

Farmers' Rights in the International Treaty on Plant Genetic Resources for Food and Agriculture

Lesson 1

Introduction to Farmers' Rights



Overview of the Lesson

Farmers' Rights refer to rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centres of origin/diversity. They are an important precondition for the maintenance of crop genetic diversity, which is the basis of all food and agricultural production worldwide. This lesson explains the foundation of Farmers' Rights, and the important, though largely uncompensated role played by farmers and local and indigenous communities in the conservation and sustainable management of plant genetic resources for food and agriculture (PGRFA).

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereafter known as the International Treaty), which was adopted in 2001, addresses the issue of Farmers' Rights in Article 9, and in its Preamble. The International Treaty advises Contracting Parties to protect and promote Farmers' Rights in accordance with national laws. To help achieve this objective, a range of measures are suggested, to be examined in greater detail in subsequent lessons.

Presenting a short history of the negotiations that led to the adoption of Farmers' Rights, as contained in the International Treaty, the lesson examines how the notion of Farmers' Rights has been refined since it was first considered in international negotiations, in 1986. It traces its genesis as a political notion developed by civil society activists to highlight the valuable contributions of farmers to PGRFA, and explores how the concept has also been enshrined in other international processes.

Learning Objectives

At the end of this lesson, you will be able to:

1. Recall role played by farmers and local and indigenous communities in the conservation and sustainable management of plant genetic resources for food and agriculture (PGRFA)
2. Explain the foundation and evolution of Farmers' Rights up to its recognition in the International Treaty

1. Introduction

Farmers' Rights can be seen as one important precondition for the maintenance of crop genetic diversity, which is the basis of all food and agriculture production in the world. Therefore they are also central to the realization of the objectives of the International Treaty on Plant Genetic Resources for Food and Agriculture (hereafter "International Treaty"). This lesson will look further into why these rights are so important. The main elements of the history of the negotiations that led to the adoption of Farmers' Rights as contained in the International Treaty will also be presented. Much of the foundation for the international understanding of these rights was laid already in the early years after the first consideration of Farmers' Rights in international negotiations in 1986, however important clarifications have been made since.

To understand the provisions on Farmers' Rights in the International Treaty, it is therefore useful to know more about its background.

1.2 The rationale of Farmers' Rights

It is probably fair to say that plant genetic diversity is more important for farming than any other environmental factor, because it enables adaptation to changing environmental conditions, such as those caused by climate change. Since farmers are custodians and developers of crop genetic diversity in the field, their rights in this regard are critical if they are to be able to maintain this vital role for food security.

Farmers' Rights are central to the protection and continued use of traditional knowledge related to the conservation and sustainable use of PGRFA, as well as to the sharing of benefits derived from the use of those resources. Such rights can help to promote farmer participation in decision-making related to PGRFA, and in saving, using, exchanging and selling farm-saved seed. Realizing Farmers' Rights enables farmers to continue to maintain, develop and manage crop genetic resources, and involves recognizing and rewarding them for their indispensable contribution to the global pool of genetic resources. So why are these rights important?

1.2.1 The conservation and sustainable use argument

Since the dawn of agriculture, farmers around the world have been the custodians and innovators of agricultural biodiversity. Through careful selection of their best seeds and propagating material, and exchange with other farmers, it became possible to develop and diversify crop varieties. New crops were found in the wild, and some of these were cultivated. Over thousands of years of continuous management and innovation by farmers, a small range of initial crops and varieties evolved into an unconceivable wealth of plant diversity for food and agriculture.

The development of crop diversity changed profoundly with the modernization of agriculture and the Green Revolution, which introduced improved, high-yielding varieties of wheat, rice, maize and other cereals in the 1960s and 1970s. While on a global scale, this contributed to a substantial increase in food production, it also led to the replacement of a significant amount of locally adapted crop varieties that were vital to small-scale farmers and to future plant breeding.¹

A separate challenge has been posed by the emergence of various types of legal regimes resulting in restrictions to access in, and using available genetic resources – thus creating difficulties for stakeholders

1 For more background on the Green Revolution, refer to section 1.2.1 of Lesson 1 (A Global Treaty for Food Security) and section 3.2.1 of Lesson 3 (History of the International Treaty) of Educational Module I.

in agriculture, including researchers, public and private breeders, and especially crop producers. Farmers' access to, use of, and opportunities for exchanging seed and propagating material are strongly affected by seed regulations (variety release and seed marketing regulations), legislation linked to intellectual property rights (patents and plant breeders' rights), and regulations concerning the bioprospecting of genetic resources. As a result, it has been reported that in many countries the conservation and sustainable use of plant genetic diversity in agriculture has become more difficult for farmers, who are still engaged in diversity farming.²

Farmers' Rights are important, in order to ensure the legal space and framework conditions required so that farmers can continue in their roles as custodians and innovators of PGRFA.

1.2.2 Food security and nutrition

Farmers' Rights represent a valuable channel for increasing food security and nutrition in developing countries. The main challenge to increase food security is not just about food production but also about access to food. In addition, it is not simply a matter of delivering more calories to more people. It should be noted that most hungry people in the world (over 70 per cent) live in rural areas (Esquinaz, 2011) and depend largely on traditional agriculture where climate change also poses serious challenges to about 370 million of the poorest farmers ((Altieri et al., 2015). For most of these farmers, access to commercial varieties and the required production inputs, such as fertilizers and pesticides, are unaffordable. They depend on the diversity of cultivated plants to maintain yields and quality, adapting their food production to often marginal environments and difficult conditions. Diversity between and within crops is a means of spreading the risk of crop failure due to pests and diseases, or adverse climatic conditions, such as drought. Enabling farmers to maintain and develop this diversity, and recognizing and rewarding them for their contribution to the global genetic pool, are therefore critical prerequisites for the achievement of Sustainable Development Goals 1 (no poverty), 2 (zero hunger) and 15 (life on land).

1.2.3 The farming context argument

Farmers, particularly those in marginal environments, face extensive challenges. Farming is intrinsically linked to access to land, water and other input factors, such as labour, knowledge and technology, as well as seeds and other propagating material. For this reason, when farmers are asked to identify what they regard as their rights, they often mention issues such as land rights, access to water, seed and other related factors, such as access to information, and the right to health and safety. They frequently highlight the interrelations between these different rights. In such a context, the rights of farmers are commonly referred to as a bundle of rights.³

This module focuses on the rights of farmers in relation to plant genetic resources for food and agriculture (PGRFA) – as they are set out and recognized in the International Treaty. That is not to say

2 This has been documented in several international consultations on Farmers' Rights, see for example: http://www.farmersrights.org/resources/global_works_18.htm. The challenge has been addressed in different fora, inter alia through Art. 6.2.g of the International Treaty, which suggests that regulations concerning variety release and seed distribution are reviewed as a measure to ensure the sustainable use of crop genetic resources. Also, the UN Rapporteur on the Right to Food has addressed the challenge and highlighted the need to take measures in this regard. See United Nations (2009): The right to food. Seed policies and the right to food: enhancing agrobiodiversity and encouraging innovation. New York, The United Nations. (available at http://www.farmersrights.org/resources/global_articles_22.html).

3 Andersen, 2005; Gerald Moore and W. Tymowski, 2005. Explanatory Guide to the International Treaty on Plant Genetic Resources for Food and Agriculture. IUCN, Gland, Switzerland and Cambridge, UK. pp. 67-69; Chiarolla et 2010. An analysis of the Relationship between the Nagoya Protocol and Instruments related to Genetic Resources for Food and Agriculture and Farmers' Rights.

that the other issues are not important. Rather, the aim here is to facilitate targeted action within this critical area for farming, and for the achievement of the objectives of the International Treaty.

1. 2.4 The participatory approach to development argument

During the 1990s, an understanding emerged that the realization of Farmers' Rights depends largely on the ability to respond to the realities and needs of farmers, and that as a result, the participation of farmers and their organizations in relevant decision-making processes is essential. This recognition reflects the increased attention paid by donor organizations in the 1980s and 1990s to participatory approaches to development. Books such as *Rural development: Putting the last first*,⁴ *Putting people first*,⁵ and *Listen to the people*⁶ contributed to framing this acknowledgement of the importance of including target groups in decision-making, if development cooperation is to be successful. To ensure such participation, new project planning methodologies were introduced in many donor organizations and non-governmental organizations (NGO) engaged in development cooperation in the second half of the 1980s and the beginning of the 1990s. The understanding had a profound influence on the framing of the Farmers' Rights concept. This is reflected in the International Treaty, where farmers' participation in making decisions at national level on matters related to the conservation and sustainable use of PGRFA is termed a right. The focus on participatory decision-making may also have contributed to the acceptance of Farmers' Rights as a part of the International Treaty.

1.3. The emergence of Farmers' Rights as a concept⁷

The first use of Farmers' Rights as a political concept dates back to the early 1980s. The term was coined by civil society activists⁸ to highlight the valuable but unrewarded contributions of farmers to PGRFA.⁹ At the beginning, the idea developed as a way of countering increased demand for plant breeders' rights being voiced at the time in international negotiations. It soon emerged as a way of drawing attention to the unremunerated innovations of generations of farmers, who provided the foundation of all modern plant breeding.

In 1983, *The law of the seed: Another development and plant genetic resources*, was published.¹⁰ This booklet argued for benefits to be given to farmers, in recognition of their contribution to the global genetic pool. It also made the case for support in conservation. Proposing that a fund be established for the purpose, and arguing against any legal arrangements that might hinder farmers in their practice of saving, reusing, improving and developing seeds, the booklet foreshadowed many of the elements which later, during international negotiations within FAO, came to form the cornerstones of the concept of Farmers' Rights.

4 Robert Chambers. 1983. *Rural development: Putting the last first* (Harlow: Pearson Education Limited).

5 Michael M. Cernea (ed.) 1985. *Putting people first*. Published for the World Bank (Oxford University Press).

6 Lawrence F. Salmen. 1987. *Listen to the people*. Published for the World Bank. (Oxford University Press).

7 Based on Regine Andersen. 2005. *The history of Farmers' Rights – A guide to central documents and literature*. FNI-Report 8/2005. Lysaker, Norway, The Fridtjof Nansen Institute; and Regine Andersen. 2008. *Governing agrobiodiversity. plant genetics and developing countries*. Aldershot, Ashgate.

8 The first to use the term in this context were Pat Roy Mooney and Cary Fowler of the Rural Advancement Foundation International (RAFI, now ETC-group).

9 Cary Fowler. 1994. *Unnatural selection. Technology, politics and plant evolution*. p. 192. Yverdon, Switzerland, Gordon and Breach); and Svanhild-Isabelle Batta Bjørnstad. 2004. *Breakthrough for 'the South'? An analysis of the recognition of Farmers' Rights in the International Treaty on Plant Genetic Resources for Food and Agriculture*. FNI Report 13/2004. p. 35. Lysaker, Norway, The Fridtjof Nansen Institute.

10 Pat Mooney. 1983.

1.4. Towards a common understanding of the concept of Farmers' Rights

Controversies regarding control over genetic resources in the 1980s were marked by broad disparities between the positions of different countries.¹¹ For this reason, the then Chair of the US National Board for Plant Genetic Resources made contact with the Keystone Centre in Colorado, to launch a dialogue on plant genetic resources among international stakeholders.¹² The Keystone Approach was to invite stakeholders as individuals, with the aim of reducing conflict levels and fostering off-the-record discussions, leading to a report to be produced on the basis of consensus only.

1.4.1 The Keystone Dialogues

The Keystone Dialogues took place in 1988, 1990 and 1991, in Keystone, Madras (now Chennai) and Oslo, respectively, and were chaired by Prof. M. S. Swaminathan.

The Dialogues gathered a total of 92 stakeholders from 30 countries in the course of the three sessions. These were important in framing international discussions on such issues as Farmers' Rights, the common heritage of mankind, international funding and, to some extent, intellectual property rights. The 1990 session in Madras provided the clearest account of the participants' recommendations regarding Farmers' Rights:¹³

“We propose that the best way of recognizing Farmers' Rights would be a mandatory fund, such as the fund currently existing at FAO, which supports genetic conservation and utilization programs particularly, but not exclusively, in the Third World. The logic is that such a fund would benefit farmers and farm communities in general, and would compensate them for their past and present contributions. We are not talking about designing a system to reward or compensate individual farmers, farm communities, Third World countries or governments. We do not propose to design a system which compensates anyone or anything based strictly on their contributions of germplasm.

We speak of 'compensation' because it implies a relationship with obligation. We agree on the concept of Farmers' Rights and we agree that contributions to a fund in recognition of these rights should not be voluntary. Practically speaking, a voluntary fund is a fund without resources. Thus, there should be a compulsory funding mechanism. This would insure that Farmers' Rights are recognized in a real way and should insure the fund has substantial resources. All of us agree that current conservation and utilization efforts are underfunded.

The concept of 'Farmers' Rights' includes recognition of the fact that farmers have developed and continue to help develop genetic diversity. In many cases, farmers engage in conscious and creative practices as they 'select' and 'breed' their crops.”

As illustrated below, these ideas found support when the agreed interpretations of the International Undertaking, which were adopted in 1989 and in 1991, were to be formulated.

1.4.2 FAO Conference resolutions on Farmers' Rights in 1989 and 1991

In April 1989, the Commission on Genetic Resources for Food and Agriculture at its Third Regular Session prepared two resolutions on Agreed Interpretations of the International Undertaking to be presented at the Twenty-fifth Session of the Conference of FAO in November 1989. The draft resolutions, preserving the principle of unrestricted availability of germplasm, recognized the rights of both donors of

11 FAO Member States.

12 The Chair at the time was William Brown. Cary Fowler (1994): *Unnatural selection. Technology, politics and plant evolution*. p. 197. Yverdon, Switzerland, Gordon and Breach.,

13 Keystone Center. 1990. Madras Plenary Session. *Final Consensus Report of the Keystone International Dialogue Series on Plant Genetic Resources, Second Plenary Session, 29 January – 2 February, 1990*. pp. 25–26. Madras, India.

technologies and donors of germplasm to be compensated for their contributions through the simultaneous recognition of plant breeders' and farmers' rights.

In November 1989, the Conference of FAO adopted the two resolutions by consensus: (i) Resolution 4/89 'Agreed Interpretation of the International Undertaking'; and (ii) Resolution 5/89 'Farmers' Rights'. The Conference decided that they were to be annexed to the International Undertaking.¹⁴

The Conference recognized that both resolutions were intended to lay the foundations for an equitable and lasting global system for sharing the costs and benefits of the world's plant genetic resources for present and future generations.

Resolution 4/89 endorsed the fact that the agreed interpretation was intended to provide the basis for an equitable, and therefore solid and lasting global system. It thereby sought to facilitate the withdrawal of reservations that countries had made with regard to the International Undertaking, and to secure the adherence of others. The Resolution presented the rationale behind the agreed interpretation, before listing its components:

1. Plant Breeders' Rights as provided for under UPOV (International Union for the Protection of New Varieties of Plant) are not incompatible with the International Undertaking.
2. A state may impose only such minimum restrictions on the free exchange of materials covered by Article 2.1 (a) of the International Undertaking as are necessary for it to conform to its national and international obligations.
3. States adhering to the Undertaking recognize the enormous contribution that farmers of all regions have made to the conservation and development of plant genetic resources, which constitute the basis of plant production throughout the world, and which form the basis for the concept of Farmers' Rights.
4. The adhering states consider that the best way to implement the concept of Farmers' Rights is to ensure the conservation, management and use of plant genetic resources, for the benefit of present and future generations of farmers. This could be achieved through appropriate means, monitored by the Commission on Plant Genetic Resources, including in particular the International Fund for Plant Genetic Resources, already established by FAO. To reflect the responsibility of those countries which have benefited most from the use of germplasm, the Fund would benefit from being supplemented by further contributions from adhering governments, on a basis to be agreed upon, in order to ensure for the Fund a sound and recurring basis. The International Fund should be used to support plant genetic conservation, management and utilization programmes, particularly within developing countries, and those which are important sources of plant genetic material. Special priority should be placed on intensified educational programmes for biotechnology specialists, and strengthening the capabilities of developing countries in genetic resource conservation and management, as well as the improvement of plant breeding and seed production.

The resolution on Farmers' Rights (paragraph 108, Resolution 5/89) represented a milestone in international negotiations on the topic, as it outlined the contents and implications of this concept:

“THE CONFERENCE,

14 On 29 November 1989. C 1989/REP, Paragraphs 108 and 109. (Available at: <http://www.fao.org/docrep/x5588E/x5588e06.htm#e>. Commission on plant genetic resources and the international undertaking: progress report).

Recognizing that:

- a) plant genetic resources are a common heritage of mankind to be preserved, and to be freely available for use, for the benefit of present and future generations,
- b) full advantage can be derived from plant genetic resources through an effective programme of plant breeding, and that, while most such resources, in the form of wild plants and old landraces, are to be found in developing countries, training and facilities for plant survey and identification, and plant breeding, are insufficient, or even not available in many of those countries,
- c) plant genetic resources are indispensable for the genetic improvement of cultivated plants, but have been insufficiently explored, and are in danger of erosion and loss,

Considering that:

- a) in the history of mankind, unnumbered generations of farmers have conserved, improved and made available plant genetic resources,
- b) the majority of these plant genetic resources come from developing countries, the contribution of whose farmers has not been sufficiently recognized or rewarded,
- c) the farmers, especially those in developing countries, should benefit fully from the improved and increased use of the natural resources they have preserved,
- d) there is a need to continue the conservation (in situ and ex situ), development and use of the plant genetic resources in all countries, and to strengthen the capabilities of developing countries in these areas,

Endorses the concept of Farmers' Rights (Farmers' Rights mean rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centres of origin/diversity. These rights are vested in the International Community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers, and supporting the continuation of their contributions, as well as the attainment of the overall purposes of the International Undertaking) in order to:

- a) ensure that the need for conservation is globally recognized and that sufficient funds for these purposes will be available;
- b) assist farmers and farming communities, in all regions of the world, but especially in the areas of origin/diversity of plant genetic resources, in the protection and conservation of their plant genetic resources, and of the natural biosphere;
- c) allow farmers, their communities, and countries in all regions, to participate fully in the benefits derived, at present and in the future, from the improved use of plant genetic resources, through plant breeding and other scientific methods."

Although this resolution was a milestone, it was not legally binding, nor were the ways in which it was to be implemented specified. Furthermore, the resolution did not actually define the concept; it merely stated where the notion had arisen and the purpose of Farmers' Rights. The substance of the rights, who the rights holders were, and how the rights were to be maintained – these issues were not clarified. Thus it may be said that the resolution marked an important start, but the realization of Farmers' Rights would require a great deal more in the way of conceptualization and operationalization.

In 1991, the Conference considered a progress report on the FAO Global System for the Conservation and Utilization of Plant Genetic Resources, including information on the outcome of the Fourth Session of the Commission on Plant Genetic Resources (PGR). The Conference noted with satisfaction the atmosphere of cooperation and harmony that had developed in the last years in the FAO debates on PGR and

welcomed the consensus reached during the last Session of the Commission on a number of major issues. The Conference also noted that the Ninety-ninth Session of the Council had extensively reviewed the report of the Fourth Session of the Commission on PGR (Rome, 15 - 19 April 1991), and had endorsed its conclusions and recommendations. The Conference considered a draft Resolution submitted by the Council at its Ninety-ninth Session and noted that this Resolution was an important step forward in obtaining universal acceptance of the International Undertaking and in making it more operative. The Conference recognized the important consensus reached on a number of delicate issues such as sovereignty over PGR, access to breeders' and farmers' material and implementation of Farmers' Rights through an international fund. It also recognized that other relevant matters, such as conditions of access to PGR and nature and size of the fund, needed to be further discussed and negotiated in the light of the decisions on access to biodiversity and funding mechanisms of the 1992 UN Conference on Environment and Development.

The Conference, recognizing that the text of the draft Resolution was the final result of wide-ranging and intensive discussions and negotiations among many countries, including non-members of the Commission and countries that did not adhere to the Undertaking or adhered to it with reservations, adopted the following Resolution and agreed that it would be the third annex to the International Undertaking:

Resolution 3/91

Annex 3 to the International Undertaking on PGR

The Conference,

Recognizing that:

- the concept of mankind's heritage, as applied in the International Undertaking on Plant Genetic Resources, is subject to the sovereignty of the states over their plant genetic resources,
- the availability of plant genetic resources and the information, technologies and funds necessary to conserve and utilize them, are complementary and of equal importance,
- all nations can be contributors and beneficiaries of plant genetic resources, information, technologies and funds,
- conditions of access to plant genetic resources need further clarification;

Considering that:

- the best way to guarantee the maintenance of plant genetic resources is to ensure their effective and beneficial utilization in all countries,
- the farmers of the world have, over the millennia, domesticated, conserved, nurtured, improved and made available plant genetic resources, and continue to do so today,
- advanced technologies and local rural technologies are both important and complementary in the conservation and utilization of plant genetic resources,

- in situ and ex situ conservation are important and complementary strategies for maintaining genetic diversity;

Endorses the following points:

1. that nations have sovereign rights over their plant genetic resources ;
2. that breeders' lines and farmers breeding material should only be available at the discretion of their developers during the period of development;
3. that Farmers' Rights will be implemented through an international fund on plant genetic resources which will support plant genetic conservation and utilization programmes, particularly, but not exclusively, in the developing countries;
4. that the effective conservation and sustainable utilization of plant genetic resources is a pressing and permanent need, and therefore the resources for the international fund as well as for other funding mechanisms should be substantial, sustainable and based on the principles of equity and transparency;
5. that through the Commission on Plant Genetic Resources, the donors of genetic resources, funds and technology will determine and oversee the policies, programmes and priorities of the fund and other funding mechanisms, with the advice of the appropriate bodies.

(Adopted 25 November 1991)

1.5 Reaffirmation of the concept of Farmers' Rights in other international processes

Since the adoption of the concept of Farmers' Rights, considerable empirical evidence has highlighted the role of traditional farmers in relation to plant genetic resources. The idea of recognizing Farmers' Rights transcended FAO and the International Undertaking, and was also supported in other international fora. The concept of Farmers' Rights has to date been reaffirmed in various contexts, namely:

- Chapter 14.60(a) of Agenda 21 (approved at the UN Conference on Environment and Development held in Rio de Janeiro in 1991), stated that the appropriate United Nations agencies and regional organizations should "strengthen the Global System on the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture (PGRFA) by ... taking further steps to realize Farmers' Rights".
- Resolution 3 of the Nairobi Conference for the Adoption of an Agreed Text of the Convention on Biological Diversity, identified the realization of Farmers' Rights as one of the 'outstanding issues' for further negotiation.
- A June 1999 study by the Economic and Social Council (ECOSOC) on the Right to Food, submitted to the Commission on Human Rights, urged that Farmers' Rights be promoted as part of the 'Right to Food', especially since "our future food supply and its sustainability may depend on such rights being established on a firm footing" (Commission on Human Rights, 1999).

1.5.1 Agenda 21

Agenda 21 was adopted at the United Nations Conference on Environment and Development in Rio de Janeiro (UNCED) in June 1992, as a dynamic programme, to be implemented by various actors according to the differing situations, capacities and priorities of countries and regions. Farmers' Rights related to

PGRFA are addressed in Chapter 14 of Agenda 21, which highlights the promotion of sustainable agriculture and rural development. In this context, Agenda 21 deals with the conservation and sustainable utilization of PGRFA (Section G). It states that these resources are essential to meet future needs for food, and that the primary objective is to safeguard the world's genetic resources while preserving them for sustainable use. Several necessary measures towards this end are listed, and actions to be taken by governments are indicated. The appropriate UN agencies and regional organizations are requested to take action in this regard, inter alia by taking further steps to realize Farmers' Rights (ibid, Paragraph 14.60.a).

1.5.2 The Convention on Biological Diversity

In 1992, the Convention on Biological Diversity (CBD) was adopted in Nairobi and opened for signatures at UNCED, which also adopted Agenda 21 (see above).

The CBD was the first legally binding international treaty to address the conservation, sustainable use and equitable sharing of benefits derived from the utilization of biological diversity in general. It covered domesticated, as well as undomesticated biodiversity, and entered into force on 29 December 1993.

The CBD did not explicitly address the issue of Farmers' Rights. Nevertheless, according to Article 8j, each Contracting Party should "as far as possible and as appropriate",

"... subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".

Despite the absence of any specific reference to the concept of Farmers' Rights in Article 8j, subsequent CBD COP meetings showed interrelations between the two regimes¹⁵. Several publications also showed also an interrelations and overlapping between CBD Article 8j Traditional knowledge and International Treaty Article 9 Farmers' Rights.¹⁶

1.5.3 Follow-up by FAO: initiating negotiations of the International Treaty

At its following session, in November 1993, the FAO Conference requested the Organization's Director-General to provide a forum for negotiations on adapting the International Undertaking in harmony with the CBD (Resolution 7/93)¹⁷ as follows:

(a) for the adaptation of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity,

(b) for consideration of the issue of access on mutually agreed terms to plant genetic resources, including ex situ collections not addressed by the Convention, as well as

15 UNEP/CBD/COP/DEC/VIII/23 *Agricultural Biodiversity (item 1a Respect traditional knowledge and Farmers' Rights to the preservation of seeds under traditional cultivation; and 3 Invites the governing body of the International Treaty on Plant Genetic Resources for Food and Agriculture to examine, within the context of its work, priorities and available resources, the potential impacts of genetic use restriction technologies with special consideration to the impacts on indigenous and local communities and associated traditional knowledge, smallholder farmers and breeders and Farmers' Rights*

16 Andersen, R. 2016. *Governing Agrobiodiversity: Plant genetics and developing countries*, see Chapter 8; page 62 *The protection of traditional knowledge*

17 Report of the Conference of FAO Twenty-seventh Session Rome, 6-24 November 1993. *Revision of the international undertaking on plant genetic resources*

(c) for the issue of realization of Farmers' Rights;

The Commission on Plant Genetic Resources followed up with a mandate and a proposed process.¹⁸ This marked the point of departure for the long-lasting negotiations, during which the issue of Farmers' Rights was debated in detail, leading up to adoption of the International Treaty in 2001.

1.6 Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture

In 1996, representatives from 150 countries met for the Fourth International Technical Conference on Plant Genetic Resources in Leipzig, Germany. In a declaration from the meeting, the representatives stated that major gaps existed in national and international capacities to conserve, characterize, evaluate and sustainably use plant genetic resources.¹⁹ They also stated that access to, and the sharing of both genetic resources and technologies was essential in order to ensure world food security and meet the needs of the growing world population. On this basis, the representatives adopted the Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture (hereafter referred to as the Global Plan of Action). In November 1996, the Global Plan of Action was endorsed by the FAO Council,²⁰ by the Conference of the Parties to the CBD,²¹ and by the World Food Summit at FAO, where the heads of state and government committed their countries to its implementation.²²

1.6.1 Farmers' Rights in the Global Plan of Action

The First Global Plan of Action adopted in 1996 acknowledges the need to realize Farmers' Rights.²³ The Second Global Plan of Action, prepared under the aegis of the Commission on Genetic Resources for Food and Agriculture, was adopted by the FAO Council on 29 November 2011. The Global Plan of Action contains a set of recommendations and activities intended as a framework, guide and catalyst for action at community, national, regional and international levels. It provides a framework for the identification of priority areas by the countries, and support for capacity enhancement towards those ends. Priority activities are to be identified within the areas of in situ conservation and development, ex situ conservation, the utilization of plant genetic resources, institutional development and capacity enhancement. One of the long-term objectives is to realize Farmers' Rights, as defined in FAO Resolution 5/89, at international, regional and national levels (paragraph 32). The Global Plan of Action identifies several activities that would benefit farmers with regard to on-farm management and improvement of crop genetic resources.

1.6.2 Farmers' Rights in the State of the World's Plant Genetic Resources

18 CPGR-EX1/94/3. 1994. *Revisions of the International Undertaking: Mandate, context, background and proposed process*. Rome, FAO.

19 FAO. 1996, *The Leipzig Declaration adopted by the International Technical Conference on Plant Genetic Resources in Leipzig, Germany, 17–23 June 1996*.

20 Resolution CL 111/1, in CL 111/REP. *Report of the Council of FAO, Hundred-and-eleventh Session, Rome*.

21 Decision CBD/COP III/11 in UNEP/CBD/COP/3/38. *Report of the Third Meeting of the Conference of the Parties to the CBD*, Buenos Aires.

22 WFS Commitment 3, Objective 3.2(I), in FAO WFS 96/REP. *Appendix to the Report of the World Food Summit, 13–17 November 1996*.

23 FAO. 1996, *The Leipzig Declaration adopted by the International Technical Conference on Plant Genetic Resources in Leipzig, Germany, 17–23 June 1996*.

The Global Plan of Action was developed with the participation of 154 countries. Each prepared a comprehensive report on the state of PGRFA in its territories. These documents were analysed in a comprehensive and detailed report, the State of the World's Plant Genetic Resources for Food and Agriculture (hereafter known as the State of the World Report), covering biological, technical and institutional concerns, including Farmers' Rights.²⁴

The State of the World Report addressed the implementation of Farmers' Rights focusing on the agreed international fund and on efforts to define the concept and components of Farmers' Rights. On the question of the international fund, suggestions were made for linking this with the Global Plan of Action, in an effort to make it a reality. It also states that:

“The concept of Farmers' Rights may include several dimensions: compensation for innovation in the development of farmers' varieties; compensation to farmers for making plant genetic resources available; provision of incentives for continued conservation of these resources; and support for particular conservation and utilization activities.²⁵

During the discussions and on-going negotiations for a revised International Undertaking,²⁶ and during the preparatory process for the International Technical Conference,²⁷ it has been suggested that Farmers' Rights may have other operational dimensions including:²⁸

- The traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and plant reproductive material, comprising the right to reuse farm-saved seed known as the 'farmers' privilege';
- The needs of farmers and their communities as custodians of plant genetic resources and related indigenous and local knowledge (in line with Article 8(j) of the Convention) to have their rights protected and to share in the benefits derived therefrom.

Some NGOs also proposed that Farmers' Rights be developed as a 'bundle of rights', including the right to conserve, develop and protect plant genetic resources, the right to receive financial support for conservation and utilization activities, the right to benefit from the commercial exploitation of resources under their stewardship, and the right to determine the extent to which such resources and related practices, information and knowledge are made available.²⁹

Many countries argue that there is a need for a legal framework for the implementation of Farmers' Rights. Some have proposed that such a framework first be developed at the international level. Several countries have also suggested that certain aspects of Farmers' Rights be protected through the development of intellectual property rights, or similar systems, to protect indigenous knowledge.³⁰ Some countries consider that the implementation of certain aspects of Farmers'

24 Published by FAO in 1998. A second version of the State of the World's Plant Genetic Resources for Food and Agriculture was published by FAO in 2010.

25 Report of the Tenth Session of the Working Group of the Commission on Plant Genetic Resources, CPGR-6/95/REP, Appendix C, particularly paragraphs 23–26; Report of the Sixth Session of the Commission on Plant Genetic Resources, CPGR-6/95/REP, Appendix K.

26 Ibid.

27 Including: Subregional preparatory meeting: Southern Africa Report, para 12 (xi); Subregional preparatory meeting: East Africa and the Indian Ocean Islands Report, paras 13(b), 14(xii); Subregional preparatory meeting: West and Central Africa Report, para 39; Subregional preparatory meeting: South and Southeast Asia and the Pacific Report, recommendation 31.

28 Note, however, that FAO Conference Resolution 5/89 states that Farmers' Rights are 'vested in the international community'.

29 Genetic Resources Action International proposes a biological diversity community rights regime based on the principles of local heritage, tenurial rights and communal ownership over resources. GRAIN. 1995. Towards a biodiversity community rights regime. Seedling, 12(3):2.

30 The difficulties of such a system are explored in Annexes 1–4 of the State of the World's Plant Genetic Resources for Food and Agriculture, FAO.

Rights could be facilitated through an appropriate sui generis system, in line with the TRIPS Agreement. Such an approach could incorporate the 'farmers' privilege' (as is already the case with the UPOV 1978 Convention), and could also include benefit-sharing mechanisms, such as those under consideration in India. Benefits might be awarded to particular farming communities or accrue to a fund. All of these matters are under discussion in various forums, including FAO in the context of the renegotiation of the International Undertaking.”

Finally, the Second Global Plan of Action³¹, as agreed by the Commission at its Thirteenth Regular Session and approved by the FAO Council at its 143rd Session in 2011 included provisions:

“to assist countries, as appropriate and subject to their national legislation, to take measures to protect and promote Farmers' Rights, as provided in Article 9 of the International Treaty”.

1.7 Negotiation outcome: Farmers' Rights in the International Treaty on Plant Genetic Resources (ITPGRFA)

After a long negotiation process, the International Treaty on Plant Genetic Resources for Food and Agriculture was finally adopted by Resolution 3/2001 of the Thirty-First Session of the FAO Conference in November 2001, and entered into force in June 2004.

The negotiation outcome, i.e. Article 9 of the International Treaty, is a compromise, containing most important elements of the rights of farmers with regard to plant genetic resources from the developing country perspective. However, it does not lay down any concrete legal obligations, as to how these elements of Farmers' Rights should be implemented.

1.7.1 International Treaty, Article 9, Farmers' Rights

In Article 9, the Contracting Parties of the International Treaty recognize the enormous contribution that farmers of all regions of the world have made, and will continue to make, for the conservation and development of plant genetic resources as the basis of food and agricultural production throughout the world. They further agree that the responsibility for implementing Farmers' Rights rests with national governments, and that they can choose the measures to do so according to their needs and priorities. Certain measures are suggested, covering the protection of traditional knowledge, benefit-sharing and participation in decision-making. Also the rights of farmers to save, use, exchange and sell farm-saved seeds and propagating material are addressed, but without giving any particular direction for implementation.

In addition, Farmers' Rights are addressed in the preamble, and other articles in the Treaty clearly support these rights, albeit not explicitly (for example, the provisions on conservation and sustainable use and on benefit sharing).³²

There are no legally binding provisions in the International Treaty on how to implement Farmers' Rights at national level. While some stakeholders have seen this as a weakness, others regard it as a reflection of the very different realities in the various Contracting Parties of the International Treaty. As a result, there is a need for leeway in implementation, according to differing national and local circumstances. Article 9 provides a platform, from which the further understanding and realization of Farmers' Rights can

31 FAO, 2012. Second Global Plan of Action for Plant Genetic Resources for Food and Agriculture Adopted by the FAO Council, 29 November 2011, paragraph 18(e).

32 To learn more about how the provisions on Farmers' Rights are linked to other provisions of the International Treaty, see Lesson 2 of this module (Farmers' Rights in the Context of the International Treaty). For the provisions on conservation and sustainable use of PGRFA, refer to Lesson 2 of Module II (Conservation and Sustainable Use under the International Treaty).

be developed. While the choice of measures to promote Farmers' Rights remains at the discretion of national authorities, the International Treaty advises Contracting Parties to implement national regulations related to Farmers' Rights, and provides farmers with a basis from which to advocate their rights.³³ Since the entry into force of the International Treaty in 2004, there has been a steady process of international consultations and discussions in the Governing Body. Through these, a joint understanding of what is required in order to realize Farmers' Rights is currently emerging.³⁴

2. Conclusion

This lesson illustrates the notion of Farmers' Rights, which developed during the early 1980s to counter increased demands for Plant Breeders' Rights (PBR) being voiced in international negotiations. The aim was to draw attention to the unremunerated innovations of farmers, which were seen as the foundation of all modern plant breeding. The concept first emerged in international negotiations within FAO in 1986. Already in 1987, practical solutions were being proposed, serving as the foundation for all further negotiations on Farmers' Rights, and providing substantial input to the framing of current understanding of the issue.

In 1989, Farmers' Rights gained formal recognition by the FAO Conference. In 1991, the Conference decided to set up a fund for the realization of these rights, but this has never materialized. In May 1992, the Convention on Biological Diversity (CBD)³⁵ was adopted, and with it a resolution on the interrelationship between the CBD and the promotion of sustainable agriculture. In this resolution, FAO was urged to commence negotiations for a legally binding international regime on the management of PGRFA, and in this context, to resolve the question of Farmers' Rights. Agenda 21, a dynamic programme approved at the UN Conference on Environment and Development held in Rio de Janeiro in 1991, had voiced similar demands. This marked the start of lengthy negotiations, which finally led to adoption of the International Treaty.

Other international processes added their support to the principle of Farmers' Rights. These included the Global Plan of Action, which was adopted by the FAO Council in 1996 and updated in 2011. Both the first and second Global Plan of Action addressed the issue of Farmers' Rights.

The International Treaty, adopted in 2001, addresses the issue of Farmers' Rights in Article 9 and in its Preamble. It advises Contracting Parties to take measures to protect and promote Farmers' Rights in accordance with national laws, and provides farmers with a basis for advocating their rights. The main arguments for recognizing Farmers' Rights were as follows:

- Conservation and sustainable use of plant genetic resources and related knowledge: Direct measures would be required to enable farmers to continue acting as custodians of the plant genetic heritage and as innovators in agriculture. Measures to conserve plant genetic resources and related knowledge, and to stimulate innovations, were therefore seen as essential. Even if such measures were addressed in other contexts of the negotiations, such as provisions on conservation, sustainable use and benefit sharing, they were also deemed important as an independent component of Farmers' Rights, crucial to present and future food security.

33 See Introduction to the International Treaty on Plant Genetic Resources for Food and Agriculture", p. 119.

34 For up-to-date information and reference materials related to the implementation of Farmers' Rights, see the website of the International Treaty at <http://www.fao.org/plant-treaty/areas-of-work/farmers-rights/en/> and the Fridtjof Nansen Institute's Farmers' Rights Project website at <http://www.farmersrights.org/>.

35 [Nairobi](#) Final Act, Resolution 3, Nairobi, 22 May 1992.

- Reward to farmers: The second argument was the practical recognition of the enormous collective contribution of past, present and future farmers to the global genetic pool.
- Balancing Farmers' Rights and IPRs: The concept of Farmers' Rights emerged in the context of the debate on IPRs related to plant genetic resources for food and agriculture.

These points reflect the results of long and complex negotiations. But they also provide an important background to a better understanding of ongoing negotiations and developments under the International Treaty on the further implementation of Farmers' Rights, and closely related topics. The arguments outlined above are reflected in the discussion on Farmers' Rights – at international, as well as national levels in many countries – which still continues today.

Key points to remember:

- The idea of Farmers' Rights related to crop genetic resources emerged in the early 1980s, the purpose was to draw attention to the unremunerated innovations of generations of farmers who provided the foundation of all modern plant breeding.
- Discussions on Farmers' Rights during the formative years, from 1980s until the FAO Conference adopted a Resolution endorsing the concept of Farmers' Rights in 1989, of which the main elements concerned balancing the rights of breeders and of farmers, ensuring rewards to farmers for their contribution to the global genetic pool, supporting farmers in conserving and sustainably using crop genetic resources and an international fund to facilitate the funding of such measures. This provides an important background for understanding the contents of Article 9 as contained in Article 9 of the International Treaty.
- Farmers' Rights mean rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centres of origin/diversity.
- International processes within FAO had supported the principle of Farmers' Rights. Both the Global Plan of Actions adopted by the FAO Council in 1996 and the updated version in 2011 - addressed the implementation of Farmers' Rights.
- Other international processes had supported the development of the concept of Farmers' Rights: Agenda 21, UNCED, CBD - with it a resolution on the interrelationship between the CBD and the promotion of sustainable agriculture
- The International Treaty, adopted in 2001, addresses the issue of Farmers' Rights in Article 9 and in its Preamble "...the enormous contribution that 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 agricultural production throughout the world."

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