



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



E

Views, Experiences and Best Practices on the Implementation of Farmers' Rights Submitted by Contracting Parties and Relevant Organizations

Note by the Secretary

This document presents the views, experiences and best practices on the implementation of Farmers' Rights, as set up in Article 9 of the International Treaty submitted by Fridtjof Nansen Institute on 9 October 2012.

The submission is presented in the form and language in which it was received. Minor editorial changes include the full rendering of acronyms and the correction of spelling.

RELEVANT ORGANIZATIONS

Fridtjof Nansen Institute

The Fridtjof Nansen Institute submitted to the Treaty Secretariat the following documents regarding Farmers' Rights:

- i. The implementation of Article 9 on Farmers' Rights: Views, experiences and best practices
- ii. Plant Genetic Diversity and Farmers' Rights in Norway

i) The implementation of Article 9 on Farmers' Rights: Views, experiences and best practices

This input paper is submitted to the Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture (Plant Treaty) in response to the notification of 21 September and re-invitation based on Resolution 6/2011 to submit:

- Views, experiences and best practices on the implementation of Farmers' Rights as set out in Article 9 of the International Treaty, involving, as appropriate, farmers' organizations and other stakeholders; and
- Proposals for ways and means through which these views, experiences and best practices can be exchange between and among Contracting Parties and relevant stakeholder groups.

The Fridtjof Nansen Institute (FNI)¹ has followed the developments of Farmers' Rights under the Plant Treaty closely since 2005, through its Farmers' Rights Project, which was established to assist the implementation of Farmers' Rights under the Treaty with research based guidance.² FNI has contributed reports, input papers and side events at each session of the Governing Body, presenting views, experiences and best practices from a long range of countries in all regions.³ Our book *'Realising Farmers' Rights to Crop Genetic Resources: Success Stories and Best Practices'* will be published in June 2013, and presented at the Fifth Session of the Governing Body.⁴

The FNI contribution in response to the Secretariats' invitation will therefore take the second bullet point above as point of departure and highlight options for further steps for the Governing Body to support the national governments in implementing Farmers' Rights in this context. This is based on a summary of the informal international consultations organized prior to previous sessions of the Governing Body as well as on relevant resolutions adopted by the Governing Body.

¹ See: www.fni.no

² See: www.farmersrights.org

³ See: http://www.farmersrights.org/about/fr_in_itgrfa.html

⁴ Edited by Regine Andersen and Tone Winge (eds.) and published by Routledge, see: <http://www.routledge.com/books/details/9780415643849/>

1. The First Session of the Governing Body

At the First Session of the Governing Body in 2006, Norway stressed the importance of Farmers' Rights, noting that the responsibility for their implementation lay with national governments, and Norway reported that it was accordingly funding a project that focused on how countries could best implement Farmers' Rights, the need for cooperation in this regard within the framework of the Treaty, and how the Governing Body could support these efforts (the Farmers' Rights Project). An international stakeholder survey had been conducted, which gathered the perceptions and opinions of various stakeholders from all parts of the world, as expressed in 60 questionnaires from 31 countries. The survey gave an overview of the state of realization of Farmers' Rights which showed that, despite the huge challenges ahead, efforts were already underway with regard to all issues addressed as Farmers' Rights in the International Treaty. Mindful of the workload that the Secretariat was carrying, and that the first priority of the Treaty was make the Multilateral System functional, Norway requested that a follow-up to Article 9, *Farmers' Rights*, be considered by the Bureau for possible inclusion in the agenda of the Governing Body's second session. Many regions supported this proposal.⁵

2. The Lusaka international consultations on Farmers' Rights

In preparation of the Second Session of the Governing Body, an informal international consultation was organized in Lusaka, Zambia 18–20 September 2007. The consultation was co-hosted by Zambia Agricultural Research Institute, Ministry of Agriculture and Food, Norway, and the Fridtjof Nansen Institute, Norway. The three-day meeting had a total of twenty-seven participants, invited in their personal capacities and drawn from governments, NGOs, international organizations, research institutions and other private and public institutions, from twenty countries of different regions and with various backgrounds and expertise. It resulted in a comprehensive report.⁶ Based on the findings, Zambia and Norway submitted an input paper on Farmers' Rights to the Governing Body of the ITPGRFA for consideration at its second session.⁷ In this input paper, they recommended the Governing Body to consider the following proposals on how it can assist countries in the realization of Farmers' Rights:

- The Governing Body may wish to ask the Secretary to collect information on national action plans, programmes and legislation related to Farmers' Rights as well as information on how international bodies and institutions could assist Contracting Parties in implementing Article 9 and the other provisions of the Treaty through which Farmers' Rights can be realized;
- The Governing Body may wish to consider how to guide and assist Contracting Parties in their implementation of Article 9 and related provisions. In this regard, the Governing Body may wish to consider developing guidelines for national implementation of Article 9 on Farmers' Rights. The guidelines should also take into account how the related provisions of the Treaty will assist in the implementation of Article 9 and how Farmers' Rights can be beneficial for

⁵ Report from the First Session of the Governing Body (IT/GB-1/06/Report), paragraph 54, available at: <http://www.planttreaty.org/sites/default/files/gb1repe.pdf>

⁶ Available at: http://www.farmersrights.org/pdf/farmers_rights_lusaka_consultation_final_report.pdf

⁷ Available at: <ftp://ftp.fao.org/ag/agp/planttreaty/gb2/gb2c1e.pdf>

implementation of these related articles. The guidelines could include practical and technical advice on steps and measures that Contracting Parties could take, in accordance with their needs and priorities;

- The Governing Body may wish to consider establishing an *ad hoc* working group mandated to develop the above draft guidelines through a transparent, participatory and inclusive process.

1. *The Second Session of the Governing Body*

At the Second Session of the Governing Body in 2007, the Secretary presented an Information Paper on the Development of Farmers' Rights in the Context of the International Undertaking and Article 9.⁸ Zambia and Norway presented the input paper from the Lusaka informal international consultations on Farmers' Rights as basis for discussions. The Governing Body extended its appreciation to the Governments of Norway and Zambia for convening the informal international consultations and for sharing the outcomes with the Governing Body and adopted a resolution in which (Resolution 2/2007):⁹

- Contracting Parties and other relevant organizations were encouraged to submit views and experiences on the implementation of Farmers' Rights as set out in Article 9 of the International Treaty, involving, as appropriate, farmers' organizations and other stakeholders;
- the Secretariat of the Governing Body was requested to collect these views and experiences as a basis for an agenda item for consideration by the Governing Body at its Third Session to promote the realization of Farmers' Rights at the national level;
- the commitment to continue to involve farmers' organizations in the work of the Governing Body - as appropriate and according to the Rules of Procedures - was affirmed.

4. *Online Conference on Farmers' Rights*

Based on Resolution 2/2007, the Centre for Genetic Resources, The Netherlands (CGN) and the Community Technology Development Trust (CTDT, Zimbabwe) opened an on-line conference platform to discuss legal options to facilitate the contribution of farmers to on-farm maintenance and development of plant genetic resources (titled *Options for Farmers' Rights*). The initiative was taken in a search for agreed principles shared widely between major stakeholder groups, and with the ambition to present to the Governing Body alternative options for the implementation of Farmers' Rights with their advantages and disadvantages. The output of the on-line consultation process, as well as the results of a number of farmers' workshops held in parallel to the internet-based discussion in Malawi, Zambia and Zimbabwe were summarized in a report submitted to the Governing Body as an information document.

⁸ IT/GB-2/07/Inf.6, available at: <ftp://ftp.fao.org/ag/agp/planttreaty/gb2/gb2i6e.pdf>

⁹ Report from the Second Session of the Governing Body, IT/GB-2/07, p. 13, available at: <http://www.planttreaty.org/sites/default/files/gb2repe.pdf> See also press release from the Fridtjof Nansen Institute at: <http://www.fni.no/news/071119.html>

The consultations lasted for almost 6 months (2008-2009), had broad participation and resulted in the following recommendations:¹⁰

- A request to the Secretary to study, in collaboration with FAO, the options for provisions in national seed legislation of Contracting Parties, with a view to provide recommendations and/or guidelines for the introduction of legislation that would allow for the unrestricted or less restricted sales of farmer varieties;
- A request to the Secretary of the Treaty to study, in collaboration with UPOV, the possible means and mechanisms to streamline Article 9.3 into UPOV 78 and UPOV 91 regarding protected varieties, in particular regarding the options for provisions in national legislation based on UPOV 78 or 91 that would allow small-scale farmers in developing countries to save, use, sell and exchange protected varieties within their communities;
- A request to the Secretary of the Treaty to develop means and mechanisms to further define ‘small-scale farmers’ in the legal context of UPOV 78, UPOV 91 and the Treaty, for the benefit of implementing legislation as suggested above in paragraphs 1) and 2), in collaboration with UPOV;
- An encouragement to donors to provide financial assistance to continue with the online conference group as a forum for further discussion and exchange of experiences on the implementation of Farmers’ Rights at the national level, or to continue helping discussions on the implementation of Farmers’ Rights through any other means and approaches;
- An encouragement to donors to provide financial assistance to help developing countries to organize farmers’ workshops to gather inputs for policy decisions on the implementation of Farmers’ Rights, seed legislation, and intellectual property rights legislation.

5. The Third Session of the Governing Body

For the Third Session of the Governing Body in 2009, the Secretary of the Treaty had compiled submissions on the agenda item on Farmers’ Rights from Ecuador, Germany, Mali, Niger, Pakistan, Syria and Zambia.¹¹ In addition there were submissions from CGN and CTDI (see above), from the Ministry of Agriculture and Food, Norway,¹² the Fridtjof Nansen Institute, Norway,¹³ and France,¹⁴ and others.¹⁵

At the session a new resolution on Farmers' Rights was adopted (Resolution 6/2009), which marked a substantial step forward for the implementation of Article 9 of the Plant Treaty. This is not only due to the contents of the resolution (see below), but also because of the broad consensus that was reached among the Contracting Parties at an early stage in the discussions of the proposed text. The 2009-resolution was proposed by Brazil on behalf of Africa, Latin America and the Caribbean. It

¹⁰ Available at: <http://www.farmersrights.org/pdf/GB3Inf6a2.pdf>

¹¹ Available at: <http://www.planttreaty.org/sites/default/files/gb3i06e.pdf>

¹² Available at: <http://www.planttreaty.org/sites/default/files/gb3i06a5e.pdf>

¹³ Available at: <http://www.planttreaty.org/sites/default/files/gb3i06a3e.pdf>

¹⁴ Available at: <http://www.planttreaty.org/sites/default/files/gb3i06a4e.pdf>

¹⁵ Other contributions are not anymore available at the Treaty website.

has 10 preambular paragraphs and 5 operational paragraphs. Through the operational paragraphs the Governing Body:¹⁶

(xi) *Invites* each Contracting Party to consider reviewing and, if necessary, adjusting its national measures affecting the realization of Farmers' Rights as set out in Article 9 of the International Treaty, to protect and promote Farmers' Rights;

(xii) *Encourages* Contracting Parties and other relevant organizations to continue to submit views and experiences on the implementation of Farmers' Rights as set out in Article 9 of the International Treaty, involving, as appropriate, farmers' organizations and other stakeholders;

(xiii) *Requests* the Secretariat to convene regional workshops on Farmers' Rights, subject to the agreed priorities of the Programme of Work and Budget and to the availability of financial resources, aiming at discussing national experiences on the implementation of Farmers' Rights as set out in Article 9 of the International Treaty, involving, as appropriate, farmers' organizations and other stakeholders;

(xiv) *Requests* the Secretariat to collect the views and experiences submitted by Contracting Parties and other relevant organizations, and the reports of the regional workshops as a basis for an agenda item for consideration by the Governing Body at its Fourth Session, and to disseminate relevant information through the website of the International Treaty, where appropriate; and

(xv) *Appreciates* the involvement of farmers' organizations in its further work, as appropriate, according to the Rules of Procedure established by the Governing Body.

6. Global Consultations on Farmers' Rights

Global consultations on Farmers' Rights as they are addressed in Article 9 of were carried out in response to the request for regional consultations. The background was the decision made by the Governing Body its Third Session (Resolution 6/2009), requesting the Secretariat to convene regional workshops on Farmers' Rights to discuss relevant national experiences. The Fridtjof Nansen Institute in Norway assisted the Secretariat in carrying out this task by organizing it as global consultations with regional components. The consultation process started out in July with the sending out of questionnaires, in order to involve as many stakeholders as possible, in all parts of the world. By the deadline on 6 September, 56 questionnaires from 108 respondents had been received.

A global consultation conference, with regional components and 52 participants representing a wide range of stakeholders and countries, took place in Addis Ababa 23-25 November 2010. The conference was organized by the Fridtjof Nansen Institute, Norway, and hosted by the Institute of Biodiversity Conservation, Ethiopia. The results of the global

¹⁶ The Report from the Third Session of the Governing Body (IT/GB-3/09/Report), available at: <http://www.planttreaty.org/sites/default/files/gb3repe.pdf>

consultation process were presented in an input paper¹⁷ (available also in Spanish¹⁸ and French¹⁹) submitted by Ethiopia to the Governing Body of the Plant Treaty at its Fourth Session in 2011, as a basis for an agenda item on Farmers' Rights. In addition, two reports have been published. The first report presents the proceedings of the Consultation Conference, and contains a summary of the findings from the email-based questionnaire survey,²⁰ while the second report presents the findings from the survey more in detail.²¹

The consultations resulted in recommendations from the regional groups present at the meeting, as well as joint recommendations. These are excerpts from the joint recommendations:

“Farmers’ Rights is a cornerstone of the Treaty. The Governing Body should prioritise, and request the assistance of FAO and other relevant international organisations in the provision of technical and financial support to national governments in the realisation of Farmers’ Rights.

The Governing Body is requested to study options for provisions in national seed legislation of Contracting Parties, with a view to providing recommendations for the improvement of national legislation in order to allow for a balanced regulation for all types of seeds.

Recognising the successful progress achieved by governments in the reform of the UN FAO Committee on World Food Security (CFS) the Governing Body is requested to consider adopting the procedures agreed in the CFS as a template for new procedures in the Governing Body that will ensure the full participation of all stakeholder groups.

With respect to all aspects of Farmers’ Rights as set out in this Treaty, the role of gender should be mainstreamed, because it is a cross cutting issue in seed saving, traditional knowledge, benefit sharing and participation. The Governing Body should explore the role of gender in the realisation of Farmers’ Rights.

Noting the valuable contributions of the Voluntary Guidelines on the Right to Food, the Governing Body should in particular establish an *ad hoc* working group to develop voluntary guidelines on the national implementation of Article 9 and related provisions, in a transparent, participatory and inclusive manner, with the effective involvement of farmers’ organizations and other relevant organizations.

The voluntary guidelines should assist and support national governments in implementing the following:

¹⁷ Available at: http://www.farmersrights.org/pdf/gb4c01e_%20FRinputpaper_eng.pdf

¹⁸ Available at: http://www.farmersrights.org/pdf/gb4c01s_FRinputpaper_spa.pdf

¹⁹ Available at: http://www.farmersrights.org/pdf/FR-2010-INPUT-PAPER_French.pdf

²⁰ Available at: <http://www.farmersrights.org/pdf/FNI%20Report%201-2011%20Farmers%20Rights.pdf>

²¹ Available at: <http://www.fni.no/doc&pdf/FNI-R0211.pdf>

- National governments should consider Article 9.3 broadly, with particular regard to the fact that the factors involved in determining how to recognise these rights are not purely scientific and that these rights have implications for farmers' livelihoods and other social, economic and environmental issues;
- Formal and local seed systems should not be seen as in opposition but should be recognised as complementary and, as such, there is a need to ensure legal space for each to make its contribution to the conservation and sustainable use of PGRFA at the national level.”

7. Fourth Session of the Governing Body

At the Fourth Session of the Governing Body in 2011, Ethiopia presented the input paper from the Global Consultations on Farmers' Rights and the results were presented in further details in at a side event. After lengthy negotiations, Resolutions 6/2011 and 7/2011 were adopted, which constitute the points of departure for the invitation to submitting this input paper. In the Resolutions, the Governing Body invites Contracting Parties to convene national consultations, and requests the Secretariat to convene regional workshops on the implementation of Farmers' Rights. An Ad Hoc Technical Committee was established on the implementation of Article 6, sustainable use of crop genetic resources, which will also work on important questions related to the implementation of Farmers' Rights (the two resolutions should therefore be read together). Furthermore, Contracting Parties were encouraged to continue submitting views, experiences and best practices on the implementation of Farmers' Rights as well as proposals for ways and means through which these views, experiences and best practices can be exchange between and among Contracting Parties and relevant stakeholder groups to the Secretariat. They were also invited to consider reviewing, and if necessary, adjusting their national measures affecting the realization of Farmers' Rights.

8. Where we stand

The ITPGRFA provisions on Farmers' Rights have been subject to comprehensive consultations prior to all sessions of the Governing Body involving many stakeholders from all relevant categories and countries from all regions. Furthermore Farmers' Rights have been extensively discussed at each Governing Body session resulting in a resolution from each. From the consultations prior to the Governing Body sessions as well as from the Resolutions of the Governing Body, certain patterns are visible:

Patterns from the consultations prior to GB-sessions:

1. The need for information sharing among and between the Contracting Parties (Lusaka consultations);
2. The need for guidance from the Governing Body to assist Contracting Parties in their implementation of Article 9 and related provisions (Lusaka consultations);
3. The recommendation to develop voluntary guidelines for this purpose in a transparent, participatory and inclusive manner, with the effective involvement of farmers' organizations and other relevant organizations (Lusaka consultations, Online consultations, Global consultations);
4. The proposal that an *ad hoc* working group be established facilitate the development of such guidelines (Lusaka consultations and Global consultations);

5. The recommendation for the Governing Body to study options for provisions in national seed legislation of Contracting Parties, with a view to providing recommendations for the improvement of national legislation in order to allow for a balanced regulation for all types of seeds (online consultation and Global consultations).

Patterns of the Governing Body resolutions concerning Farmers' Rights:

1. The invitation to submit views and experiences, to be collected by the Secretary as a basis for an agenda item at the next session of the Governing Body (GB2 GB3 GB4);
2. Proposals for ways and means through which these views, experiences and best practices can be exchanged between and among Contracting Parties and relevant stakeholder groups (GB4);
3. The invitation for each Contracting Party to consider reviewing and, if necessary, adjusting its national measures affecting the realization of Farmers' Rights as set out in Article 9 of the International Treaty, to protect and promote Farmers' Rights. (3GB 4GB);
4. The request that the Secretariat convenes regional workshops on Farmers' Rights, subject to the agreed priorities of the Programme of Work and Budget and to the availability of financial resources, aiming at discussing national experiences on the implementation of Farmers' Rights as set out in Article 9 of the International Treaty, involving, as appropriate, farmers' organizations and other stakeholders (3GB 4GB);
5. The appreciation of the involvement of farmers' organizations in its further work, as appropriate, according to the Rules of Procedure established by the Governing Body (2GB 3GB 4GB).

With a view to the results of the consultations on Farmers' Rights, we can see that the first point on information sharing has been responded to by the Governing Body, by inviting the submission of views and experiences and making these available. It has also been responded to by the decision to hold regional workshops for this purpose. Also the fifth point from the consultations has been responded to, to some extent, in that the Governing Body has invited Contracting Parties to review their national measures and if necessary adjust them. This includes seed legislation. However, more could be done in this regard, i.e. in terms of guiding the Parties as to how such legislation could be adjusted. The fourth point on an *ad hoc* working group has to some extent been responded too through the decision to establish a working group on Article 6, which will also consider aspects related to Article 9.

Nevertheless, the expressed need from many Contracting Parties and relevant organizations for guidance from the Governing Body with regard to the implementation of Farmers' Rights has so far not been responded to. Neither has the recommendation to develop voluntary guidelines through an inclusive process, which is one way to respond to the expressed need.

Conclusion

On this basis the Fridtjof Nansen Institute would like to emphasize the option for the Governing Body to consider ways and means to guide and assist Contracting Parties in their implementation of Article 9 – in addition to collecting views and experiences and making them available. The *Ad Hoc* Technical Working Group may wish to consider such possibilities and present recommendations in this regard to the Governing Body at its next

session, taking previous consultations and previously submitted views and experiences into account.

ii) Plant Genetic Diversity and Farmers' Rights in Norway

The Fridtjof Nansen Institute submitted the document “*Plant Genetic Diversity and Farmers' Rights in Norway*” which due to its length (133 pages) is available as a publication at the following link <http://www.planttreaty.org/content/plant-genetic-diversity-agriculture-and-farmers%E2%80%99-rights-norway>