

**CONVENTION ON
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**CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY**

Sixth meeting

The Hague, 7-19 April 2002

Item 16 of the provisional agenda*

**THEMATIC PROGRAMMES OF WORK—PROGRESS REPORTS ON
IMPLEMENTATION: AGRICULTURAL BIOLOGICAL DIVERSITY*****Report of the informal consultation on the potential impacts of the application of genetic use
restriction technologies on indigenous and local communities and on Farmers' Rights***

Note by the Executive Secretary

1. As mentioned in paragraph 3 of his report on the impacts of the application of genetic use restriction technologies on indigenous and local communities and Farmers' Rights (UNEP/CBD/COP/6/11/Add.1), the Executive Secretary is circulating herewith, for the information of participants in the sixth meeting of the Conference of the Parties to the Convention on Biological Diversity, the report of the informal consultation on the potential impacts of the application of genetic use restriction technologies on indigenous and local communities and on Farmers' Rights.
2. The consultation was convened by the Executive Secretary in Montreal on 3 February 2002 in response to paragraph 29 of decision V/5 of the Conference of the Parties, by which the Executive Secretary was requested to discuss with organizations with relevant expertise and representatives of indigenous and local communities the potential impacts of the application of genetic use restriction technologies (GURTs) on those communities and on Farmers' Rights in keeping with the revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture to keep, use, exchange and sell seed or propagating material and to prepare a report to be considered by the Conference of the Parties.
3. The report is available in English only.

* UNEP/CBD/COP/6/1 and Corr.1/Rev.1.

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REPORT OF THE INFORMAL CONSULTATION ON THE POTENTIAL IMPACTS OF THE APPLICATION OF GENETIC USE RESTRICTION TECHNOLOGIES ON INDIGENOUS AND LOCAL COMMUNITIES AND ON FARMERS' RIGHTS

1. The informal consultation on the potential impacts of the application of genetic use restriction technologies (GURTs) was convened by the Executive Secretary of the Convention on Biological Diversity:

(a) To discuss, with relevant organizations and representatives of indigenous and local communities, the potential impacts of the application of GURTs on these communities and on Farmers' Rights, in keeping with the revision of the International Treaty on Plant Genetic Resources for Food and Agriculture, to keep, use, exchange and sell seed or propagating material; and

(b) To prepare a report to be considered by the Conference of the Parties.

2. The meeting was held in Montreal at the headquarters of the International Civil Aviation Organization (ICAO) on 3 February 2002.

ITEM 1. OPENING OF THE MEETING

3. The representative of the Executive Secretary opened the meeting at 10 a.m. He welcomed the participants and recalled the objectives of the meeting.

4. Twenty-two participants were present including representatives of Parties (Argentina, Belarus, Bolivia, Burkina Faso, Cameroon, Central African Republic, Congo, Cuba, Denmark, Dominican Republic, El Salvador, Lao People's Democratic Republic, Norway, Spain), United Nations specialized agencies (Food and Agriculture Organization of the United Nations (FAO) and World Intellectual Property Organization (WIPO)) and non-governmental organizations and universities (Action Group on Erosion, Technology and Concentration; ASSINSEL; Griffith University; and Plant Research International), and one indigenous organization (Asociación ANDES).

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Election of officers

5. Mr. Veit Koester from Denmark was elected Chairperson of the meeting.

2.2. Adoption of the agenda

6. Participants adopted the agenda for the consultation on the basis of the provisional agenda proposed by the Executive Secretary in light of paragraph 29 of decision V/5 of the Conference of the Parties (UNEP/CBD/Consultation/GURTs/1/Rev.1).

2.3. Organization of work

7. The meeting decided to organize its work following the provisional organization of work in annex II to the annotated provisional agenda (UNEP/CBD/Consultation/GURTs/1/Add.1/Rev.1).

ITEM 3. POTENTIAL IMPACTS OF THE APPLICATION OF GENETIC USE RESTRICTION TECHNOLOGIES ON INDIGENOUS AND LOCAL COMMUNITIES AND ON FARMERS' RIGHTS

3.1. Keynote presentations

8. The Executive Secretary invited four participants to make keynote presentations on GURTs and its potential impacts: Mr. Niels Louwaars (Plant Research International, The Netherlands) described GURTs and the policy issues raised by their applications; Mr. Alejandro Argumedo (Asociación ANDES, Peru) focused his presentation on the potential impacts of GURTs on indigenous communities; Ms. Christine Morris (Griffith University, Australia) contributed with an indigenous perspective on the development of GURTs; and Mr. Josep-Antoni Gari (Autonomous University of Barcelona, Spain) explored a set of GURTs issues in relation to equitable agricultural and rural development.

9. Participants agreed that agenda items 3.2. (Potential impacts of GURTs on indigenous and local communities) and 3.3 (Potential impacts of GURTs on Farmer's Rights) should be discussed together bearing in mind that there is no clear and commonly acceptable definition of Farmer's Rights, that the notion of farmers and local and indigenous communities are rather interlinked, and that there is a need to distinguish between commercial and subsistence farmers.

3.2. Potential impacts of GURTs on indigenous and local communities

and

3.3. Potential impacts of GURTs on Farmers' Rights

10. Building on the keynote presentations and the meeting documents, in particular the FAO document entitled "Potential impacts of genetic use restriction technologies (GURTs) on agricultural biodiversity and agricultural production systems", the meeting agreed on a set of potential impacts of the application of GURTs on indigenous and local communities and on Farmer's Rights (Annex I to this report). The set consists of potential impacts agreed by all participants and other impacts proposed by some but not agreed by all participants.

11. Participants in the informal consultation noted also that it was necessary to address the potential impacts of GURTs on *in situ* and *ex situ* conservation and sustainable use of agricultural biological diversity, including food security, and to consider the need to take into account, on a case-by-case basis, the effects of the application of GURTs on environmental, social and economic aspects of agricultural biological diversity, such as,

(a) The genetic erosion in different areas or regions, in particular in agricultural lands; in centres of origin or regions of high diversity; in fragile, fragmented ecosystems and farming systems and in marginal and/or remote areas such as mountain or semi-arid areas;

(b) The potential impacts on *in situ* conservation, in particular the conservation of landraces, wild relatives and wild species, and the diversity of types and varieties of farmed plants;

(c) The extent to which out-crossing for key targeted crops could be expected to occur and the possible consequences.

12. Furthermore, as general considerations, participants:

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(a) Noted the statement of the independent Panel of Eminent Experts on Ethics in Food and Agriculture, established by the FAO to advise the Organization and raise public awareness of ethical considerations, that: “ ‘Terminator seeds’ are generally unethical as it is deemed unacceptable to market seeds whose offspring a farmer cannot use again because the seeds do not germinate”;

(b) Noted the relevance of the current work undertaken by the Working Group on Article 8(j) and related provisions of the Convention on Biological Diversity on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities;

(c) Further noted the work on liability and redress under the Convention on Biological Diversity, including those works related to international legal instruments such as the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (“The Lugano Convention”), and their relevance to the issue of the potential impacts of the application of GURTs on indigenous and local communities and Farmers’ Rights;

(d) Stressed that GURTs represent a set of different biotechnologies that are designed for and deployed to a variety of goals and may serve industrial, property, environmental, research, or agricultural production purposes; also noted that taking into account the specificity of the impact on indigenous and rural communities, as well as the potential implications for Farmers’ Rights and for the international policy and institutional framework (e.g., the International Treaty on Plant Genetic Resources, the Cartagena Protocol on Biosafety, and the specific arena of the World Intellectual Property Organization), a careful analysis of the different functions and regulation of the application of GURTs in the light of this analysis would be needed;

(e) Welcomed with satisfaction the adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture developed by the FAO Commission on Genetic Resources for Food and Agriculture and adopted by the FAO Conference in November 2001, noted the international efforts deployed in this process and further stressed the particular relevance of the provisions related to Farmers’ Rights, the benefit-sharing in the multilateral system and the sustainable use of plant genetic resources are of particular relevance to the issue of the potential impacts of the GURTs on indigenous and local communities and Farmers’ Rights.

ITEM 4. RECOMMENDATIONS

13. The meeting developed some recommendations (annex II). The meeting invited the Executive Secretary to include the findings of this informal consultation in his report on the potential impacts of the application of GURTs on indigenous and local communities and on Farmers’ Rights for the sixth meeting of the Conference of the Parties.

14. The Chairperson was requested by the meeting to present the key elements of the report at the meeting of the Ad Hoc Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity to be held from 4 to 8 February 2002.

ITEM 5. CLOSURE OF THE MEETING

15. The Chairperson thanked all the participants and closed the meeting at 5:30 p.m.

Annex I

**POTENTIAL IMPACTS OF THE APPLICATION OF GENETIC USE RESTRICTION
TECHNOLOGIES ON INDIGENOUS AND LOCAL COMMUNITIES AND ON
FARMERS' RIGHTS**

1. The participants in the meeting agreed on the following potential impacts of the application of genetic use restriction technologies (GURTs) on indigenous and local communities and on Farmers' Rights:

(a) Genetic use restriction technologies are an exclusion strategy that would provide technical means to exclude others from the use of given genetic resources outside a legal framework that is socially agreed upon, including Intellectual Property Rights, and might negatively affect subsistence farmers and small- and medium-scale farmers, especially in developing countries;

(b) Promotion of variety-specific genetic use restriction technologies in farming systems is likely to lead to seed security problems. With the risk of concentration in the breeding sector, farmers might become dependent on GURTs-modified seeds and lose ability to save seeds for the following season;

(c) Although genetic use restriction technologies may not disrupt conservation of biodiversity *per se*, they might disrupt the dynamic of use, development, exchange and improvement of genetic resources pools;

(d) By attracting the agricultural research and development further into the private sector, genetic use restriction technologies might create asymmetries in the relationship between the public and private sector in crop research and development. The lack of significant additional public investment in crop breeding for resource-poor farming systems could increase the vulnerability of resource-poor farmers in ways that might affect negatively indigenous and local communities;

(e) Genetic use restriction technologies might constrain the implementation of the International Treaty on Plant Genetic Resources for Food and Agriculture, in particular the provisions of the Treaty dealing with the multilateral system and Farmers' Rights. In this context, genetic use restriction technologies might create asymmetry and inequality in the efforts of the international community towards biological diversity conservation, sustainable agriculture, food security and the recognition of Farmers' Rights;

(f) Some applications of genetic use restriction technologies might violate the spiritual, cultural and cosmological values of indigenous and local communities as well as customary law systems.

2. Some participants of the meeting were also of the view that GURTs could:

(a) In some applications, also be useful and beneficial under particular conditions if deployed in sound and commonly agreed approach (e.g. to help separate living modified organisms (LMOs) and non-LMOs in production chain);

(a) Reduce the genetic pollution of local germplasm when planted close to modern varieties;
and

(b) If implemented, increase further corporate control over the use of some genetic resources and consequently marginalize small- and medium-scale farmers.

Annex II

**RECOMMENDATIONS REGARDING ELEMENTS TO BE INCLUDED IN A
DRAFT RECOMMENDATION TO THE CONFERENCE OF THE PARTIES AT ITS
SIXTH MEETING**

The informal consultation recommends that the Conference of the Parties may wish to:

(a) *Establish* a suitable mechanism, such as an expert group, to further analyse the potential impacts of genetic use restriction technologies on indigenous and local communities and on Farmers' Rights, taking into account relevant ongoing work and comments from Parties, international organizations, and indigenous and local communities in order to prepare advice for consideration at its seventh meeting;

(b) Since there is still not enough reliable data available, *reaffirm* paragraph 23 of its decision V/5, which states that, in the current absence of reliable data on genetic use restriction technologies, "products incorporating such technologies should not be approved by Parties for field testing until appropriate scientific data can justify such testing, and for commercial use until appropriate, authorised and strictly controlled scientific assessments with regard to, *inter alia*, their ecological and socio-economic impacts and any adverse effects for biological diversity, food security and human health have been carried out in a transparent manner and the conditions for their safe and beneficial use validated";

(c) *Invite* Parties, other Governments and relevant organizations to protect native species and associated traditional knowledge by paying a particular attention to indigenous and local communities and Farmers' Rights in their implementation of the programme of work on agricultural biological diversity and the Global Strategy for Plant Conservation, in order to promote the sustainable use and *in situ* development of genetic resources;

(d) *Invite* the Food and Agriculture Organization of the United Nations to study the potential impacts of the applications of genetic use restriction technologies in the framework of the International Treaty on Plant Genetic Resources for Food and Agriculture, and to consider genetic use restriction technologies in the further development of the Code of Conduct on Biotechnology as it relates to genetic resources for food and agriculture;

3. *Invite* the International Union for the Protection of New Varieties of Plants (UPOV), the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO) and other relevant organizations to examine, in the context of their work, the specific intellectual property implications of genetic use restriction technologies, particularly in respect of indigenous and local communities.

4. The Conference of the Parties may also wish to *request* the Executive Secretary,

(a) To integrate the issues related to the impacts of genetic use restriction technologies on indigenous and local communities and on Farmers' Rights in the work under the Convention regarding Article 8(j) and related provisions and Article 14, paragraph 2, on liability and redress;

(b) To invite the Food and Agriculture Organization of the United Nations, in collaboration with other organizations to investigate the potential impacts of the applications of genetic use restriction

technologies in forestry, livestock and aquatic ecosystems, and to take into account the findings of the these organisations in the development of the relevant programmes of work; and

(c) Given the distinct nature of genetic use restriction technologies and their potential impacts on indigenous and local communities, to invite relevant organizations to examine the applicability of existing, and to explore the need to develop new, legal mechanisms to address the application of genetic use restriction technologies.
