October-November 2001, Rome, Italy) resolved outstanding issues and, on 3 November 2001, the 31st FAO Conference adopted the ITPGR by a vote of 116 in favor, zero against and two abstentions.

ITPGR INTERIM COMMITTEE: CGRFA, acting as the ITPGR Interim Committee, held two meetings (October 2002 and November 2004, Rome, Italy), where it adopted its rules of procedure, and set terms of reference for intersessional consideration of the rules of procedure and financial rules for the Governing Body, procedures for compliance, and the terms of the standard material transfer agreement (SMTA). An open-ended intersessional working group (December 2005, Rome, Italy) revised the rules of procedure and financial rules of the Governing Body, the funding strategy and procedures for compliance, and prepared a draft resolution on compliance for consideration by the first meeting of the Governing Body. An expert group on the SMTA (October 2004, Brussels, Belgium) considered options for the SMTA terms and draft structure, and recommended establishment of an intersessional contact group to draft its elements. This contact group held two meetings. At its first meeting (July 2005, Hammamet, Tunisia), it set out the basic structure of the SMTA. A number of controversial issues remained outstanding, such as: dispute settlement, including whether arbitration would be binding or not; the benefit-sharing mechanism and payment; and an African proposal to add a Third Party Beneficiary representing the Governing Body to monitor execution of the SMTA. The second meeting (April 2006, Alnarp, Sweden) agreed on a draft SMTA but left a number of issues unresolved, including: the Third Party Beneficiary's rights; the definitions of "product" and "sales," and the formula for benefit-sharing; obligations of the recipient in the case of subsequent transfers of material; dispute settlement; and applicable law. Contact group Chair Eng Siang Lim (Malaysia)

established an intersessional Friends of the Chair group to resolve pending issues prior to the first session of the Governing Body.

ITPGR GB 1: The first session of the ITPGR Governing Body (June 2006, Madrid, Spain) adopted the SMTA and the Funding Strategy. The SMTA includes provisions on a fixed percentage of 1.1% that a recipient shall pay when a product is commercialized but not available without restriction to others for further research and breeding; and 0.5% for an alternative payments scheme. The Governing Body further adopted: its rules of procedure, including decision making by consensus; financial rules with bracketed options on an indicative scale of voluntary contributions or voluntary contributions in general; a resolution establishing a compliance committee; the relationship agreement with the Global Crop Diversity Trust; and a model agreement with the IARCs of the CGIAR and other international institutions.

ITPGR GB 2: The second session of the Governing Body (October-November 2007, Rome, Italy) addressed a series of items, including implementation of the Funding Strategy, the MTA for non-Annex I crops, cooperation with the CGRFA, and sustainable use of PGRFA. Following challenging budget negotiations, the meeting adopted the work programme and budget for 2008/09. It also adopted a resolution on farmers' rights, as well as a joint statement of intent for cooperation with the CGRFA.

ITPGR GB 3: The third session of the Governing Body (June 2009, Tunis, Tunisia) agreed to: a set of outcomes for implementation of the Funding Strategy, including a financial target of US\$116 million for the period July 2009 - December 2014; a resolution on implementation of the MLS, including setting up an intersessional advisory committee on implementation issues; procedures for the Third Party Beneficiary; and a resolution on farmers' rights. The meeting also adopted the work programme and budget for 2010/11; agreed to finalize the outstanding financial rules at GB 4; and established intersessional processes to finalize compliance procedures by GB 4 and review the SMTA.

INTERSESSIONAL HIGHLIGHTS

BARI POLICY SEMINAR: A policy seminar (15-18 December 2009, Bari, Italy) addressed global challenges and future direction for the ITPGR. Participants assessed the Treaty's role in addressing the global challenges of agricultural biodiversity, food security and climate change. During the meeting, Spain announced a contribution of €2 million to the Treaty's benefit-sharing fund.

HIGH-LEVEL ROUNDTABLE ON THE ITPGR: Hosted by the Government of Italy with the support of the ITPGR Secretariat under the title "Leading the Field," the High-level Roundtable on the ITPGR (7 December 2010, Rome, Italy) focused on the role of the ITPGR in addressing food security in a time of climate change. Speakers emphasized: the need to continue exchanging and using PGRFA to achieve food security, particularly in the climate change context; the Treaty's role in that regard; that all parties should make their relevant PGRFA available through the MLS; that the Treaty's benefit-sharing fund should be used to assist small-scale farmers to adapt to climate change; and that investing in the Treaty should continue and the Treaty's Core Administrative Budget should be funded adequately.

COMPLIANCE WORKING GROUP: The *Ad Hoc* Working Group on compliance held two meetings (2-3 February 2010 and 17-18 January 2011, Rome, Italy). At its first meeting, the group emphasized the importance of cooperative and effective compliance procedures, noting they should be facilitative and supportive in nature, and developed new draft text regarding procedures and operational mechanisms to

promote compliance and address issues of non-compliance. At its second meeting, the group further developed the draft text and agreed on a draft resolution for the Governing Body to adopt. Outstanding issues include: linking compliance to countries' differentiated capacity; functions of the compliance committee and who could trigger the procedure; and publicity of the compliance committee decisions.

ADVISORY COMMITTEE ON THE FUNDING STRATEGY: The advisory committee convened twice (26-27 May 2010 and 13-15 October 2010) focusing on: resource mobilization; profiling and branding of the benefit-sharing fund; design of the 2010 call for proposals for the benefit-sharing fund, and review of the work involved; development of partnership strategies to support the implementation of the fund; preparation of a mid-term programme for the fund; establishment of procedures and institutional arrangements for reporting, monitoring and evaluation of projects and disbursement of funds; and advice on the autonomy and self-administration of the fund in the context of the review of statutory bodies of FAO.

ADVISORY COMMITTEE ON THE SMTA AND MLS: The *Ad Hoc* Advisory Technical Committee on the SMTA and the MLS met twice (18-19 January 2010, Rome, Italy, and 31 August-2 September 2010, Brasilia, Brazil). At its first meeting, the Committee addressed implementation questions raised by MLS and SMTA users, including: criteria for identifying PGRFA that are under the management and control of parties, and in the public domain; and incentive measures to encourage natural and legal persons to include their Annex I PGRFA in the MLS. At its second meeting, the Committee addressed issues including: reporting obligations of parties under the SMTA; restrictions on further transfer of PGRFA under development; non-food/feed uses of PGRFA; and restoration of germplasm.

THIRD PARTY BENEFICIARY COMMITTEE: The *Ad Hoc* Third Party Beneficiary Committee (7-8 October 2010) reviewed and finalized draft mediation rules and a corresponding amendment to the Third Party Beneficiary Procedures.

CBD COP 10: The tenth meeting of the Conference of the Parties (COP) to the CBD (18-29 October 2010, Nagoya, Japan) adopted the Nagoya Protocol on ABS, which sets out rules and procedures for implementing the Convention's third objective on fair and equitable benefit-sharing. The Protocol recognizes that the ITPGR is part of the international regime on ABS, and that specialized ABS instruments supersede its provisions as long as they are consistent with, and do not run counter to, the CBD and Protocol objectives.

CONFERENCE ON FARMERS' RIGHTS: The Global Consultation Conference on Farmers' Rights (23-25 November 2010, Addis Ababa, Ethiopia) focused on: rights to save, use, exchange and sell farm-saved seeds; protection of traditional knowledge; benefit-sharing; and participation in decision making. The meeting provided an overview of national measures affecting the realization of farmers' rights, achievements and success stories, farmers' views on required measures, major obstacles and options, gaps and needs, as well as recommendations to the Governing Body.

BALI MINISTERIAL CONFERENCE: Convened on 11 March 2011, the meeting adopted the Bali Ministerial Declaration on the ITPGR, in which participants: engage themselves to further enhancing Treaty implementation to help meet the challenges of agricultural biodiversity erosion, food insecurity, extreme poverty and the effects of climate change; and call upon parties and relevant stakeholders to prioritize activities relevant to the MLS, SMTA, sustainable use of PGRFA, and farmers' rights, and to mobilize more effective and timely contributions to the implementation of the Funding Strategy, including its benefit-sharing fund.