

June 1997



FOOD AND
AGRICULTURE
ORGANIZATION
OF THE
UNITED NATIONS

ORGANISATION
DES NATIONS
UNIES POUR
L'ALIMENTATION
ET L'AGRICULTURE

ORGANIZACION
DE LAS NACIONES
UNIDAS PARA
LA AGRICULTURA
Y LA ALIMENTACION

**COMMISSION ON GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

Fourth Extraordinary Session

**REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC
RESOURCES. NEGOTIATED TEXT AND CONSOLIDATED TEXT OF ARTICLES 3
(SCOPE), 11 (ACCESS) AND 12 (FARMERS' RIGHTS), RESULTING FROM THE
NEGOTIATIONS DURING THE SEVENTH REGULAR SESSION**

**Continuation of the Negotiations for the Revision of
the International Undertaking on Plant Genetic Resources**

As the Commission decided at its Third Extraordinary Session, regional groups met at the beginning of the Seventh Session, to prepare regional positions on the revision of the International Undertaking on Plant Genetic Resources. At the request of the Chairman, the Regional Groups concentrated on Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights), taking into account the Fourth Negotiating Text of the International Undertaking (available as document CGRFA/IUND/4 Rev. 1), and the Secretariat Non-Paper contained in *Appendix D, Attachment 5*, of CGRFA-Ex3/96/Rep (Report of the Third Extraordinary Session). Some Groups also proposed texts on other Articles.

The regional positions were then consolidated by the Bureau. Two *Ad Hoc* Working Groups subsequently met to review the consolidated text. One Working Group examined Articles 3 (Scope) and 11 (Access). The other examined Article 12 (Farmers' Rights). The negotiated text and that part of the consolidated text of these Articles which was not negotiated for lack of time, as reported to the Commission, are available in the present document (extracted from *Appendix I* of CGRFA-7/97/Rep, Report of the Seventh Session).

It was agreed that negotiations during the Fourth Extraordinary Session should be on the basis of:

- Document CGRFA/IUND/4 Rev. 1: Revision of the International Undertaking on Plant Genetic Resources. Fourth Negotiating Draft.
- Document CGRFA/IUND/4 Rev. 1 Add. 1: Revision of the International Undertaking on Plant Genetic Resources. Negotiated Text and Consolidated Text of Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights), resulting from the Negotiations during the Seventh Regular Session.
- Document CGRFA-Ex4/Inf. 1: Regional Positions Presented during the Seventh Session of the Commission on Genetic Resources for Food and Agriculture.

From CGRFA-7/97/Rep, Appendix I

**REVISION OF THE INTERNATIONAL UNDERTAKING
ON PLANT GENETIC RESOURCES.
NEGOTIATED TEXT AND CONSOLIDATED TEXT OF ARTICLES 3 (SCOPE),
11 (ACCESS) AND 12 (FARMERS' RIGHTS), RESULTING FROM THE NEGOTIATIONS
DURING THE SEVENTH REGULAR SESSION**

In extracting the following text from the request of the Seventh Session of the Commission (CGRFA-7/97/Rep, Appendix I), the Secretariat has included shaded headings which identify for each article, (i) the text that was negotiated during the Seventh Session of the Commission on the basis of the consolidated text prepared by the Bureau, and (ii) the part of the consolidated text not yet considered by the Commission, due to a lack of time.

NOTE: For the purpose of the present draft the terms "Undertaking" and "Parties" are used, without brackets, for simplicity, without prejudice to final formulations.

ARTICLE 3: TEXT NEGOTIATED BY THE COMMISSION

Article 3 - Scope

3.1 This Undertaking relates to plant genetic resources for food and agriculture.

ARTICLE 11: TEXT NEGOTIATED BY THE COMMISSION

Article 11 - Access to plant genetic resources for food and agriculture

[11.1 Parties recognize the sovereign rights of States over their plant genetic resources for food and agriculture, including that the authority to determine access to those resources rests with the national governments and is subject to national legislation, and in the exercise of their sovereign rights, Parties shall facilitate access without imposing restrictions that run counter to the Convention on Biological Diversity and this Undertaking.

11.1 and 11.2 In furtherance of the Convention on Biological Diversity, Parties shall facilitate access to their plant genetic resources for food and agriculture without imposing restrictions that run counter to the Convention on Biological Diversity and this Undertaking, and in a manner which is efficient, effective and transparent.

11.2 Parties agree to establish a multilateral system, which is efficient, effective, and transparent, to facilitate access to plant genetic resources for food and agriculture, and to provide for the fair and equitable sharing of the benefits arising from the utilization of these resources, including the transfer of technology, capacity-building, exchange of information and funding.

11.2 Parties agree to establish a multilateral system, which is efficient, effective and transparent, to facilitate access to plant genetic resources for food and agriculture. Parties recognise that access to plant genetic resources for food and agriculture is the major benefit of this multilateral system.

11.3.1 Access shall be provided[free of charge or with only a modest handling fee]/[at the lowest possible charge], as rapidly as technically possible, using as few steps as possible and [, if

possible upon simple exchange of correspondence] with the necessary documentation for shipment. [Formal requests for access shall not be denied.]

- 11.3.2 Recipients of material must be informed [and must formally agree] that by acceptance they (a) undertake that it will be used for research, breeding or training in food and agriculture, according to the terms of this Undertaking (b) [understand that any other use of this material may be subject to [different conditions, with particular reference to]/[other provisions of] the Convention on Biological Diversity, and (c)] agree to redistribute samples of the material to third parties only under these same conditions.
- (a) Any information generated on the material will be fed back to the source country. The recipient shall agree that the material received shall not be passed on to a third party without the prior informed consent of the donor.
 - (b) Recipients of plant genetic resources shall declare the intended use of such resources. Subject to national legislation, applications for use for food and agriculture, research, training, shall be granted access.
 - (c) Recipients shall undertake that no intellectual property rights or any other rights shall be claimed over the materials, processes related to the materials, and products arising from such materials.
 - (d) Plant genetic resources received for food and agriculture use and later utilized for any non-food or agriculture purposes shall also be subject to fair and equitable benefit-sharing arrangements for such uses.
 - (e) ... unless the provider does not require such documentation...[to be added as appropriate]
 - (f) Access to proprietary breeders' lines, farmers' varieties and other material under development, will be at the discretion of their developers during the period of their development.
 - (g) Access should be facilitated by the provision of adequate information on the material.
 - (h) When the acquisition is subject to specific conditions, access shall be provided consistent with those conditions.
 - (i) Access to material protected by intellectual property rights will be consistent with relevant international intellectual property rights legislation.]

**ARTICLE 11: PART OF THE CONSOLIDATED TEXT PREPARED BY THE BUREAU
WHICH THE SEVENTH SESSION DID NOT HAVE TIME TO NEGOTIATE**

- 11.2¹ 1* Parties shall take measures to provide or allow for unrestricted access to plant genetic resources for food and agriculture [for the material referred to in Annex A. Parties to this greement are also encouraged to provide or allow for unrestricted access to additional material, not listed in Annex A.]/[for the material designated by the Parties for inclusion in the

¹ NOTE: In Article 11.2, 1*, 2* and 3* may be viewed as alternative regimes, or as components of a single regime. If they are to be viewed as components of a single regime, then the negotiations will need to establish which materials shall be dealt with under which component. The references in brackets to annexes relate to this possibility. It will also be necessary to establish which component should be the default category, that is, the category that covers all PGRFA not defined as being in other categories. Whether 11.3 is retained will depend upon such decisions.

International Network, as defined in Article...]. Parties shall also take measures to provide or allow for unrestricted access to plant genetic resources for food and agriculture, acquired prior to entry into force of this agreement, except where the acquisition was subject to specific conditions, in which case access to the genetic resources shall be provided consistent with those conditions.

AND/OR

2* Parties agree to establish a multilateral system of access and exchange of plant genetic resources for food and agriculture under the auspices of FAO [for the material referred to in Annex B]/[for the material designated by the Parties]. Conditions of access and benefit-sharing under the multilateral system of access and exchange shall cover all categories of plant genetic resources for food and agriculture as an integral part of this Undertaking. Recipients of plant genetic resources for food and agriculture shall undertake commitments to share benefits derived from any commercial use to the country or countries of origin, or in the case of plant genetic resources for food and agriculture for which country or countries of origin cannot be determined, to the International Fund established under Article

AND/OR

3* Conditions of bilateral access and benefit-sharing [for the material referred to in Annex C]/[for the material designated by the Parties] shall be determined by the contracting parties concerned on mutually agreed terms, keeping in view the provisions of the CBD.

- 11.3 Any Party may propose an amendment to Annexes A, B and C for consideration by the CGRFA. The text of the proposed amendment shall be communicated by the Secretariat of the CGRFA to Parties at least three months before its meeting.
- 11.4 Parties agree that plant genetic resources received under the terms of this Undertaking for use for food and agriculture and later utilized for any other commercial purposes shall also be obliged to ensure fair and equitable benefit-sharing arising from such non-agricultural use.
- 11.5 Access to the material in the International Network will be allowed to non-participants under specific conditions to be negotiated by the [FAO CGRFA]/[governing body].
- 11.6 Prior to being granted access, applicants for access shall meet the requirements set out in any generally agreed international standards, including in particular the FAO Code of Conduct for Collecting and Transfer of Plant Germplasm.
- 11.7 Access to proprietary breeders' lines and farmers' varieties under development will be at the discretion of their developers during the period of their development, provided that the exercise of this discretion does not run counter to the objectives of this Undertaking.

[**Annexes to Article 11**]

Annex A

Designated material in the International Network

OR

Plant genetic resources for food and agriculture (genus level) listed in this Annex, acquired after entry into force of this agreement, when they are held in national collections, in collections designated by their national government, or in areas for *in situ* conservation of plant genetic resources for food and agriculture designated by governments for the purposes of this agreement

A.	Wheat	Rice
	Maize	Chickpea
	Sorghum	Bean (Phaseolus)
	Millets	Cowpea (Vigna)
	Rye	Faba Bean
	Oat	Soybean
	Barley	Pigeon Pea
	Yam	Peanut
	Potato	Lentil
	Tanier	Pea
	Taro	Sweet Potato
	Cassava	Banana and Plantain
	Coconut	Squashes
	Brassicas	Melons
	Tomatoes	Flax
	Citrus	Sunflower
	Sugarcane	Beets
	Allium	

B. Forages

OR

material not included in Annexes B or C

Annex B

Designated material

OR

Plant genetic resources for food and agriculture (genus level) listed in this Annex

OR

material not included in Annexes A or C

Annex C

Plant genetic resources for food and agriculture (genus level) listed in this Annex

OR

material not included in Annexes A or B]

ARTICLE 12: TEXT NEGOTIATED BY THE COMMISSION

Article 12 - Farmers' Rights²

12.1 [Parties recognize the enormous contribution that farmers of all regions of the world, particularly those in the centres of origin and crop plant 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. These contributions form [a / the] basis for [Farmers' Rights as they relate to plant genetic resources for food and agriculture, as elaborated in Article 12.3.] [[the concept of [F/farmers' R/rights] as [[elaborated/dealt with] in earlier FAO resolutions], to be [implemented /addressed] by appropriate measures] [recognizing farmers' rights, as elaborated in Article 12.3, and undertaking] / [Farmers' Rights and] / [] appropriate measures, reflecting national capacities and needs, [which are non-discriminatory and non trade-distorting,]] necessary for Parties [and/or] farmers to continue to conserve, manage and improve plant genetic resources for food and agriculture.]

OR

[Parties recognize the enormous contribution that 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. These contributions form [the / a] basis for [recognizing farmers' rights as they relate to plant genetic resources for food and agriculture[, as elaborated in Article 12.3. and undertaking] [the concept of Farmers' Rights as dealt with in FAO Resolution 5/89 to be addressed at national level by] appropriate measures [reflecting national capacities and needs,] [which are non-discriminatory and non trade-distorting,]] necessary for Parties and/or farmers to continue to conserve, manage and improve plant genetic resources for food and agriculture.]

12.2 [Parties recognize that the [principle] responsibility for realizing [the rights of [their] farmers, as they related to PGRFA,] [Farmers' Rights] [individually and/or collectively, where recognized by national law] , rests with [the national government] [national governments] [and the international community, as a beneficiary of the PGR developed and conserved by farmers]. The international community [, as a beneficiary of the PGR developed and conserved by farmers, also has the responsibility to] [recognize Farmers' Rights and to] [will] assist national governments for the purpose of [ensuring/encouraging] equitable benefits to present and future generations of farmers and farming [and indigenous] communities.]

OR

[Parties recognize the need to promote the efforts of their farmers to conserve and sustainably use plant genetic resources for food and agriculture.]

12.3 [Each Party / Parties] [shall / should] therefore, as appropriate, take measures, including administrative, policy and legislative measures, according to [its needs and priorities] / [their respective priorities], to:

(a) Assist their farmers and [traditional] farming communities, [especially in areas of origin/diversity of plant genetic resources,] in contributing to the evolution, conservation, improvement, evaluation and sustainable use of plant genetic resources

² Definitions required for Farmers' Rights, farmers and farming communities throughout the entire text.

for food and agriculture, through the participation in and establishment or strengthening of appropriate arrangements, [and the participation of their farmers and their [traditional] farming communities therein] such as:

- (i) national [and regional] germplasm programmes;
- (ii) initiatives that promote the use of, and research into, crops which are not widely used.

- (b) [[Subject to national legislation,] Ensure that international programmes [directly] benefit farmers by furthering their activities to conserve and sustainably use plant genetic resources for food and agriculture.]

OR

[Work with relevant international programmes to benefit farmers and to] further their activities to conserve and sustainably use plant genetic resources for food and agriculture.]

- (c) [Actively implement the measures referred to in Article...,³ in accordance with their national capacities, so contributing to ensure benefits to farmers and [their] [traditional / farming /indigenous and local] communities.]
- (d) Support measures for research, training and institutional capacity building activities at the local level, with the [full] participation of the communities concerned, particularly focusing on women farmers, [[including / and] measures for [review of] credit facilities and market provisions.] [governing farmers' access to plant genetic resources for enhancing traditional genetic resources, development and the exchange systems through, inter alia, the removal of financial and market barriers against such systems, for conservation, development and sustainable use, and transfer of technology that protect, integrate, enhance and develop [traditional farmers' / farmers' traditional] knowledge, know-how and practices.]
- (e) [Facilitate the [integration] of [traditional farmers' /farmers' traditional] knowledge, know-how and practices, with modern technologies, as appropriate.]
- (f) Promote national and international scientific and technological agricultural research that supports and enhances, as appropriate, farmer-based knowledge systems related to plant genetic resources for food and agriculture.
- (g) [Recognize and protect traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and any other plant reproductive material, including the right to re-use farm saved seed.]

OR

[[In accordance with national legislation,] Recognize [and protect] traditional [practices and] rights of farmers and their communities to keep, use, exchange, share and market [their] [/ [farmers' varieties /] landraces] [[seeds and [any other/ their] plant reproductive material], [of their local or farmer varieties,] including the right to re-use [their] farm-saved seed [under UPOV] [as appropriate].]

³ The European Region proposes titling Article...(Article 5 in IUND/4) "National commitment towards the conservation and sustainable use of plant genetic resources for food and agriculture".

OR

Protect the ability of farmers and their communities to keep and use, including the ability to re-use, their farm-saved seed and their other plant reproductive material: as well as [consistent with national legislation, exchange, share and market seeds and other plant reproductive materials in the public domain.]

OR

[Protect, consistent with national and international legislation, as appropriate, the ability of farmers and their communities to keep, use, exchange, share and market seed and other plant reproductive materials of their farmers' varieties / landraces.]

- (h) [Establish and implement an international fund (referred to in Article ...) and develop its operational mechanism to ensure conservation and sustainable use of plant genetic resources, and traditional farmers' knowledge, facilitate and ensure access to new technologies and equitable sharing of benefits derived from the products obtained through the use of plant genetic resources for the benefit of present and future generations of farmers.]

OR

[Make appropriate efforts to mobilize adequate financial resources to support farmers activities to conserve and use sustainably plant genetic resources for food and agriculture [without restricting or distorting trade]. In this regard, they should seek the full use and qualitative improvement of all national, bilateral and multilateral funding sources and mechanisms and the involvement of private sector sources and mechanisms: including NGOs.]

- (i) [[Subject to national legislation, encourage] Recognize and [ensure the rights of [their] farmers in [fully] sharing]] [endeavour to share] the benefits arising from the [direct] use of plant genetic resources on a fair and equitable basis, [and] as mutually agreed, including [through transfer of technology,] participation in research, and access to the results of research and development,[where appropriate,] derived [at present, and in the future,] from the improved use of plant genetic resources through plant breeding[. and other modern scientific methods, as well as from their commercial use.]
- (j) [Ensure that the [individual and/or] collective knowledge and plant genetic resources for food and agriculture held and developed by farmers and [farming / local] communities are protected and promoted by adopting and implementing appropriate legislation [in the form of a collective rights regime] that provides for the adequate protection of traditional or indigenous knowledge, innovations, materials and practices of and by farmers and [farming / local] communities [and promote the equitable sharing of benefits arising from the utilization of their plant genetic resources for food and agriculture] .]
- (k) [Promote on the national level legal protection systems [and/or other mechanisms] in order to render effective the rights of farmers [and / relating to] the fair and equitable sharing of the benefits arising out of the utilization of plant genetic resources for food and agriculture.]

OR

[Establish systems on the national level [,including *sui generis* systems,] as appropriate, [pertaining to] / [to ensure / promote] the fair and equitable sharing of the benefits arising out of the utilization of plant genetic resources for food and agriculture .]

ARTICLE 12: PART OF CONSOLIDATED TEXT WHICH THE SEVENTH SESSION DID NOT HAVE TIME TO NEGOTIATE, WITH AMENDMENTS PRESENTED BY COUNTRIES DURING AN IN-SESSION WORKING GROUP ON FARMERS' RIGHTS

- (n[l]) [Promote the establishment and advise on the development of an international *sui generis* system for the recognition, protection and compensation of knowledge, innovations and practices of farmers and traditional communities.]
- (o[m]) [Take the necessary measures to ensure that [their] farmers and [local] farming communities fully participate in the definition and implementation of the measures [provided under this article] [and legislation on Farmers' Rights at national and international levels], and including their active participation in the development, implementation and review of this Undertaking [and the International Fund referred to in Article ... A] [P] permanent and flexible consultative process will [processes \ should] be initiated to meet this aim.]
- (p[n]) [Ensure that the prior informed consent of the concerned farmers and local communities is obtained before the collection of plant resources is undertaken; adapt current variety registration systems so as to identify and record, as appropriate, varieties of plant genetic resources provided by farmers and farming communities; and require disclosure of the origin of plant genetic resources utilized in the development of commercial varieties.]
- (q[o]) [Review, assess and, if appropriate, modify intellectual property rights systems, land tenure, and seed laws in order to ensure their harmony with the provisions of this Article.]