

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

Lesson 2

Farmers' Rights in the context of the International Treaty



Overview of the lesson

The International Treaty was the first legally binding instrument to acknowledge the immense contribution made by farmers and indigenous communities in developing and conserving the plant diversity that continues to serve as the basis for most food crops to this day. This lesson examines the importance of crop diversity to agro-ecosystem resilience and food security, and underscores the need to maintain traditional agricultural practices, so as to ensure continuity in the development of crop genetic resources in the future.

Exploring in some detail how the International Treaty addresses Farmers' Rights, the lesson explains that Article 9 includes measures for the protection of local and indigenous communities' and farmers' traditional knowledge relevant to PGRFA, their right to share in benefits, and to participate in decision-making related to these resources.

Learning Objectives

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

1. Explain how Article 9 of the International Treaty recognizes the contribution of local and indigenous communities and farmers to the conservation and development of PGRFA,
2. Describe the measures listed under Article 9 for the protection of local and indigenous communities' and farmers' traditional knowledge relevant to PGRFA, their equitable participation in the sharing of benefits, and in decision-making processes related to these resources

1. Introduction

The concept of Farmers' Rights, as formulated in FAO Conference Resolutions in 1989, and ultimately enshrined in the International Treaty, is related to PGRFA. Farmers' Rights are often confused with the issue of generic human rights, such as those related to land tenure, access to water and mineral resources, health care, education and living conditions in rural areas. These are all crucial factors that affect the general well-being, working and living conditions of farmers.¹ However, the focus of this lesson is **Article 9, and specifically Farmers' Rights, as they relate to plant genetic resources for food and agriculture.**

Farmers' Rights are an important component of the International Treaty, and protecting them is designed to enable farmers and farming communities to continue performing their role as guardians and developers of the plant genetic resources used for food and agriculture. The International Treaty promotes a complementary approach to strategies for the conservation and sustainable use of PGRFA, for both *in situ* and *ex situ* conservation. Over the past 50 years, there has been growing appreciation of the important contribution made by farmers and indigenous peoples and local communities play to developing and conserving crop genetic diversity, and the importance of that diversity to agro-ecosystem resilience and food security. The farmer is viewed as ultimately responsible for the conservation of plant genetic resources, and any successful approach must involve the maintenance and promotion of traditional agricultural systems and the continued conservation of plant genetic diversity within farming environments. Maintaining traditional agricultural practices is a recognized strategy for ensuring continuity in the development of crop genetic resources. These have evolved over thousands of years. Over the centuries, diverse farming systems have been shaped by physical land limitations, the combination of varied topographies and harsh climates, as well as by cultural values and collective forms of social organization, including customary institutions for agro-ecological management, festivities and associated knowledge systems. In the process, these agricultural systems have in turn maintained and contributed to the development of crop genetic diversity. All today's major food crops were developed through these time-honored farming systems. Traditional agriculture prospered because of diversity. It has provided communities with varied diets and stability in production, minimizing risks and reducing crop losses due to pests and diseases, particularly in highly variable environments. Farmers have traditionally attached importance not only to crop yields, but also to many attributes, such as food and taste, field adaptation, cultivation requirements, and cultural values associated with certain crops. These creative farming communities are responsible for the wide range of crops and varieties of foods that we enjoy today.

Farmers' Rights, as laid out in Article 9, are backed up by other provisions of the International Treaty, including the Preamble and a number of measures proposed for promoting the conservation and sustainable use of PGRFA. Certain provisions linked to benefit sharing under the Multilateral System are also supportive of Farmers' Rights.

1 See the generic scope of human rights at United Nations Human Rights website: <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>; [http://undocs.org/A/RES/217\(III\)](http://undocs.org/A/RES/217(III))

Farmers' Rights, as they pertain to plant genetic resources for food and agriculture, are an issue of central importance in countries where most of the population lives in rural areas, with livelihoods based on farming – particularly so when farming systems centre on traditional varieties. This is the case in most developing countries. In Northern countries, Farmers' Rights concern a much smaller segment of the population, though here too the issue of producers' roles in stewarding crop genetic diversity is an important one. Although most farmers in the North rely on commercial plant varieties, saving and re-using of propagating material is still practised to some extent, and among eco-farmers there is increasing interest in developing plant breeding based on traditional varieties.

2. Farmers' Rights under the International Treaty

The International Treaty is the first legally binding international agreement to recognize the contribution of local and indigenous communities and farmers to the conservation and development of PGRFA, and on this basis to affirm Farmers' Rights with regard to PGRFA. Article 9 of the International Treaty states the following:

Article 9 - Farmers' Rights

9.1 The Contracting Parties recognize the enormous contribution that the 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 agriculture production throughout the world.

9.2 The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:

- (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;**
- (b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and**
- (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.**

9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

In addition to farmers, the wording of Article 9.1 refers to the importance of local and indigenous communities for the conservation and development of PGRFA. This is a clear indication of the growing recognition of the role played by indigenous communities in the creation and preservation of knowledge of value for the society as a whole. This distinction also has the effect of giving states the option of treating local and indigenous communities as a distinct class from that of farmers though in many cases indigenous

people and farmers may be one and the same.² Several literatures highlights the important role and contribution of family and small-scale farming in sustaining world food security, particularly in contributing to a balanced diet, conserving, developing and managing world's agrobiodiversity³.

Article 9.1 does not establish any obligation for the Contracting Parties to the International Treaty, it provides the rationale for the subsequent substantive provisions on Farmers' Rights and choose the measures to do so according to their needs and priorities.

Measures listed under Article 9.2 (a) to (c) are considered the core for the realization of Farmers' Rights at the national level, yet legally speaking they are neither mandatory nor exhaustive. Contracting Parties are encouraged to evaluate their needs and to decide on the measures that offer incentives to farmers to continue to conserve and to further develop PGRFA, in accordance with their national legal system and prevalent agricultural practices. The realization of Farmers' Rights can also include other measures than those listed, as appropriate.

2.1. Protection of traditional knowledge

Paragraph (a) of Article 9.2 encourages measures for the "protection of traditional knowledge relevant to plant genetic resources for food and agriculture". Given the scope and objectives of the International Treaty, the type of traditional knowledge to be protected is limited to that which is "relevant to plant genetic resources for food and agriculture". In this sense, the provision is narrower in scope than Article 8j of the CBD which addresses a broader range of biological resources. In another sense, however, the scope of the provision may be broader than that of the CBD in the sense that it is not limited to traditional knowledge "of indigenous and local communities embodying traditional lifestyles" as in Article 8j⁴ of the CBD. Under the International Treaty, traditional knowledge would appear to refer more to the traditional knowledge of farmers, mainly to the knowledge used to develop, and it thus incorporated in, farmers' varieties (landraces)⁵ and certain traditional agricultural knowledge that are crucial in the process of conserving genetic resources by local farming communities.⁶

Traditional knowledge and and plant genetic resources have contributed significantly to technological advancement of society and improvement of livelihoods.⁷ Traditional knowledge gained in the long history of agricultural development have been of great help for farmers for conservation and the proper selection of genetic resources, from different natural habitats such as fields, meadows, and forests in their

2 Moore and Tymowski, 2005. Explanatory guide to the International Treaty of Plant Genetic Resources for Food and Agriculture. IUCN Environmental Policy and Law Paper No. 57. Pp. 66-78

3 For example, see information resources in IYFF website <http://www.fao.org/family-farming-2014/resources/publications-list/en/>; AED and FAO 2011: Deepening the Dialogue: Agriculture and Nutrition Collaboration to Enhance Global Food Security Summary Report from the Open Forum held on 10 November 2010, Washington, DC (<http://www.fao.org/3/as563e.pdf>); IAASTD 2009: Assessment of Agricultural Science and Technology for Development.

4 Article 8(j) states that each contracting Party shall, as far as possible and as appropriate: Subject to 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. See CBD website: <https://www.cbd.int/traditional/>

5 Moore and Tymowski, 2005. Explanatory guide to the International Treaty of Plant Genetic Resources for Food and Agriculture. IUCN Environmental Policy and Law Paper No. 57. Pp. 66-78

6 Z. Aksoy, 2016. Global Governance of Traditional Knowledge and its justice implications: a case for an alternative approach. An Internal Colloquium, 4-5 February 2016, Colloquium Paper No. 3. The Hague, The Netherlands.

7 Andersen, 2008: Governing Agrobiodiversity: plant genetics and developing countries. Ashgate Publishing, 420 p; Andersen and Winge, 2013

immediate environment.⁸ The development and sustainable use of plant varieties and crop diversity that meet the specific needs of farmers under local conditions, within the context of traditional farming systems, can encompass a broad range of forms of traditional knowledge. But also, there is growing recognition and attention to the role of women farmers⁹ in plant genetic resources conservation. Women have been recognized at the international level for their efforts in environmental and agricultural biodiversity protection, as keepers of traditional knowledge and stewards of in-situ conservation.¹⁰ Most forms of traditional knowledge are location-specific, evolving in time in a particular habitat and culture, but many of these knowledge systems share common features (i.e. crop diversity, high structural diversity, exploitation of a full range of microclimates, dependence on local resources and indigenous cultivars, etc).¹¹ There are extensive studies and literature about the importance of traditional knowledge related to conservation and sustainable use of PGRFA. The traditional knowledge of farmers, indigenous peoples and local communities is perceived as dynamic reservoir for the development of new varieties and for the transmissions of desirable genetic traits.¹² Family farmers¹³ have tended to utilize a diverse selection of crop species in order to assure their harvests; seed production in many instances has been on the collection of/and domestication of locally known, wild varieties. Modern agricultural practices depend on crop varieties that promote productivity and resistance to disease that can only be maintained with the continuous input of new germplasm. This diversity of landraces and the associated information on their specific qualities contribute invaluable information to formal breeding processes. It has been noted that the loss of biological diversity is parallel by the loss of traditional knowledge.¹⁴ .

Traditional knowledge evolves over time due to different factors, not least because in many cases it is transmitted orally. This is a mature, long-standing traditional practices, knowledge and wisdom of local communities and indigenous people of a region. It is a mental inventories of PGR which include landraces, wild relatives and other indicator plant species, as well as traditional production techniques of agriculture such as seed treatment, crop planting, cropping systematization, harvesting and different seed/grain storage systems and other related farming practices.¹⁵

Hence, the protection of traditional knowledge within their dynamic context is likely to make an effective contribution to the maintenance of their practical use and use for future development and it would be an important element for safeguarding the evolution of crop diversity. In this regard, Contracting Parties may consider a wide range of possibilities to promote its continued evolution and protect against misappropriation but also against its use without the consent of knowledge holders (farmers and indigenous local communities). Contracting Parties can devise their own measures, it could be similar to

8 Jovovic Z. and S. Kratovalieva, 2016. Global strategies for sustainable use of agricultural genetic and indigenous traditional knowledge. In: Plant genetic resources and traditional knowledge for food security. Pp. 39-72

9FAO, 2011. The role of women in agriculture. ESA Working Paper no. 11-02

<http://www.fao.org/docrep/013/am307e/am307e00.pdf>

10 FAO 2013: Gender Equality and Food Security: Women's empowerment as a Tool against Hunger.

11 Altieri and Nicholls 2013: The adaptation and mitigation potential of traditional agriculture in a changing climate.

<https://www.socla.co/wp-content/uploads/2014/ALTIERI-NICHOLLS-CLIMATIC-CHANGE.pdf>

12 Traditional Agricultural Knowledge and Farmers' Rights. In Intellectual Property Rights and Food Security. Michael Blakeney. pp. 122-127

13 Note: Family farmers, small holders or small scale farmers are used indistinctly in this module.

14 There are extensive documentation published about traditional knowledge and relevance to biodiversity and development, e.g. authored by Abramovitz for the World Resources Institute, The Center for Our Common Future, the Consultative Group on International Agricultural Research, Hawkes for The World Bank, IUCN/UNEP/WWF, McNeely et al. for the International Union for Conservation of Nature and Natural Resources, the Global Biodiversity Strategy: Policy-makers' Guide produced by the World Resources Institute, The World Conservation Union, and the United Nations Environment Programme, and several FAO and UNESCO publications.

15 Salgotra and Gupta, 2016. Plant genetic resources and traditional/indigenous knowledge: potentials and challenges. In: Plant Genetic Resources and Traditional Knowledge for Food Security. R.K. Salgotra and B.B. Gupta (eds). Springer. pp. 1-22

the establishment of intellectual property regulations, establishment of registries, licensing mechanisms and access and benefit sharing initiatives. The promotion of production and consumption of farmers' traditional varieties can also foster local economy development, thus supporting the use of farmers and indigenous local communities' traditional knowledge along with their own crop varieties.

2.2. Equitable participation in the sharing of benefits

According to paragraph (b) of Article 9.2 of the International Treaty, measures that Contracting Parties should take, as appropriate and subject to their national legislation, include those to ensure the right of farmers "to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture". In this regard, Contracting Parties should establish mechanisms in order for farmers and indigenous local communities to benefits from the use of PGRFA that have been developed and conserved by them.

The International Treaty provides no further details as to how and what Article 9.2b might mean in practice. Article 18 on the Multilateral System on Access and Benefit Sharing provides further description and lists the most important benefits. The Multilateral System sets up opportunities for developed countries with technical know-how to use their laboratories to build on what the farmers in developing countries have accomplished in their fields.

Access

Access to genetic materials is through the collections in the world's gene banks. These can include collections of local seeds kept in small refrigeration units of research labs, national seed collections housed in government ministries or research center collections that contain all known varieties of a crop from around the world.

Under the Treaty and its Multilateral System, collections of local, national and international gene banks that are in the public domain and under the direct control of Contracting Parties share a set of efficient rules of facilitated access. This includes the vast collections of the Consultative Group for International Agricultural Research (CGIAR), a consortium of 15 international research centers.

Benefit Sharing

Those who access genetic materials through the Multilateral System agree that they will freely share any new developments with others for further research or, if they want to keep the developments to themselves, they agree to pay a percentage of any commercial benefits they derive from their research into a common fund to support conservation and further development of agriculture in the developing world. The Benefit-Sharing Fund (BSF) was established in 2008¹⁶.

16 For more information on BSF, see ITPGRFA webpage: <http://www.fao.org/plant-treaty/areas-of-work/benefit-sharing-fund/overview/en/>

Monetary Benefits:

In accordance with the terms and conditions of the Standard Material Transfer Agreement (SMTA)¹⁷:

- recipients pay an equitable share of financial benefits into the Treaty's Benefit-sharing Fund whenever a commercialized product resulting from material obtained from the Multilateral System is not freely available for further research and breeding.
- these funds are complemented with voluntary contributions from countries, international foundations and the private sector.
- the funds that accumulate in the Benefit-sharing Fund flow primarily to farmers in developing countries who use and conserve crop diversity.

Non-monetary Benefits

The Treaty also foresees the sharing of non-monetary benefits from the Multilateral System in the form of:

- exchange of information: making available information such as catalogues and inventories of crop diversity and results of technical, scientific and socio-economic research, for example, research related to characterization, evaluation and utilization of agricultural crops.
- technology transfer: facilitating access by developing countries to technologies for the conservation, characterization, evaluation and use of crop diversity under the Multilateral System. The Treaty encourages all types of partnerships in research and development and in commercial joint ventures, especially relating to the material received, to human resource development, and to effective access to research facilities.
- capacity building: support capacity building through:
 - programmes for scientific and technical education and training;
 - research facilities in developing countries, and
 - scientific research in developing countries in cooperation with national institutions.

2.3. Participation in decision-making

Another core aspect of the protection and promotion of Farmers' Rights included in Article 9.2 of the International Treaty is stated under paragraph (c) as "the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture". This represents a recommendation for Contracting Parties to the International Treaty to strengthen the representation of farmers or farming communities in decision-making bodies, according to each country's existing institutions.

Since agriculture is heavily dependent on high quality seeds/propagating materials, it is natural that farmers or farming communities should participate in the decision-making processes, in particular, laws and regulations governing the management of crop production, as well as seed regulations and standards.

Farmer participation taken in a broader sense than that laid down in the International Treaty can encompass the representation of farmers and farming communities in a variety of decision-making bodies, as they are regarded as relevant stakeholders in all discussions that affect their farming systems

17 For more information on SMTA, see ITPGRFA webpage: <http://www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/the-smta/en/>

or livelihoods. In this sense, farmers have a particular stake in the shaping of agricultural policies t, including food security and nutrition, sustainable agriculture and rural development.

Also, another important aspect to take into account when promoting the right to participate in making decision, although not directly mentioned in the International Treaty, is gender balance in participation. The role of women in agriculture is often neglected, despite the fact that they are in many cases responsible for a range of different tasks, including the management of seeds and planting materials. The important role of women in conservation and sustainable use of PGRFA has been underlined by the Governing Body at its third session¹⁸, and the role of women in agriculture and rural areas are stressed in several meetings and important documents¹⁹.

2.4. Respect of existing rights under national law to save, use, exchange and sell farm-saved seed

Article 9.3 of the International Treaty states that “nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate”.

This article seeks to guarantee that the actions Contracting Parties may take with a view to promoting the realization of Farmers' Rights, in line with the measures proposed under Article 9.2, will not run counter to any existing rights that farmers may have under national law to save, use, exchange and sell farm-saved seed or propagating material. The importance of these rights is recognized in the preambular text of the International Treaty, and Article 9.3 implicitly acknowledges that farmers may have the right to save, use, exchange and sell farm-saved seeds in certain national settings. Nevertheless, Article 9.3 remains neutral in this respect and does not request Contracting Parties to promote these rights where they are not established.

While Article 9.3 does not provide a legal basis to encourage Contracting Parties to regulate operations regarding nationals under a Contracting Party's jurisdiction, nothing in the article prevents them from putting in place regulations for such operations, according to their needs and available options.

IPRs, such as plant breeders' rights, are relevant aspects of countries' strategies to support investments in plant variety development, and to balance or direct the allocation of public funds. Article 9.3 does not limit IPR and therefore should not be seen as incompatible with breeders' rights, such as those provided under the different Acts of the UPOV.²⁰ The compromise language in Article 9.3 is neutral with regard to both the rights of plant breeders and the rights of farmers to save, use, exchange and sell farm-saved seed or propagating material.²¹

It is important to note that countries should be consistent with regard to their obligations contracted under different international instruments. In this regard, countries would need to ensure a good balance between rights and obligations under their legal systems, so as to allow farmers or farming communities

18 IT/GB-3/09/Report available at: <http://www.fao.org/3/a-be112e.pdf>

19 See policy documents and references on: European parliament Report on the role of women in agriculture and rural areas (2010/20154(INI)); UN Women webpage: <http://www.unwomen.org/en/docs/2011/6/the-vital-role-of-women-in-agriculture-and-rural-development>; FAO Document on The Role of Women in Agriculture. <http://www.fao.org/docrep/013/am307e/am307e00.pdf>

20 Regine Andersen. 2008. Governing agrobiodiversity – Plant genetics and developing countries. See http://www.farmersrights.org/resources/global_works_12.html.

21 To learn more about the policy area of IPR in the domain of genetic resources, see Lesson 5 of Module 1, The Legal Architecture Governing Crop Diversity and Partnerships for Implementation available at: <http://www.fao.org/3/a-i2631e/i2631e05.pdf>.

to preserve their farming systems, thereby enabling them to continue with their customary practices for the conservation and sustainable use of PGRFA. This is also commonly referred to as the necessary 'legal space' for the realization of Farmers' Rights.²²

3. The linkages between Article 9 (Farmers' Rights) and Articles 5 and 6 (conservation and sustainable use of PGRFA)

While many provisions of the International Treaty are related to Article 9 and the realization of Farmers' Rights, this is especially true in the case of Articles 5 and 6²³, which contain provisions on conservation and sustainable use of PGRFA, which are crucial for implementation of the International Treaty.

Under Article 5.1, the Contracting Parties are encouraged to promote an integrated approach to the conservation, exploration, collection, characterization, evaluation and documentation of plant genetic resources for food and agriculture. The proposed measures are, as follows:

- a) Survey and inventory plant genetic resources for food and agriculture, taking into account*
- b) the status and degree of variation in existing populations, including those that are of potential use and, as feasible, assess any threats to them;*
- c) Promote the collection of plant genetic resources for food and agriculture and relevant associated information on those plant genetic resources that are under threat or are of potential use;*
- d) Promote or support, as appropriate, farmers and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture;*
- e) Promote in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, inter alia, the efforts of indigenous and local communities;*
- f) Cooperate to promote the development of an efficient and sustainable system of ex situ conservation, giving due attention to the need for adequate documentation, characterization, regeneration and evaluation, and promote the development and transfer of appropriate technologies for this purpose with a view to improving the sustainable use of plant genetic resources for food and agriculture;*
- g) Monitor the maintenance of the viability, degree of variation, and the genetic integrity of*
- h) collections of plant genetic resources for food and agriculture.*

Looking into these proposed measures, it means that farmers and farming communities might need to participate in surveys and inventories, as well as in the collection of PGRFA and associated information on plant genetic resources of potential use, or that are under threat.²⁴ Also, Article 5.1 specifies the role of farmers and local communities in the conservation of PGRFA. It states that Contracting Parties shall "promote or support, as appropriate, farmers' and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture". This means, in connection with Article 6.2 of the International Treaty, that Contracting Parties shall take measures to support farmers and local communities to maintain a high level of genetic diversity within and among cultivated crops. Although listed under conservation activities, support for on-farm management is also an important measure for

22 Ministry of Agriculture and Food and Fridtjof Nansen Institute, Norway, and the Zambia Agriculture Research Institute of the Ministry of Agriculture, Food and Fisheries. 2007. Informal International Consultation on Farmers' Rights, 18 – 20 September 2007. Lusaka, Zambia.

(Available at: http://www.farmersrights.org/pdf/farmers_rights_lusaka_consultation_final_report.pdf).

23 See Educational Module II – Conservation and Sustainable Use under the International Treaty.

24 The International Treaty on Plant Genetic Resources for Food and Agriculture, Articles 5.1 and 5.2.

the sustainable use of PGRFA, including, with reference to Article 6.2(a) as appropriate, assistance to guarantee the maintenance of the agricultural systems where they evolve and adapt to changing environmental conditions.

As stated above, Article 5.1(d) requests Contracting Parties to “promote *in situ* conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, *inter alia*, the efforts of indigenous and local communities”. Living close to the protected areas and also managing wild plants, it is clear that these communities know how to preserve those plants, and their initiatives in this regard are therefore worthy of support. Measures to promote the *in situ* conservation of crop wild relatives are also important for the promotion of neglected and underutilized species, as well as for the preservation of relevant traits that could be used as a source of resistance against limiting factors in agriculture.

According to Article 6.1, Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of PGRFA. Most of these policies and legal measures, as suggested to Contracting Parties under Article 6, may benefit farmers and farming communities. A non-exhaustive list of measures is provided in Article 6.2, given here.

Accordingly, Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of PGRFA. The sustainable use of PGRFA may include such measures as:

- a) *pursuing fair agricultural policies that promote, as appropriate, the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources;*
- b) *strengthening research which enhances and conserves biological diversity by maximizing intra- and inter-specific variation for the benefit of farmers, especially those who generate and use their own varieties and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and pests;*
- c) *promoting, as appropriate, plant breeding efforts which, with the participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties particularly adapted to social, economic and ecological conditions, including in marginal areas;*
- d) *broadening the genetic base of crops and increasing the range of genetic diversity available to farmers;*
- e) *promoting, as appropriate, the expanded use of local and locally adapted crops, varieties and underutilized species;*
- f) *supporting, as appropriate, the wider use of diversity of varieties and species in on farm management, conservation and sustainable use of crops and creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion, and promote increased world food production compatible with sustainable development; and*
- g) *reviewing, and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution.*

4. Conclusion

For the first time in history, the efforts and “*the enormous contribution that the 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 agriculture production throughout the world*” have been recognized in an international legally binding instrument, through Article 9 of the International Treaty. The International Treaty provides measures that could serve as a common ground for the understanding of Farmers' Rights, in particular:

- Protection of traditional knowledge;
- Equitable participation in benefit sharing;
- Participation, at national level, in matters relating to the conservation and use of PGRFA;
- Using and exchanging farm-saved seeds/propagating materials.

The International Treaty advises Contracting Parties to take measures to protect and promote Farmers' Rights in accordance with national laws, and provides farmers with a basis on which to advocate for their rights.

Prior to the adoption of the International Treaty, in the absence of any internationally agreed common ground, the concept of Farmers' Rights had come to mean different things to different people, in various parts of the world. While some associated it with a desire for a new form of intellectual property rights for materials developed by farmers, others saw it as more of a political slogan, seeking recognition of farmers' contributions to the conservation and sustainable use of PGRFA and support for their activities in this regard. To many, it conveyed the importance of protecting the ability of farmers to continue conserving PGRFA and using them in a sustainable way, as well as enabling farmers to take an active role in decision-making related to crop diversity.²⁵ Clearly, Farmers' Rights are not intellectual property rights, but the basis for recognition of the collective innovation on which agriculture is based.

The specific way in which Contracting Parties could realize Farmers' Rights and support farming systems that conserve PGRFA and use them in a sustainable way depends to a great extent on, *inter alia*, their economy and internal market structures. Contracting Parties are encouraged to balance IPRs within their regulatory systems. The challenge lies in striking a balance between private rights over seeds and the interests of farmers. Both can be fully compatible and it is essentially a matter of providing that they coexist in harmony, and in line with a Contracting Party's economic and agricultural development plan.

Finally, the International Treaty specifies that responsibility for implementing Farmers' Rights (Article 9) lies with the various national governments. Each country is free to choose the measures deemed necessary and appropriate, in accordance with its own needs and priorities. Other provisions of the International Treaty are also of importance to the implementation of Farmers' Rights. Most often referred to in this context is Articles 5 and 6 on conservation and sustainable use, and also Article 13 – the Benefit-sharing in the Multilateral system. The Preamble of the Treaty confirms that “the right to save, use,

²⁵ Fowler, 1997.

exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers' Rights, as well as the promotion of Farmers' Rights at national and international levels".

Key points to remember

- The International Treaty is the first legally binding instrument that recognizes the enormous contribution of local and indigenous communities and farmers worldwide to the development and conservation of crop diversity. It advises Contracting Parties to take measures to protect and promote Farmers' Rights in accordance with national laws, and provides farmers with a basis to advocate for their rights.
- Farmers' Rights in the International Treaty are strictly related to plant genetic resources for food and agriculture.
- The International Treaty does not offer a definition of Farmers' Rights but simply describes the measures that need to be undertaken, such as for the protection of local and indigenous communities' and farmers' traditional knowledge relevant to PGRFA, their right to share in benefits arising from the use of PGRFA, as well as their right to participate in decision-making related to PGRFA. In addition to these measures, the importance of the rights of farmers to save, use, exchange and sell farm-saved seed is affirmed in the preamble of the International Treaty.
- The realization of Farmers' Rights falls under the responsibility of national governments, and the adoption of measures for the promotion of Farmers' Rights therefore remains at the discretion of national authorities.
- Although there is no binding agreement or catalogue of measures for the implementation of Farmers' Rights, it is clear that farmers need to be supported, so that they may continue their role as stewards of plant genetic diversity in agriculture.

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