

May 2009



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



E

## Item 14 of the Provisional Agenda

### INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

#### FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

#### THIRD SESSION OF THE GOVERNING BODY

Tunis, Tunisia, 1 – 5 June 2009

### COLLECTION OF VIEWS AND EXPERIENCES SUBMITTED BY CONTRACTING PARTIES AND OTHER RELEVANT ORGANIZATIONS ON THE IMPLEMENTATION OF ARTICLE 9

*This addendum contains an information paper on Farmers' Rights submitted by the Fridtjof Nansen Institute, Norway, based on the Farmers' Rights Project*

The information contained in this document relates to the implementation of Article 9. It was received by the Secretary in **May 2009** and it is presented in the form and language in which it was received.

---

**Information paper on Farmers' Rights submitted by the Fridtjof Nansen Institute, Norway,  
based on the Farmers' Rights Project**

---

Resolution 2/2007 of the Governing Body of the International Treaty encourages Contracting Parties and relevant organizations to submit their views and experiences on the implementation of Farmers' Rights, as set out in Article 9. This input paper is the contribution of the Fridtjof Nansen Institute, Norway, based on the results of its international Farmers' Rights Project.

This input paper summarizes our knowledge to date on views and experiences with the implementation of Farmers' Rights globally, noting existing gaps and needs. After a brief introduction to the research and other activities of the Farmers' Rights Project, the paper proceeds to views on the contents of Farmers' Rights and experiences with their realization to date. It further outlines various avenues towards systemic implementation of Farmers' Rights according to needs and priorities at the national level. Finally, remaining gaps and needs are identified and recommendations for the Governing Body are presented. The paper starts out with a few words on why Farmers' Rights matter.

### ***Why Farmers' Rights matter***

Basically, realizing Farmers' Rights means enabling farmers to maintain and develop crop genetic resources as they have done since the dawn of agriculture, and recognizing and rewarding them for this indispensable contribution to the global pool of genetic resources.

The realization of Farmers' Rights is a precondition for the maintenance of crop genetic diversity, which is the basis of all food and agricultural production in the world. Plant genetic diversity is probably more important for farming than any other environmental factor, simply because it is **the** factor that enables adaptation to changing environmental conditions, such as climate change. As farmers are the custodians and developers of crop genetic resources in the field, their rights in this regard are crucial for enabling them to maintain this vital role for local and global food security, and as such central means in the fight against poverty. For this reason, Farmers' Rights also constitute a cornerstone in the International Treaty, as their realization is a precondition for the achieving the objectives of the Treaty of conservation and sustainable use of crop genetic resources with the ultimate goal of sustainable agriculture and food security (Article 1).

**Contents:**

1. Research, activities and products of the Farmers' Rights Project .....	5
1.1 Surveys and case studies .....	5
1.2 Consultations, context analysis and success stories .....	5
1.3 Further research, Norway case study, website and workshop module .....	6
1.4 Collaboration and support .....	7
2. The contents of Farmers' Rights and experiences with their implementation.....	7
2.1 Farmers' Rights related to the protection of traditional knowledge .....	8
2.2 Farmers' Rights to participate equitably in the sharing of benefits .....	10
2.3 Farmers' Rights to participate in decision-making .....	13
2.4 Farmers' Rights to save, use, exchange and sell farm-saved seed.....	15
3. The process of realizing Farmers' Rights: approaches .....	17
3.1 Creating and enhancing awareness on the importance of Farmers' Rights .....	17
3.2 Ensuring farmers' participation in the implementation process .....	19
3.3 Developing a national consultative process and pooling resources.....	19
4. Existing gaps and needs .....	20
5. Recommendations for the Governing Body .....	21
 Annex:	
Summaries of publications from the Farmers' Rights Project.....	23
The History of Farmers' Rights, a Guide to Central Documents and Literature .....	23
International Stakeholder Survey on Farmers' Rights.....	23
Report on Farmers' Rights in Peru .....	24
Report on Farmers' Rights in India .....	24
Report on Farmers' Rights in Ethiopia .....	25
Results from the first phase of the Farmers' Rights Project as of 2006 .....	26
Flyer on Farmers' Rights and Agrobiodiversity .....	28
Report from the international consultations on Farmers' Rights in Lusaka, 2007 .....	28
Protecting Farmers' Rights in the Global IPR Regime: Challenges and Options .....	29

---

Book on global management of agrobiodiversity, including Farmers' Rights.....	30
Report on Success Stories from the Realization of Farmers' Rights.....	30
Farmers' Rights in Peru: Farmers' Perspectives.....	31
Farmers' Rights and implementation issues for South Asia.....	32
Farmers' Rights in Norway.....	32
Other products from the Farmers' Rights Project.....	33
Website on Farmers' Rights: <a href="http://www.farmersrights.org">www.farmersrights.org</a> .....	33
Workshop module on Farmers' Rights.....	34

## **1. RESEARCH, ACTIVITIES AND PRODUCTS OF THE FARMERS' RIGHTS PROJECT**

The Farmers' Rights Project is aimed at supporting the implementation of Farmers' Rights as they are addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture. The project provides research, guidance and capacity building on the implementation of Farmers' Rights at the national as well as the international level. Initiated in 2005, it is a long-term project with many different components, comprising research and surveys as well as more operational activities like a website, workshops and seminars.

The annex of this information paper contains short summaries of all publications from the Farmers' Rights Project. Further information on the activities and on Farmers' Rights can be found at our project website [www.farmersright.org](http://www.farmersright.org).

### *1.1 Surveys and case studies*

The project started out with a survey on the history of Farmers' Rights, based on a review of available documents and literature. The resulting report was designed as a guide to decision-makers and practitioners. On this basis a questionnaire was developed and an international multi-stakeholder survey carried out, to map views and experiences with Farmers' Rights around the world and to derive lessons for further implementation at the national as well as international levels. 60 respondents from 31 countries participated, covering a wide range of stakeholders. On this basis, in-depth case studies on Farmers' Rights were carried out in India, Ethiopia and Peru. The results from all these studies were summarized in a publication and launched at a side event at the First Session of the Governing Body in Madrid (2006).

The publication identified two approaches to Farmers' Rights and termed them 'the stewardship approach' and the 'ownership approach', terms that have been widely used in later discussions on Farmers' Rights. It also introduced the concept 'legal space' for the first time in the context of Farmers' Rights. The term refers to the legal requirements for farmers to continue to conserve and sustainably use crop genetic diversity by saving, developing, exchanging and selling seed and propagating material. Also this concept has been widely employed in subsequent discussions on Farmers' Rights. Furthermore, the publication highlighted the state of realization of Farmers' Rights and pinpointed barriers and options in this regard. Finally, it provided recommendations regarding national-level implementation as well as the negotiations in the Governing Body for its first Session.

### *1.2 Consultations, context analysis and success stories*

At its First Session, the Governing Body decided to put Farmers' Rights on its working agenda upon a suggestion from the Norwegian delegation and with the support of several developing countries. Thus, Norway (through its Ministry of Agriculture and Food) took the initiative to organize informal international consultations on Farmers' Rights together with Zambia (Ministry of Agriculture, Food and Fisheries) and the Fridtjof Nansen Institute. Consultations were held in Lusaka, Zambia, and gathered 27 participants from 20 countries. The ensuing report was presented by Norway at the Second Session of the Governing Body together with an input paper from the two countries. Resolution 2/2007 is a result of this process.

The next milestone was the publication of *Governing Agrobiodiversity: Plant Genetics and Developing Countries* by Regine Andersen. This book analyses the interaction between international agreements related to plant genetic resources in agriculture and how this affects the

management of these resources in developing countries. It also shows how the core challenges related to the conservation and sustainable use of crop genetic resources boil down to the implementation of Farmers' Rights as a precondition for the further maintenance of these vital resources *in situ* on-farm.

One of the findings of the Farmers' Rights project was that models of the realization of Farmers' Rights are needed: stakeholders asked for positive examples to concretize what Farmers' Rights are about and to encourage their implementation. The Farmers' Rights Project started collecting such stories, and published a report with 17 success stories from the realization of Farmers' Rights in 2008. The work on this report inspired the project staff to continue collecting success stories, which are posted on the project website. A book with a more narrative style, aimed at reaching broader target groups, is currently in the making. The stories have contributed greatly to developing an understanding of the contents of Farmers' Rights as well as to the prospects for their realization.

Another lesson from the work on Farmers' Rights is that this issue has emerged at the international level, and has never been really rooted in the farming population. Thus, we wanted to explore the potentials of involving farmers in bottom-up processes for the realization of Farmers' Rights. Together with a Peruvian partner, Maria Scurrah of Grupo Yanapai, the Farmers' Rights Project carried out a study on Farmers' Rights in Peru, as seen from farmers' perspectives, involving 180 farmers in various regions of the Andes. This work was undertaken with assistance from the Peruvian Society for Environmental Law (SPDA) and the German GTZ (commissioned by the Federal Ministry for Economic Cooperation and Development of Germany) and in close cooperation with the responsible national authority, Instituto Nacional de Innovacion Agraria, Ministry of Agriculture, Peru. The process was highly fruitful and led to a report (available in Spanish and English) which is now taken as a point of departure for implementation of Farmers' Rights in Peru .

### *1.3 Further research, Norway case study, website and workshop module*

Much of the realization of Farmers' Rights in the world takes place on the initiative of civil society organizations. Thus, one of the current research activities is aimed at analysing civil society initiatives for the realization of Farmers' Rights, in order to derive lessons as to the conditions under which various strategies are most successful.

The main focus of work has been on developing countries. The Farmers' Rights Project wanted to explore the relevance of these rights in industrialized countries as well, and has carried out a comprehensive study of Farmers' Rights in Norway. That study shows that Farmers' Rights are crucial also to the *in situ* on-farm maintenance of crop genetic diversity in Norway. Although Norway seeks to implement Farmers' Rights, some crucial barriers make further advancement difficult, notably existing seed regulations. These are currently being amended with a view to Farmers' Rights.

Along the way the Farmers' Rights Project has organized and participated in side events, conferences and seminars, written articles, produced and distributed various flyers and information material, and taken part in discussions on Farmers' Rights. A multi-stakeholder workshop module for the implementation of Farmers' Rights is currently being prepared.

The website [www.farmersrights.org](http://www.farmersrights.org) is the official website of the Farmers' Rights Project and has been developed as a tool for decision-makers, practitioners and others involved in the realization

of Farmers' Rights. It is also intended as an information source for researchers and other interested individuals. The website contains information on the history, legal status and contents of Farmers' Rights, on the state of implementation of these rights, and a comprehensive database on legislation and policies. There are concrete recommendations on how to go about implementing Farmers' Rights nationally, including success stories from all over the world. The prospects for implementing Farmers' Rights internationally are also discussed, and there are overviews of literature and organizations related to Farmers' Rights, a calendar of coming events, and answers to frequently asked questions (FAQ). There is also more information about the Farmers' Rights Project.

#### *1.4 Collaboration and support*

The Farmers' Rights Project is led by Senior Research Fellow Regine Andersen. We collaborate with researchers in many countries, and communicate with a wide network of individuals and institutions, among them government ministries, research institutions, breeding companies, donor organizations, NGOs and last but not least, farmers' organizations.

The activities have been/are supported financially and professionally by six institutions:

- Ministry of Foreign Affairs, Norway
- Ministry of Agriculture and Food, Norway
- German GTZ, sectorial project People, Food and Biodiversity which is implemented on behalf of the German Federal Ministry of Economic Cooperation and Development (BMZ)
- Development Fund, Norway
- Norwegian Genetic Resource Centre
- Research Council of Norway

## **2. THE CONTENTS OF FARMERS' RIGHTS AND EXPERIENCES WITH THEIR IMPLEMENTATION**

Farmers' Rights are basically about enabling farmers to maintain and develop crop genetic resources as they have done since the dawn of agriculture, and recognizing and rewarding them for this indispensable contribution to the global pool of genetic resources.

The realization of Farmers' Rights is a cornerstone in the implementation of the International Treaty on Plant Genetic Resources for Food and Agriculture, as it is a precondition for the conservation and sustainable use of these vital resources *in situ* on-farm. The Treaty recognizes the enormous contributions made by farmers worldwide in conserving and developing crop genetic resources. This contribution constitutes the basis of Farmers' Rights. According to Article 9, governments are to protect and promote Farmers' Rights, but can choose the measures to do so according to their needs and priorities. Measures may include the protection of traditional knowledge, equitable benefit sharing, and participation in decision-making. The right to save, use, exchange and sell farm-saved seeds and propagating material is also mentioned. Several other Articles in the Treaty are also relevant for the realization of Farmers' Rights, in particular articles 5 (conservation), 6 (sustainable use) and 13 (benefit sharing). However, the understanding of Farmers' Rights and the modalities for their implementation is still vague.

One reason why the negotiators of the International Treaty were not able to agree on a definition of *Farmers' Rights* was that the situation of farmers differs so greatly from country to country, as do the perceptions of Farmers' Rights. With no official definition of Farmers' Rights, there is uncertainty as to what the concept involves, and thereby also to how these rights can be realized. Thus, it is important to establish a common ground of understanding in order to develop a fruitful

dialogue among stakeholders on the measures that need to be taken. The work of the Farmers' Rights Project is aimed at contributing to such a common ground.

The four issues addressed in Article 9, often referred to as the elements of Farmers' Rights, constitute a logical point of departure for establishing such a common ground: protection of traditional knowledge, benefit sharing, participation in decision-making and the rights to save, use, exchange and sell farm-saved seed. In the following, the contents of these four elements will be discussed, based on the findings from the Farmers' Rights Project.

### *2.1 Farmers' Rights related to the protection of traditional knowledge*

Traditional knowledge is vital to understanding the properties of plants, their uses and how to cultivate them. Also, traditional knowledge comprises the knowledge on how to select seeds and propagating material, how to store them and use them for the next harvest. Thus, it is basic for the ability of farmers to maintain crop genetic diversity in the fields. Article 9.2.a is the only provision on traditional knowledge in the Plant Treaty: there is no further guidance in the Treaty as to how this article can be interpreted and operationalized. As the objectives of the Plant Treaty are to be implemented in harmony with the Convention on Biological Diversity (Article 1), Article 8j of the Convention is also relevant in this context. According to this article, each contracting party shall, as far as possible, as appropriate and subject to its national legislation, respect, maintain and preserve traditional knowledge, innovation and practices and promote their wider application. This should be done with the approval of the holders of such knowledge, innovations and practices and equitable sharing of benefits from its use should be encouraged.

This understanding of the challenges related to the protection of traditional knowledge has been important for the current views on how Article 9.2.a of the Plant Treaty can be implemented. Basically there are two approaches to protecting traditional knowledge: (1) protection against extinction, and (2) protection against misappropriation.

*Protection against extinction* is about ensuring that traditional knowledge is kept alive and can further develop among farmers. As traditional knowledge is disappearing at an alarming pace, along with the genetic erosion in agriculture, measures in this regard are considered crucial among many diversity farmers, particularly in the North. The best way of protecting traditional knowledge against extinction is to share it. Thus, the motto here is: 'Protection by sharing'. Measures for the sharing of traditional knowledge include:

- Seminars and gatherings among farmers to share knowledge
- Seed fairs for the exchange of propagating material and associated knowledge
- Documentation of knowledge in seed catalogues and registries
- Documentation of knowledge in books, magazines and on websites
- Documentation of knowledge in gene banks and making such knowledge accessible

*Protection against misappropriation* is a different approach. It is based on the fear that farmers' varieties together with associated knowledge could be 'discovered' and developed by commercial actors, possibly also by use of intellectual property rights – and without benefit-sharing mechanisms. Sharing of knowledge should not take place without measures to avoid misappropriation, according to this approach. There is also widespread regret that it should be deemed necessary to show such caution with activities so vital for further availability of genetic resources and related knowledge due to the fear of misappropriation. Measures for protection against misappropriation include:

- Regulation of the access to genetic resources and associated traditional knowledge with measures on prior informed consent and mutually agreed terms
- Legal clauses in catalogues of genetic material and associated material, to avoid misappropriation
- ‘User country measures’ like conditions for intellectual property rights, such as certificates of origin of genetic resources and of following the legal procedures for access to genetic resources in provider countries.

In some countries, the measures taken against misappropriation of traditional knowledge make the sharing of such knowledge difficult, and contribute to distrust among farmers. This has made *ex situ* conservation of crop varieties difficult in, for example, Peru. An important question is thus how great the risk is of misappropriation of farmers’ varieties and knowledge, and whether this risk is worth the measures taken to avoid misappropriation as well as the fear it has produced in a cost-benefit perspective for farmers.

As far as we have been able to document so far, commercial plant breeders tend to use already improved varieties from own stocks, or from other plant breeders, as basis for developing new varieties. Farmers’ varieties are generally regarded as difficult to work with, due to their genetic heterogeneity. Only when particular traits are sought, traits that cannot be found in the own stocks or among other improved varieties, are farmers’ varieties interesting. Then they are normally obtained from gene banks, and only seldom from the fields or markets. When obtained from gene banks, there is normally not much traditional knowledge in the passport data. Thus, the general picture today is traditional knowledge related to crop genetic resources is rarely used in commercial breeding. Whether this will remain so also in future is difficult to predict. Generally, it seems to be a tendency that the genetic base of commercial plant breeding is getting increasingly narrow. This development, together with the effects of climate change for agriculture, suggests that the need for land races and farmers’ varieties – with associated knowledge – will become more important in future.

Nevertheless, the measures chosen should reflect the real situation. What matters today – in light of the fast erosion of traditional knowledge is first and foremost to protect traditional knowledge related to crop genetic resources against extinction, by facilitating documentation and free sharing of such knowledge among farmers. In addition, relevant measures for avoiding misappropriation may be taken in line with this ultimate goal.

What measures would be adequate to avoid misappropriation? To answer this question, we need to take a closer look at what misappropriation of traditional knowledge related to crop genetic diversity is actually about in the context of the Plant Treaty and the Multilateral System on Access and Benefit Sharing. Basically, there are three forms of action which farmers tend to regard as misappropriation: (1) if farmers’ varieties and related knowledge are used in commercial plant breeding without recognizing the farmers in question; (2) if plant breeders get intellectual property rights to farmers’ varieties, thereby removing the varieties from the public domain and the traditional uses of farmers; and (3) if plant breeders profit from the use of farmers’ varieties and related knowledge without sharing the benefits with the farmers in question. Measures to avoid such misappropriation could be:

- Ensuring recognition: Recognition is regarded as important among many farmers, particularly in the South. Ways of showing recognition include naming varieties after the farmers or communities in question, providing information about the farmers on the wrapping of

products, and/or rewarding farmers for their contribution in terms of benefit sharing (see below) or with awards. As to the first measures, it may be difficult to identify the individual farmers in question, as more farmers/communities/ regions may have maintained a crop variety or contributed to its development. Awards are different in this regard, as they can be awarded for the maintenance of diversity and related knowledge as such and not necessarily for specific varieties.

- Avoiding breeders' intellectual property rights on farmers' varieties: Documenting plant varieties and their related knowledge is normally a useful way of establishing prior art, which means that no one can claim intellectual property rights over the varieties in the form they are documented. This is so far the most promising measure to be applied to ensure protection against the misappropriation of genetic resources and associated traditional knowledge while at the same time promoting its sharing.
- Ensuring benefit sharing: Under the Plant Treaty, benefit sharing takes place via the Multilateral System upon the terms and conditions of the Standard Material Transfer Agreement. The benefits should be shared with farmers in developing countries, and in countries with economies in transition, who conserve and sustainably use crop genetic diversity – not any particular providers of genetic resources (and related knowledge). However, there are many questions related to this, to which we return in the sub-section on benefit sharing.

There are many useful and inspiring databases and catalogues on crop genetic resources and associated traditional knowledge around the world, which at the same time establish prior art with regard to farmers' varieties and contribute to benefit sharing by making the knowledge accessible. Some of them also recognize farmers explicitly. An impressive example is the potato catalog from Huancavelica, Peru (see Andersen and Winge, 2008, pp. 23–25). Other success stories include *in situ* conservation in Switzerland, combining on-farm conservation of a huge number of crop varieties with a range of measures for the dissemination of information regarding the varieties and the associated traditional knowledge; the community registry at Bohol, the Philippines, which helps in keeping traditional knowledge alive and accessible; and information and seminar activities in Norway to help disseminate traditional knowledge. These are good models for the implementation of farmers' rights related to traditional knowledge associated with crop genetic resources. However, they all represent a beginning. Much more is required to keep such knowledge alive among farmers and to promote its further development. In many countries it seems necessary to raise awareness on the importance of traditional knowledge related to crop genetic resources and to develop strategies on how to maintain and disseminate traditional knowledge in a systematic way – to halt the loss of such knowledge.

## 2.2 *Farmers' Rights to participate equitably in the sharing of benefits*

Article 9.2.b concerns the right to participate equitably in the sharing of benefits arising from the utilization of plant genetic resources for food and agriculture. To interpret this provision, some guidance can be found in Article 13 on benefit sharing in the Multilateral System. Here, the most important benefits are listed as follows: (1) facilitated access to plant genetic resources for food and agriculture; (2) the exchange of information; (3) access to and transfer of technology; (4) capacity-building; and (5) the sharing of monetary and other benefits arising from commercialization. Moreover, it is specified that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly and indirectly, to farmers in all countries, and especially in developing countries and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.

Whereas these provisions all relate to the Multilateral System and not directly to the provisions on Farmers' Rights in the International Treaty, they reflect a line of thought on benefit sharing which

is relevant for interpreting Article 9.2 (b) on benefit sharing as a measure to protect and promote Farmers' Rights. First, we see that there are many forms of benefit sharing, where monetary benefits comprise only one part. Second, we see that benefits are not only to be shared with those few farmers who happen to have plant varieties that are utilized by commercial breeding companies, but farmers in all countries engaged in the conservation and sustainable use of agrobiodiversity. This reflects an approach prevalent in the FAO ever since Farmers' Rights and benefit sharing were first recognized officially in 1989 (FAO Conference Resolution 5/89). (It differs from the bilateral and direct approach to benefit-sharing under the Convention on Biological Diversity, where benefits are to be shared between purported 'owners' and buyers of the resources.)

In the South, policies on benefit sharing – if any – are provided in laws and regulations on access to biological resources, sometimes in legislation on the protection of biological diversity, and – in the case of India – in its Protection of Plant Varieties and Farmers' Rights Act of 2001. Countries with legislation on indigenous peoples' rights often include provisions on benefit sharing in these laws, which then also cover indigenous farmers. Most of these regulations foresee forms of direct benefit sharing between the 'owners' and 'buyers' of genetic resources, often upon prior informed consent on mutually agreed terms, as set out in the Convention on Biological Diversity. Despite all these efforts, so far there have been no examples of direct benefit sharing between providers and recipients of plant genetic resources for food and agriculture resulting from such legislation.

There are, however, other ways of sharing benefits, often referred to as indirect ways of benefit sharing. Here the thinking from the early days of the FAO negotiations on Farmers' Rights comes through. Benefits should be shared between 'entire peoples', the stewards of plant genetic resources in agriculture, and the society at large (FAO, 1987: Report of the Second Session of the CPGR, CL 91/14, Appendix F, Section 8). This is based on the idea that it is their legitimate right to be rewarded for their contributions to the global genetic pool, from which we all benefit; further, that it is an obligation of the international community to ensure such recognition and reward.

Where should the funds come from to enable such benefit sharing? First of all the benefit sharing mechanism under the Multilateral System sets out that the benefits from the system should flow primarily to farmers in all countries, especially in developing countries and countries with economies in transition, who conserve and sustainably use crop genetic resources (Art. 13.3). However, it is not sure how much funds will be generated by this mechanism and it is not likely that it will be sufficient to cover the needs in this regard. Thus, the Funding Strategy (Art. 18) is another important source, in terms of supporting the implementation Articles 5 (on conservation), 6 (on sustainable use) and 9 (on Farmers' Rights) of the Plant Treaty, which would greatly benefit diversity farmers. However, there are still substantial uncertainties as to how the Funding Strategy shall be designed, and how much funds it can generate. Thus, Articles 7 (international cooperation) and 8 (technical assistance) are important to highlight. Here the Contracting Parties agree to promote the provision of technical assistance to developing countries and countries with economies in transition, with the objective of facilitating the implementation of the Plant Treaty. As of today, Official Development Assistance (ODA) is probably the most promising source of benefit sharing. ODA can be channelled through bilateral or multilateral cooperation, or through Non-Governmental Organizations (NGO). There are many examples of the NGO-channelled support, which has greatly supported diversity farmers in the South, and thus contributed to benefit sharing in developing countries.

An international stakeholder survey carried out in 2005 (Andersen, 2005) revealed that the most frequently mentioned non-monetary benefits were:

- access to seeds and propagating material, and related information
- participation in the definition of breeding goals
- participatory plant breeding in collaboration between farmers and scientists
- strengthening of farmers' seed systems
- conservation activities, including local gene banks
- enhanced utilization of farmers' varieties, including market access

The 2005 survey showed that – for many reasons – benefit sharing is more promising when the point of departure is the farming communities that actually contribute to the maintenance of plant genetic diversity, rather than providers of genetic resources to commercial plant breeders. Still the most dominant view on benefit sharing in many countries, particularly in the South, is still one of direct benefit sharing between purported 'owners' and 'buyers'. There are many arguments against focusing on such an approach:

- It is difficult to identify exactly who should be rewarded.
- The demand for farmers' varieties among commercial breeders is limited, relatively few farmers would benefit, and most of the contributors to the global pool of genetic resources would remain unrewarded.
- The approach could lead to disincentives to share seeds and propagating material among farmers, because of expectations of personal benefit, or the expectations of individual communities to benefit.
- Although several countries in the South have enacted legislation on direct benefit sharing, no instances of such benefit sharing have been reported so far with regard to agro-biodiversity.
- In many countries, the transaction costs of establishing access and benefit-sharing legislation have been considerable.
- By contrast, there are many examples of indirect benefit sharing, normally non-monetary.

Thus the direct benefit-sharing approach has not proven very promising so far, even though some stakeholders would opine that it is the most fair and equitable approach. These serious concerns must be taken into account in designing measures to ensure benefit sharing – in line with the intentions behind the Plant Treaty.

In seeking to operationalize the concept of benefit sharing with regard to Farmers' Rights, and based on the findings of the Farmers' Rights Rights Project, three categories of measures appear particularly important:

a) Ensuring that incentive structures in agriculture favour farmers who conserve and sustainably use plant genetic resources for food and agriculture on an equal footing with, or more than, farmers engaged in mono-culture production of genetically homogeneous plant varieties. Such incentive structures might include extension services to support farmers, loans on favourable conditions for the purchase of farm animals and other necessary input factors, facilitation of the marketing of products from diverse varieties, and other infrastructure measures. A strategy covering incentive structures for each of these areas in combination would substantially support farmers who conserve and sustainably use agro-biodiversity. This has not been done in any country so far, and generally the incentive structures have proven negative to farmers' customary practices. However, there exist many local-level initiatives that can provide good models of how incentive structures could be designed on a larger scale.

b) Creating reward and support systems which enable farmers to benefit significantly from their contributions to the global genetic pool through added value to the crops they grow, improved livelihoods and increased income. There exist many small-scale programmes and projects that demonstrate the enormous potentials in this regard – such as community gene banks, seed fairs and registries (to ensure access), dynamic conservation coupled with participatory plant breeding, participatory plant breeding and farmers' field schools, capacity-building and various marketing activities. Today, these benefits reach only a severely limited number of farmers. A major challenge is to scale up these activities so that all farmers engaged in the maintenance of agro-biodiversity can share in these benefits.

c) Ensuring recognition of farmers' contributions to the global genetic pool, to express that these contributions are valued by society. A form of recognition which is often discussed is intellectual property rights for farmers. There are strong opinions for and against such rights. Proponents claim that farmers should be granted intellectual property rights on an equal footing with breeders, as a matter of fairness. Opponents stress that such a system would create disincentives for farmers to share seeds in the expectation that these could become economically valuable. Such a development could be harmful to traditional seed systems, and could negatively affect farmers' rights to seeds. As there has been very little experience with exclusive intellectual property rights to farmers so far (except for a few individual acts of legislation), we will not go into this topic here. Another way to recognize farmers' contributions could be to provide some sort of remuneration for farmers who register varieties in seed catalogues for free use among other farmers (this was suggested by Maria Scurrah at the Lusaka Consultation), but also here no cases are known so far. A more usual way of granting recognition to farmers and farming communities is through awards for innovative practices, as has been done in several countries.

This is not to say that farmers should not be entitled to intellectual property rights. Rather, we wish to indicate where the largest potentials of benefit sharing are, and what dangers should be avoided if countries seek to establish intellectual property rights for farmers.

In the above-mentioned report on success stories from the realization of Farmers' Rights (Andersen and Winge, 2008), there are many good examples of indirect forms of benefit sharing: Creating incentive structures from the ground in the Philippines; community seed fairs in Zimbabwe; Community gene banking and on-farm conservation in India; dynamic conservation and participatory plant breeding in France; participatory plant breeding adding value to farmers' varieties in Nepal; capacity-building for seed potato selection in Kenya; the Peruvian Potato Park; rewarding best practices in Norway. These are all examples which provide models for further implementation of Farmers' Rights. The major challenge today is to find ways and means to scale up such activities.

### *2.3 Farmers' Rights to participate in decision-making*

Article 9.2.c addresses 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. There is no further guidance in the Plant Treaty as to how this can be implemented in practice. To operationalize this measure, we need to specify the relevant matters in which farmers can have the right to participate. Also the potential forms of participation should be specified.

The development of laws and regulations related to the management of plant genetic diversity in agriculture is clearly relevant for farmers' participation. Central laws and regulations are seed acts; seed certification regulations; other regulations regarding seed distribution and trade; plant variety protection laws; patent laws; bioprospecting laws or regulations; laws on the conservation

and sustainable use of biodiversity in general or crop genetic resources in particular (also regarding specific crops); and legislation on the rights of indigenous peoples and traditional knowledge. Also legislation regulating mainstream agriculture is relevant, as such legislation tends to produce incentive structures that are detrimental to Farmers' Rights without any compensating measures. Extensive use of hearings at various stages in the process is an important measure to ensure participation. It is particularly important to ensure that farmers engaged in the management of plant genetic diversity are aware of the processes, and are explicitly invited to participate through their organizations.

The implementation of laws and regulations is also relevant to farmers' participation. The ways in which these are interpreted and implemented are often decisive to the effects on farmers' management of these resources and thus also on their livelihoods. Normally, boards and institutions are established through such acts and regulations, to oversee and/or administer implementation. Farmers' representation and participation in such bodies is central, and here the process by which farmer members are selected is of crucial importance. If they are appointed by a cabinet minister, for example, they can hardly be said to represent the farmers of that country. If, however, they are appointed by farmers through their own organizations, it is more likely that they can be regarded as true representatives of farmers – depending on the share of farmers they represent and the process by which they were appointed. Again it is vital to ensure the representation of farmers actually engaged in agro-biodiversity conservation. There are few typical success stories in this regard, if any.

Developing policies and programmes in agriculture, particularly as related to the management of plant genetic resources for food and agriculture, requires farmer participation. Ideally, policies and programmes targeted at farmers should take farmers' situations and perspectives as points of departure, based on their participation.

Most importantly, the implementation of Farmers' Rights themselves requires farmers' participation. This is not only because of their right in this regard, according to the Plant Treaty, but also because they are the ones who can best define the needs and priorities of farmers in the context of Farmers' Rights, and they are central actors in the implementation process. Comprehensive consultative processes of various kinds are relevant in this regard: the better represented farmers are, the greater legitimacy the results would have, and the more likely it is that they will constitute effective measures for the realization of Farmers' Rights. In particular, it is for farmers involved in the management of plant genetic diversity to participate in such processes, since they constitute the main target group of the International Treaty. The most comprehensive consultative process on the implementation of Farmers' Rights to date is the process carried out in Peru in 2008, involving 180 farmers from different regions, and central decision-makers, and resulting in a report (Scurrah, Andersen and Winge, 2008) that today forms the basis of the implementation of Farmers' Rights in Peru.

There are two important preconditions for increased participation of farmers in decision-making. First, decision-makers need to be aware of the important role played by farmers in conserving and developing plant genetic resources for food and agriculture, in order to understand why their participation is required. Second, many farmers are not in a position to participate effectively in complicated decision-making processes without prior capacity-building. Central measures are thus awareness-raising among decision-makers on the role of farmers in agro-biodiversity management, and capacity-building in farmers' organizations. Whereas there are few examples of the former, there is more of the latter type of activity.

In general we find few examples of legislation on farmers' participation, although some countries in the South have extensive legislation in this regard. All the same, actual participation in decision-making processes seems marginal, and is often confined to large-scale farmers who are normally not engaged in the maintenance of plant genetic diversity. In the North, the participation of farmers in decision-making processes is more common, even if diversity farmers are not so often represented, but without reference to specific laws or policies. However, farmers in the North claim that their influence is now decreasing, due to their countries' commitments to regional and international organizations and agreements.

Success stories on participation include the broad-based consultation among farmers in Peru regarding the realization of Farmers' Rights (see above), various capacity-building measures to prepare farmers for participation in decision-making (e.g. Malawi, Zimbabwe, Philippines, Peru), and successful advocacy campaigns regarding the implementation of elements of Farmers' Rights, where farmers have been involved (e.g. in India, Norway, Nepal).

#### *2.4 Farmers' Rights to save, use, exchange and sell farm-saved seed*

The International Treaty is vague on Farmers' Rights to save, use, exchange and sell farm-saved seed. Section 9.3 of the Treaty states that nothing in the relevant article (Article 9 on Farmers' Rights) 'shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed, subject to national law and as appropriate', which does not give much direction, except for labelling these practices as 'rights'. The preamble notes that 'the rights recognized in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material (...) are fundamental to the realization of Farmers' Rights'. This indicates the importance of these rights, but does not give much guidance, as the rights referred to are only vaguely addressed. Despite the lack of precision, the general line of thought is clear. It is important that farmers be granted rights in this direction, although the individual countries are free to define the legal space they deem sufficient for farmers regarding their rights to save, use, exchange and sell farm-saved seed.

The freedom to define such legal space for farmers is also restricted by other international commitments. Most countries in the world are members of the World Trade Organization (WTO), and are thus obliged to implement the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). According to the TRIPS Agreement, all WTO member countries must protect plant varieties either by patents, or by an effective *sui generis* system (a system of its own kind), or a combination (Art. 27.3.b). The limits to a *sui generis* system and the meaning of an 'effective' *sui generis* system are not explicitly defined in the text. In other words, countries have to introduce some sort of plant breeders' rights.

The Union for the Protection of New Varieties of Plants (UPOV) has held that the most effective way to comply with the provision concerning an effective *sui generis* system is to follow the model of the UPOV Convention. There are several versions of the UPOV model. The most recent one (the 1991 Act of the UPOV Convention) provides that plant breeders are to be granted comprehensive rights – to the detriment of farmers' customary rights to save, re-use, exchange and sell seeds. It is still possible to make exceptions for small-scale farmers to enable them to save and re-use seeds, but only within strict limits. Exchange and sale of seeds among farmers are totally prohibited. However, all this applies to seeds protected with plant breeders' rights, and not to traditional varieties.

The UPOV model has met with resistance from some countries and many organizations that fear that joining UPOV would be detrimental to the rights of farmers to save and share propagating

material. The TRIPS Agreement provides only minimum standards, leaving enough scope for the development of other solutions more compatible with the demand for Farmers' Rights. The challenge in the context of the Plant Treaty is thus for WTO member countries to meet their TRIPS obligations regarding plant breeders' rights, while at the same time creating the necessary legal space for the realization of Farmers' Rights to propagating material. The question becomes what room to manoeuvre is left to countries within the framework of their international obligations, to grant farmers the right to save, use, exchange and sell seeds.

An additional constraint to Farmers' Rights in many countries is the introduction of seed laws requiring that varieties are officially approved for release and that seed and propagating material are certified, as conditions for bringing them out on the market, and in some cases (particularly in the North) even as a condition for exchange among farmers. The reason was originally to ensure plant health and seed quality. However, in many countries regulations have gone so far that they hinder the maintenance of crop genetic resources in the fields, in two ways:

- As traditional varieties are normally not genetically homogeneous enough to meet the requirements for approval and certification, these varieties are excluded from the market and will, sooner or later, disappear from active use, when those farmers who use them today give up.
- The seed laws may also stipulate that only authorized seed shops are allowed to sell seeds, whereas all other exchange is prohibited (sometimes with exceptions for horticultural plants or certain other species), as in most of Europe. This ends the 10,000-year-old tradition of seed exchange that made possible the development of our diversity today.

Combined, the two measures constitute serious obstacles to the implementation of the Plant Treaty in terms of *in situ* on-farm conservation and sustainable use, and also to Farmers' Rights. It is a paradox that rules originally intended to protect plant health in fact contribute to removing the basis for ensuring plant health in future, namely the diversity of genetic resources.

Seed laws together with strict plant breeders' rights represent a serious obstacle to Farmers' Rights to save, use, exchange and sell seeds. What possibilities are there to make such laws more compatible with these customary rights of farmers – which are so crucial to the maintenance of agro-biodiversity for food security, today and in the future? The European Union has tried to solve the problem with a specific directive on conservation varieties. However, the new EU-directive on conservation varieties is not adequate to solve these new hurdles to the implementation of the Plant Treaty. This is because (1) seed exchange and sale is still prohibited among farmers under the new directive; (2) only varieties deemed interesting for conservation and sustainable use by certain authorities can be covered by the system, which is limiting diversity; (3) the variety release and certification criteria are still too strict, (4) the marketing and use of the varieties are limited to the regions of origin; (5) only limited quanta can be used; and (6) the conservation varieties cannot be further developed by farmers. These provisions do not encourage the conservation and sustainable use of crop genetic diversity, and pose serious barriers to the implementation of Articles 5, 6 and 9 of the Plant Treaty.

An ultimate objective from the perspective of Farmers' Rights would be to grant the rights to save, use, exchange and sell farm-saved seed, whether from varieties protected with intellectual property rights or not. Other solutions would be needed in terms of compensation to plant breeders for their efforts and to solve the issue of plant health concerns. In real life, however, the challenge is to uphold or re-establish sufficient legal space for farmers to continue their crucial role as custodians and innovators of crop genetic diversity within existing legislation.

India stands out as the country with the most extensive legislation on this topic in the world. In most other countries with legislation on plant variety protection, Farmers' Rights are more limited, often circumscribed by acts of legislation, such as plant variety protection acts and regulations concerning seeds and seed certification. In such cases, a positive achievement can involve making a regulation less stringent or avoiding the adoption of a stricter regulation. In countries where regulations are very strict and there seems little scope for achieving legal changes, the challenges are comprehensive. In several such countries, the farmers themselves have found certain ways and means to circumvent the law in order to maintain their customary practices

Generally, legislation on intellectual property rights, variety release and seed certification are most restrictive in the North, and least so in Africa, while countries in Asia and Latin America can be placed somewhere in the middle. In the European Union, for example, farmers are not allowed to use farm-saved seed from protected varieties on their own holdings, or they must pay a license fee to do so. As for non-protected varieties, they are not allowed to exchange seed or even to give it away. These are central hurdles to Farmers' Rights and to the implementation of the Plant Treaty in terms of on-farm conservation and sustainable use.

We have gathered several interesting stories on how legal space for farmers' rights in this regard can be established and maintained to allow farmers to maintain their traditional practices and innovation in agriculture: India's Protection of Plant Varieties and Farmers' Rights Act, as mentioned above; Norway's 'no' to stricter plant breeders' rights in order to maintain the balance with Farmers' Rights; and the ways farmers are circumventing the law in the Basque Country in Spain. Nevertheless, establishing and maintaining legal space for Farmers' Right to save, use, exchange and sell farm-saved seed constitute the largest barrier to implementation of the Plant Treaty today, in terms of the conservation and sustainable use of crop genetic diversity, and of the realization of Farmers' Rights. Solutions are urgently needed.

### **3. THE PROCESS OF REALIZING FARMERS' RIGHTS: APPROACHES**

How can Farmers' Rights be implemented at the national level according to the provisions in Plant Treaty? How can an implementation process be designed that enables countries to take the measures they deem necessary, according to their needs and priorities? In some countries, steps have been taken to address various elements of Farmers' Rights, but only in very few countries (among them the Philippines, Peru and Norway) have processes begun to implement Farmers' Rights in a more systemic way. There is thus only limited experience to draw on. Nevertheless, it is important to seek to identify the possible avenues to a more systemic approach to realizing Farmers' Rights according to the countries' own needs and priorities. Based on previous research, the Farmers' Rights Project has developed a framework for such an implementation process, with different avenues to cover different needs and priorities in the various countries, and with advantages and disadvantages for each avenue outlined. This framework is presented at <http://www.farmersrights.org/realization/index.html>. In this paper, the first three steps will be highlighted briefly.

#### *3.1 Creating and enhancing awareness on the importance of Farmers' Rights*

The awareness of Farmers' Rights and their importance for food security and poverty eradication is marginal in most countries. Thus, a point of departure for the implementation process is creating or enhancing awareness on the importance of these rights, on their contents and background. Seminars and workshops are useful instruments in this regard and important topics to cover in such a context could be:

- What do Farmers' Rights mean in our country?
- Why are Farmers' Rights important in our country?
- What Farmers' Rights are important to protect and promote in our country?
- What can the different institutions and sectors do to protect and promote Farmers' Rights?
- How can they join forces and pool resources towards the realization of Farmers' Rights?

There are however, various avenues to a seminar/workshop approach, based on target groups:

Institution-based approach: Seminars and workshop in central organizations, such as farmers' organizations, parliamentary committees vested with agriculture, relevant departments/units and/or agencies in the ministry of agriculture, institutions involved in extension services to farmers, relevant research institutions, NGOs engaged in crop genetic resources and Farmers' Rights, and central seed corporations and/or plant breeding institutions.

Sector-based approach: Seminars and workshops for representatives from relevant organizations and institutions within each of the central sectors pertaining to Farmers' Rights, such as farmers' organizations (together); food and agriculture authorities (parliamentary committees, ministries and related agencies vested with the management of crop genetic resources, including intellectual property rights); NGOs; research institutions and extension services involved agriculture and crop genetic resources; the seed industry

Cross-sectoral approach: Seminars and workshop for representatives from the central organizations and institutions in each of the sectors pertaining to Farmers' Rights, such as farmers' organizations, associations, groups and/or networks; parliamentary committees vested with agriculture and intellectual property rights; central relevant departments/units of relevant ministries in the country; the focal point for the International Treaty on Plant Genetic Resources for Food and Agriculture; institutions involved in intellectual property rights (plant breeders' rights and patents), variety release and seed certification; research and capacity building institutions, including extension services, gene banks, relevant research institutions, relevant capacity building institutions, training centres, etc. relevant NGOs (including also consumer groups), other peoples' organizations, seed industry and its associations.

There are advantages and disadvantages of the different approaches, which are highlighted at the website (<http://www.farmersrights.org/realization/awareness.html>), where guidance in this regard can also be found. In addition, the role of the media is important:

Creating awareness through the media: Creating awareness through the media is a means to reach out to broader target groups, such as farmers (with access to TV, radio or newspapers/magazines), consumers, various interest groups and stakeholders, and the public at large. To make media interested in Farmers' Rights can, however, be a challenge. Often it is useful to watch out for entry points in the hot topics of the current debates, such as the food crisis, climate change or for example new acts of legislation that are up for decision in the parliament, and to use these entry points to show the crucial relevance of Farmers' Rights. There are many possibilities of creating awareness through the media, as pinpointed at the website ([http://www.farmersrights.org/realization/awareness\\_4.html](http://www.farmersrights.org/realization/awareness_4.html)).

### *3.2 Ensuring farmers' participation in the implementation process*

Ensuring farmers' participation in the implementation process is crucial for at least three reasons, as also indicated in Section 2.3. First, farmers' participation in decision processes pertaining to crop genetic diversity is among the rights set out in the International Treaty on Farmers' Rights (Paragraph 9.2.c). Secondly, farmers are those who are best informed about the situation of farmers, and thus what measures are needed to realize Farmers' Rights. Third, participation is a means to ensuring the legitimacy of the implementation process. However, participation is not always easy to ensure. There are many questions which can be difficult to answer. In the list below central questions are highlighted:

- Who are the farmers who should be included in the processes? Should all farmers be included at an equal basis, or only small-holder farmers, or perhaps only farmers who actively participate in the conservation and sustainable use of crop genetic diversity?
- How can their representatives be identified? What are the legitimate processes for such identification of representatives and what are not legitimate processes?
- Who should actually identify such representatives? Ideally it should be done by farmers, but this is not always the case. Are there any other legitimate processes?
- How can farmers' participation in the implementation process be ensured? Here capacity building is the key word.

It would lead to far in this paper to address all these questions. Interested readers are referred to the website at: <http://www.farmersrights.org/realization/participation.html>

### *3.3 Developing a national consultative process and pooling resources*

Whereas the first two steps are concerned with the foundation for the implementation process, this third step describes how a broad-based national consultative process can be designed for the implementation of Farmers' Rights.

A broad based consultative process should ensure participation from all central stakeholder groups, as highlighted above, from all regions of the country, from different ethnic groups (if relevant), from men and women. Depending on the size of the country and resources available, it may start out with workshops in various regions of the country (for example in federal states, if relevant), the results of which could feed in to national level workshops. In such a case, representatives from the different regions could be invited to the national level workshops to present and represent the results from their regions.

The first national level workshop would be aimed at outlining the contents and structures of a framework of implementation of Farmers' Rights. A second national level workshop could be structured to detail these recommendations and develop strategies to safeguard their implementation. Further workshops could be conducted to monitor progress in the implementation and provide recommendations as to required steps.

Possible contents of a first workshop on the design of a national framework for implementation of Farmers' Rights include an introduction to the contents and relevance of Farmers' Rights; identification of core issues and challenges; identification of potentials for the realization of Farmers' Rights – inspired by examples of best practices; and on this basis outlining policies and programmes for the implementation of Farmers' Rights. Also the potentials of joining forces among the stakeholders and pooling resources should be addressed. A key challenge is to design such workshops as true dialogues between the stakeholders, as discussions regarding Farmers'

Rights have previously been beset with controversies and brought little progress. A workshop module is under development for this purpose. The key contents of that module can be found at: [http://www.farmersrights.org/realization/consultation\\_4.html](http://www.farmersrights.org/realization/consultation_4.html).

#### 4. EXISTING GAPS AND NEEDS

The informal consultations and discussions during the past years, and the research carried out on Farmers' Rights have contributed to shaping elements of a common ground for the understanding of Farmers' Rights. There is a general understanding that farmers need legal space to continue to perform their role as custodians of crop genetic diversity. However, opinions differ as to what this legal space should cover. There are also areas of common understanding related to the other elements of Farmers' Rights, particularly the need for recognition and reward to farmers for their contribution to the global genetic pool and the right to participate in decision making. The research of the Farmers' Rights Project has also shown that efforts are already underway in many countries with regard to all the elements addressed in Article 9 of the Plant Treaty. These are often small scale local initiatives, but many of them provide models which are promising also with a view to scaling up. All of this point in a positive direction with regard to the realization of Farmers' Rights.

Nevertheless, there are substantial hurdles against the realization of Farmers' Rights in many countries. Overcoming these hurdles require the development of common norms among the Contracting Parties as to how they can be solved. The following is a list of existing gaps and needs, which would need to be addressed by the Governing Body to approach the hurdles to the realization of Farmers' Rights:

1. Variety release and seed certification regulations pose serious hurdles to Farmers' Rights to exchange and sell farm-saved seed, and to the marketing of land races as well as many farmers' varieties. This constitutes a serious hurdle to on-farm conservation and sustainable use of crop genetic diversity. To overcome this hurdle, shared norms should be developed on how seed laws can be designed so as to ensure adequate legal space for farmers in this regard.
2. Intellectual property rights constitute hurdles to the realization of Farmers' Rights to various degrees. In some countries, the balance between farmers' and breeders' rights is seen as acceptable, as in India and Norway. In other countries, plant breeders' rights and patents constitute greater hurdles, as they prohibit customary uses of seed. It is necessary to discuss what kind of legal space farmers should be ensured with regard to plant breeders' rights and patents, with a view to developing shared norms.
3. Fear of misappropriation of farmers' varieties and associated traditional knowledge has led to protectionism with regard to seeds and knowledge among farmers in several countries. This development is detrimental to the sharing of seed and knowledge among farmers, as well as to *ex situ* conservation measures. It is necessary to find ways and means to ensure that farmers do not need to fear misappropriation. One challenge is to identify efficient measures to establish *prior art* for land races and farmers' varieties, in order to ensure that these cannot be made subject to intellectual property rights. Another challenge is to include provisions in laws on intellectual property rights to ensure that no misappropriation takes place. Norms and rules in this regard need consideration.
4. There is great uncertainty in many countries as to what genetic resources are actually covered by the Multilateral System. The Multilateral System covers genetic resources of the crops listed in Annex 1, which are in the public domain and under the control of the Contracting

Parties. The general perception is that this accrues to the material stored in public gene banks and collections. What, then, about farmers' varieties and land races of the Annex 1 crops which are grown in the fields? The general impression is that they are not under the control of the Parties and thus not subject to the Multilateral System. As a consequence, some stakeholders hold that they are internationally regulated by the Convention of Biological Diversity, and that national laws in this regard would apply. Then transactions between providers and users would be bilateral, upon prior informed consent and benefit sharing on mutually agreed terms. Dependent on how such laws are designed, there could be negative side effects with regard to the prospects of sharing crop genetic resources among farmers. Furthermore, new hurdles could emanate with regard to the collection of genetic resources for gene banks and other *ex situ* facilities, since the SMTA has no provisions on prior informed consent, and other ways of dealing with benefit sharing. It is necessary to seek a joint understanding of what is covered in the Multilateral System, and how to deal with the material that is not covered.

5. There are many good examples of the realization of Farmers' Rights, and many of these have the potentials to be scaled up to a national level, for example through extension service systems. As to date, however, there are no examples of such up-scaling. More consideration is required as to how such up-scaling can be facilitated.
6. Participation in decision making is an issue with many facets. A general picture is that in countries where farmers are granted some sort of participation, farmers engaged in the conservation and sustainable use of crop genetic diversity are often not represented. Ways and means to identify such farmers and to involve them in decision making are needed.

## 5. RECOMMENDATIONS FOR THE GOVERNING BODY

The realization of Farmers' Rights is a precondition for the implementation of the Plant Treaty due to the crucial role that farmers have in conserving, sustainably using and making available crop genetic resources. Thus, the Governing Body should give priority to promoting the realization of Farmers' Rights.

Although Article 9 leaves the responsibility of the implementation of Farmers' Rights to the Contracting Parties, this does not mean that the Governing Body has no role to play. Article 21 sets out that the Governing Body shall promote compliance with all provisions of the Treaty. Procedures and mechanisms towards this end shall include monitoring, and offering advice or assistance, including legal advice or legal assistance, when needed. Article 19.3 sets out that the Governing Body shall promote the full implementation of the Treaty, with a variety of measures, including plans and programmes. The preamble highlights the need to promote the implementation of Farmers' Rights at the national as well as international levels.

In light of the analysis of this paper, the following recommendations appear particularly important:

1. The Governing Body should establish an *ad hoc* working group to propose voluntary guidelines for the implementation of Article 9 (and related provisions of the Plant Treaty) to the Governing Body, taking the gaps and needs highlighted above into consideration.
2. The Governing Body should encourage the Contracting Parties to develop national plans for the implementation of Farmers' Rights.

3. The Governing Body should encourage the Contracting Parties to submit reports on the implementation of Farmers' Rights at a regular basis.
4. The Governing Body should facilitate guidance and assistance to Contracting Parties seeking such guidance and assistance with regard to the implementation of Farmers' Rights.
5. The Governing Body should encourage documentation of, and research on, the implementation of Farmers' Rights at the national level in developing as well as developed countries to facilitate the sharing of experiences.
6. The Governing Body should strengthen its efforts to attract funding required for the implementation of Farmers' Rights. Particularly measures to strengthen the Funding Strategy and to mobilise development cooperation with references to articles 7 and 8 of the Treaty should be considered in this regard.

**ANNEX:****SUMMARIES OF PUBLICATIONS FROM THE FARMERS' RIGHTS PROJECT**

The attachment contains summaries of all publication from the Farmers' Rights Project. The publications can be downloaded for free from the project website [www.farmersrights.org](http://www.farmersrights.org).

*The History of Farmers' Rights, a Guide to Central Documents and Literature*

*Regine Andersen (2005): The Farmers' Rights Project – Background Study 1: The History of Farmers' Rights: A Guide to Central Documents and Literature, FNI-Report 8/2005 (Lysaker, Norway: The Fridtjof Nansen Institute)*

This document and literature survey provides an overview over the history of negotiations pertaining to Farmers' Rights; the state of knowledge with regard to the concept of Farmers' Rights as of 2005; and lessons from initial efforts at realizing Farmers' Rights. The report is designed as a guide for negotiators, practitioners and researchers wishing to understand the concept and the potentials of Farmers' Rights. The documents surveyed represent the fruits of long and complex negotiations, and provide an important context for the realization of Farmers' Rights. How to reward farmers for their past, present and future contributions to conserving, improving and making available crop genetic resources for food and agriculture has been a central topic in the negotiations. An international fund for supporting and assisting farmers in this has long been on the agenda. Discussions have also focused on how Farmers' Rights can balance breeders' rights, so as to ensure an equitable system that can facilitate farmers' continued access to – and free use of – crop genetic resources. The substantial and increasing body of literature on Farmers' Rights provides a valuable source of insights in the potentials for, and possible difficulties in, realizing Farmers' Rights. Although authors differ in their points of departure, emphases and perspectives, their contributions are largely compatible. The literature provides important points of departure for understanding the subject matter of farmers' rights, types of rights, rights holders, and appropriate measures for protecting and promoting these rights. It also draws lessons from initial efforts at realizing these rights, and warns against certain tendencies which might prove counterproductive.

The report was produced with support from the Ministry of Foreign Affairs, and the Ministry of Food and Agriculture, Norway.

The report can be downloaded here: <http://www.fni.no/doc&pdf/FNI-R0805.pdf>

*International Stakeholder Survey on Farmers' Rights*

*Regine Andersen (2005): The Farmers' Rights Project – Background Study 2: Results from an International Stakeholder Survey on Farmers' Rights, FNI-report 9/2005 (Lysaker, Norway: The Fridtjof Nansen Institute)*

The international stakeholder survey on Farmers' Rights provides an overview over the state of implementation of Farmers' Rights under the International Treaty on Plant Genetic Resources for Food and Agriculture, and the options available, as seen from the view of stakeholders. It is based on 60 questionnaires from 31 countries from all parts of the world, covering a wide range of stakeholders. The survey shows that, despite the huge challenges ahead, efforts are already

underway with regard to all issues addressed in the context of Farmers' Rights in the International Treaty. These findings indicate an already existing scope for sharing experiences, and for deriving models for the implementation of Farmers' Rights under different country specific conditions. The survey highlights the most important barriers to the realization of Farmers' Rights, as perceived by the respondents, and pinpoints at the same time options to overcome them. One of the barriers is the diffuse understanding of the concept of Farmers' Rights. The survey compiles different interpretations and develops a common ground for the understanding and communication of Farmers' Rights. It further identifies institutions and experts working for the realization of these rights, and indicates the potentials for pooling resources towards this goal. The survey suggests a potential path for the Governing Body to promote the realization of Farmers' Rights while respecting the freedom of countries to choose ways and means according to their needs and priorities.

The report was produced with support from the Ministry of Foreign Affairs, and the Ministry of Food and Agriculture, Norway.

The report can be downloaded here: <http://www.fni.no/doc&pdf/FNI-R0905.pdf>

### *Report on Farmers' Rights in Peru*

*Manuel Ruiz Muller (2006): The Farmers' Rights Project – Background Study 3: Farmers' Rights in Peru – A Case Study. FNI Report 5/2006 (Lysaker, Norway: The Fridtjof Nansen Institute)*

This case study provides an overview of the state of Farmers' Rights in Peru and of the perceptions of central stakeholders in this regard. As a centre of origin and diversity of important food crops and a country where traditional farming practices coexist with modern and intensive farming, the study offers an analysis of the various and complex issues and problems which arise with regard to understanding and, especially, implementing these rights at the national level. Various perceptions and limited awareness about the implications of Farmers' Rights pose an additional challenge. However, Peru has made some progress, particularly in the area of public policies and laws oriented towards the protection of traditional knowledge and seeking to ensure the fair and equitable sharing of benefits derived from the use of genetic resources. Most concerns at present focus on the impacts that a seed certification system and new plant breeders' rights may have on traditional saving and use of seeds and propagating material by small scale farmers and native communities. Farmers' Rights appear to be an important tool for small scale farmers and native communities to ensure the legitimacy of the traditional practices of saving, reusing and exchanging seeds.

The report was produced in collaboration with the German GTZ, commissioned by the Federal Ministry for Economic Cooperation and Development.

The report can be downloaded here: <http://www.fni.no/doc&pdf/FNI-R0506.pdf>

### *Report on Farmers' Rights in India*

*Anitha Ramanna (2006): The Farmers' Rights Project – Background Study 4: Farmers' Rights in India – A Case Study. FNI Report 6/2006 (Lysaker, Norway: The Fridtjof Nansen Institute)*

India is among the first countries in the world to have passed legislation granting Farmers' Rights in the form of the Protection of Plant Varieties and Farmers' Rights Act, 2001. India's experience

is important due to its international contribution to negotiations on Farmers' Rights, its position as a centre of biodiversity, and the complexities of agriculture in India within which the country is attempting to implement these rights. This case study provides an overview of the state of Farmers' Rights, and opinions of over forty stakeholders in India including farmers, NGOs, industry and government representatives, on the prospects for the further realization of Farmers' Rights. India's law is unique in that it simultaneously aims to protect both breeders and farmers. The study analyses the achievements, barriers and limitations of India's approach. One of the findings is that the attempt to evolve a multiple rights system could pose several obstacles to the utilization and exchange of plant genetic resources among farmers. India has framed a unique legislation, but still faces the task of implementation, without any clear consensus among the various stakeholders on how to achieve these rights. This should serve as a signal internationally that establishing legislation is insufficient to effectively promote Farmers' Rights. An international mechanism is urgently required to promote some level of consensus on defining and implementing these vital rights. If the global community does not face up to the challenge of unambiguously articulating Farmers' Rights, what has been achieved so far in the battle to establish these rights may be lost. Such a loss would be heavy for farmers in India and other developing countries which need Farmers' Rights to protect their livelihoods, secure their access to resources, protect their rights to seeds, and, above all, lift them out of poverty.

The report was produced with support from the Ministry of Foreign Affairs, and the Ministry of Food and Agriculture, Norway.

The report can be downloaded here: <http://www.fni.no/doc&pdf/FNI-R0606.pdf>

### *Report on Farmers' Rights in Ethiopia*

*Regassa Feyissa (2006): The Farmers' Rights Project – Background Study 5: Farmers' Rights in Ethiopia – A Case Study. FNI Report 7/2006 (Lysaker, Norway: The Fridtjof Nansen Institute)*

Ethiopia is an agrarian country with 85% of its population deriving their livelihood from small scale agriculture. It is also one of the centres of diversity and origin of agricultural crop genetic resources to which farmers' role and activities are strongly linked. Farmers therefore, play an important role in the agricultural sector of the country, and their varieties serve as major sources of planting materials. The role of farmers and the importance of their varieties were for the first time officially recognized with the National Seed Industry Policy in 1992. Various policies that recognize farmers' and community rights have been formulated since then. This study highlights perceptions of different stakeholders, the achievements made, and existing barriers and opportunities regarding the implementation of farmers' rights in Ethiopia. It also proposes possible measures to be taken at the global level. The study reveals that development of various legislative measures to implement the formulated policies is lagging, and the level of awareness among various stakeholders regarding the issues of farmers' or community rights is still found to be rather low. For these reasons, and because it involves diverse social, economic and cultural elements, the realization of farmer rights is a challenging task in the Ethiopian context. To overcome the challenges at the national level, concerted support from the international community through the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture is critically important. The international community should support efforts to minimize the serious problems of erosion of plant genetic resources for food and agriculture which takes place in almost all countries. This requires clear commitments by states and intergovernmental actors to protect and support farm communities in order to ensure present and future food security.

The report was produced in collaboration with the German GTZ, commissioned by the Federal Ministry for Economic Cooperation and Development.

This report can be downloaded here: <http://www.fni.no/doc&pdf/FNI-R0706.pdf>

### *Results from the first phase of the Farmers' Rights Project as of 2006*

*Regine Andersen (2006): Realising Farmers' Rights under the International Treaty on Plant Genetic Resources for Food and Agriculture, Summary of Findings from the Farmers' Rights Project (Phase 1). FNI Report 11/2006 (Lysaker, Norway: The Fridtjof Nansen Institute).*

The summary of the findings from Phase 1 of the Farmers' Rights project is designed as a guide to delegations and stakeholders concerned with Farmers' Rights. It presents the components of the Farmers' Rights Project and identifies two approaches to the understanding of Farmers' Rights in the current debate: the ownership approach and the stewardship approach. There is a latent conflict between these two, and the report argues that the stewardship approach must prevail if Farmers' Rights are to be realized within the framework of the ITPGRFA. A working definition is presented and reasons why these rights are so important are highlighted. Most importantly, the realization of Farmers' Rights is a precondition for the maintenance of agrobiodiversity and a central means in the fight against poverty in the world. The report summarizes the state of realization of Farmers' Rights and shows that achievements are already being made with regard to all measures addressed in the ITPGRFA. It pinpoints the central barriers to further progress in this area and indicates what steps are required to overcome these barriers and to implement the ITPGRFA with regard to Farmers' Rights. Finally, the report recommends measures to be taken by the Governing Body of the ITPGRFA, and highlights issues of importance for further discussion.

Measures proposed for the Governing Body include:

- regular sharing of experiences from the implementation of Farmers' Rights among parties
- encouraging parties to develop national plans for the realization of Farmers' Rights
- develop minimum standards for Farmers' Rights from national and regional experiences to a level of international harmonization
- highlight positive examples of Farmers' Rights realization as models
- provide institutional and legislative assistance to the parties on Farmers' Rights
- and ensure the participation of farmers in the sessions of the Governing Body

Issues of importance for further discussion of the Governing Body include:

- Guiding principles for the realization of Farmers Rights: what would be the contents?
- Creating legal space for Farmers' Rights: How can farmers' rights to save, use, share and sell seeds be safeguarded and/or improved within existing legislative frameworks?
- Supporting Farmers' Rights: How can the parties ensure that farmers engaged in the maintenance of agrobiodiversity are supported and rewarded for their vital contribution to the global genetic pool?
- International co-operation: How can parties support each other in the realization of Farmers' Rights, particularly through development cooperation?

The summary was produced with the support of the Ministry of Foreign Affairs, and the Ministry of Agriculture and Food, Norway.

This document can be downloaded here: <http://www.fni.no/doc&pdf/FNI-R1106.pdf>

### *Flyer on Farmers' Rights and Agrobiodiversity*

*Regine Andersen (2006): Farmers' Rights and Agrobiodiversity. Issue Papers: People Food and Biodiversity. (Eschborn, Germany: GTZ)*

This is an information flyer on Farmers' Rights in the context of Agrobiodiversity and the Plant Treaty. It provides an overview of the contents of Farmers' Rights and their implementation in practice. It ends with recommendations as to how development agencies and organizations can support the implementation of Farmers' Rights. These include supporting on-farm conservation of agrobiodiversity, local seed banks, participatory plant breeding, marketing of products from genetically diverse systems of cultivation, and capacity building. Farmers' Rights may be included in the dialogues with partners, with a particular emphasis on legal space for Farmers' Rights and farmers' participation in decision-making. Finally, development agencies can support the participation of representatives from developing countries' smallholder organizations in meetings of relevant international institutions, such as the Governing Body of the Plant Treaty.

The flyer was produced in collaboration with the German GTZ, commissioned by the Federal Ministry for Economic Cooperation and Development.

This flyer can be downloaded in English; [http://www.fni.no/doc&pdf/Bauernrechte\\_en\\_online.pdf](http://www.fni.no/doc&pdf/Bauernrechte_en_online.pdf), German; [http://www.fni.no/doc&pdf/Bauernrechte\\_dt\\_online.pdf](http://www.fni.no/doc&pdf/Bauernrechte_dt_online.pdf), Spanish; [http://www.fni.no/doc&pdf/Bauernrechte\\_sp\\_online.pdf](http://www.fni.no/doc&pdf/Bauernrechte_sp_online.pdf), and French; [http://www.fni.no/doc&pdf/Bauernrechte\\_fr\\_online.pdf](http://www.fni.no/doc&pdf/Bauernrechte_fr_online.pdf)

### *Report from the international consultations on Farmers' Rights in Lusaka, 2007*

*Regine Andersen and Gunnvor Berge, (2007): Informal International Consultation on Farmers' Rights, 18–20 September 2007, Lusaka, Zambia Report M-0737 E (Oslo, Norway: Norwegian Ministry of Agriculture and Food).*

The informal international consultation in Lusaka gathered 27 participants from 20 countries and most regions of the world. They all participated in their personal capacities, coming from various backgrounds, including ministries of agriculture, gene banks, research institutions, farmers' organizations and nongovernmental organizations. The consultation consisted of six sessions, each starting with brief introductions by some of the participants, with the main emphasis on the discussions. One aim of the consultation was to identify key issues of importance for the implementation of Farmers' Rights and to facilitate a process towards the realization of Farmer' Rights by the national governments, while acknowledging Farmers' Rights as vital for food security and the future of our agricultural plant genetic heritage. On the basis of the discussions and by taking account of comments from the participants, Norway and Zambia prepared an input paper to be submitted to the Governing Body for consideration at its Second Session.

The report starts out with a summary of results from the consultation. Then it summarizes the introductions and discussions, and provides an insight into the shared understandings, experiences and ideas on how to protect and promote Farmers' Rights.

The main suggestions from the Lusaka Consultation for the Governing Body are the following:

- Contracting parties as well as the Governing Body should give priority to the realization of Farmers' Rights at the national and international levels

- The participation of farmers in the discussions and work of the Treaty should be facilitated through various suggested measures
- The Governing Body may encourage the Contracting Parties to submit reports on the realization of Farmers' Rights at a regular basis.
- The Governing Body should guide and assist Contracting Parties in their implementation of Article 9
- The Governing Body could develop guidelines for this purpose, taking other relevant provisions of the Plant Treaty into account, through an *ad hoc* working group.
- The Governing Body should address the immediate importance of mobilizing funds within its funding strategy to facilitate implementation of the Treaty, with particular emphasis on the realization of Farmers' Rights.

Details on these suggestions are provided in the report. The last part of the report is a collection of the papers presented at the consultation. The programme of the Lusaka Consultation and the list of participants can be found in the annex.

The report was produced in collaboration between the Ministry of Agriculture and Food and the Fridtjof Nansen Institute, Norway, and the Zambia Agricultural Research Institute of the Ministry of Agriculture, Food and Fisheries, Zambia.

This report can be downloaded here:

[http://www.fni.no/doc&pdf/farmers\\_rights\\_lusaka\\_consultation\\_final\\_report.pdf](http://www.fni.no/doc&pdf/farmers_rights_lusaka_consultation_final_report.pdf) and summaries are available in Spanish:

[http://www.fni.no/doc&pdf/farmers\\_rights\\_lusaka\\_consultation\\_spanish\\_summary.pdf](http://www.fni.no/doc&pdf/farmers_rights_lusaka_consultation_spanish_summary.pdf) and French:

[http://www.fni.no/doc&pdf/farmers\\_rights\\_lusaka\\_consultation\\_french\\_summary.pdf](http://www.fni.no/doc&pdf/farmers_rights_lusaka_consultation_french_summary.pdf)

### *Protecting Farmers' Rights in the Global IPR Regime: Challenges and Options*

*Andersen, Regine (2007): Protecting Farmers' Rights in the Global IPR Regime: Challenges and Options, Trade Insight, Vol 3, No 2, pp. 30–32.*

This policy brief gives a short introduction to the concept of Farmers' Rights and its importance for agrobiodiversity, food security and poverty reduction. It then goes on to discuss the possibilities for protecting these rights under the existing global IPR regime. Central options that are discussed pertain to creating a legal space within legislative frameworks for farmers' stewardship and innovations in agriculture, and establishing funding mechanisms at the national and international levels in order to scale up activities supporting them in their vital contribution to the global genetic pool.

The policy brief was produced in collaboration between South Asia Watch on Trade, Economy and Environment (SAWTEE), Nepal, and the Fridtjof Nansen Institute, Norway.

The policy brief can be downloaded here:

[http://www.sawtee.org/pdf/Farmers%20Rights\\_IPR%20Regime\\_Regine.pdf](http://www.sawtee.org/pdf/Farmers%20Rights_IPR%20Regime_Regine.pdf)

*Book on global management of agrobiodiversity, including Farmers' Rights*

*Andersen, Regine (2008): Governing Agrobiodiversity: Plant Genetics and Developing Countries (Aldershot, UK: Ashgate), 420 pages*

The point of departure for this book is how domesticated plant varieties are disappearing at an alarming rate. This loss of biodiversity has negative consequences for food security, traditional small-scale farming, and poverty alleviation. Meanwhile, interest in the commercial use of genetic resources has increased through the development of biotechnologies, and industry is demanding intellectual property rights. This has triggered and affected the formation of various international regimes from different angles and with different objectives. The book analyses the interaction between these international agreements related to plant genetic resources in agriculture. It especially looks into how their interaction affects developing countries.

A key conclusion in the book is that the interaction between the various regimes has had largely negative effects for the management of these vital resources for food security in developing countries – despite other intentions behind the individual agreements. The result is an emerging situation where multiple actors have the possibilities to exclude each other from the use of plant genetic resources for food and agriculture. The International Treaty on Plant Genetic Resources for Food and Agriculture that entered into force in 2004 has potentials to change this development, but its success depends on the political will of its Contracting Parties. The book shows how the core challenges related to the conservation and sustainable use of crop genetic resources boil down to the implementation of Farmers' Rights. This is a precondition for the further maintenance of these vital resources *in situ* on-farm.

The book was produced with support from the Research Council of Norway, and the Fridtjof Nansen Institute.

More information can be found and orders submitted here:

[http://www.ashgate.com/default.aspx?page=637&calcTitle=1&title\\_id=8810&edition\\_id=9437](http://www.ashgate.com/default.aspx?page=637&calcTitle=1&title_id=8810&edition_id=9437)

*Report on Success Stories from the Realization of Farmers' Rights*

*Reference: Regine Andersen and Tone Winge (2008): Success Stories from the Realization of Farmers' Rights Related to Plant Genetic Resources for Food and Agriculture. FNI Report 4/2008 (Lysaker, Norway: The Fridtjof Nansen Institute)*

This is a collection of 17 inspiring stories from 11 countries illustrating the achievements already made in implementing all of the measures suggested in the International Treaty. The report also has an introductory part defining success stories in the context of Farmers' Rights, which is a contribution to understanding the contents of these rights, based on the research at the FNI. There are many examples of projects, legislation and policies which contribute to the realization of Farmers' Rights. The chosen examples are not necessarily perfect; the main criterion is that significant achievements have been made and that they can provide inspiration for others. The success stories are sorted into four categories of achievements: The realization of Farmers' Rights to save, use, exchange and sell farm-saved seed; protection of traditional knowledge related to agricultural biodiversity; participation in benefit sharing and in decision-making. Within each of these categories a handful of stories are offered:

- Success stories from the realization of Farmers' Rights to save, use, exchange and sell farm-saved seed include India's Protection of Plant Varieties and Farmers'

Rights Act, Norway's 'no' to stricter plant breeders' rights, and a story on how farmers in the Basque country in Spain circumvent the law in order to maintain agrobiodiversity. The stories show how it is possible to create and improve the legal space for farmers' customary rights related to seeds within existing or evolving legislative frameworks.

- Success stories on the protection of traditional knowledge include a community registry in the Philippines, a potato catalogue project in Peru, a capacity building project on traditional knowledge in Norway, and an *in situ* conservation project in Switzerland. The stories show how traditional knowledge can be protected by sharing, and some of them also show how this can be done while at the same time protecting the knowledge against misappropriation.
- Success stories on benefit-sharing measures include measures for developing incentive structures for agrobiodiversity from the ground in the Philippines, community seed fairs in Zimbabwe, community gene banking and on-farm conservation in India, dynamic conservation and participatory plant breeding in France, participatory plant breeding adding value to crops in Nepal, capacity building for seed potato selection in Kenya, the Potato Park in Peru, and the Plant Heritage Prize in Norway. The stories show various form of benefit sharing measures, including the shaping of conducive incentive structures, creating reward and support systems, and the recognition of farmers' contributions to the global genetic pool. Most importantly the stories show how such measures benefit farmers engaged in the maintenance and further development of crop genetic diversity.
- Success stories from farmers' participation in relevant decision-making include successful advocacy for Farmers' Rights in Nepal, and an assessment of Farmers' Rights in Malawi. The stories show the importance of capacity building as a basis for farmers' participation in relevant decision-making, and strategies that can be applied to achieve influence on decision-making.

The findings in this report suggest that NGOs and farmers organizations play an important role, and that networking can be very valuable. Last, but not least, this report notes the link between Farmers' Rights and development, and the importance of protecting these rights in order to ensure that what is left of agricultural biodiversity can be maintained, and to ensure the livelihoods of farmers throughout the world.

The report was produced in collaboration with the German GTZ, commissioned by the Federal Ministry for Economic Cooperation and Development; and the Development Fund, Norway.

The report can be downloaded here: <http://www.fni.no/doc&pdf/FNI-R0408.pdf>

### *Farmers' Rights in Peru: Farmers' Perspectives*

*Maria Scurrah, Regine Andersen and Tone Winge (2008): Farmers' Rights in Peru: Farmers' Perspectives. FNI Report 16/2008. (Lysaker, Norway: The Fridtjof Nansen Institute)*

The realization of Farmers' Rights is crucial to the maintenance of Peru's rich agro-biodiversity and for poverty alleviation. This report presents the perceptions and experiences of 180 farmers from various regions of the Peruvian Andes on issues related to Farmers' Rights as they are addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture. A

series of regional workshops were held in the Andes from March to May 2008 to map the views, experiences and suggestions of farmers on the realization of Farmers' Rights. Their views were presented at a national multi-stakeholder workshop in Lima in September 2008, where also central government institutions, NGOs, farmers' organizations, as well as gene bank officials and breeders were represented. In this report the results from these workshops are presented and analyzed as to how they can form the basis for future policies on Farmers' Rights in Peru. Central recommendations include documentation of traditional knowledge; the establishment of agro-biodiversity reserves; support to community gene banks, seed fairs and exchange visits; participatory research on traditional seed systems and participatory plant breeding; assistance in processing and marketing products made from traditional varieties; improved economic incentive structures for maintaining traditional crop varieties; and the establishment of pilot villages to bolster the conservation and exchange of genetic resources and traditional knowledge. Suggestions for activities to foster farmers' participation in decision-making are elaborated as well as institutional questions on how to coordinate the realization of Farmers' Rights.

The report was produced in collaboration with Instituto Nacional de Innovación Agraria, Ministry of Agriculture Peru; the German GTZ, commissioned by the Federal Ministry for Economic Cooperation and Development (BMZ); Grupo Yanapai, Peru; and Sociedad Peruana de Derecho Ambiental (SPDA).

This report can be downloaded here; <http://www.fni.no/doc&pdf/FNI-R1608.pdf>, and executive summaries are available in English; <http://www.farmersrights.org/pdf/ExecSumFinal.pdf> and Spanish; <http://www.farmersrights.org/pdf/ExecSumFinalSpanish.pdf>. In addition, the report has been translated into Spanish and this version can be found here: <http://www.farmersrights.org/pdf/FNI%203-2009spanish.pdf>

### *Farmers' Rights and implementation issues for South Asia*

*Regine Andersen and Tone Winge (2009): The Plant Treaty and Farmers' Rights: Implementation Issues for South Asia (Kathmandu: South Asia Watch on Trade, Economics & Environment, SAWTEE)*

This discussion paper has been published to stimulate the discussion on how the Plant Treaty and its provisions on Farmers' Rights can best be implemented in South Asia. The paper provides an introduction to the contents of the Plant Treaty with a particular view to Farmers' Rights. It highlights the challenges from other international agreements (the TRIPS, UPOV, CBD), the state of negotiations with regard to Farmers' Rights, and discusses the prospects for their further realization in South Asia. In this context, experiences from India are highlighted. Finally, the paper provides recommendations regarding the implementation of the Plant Treaty as such, the harmonization with other international instruments, and the implementation of Farmers' Rights in particular.

The paper has been commissioned by South Asia Watch on Trade, Economics & Environment (SAWTEE).

It will be posted here shortly: <http://www.farmersrights.org>

### *Farmers' Rights in Norway*

*Regine Andersen (forthcoming 2009): Farmers' Rights in Norway: A Case Study. FNI Report. (Lysaker, Norway: The Fridtjof Nansen Institute)*

Norway has played an important role in promoting Farmers' Rights at the international level. As an affluent country with a small and mainly collectively-owned plant breeding industry, the

country has good possibilities for implementing Farmers' Rights at home. In Norway as in most other countries, the diversity of crops, varieties and production methods has decreased rapidly in recent decades. This means there is an urgent need for conservation and sustainable management of plant genetic resources for food and agriculture in Norway. The role and framework conditions for farmers in this context are of crucial importance. Only few farmers are engaged in growing diversity in the country, as the vast majority use modern commercial varieties. Diversity farmers are found largely in organic agriculture, and particularly in biodynamic farming. The fact that there are so few of them left in Norway points up the particular need for recognition and support.

There are many signs of progress in terms of the realization of Farmers' Rights in Norway. For example, a bill on stricter plant breeders' rights was proposed, but was rejected by the government on the grounds that it would restrict Farmers' Rights to use and exchange farm-saved seeds and propagating material. The Norwegian Genetic Resource Centre has established several very promising instruments to disseminate information and traditional knowledge about older varieties of plants. The Centre also supports various initiatives among farmers on the conservation and sustainable use of plant genetic resources. NordGen, the former Nordic Gene Bank, is the most important provider of seed and propagating material of older varieties to diversity farmers in Norway. Also in terms of participation in decision-making, Norway has a good record, although diversity farmers have not really made use of these potentials yet. The project 'Cultivated Grain' (*kulturkorn*) provides a good illustration of how farmers contribute to the management of crop genetic diversity and of the realization of Farmers' Rights. It saves, maintains, develops and disseminates varieties of grain based on older land races and varieties, and provides information and capacity building. Through the project, traditional knowledge related to older varieties of grain has been widely disseminated, resulting in a new drive for the use of these varieties and their dissemination among farmers.

However, there are also barriers to the further realization of Farmers' Rights. The most important barrier is the seed regulation which prohibits seed exchange among farmers and specifies that only varieties that comply with certain requirements can be accepted for distribution. The varieties used by diversity farmers in Norway are often not in compliance with these requirements. As of May 2009, Norwegian authorities seek to amend the rules to make them compatible with the requirements for conservation and sustainable use of crop genetic diversity. Further barriers relate to the general lack of incentive structures and the severely limited funds for activities for the management of crop genetic resources.

The report is supported by the Ministries of Agriculture and Food, and Foreign Affairs, Norway; and the Norwegian Genetic Resource Centre.

The report will be posted here: <http://www.farmersrights.org/fr-project/products.html>

## **OTHER PRODUCTS FROM THE FARMERS' RIGHTS PROJECT**

*Website on Farmers' Rights:* [www.farmersrights.org](http://www.farmersrights.org)

This website has been developed as a tool for decision-makers, practitioners, and others involved in the realization of Farmers' Rights. It is also intended as an information source for researchers and other interested individuals. Here you will find information on the history, legal status and contents of Farmers' Rights, on the state of implementation of these rights, and a comprehensive database on legislation and policies. You will find concrete recommendations on how to go about implementing Farmers' Rights in your own country, including a workshop module for free use and success stories from all over the world. The prospects for implementing Farmers' Rights internationally are also discussed, and you will find overviews of literature and organizations related to Farmers' Rights, a calendar of coming events, and answers to 'frequently asked

questions' (FAQ). This is the official website of the Farmers' Rights Project of the Fridtjof Nansen Institute (FNI).

The website has been made possible with the support of the GTZ, commissioned by the Federal Ministry for Economic Cooperation and Development (BMZ). Responsible for the contents of [www.farmersrights.org](http://www.farmersrights.org) is FNI Senior Research Fellow and Director of the Farmers' Rights Project, Regine Andersen.

The Farmers' Rights website can be found here: <http://www.farmersrights.org/>

### *Workshop module on Farmers' Rights*

A workshop module on the implementation of Farmers' Rights is under development. It is aimed at bringing stakeholders together, broadening their understanding of the topic, framing a fruitful dialogue, identifying required measures, and providing inspiration for joint action. The workshop is planned for three days and is targeted at all relevant stakeholders. It is largely designed as an inter-active workshop seeking to enable participants to framing their own process of implementing Farmers' Rights. A first draft was successfully tested in the Philippines in November 2007. The final version will be published within the end of 2009.

The workshop module is developed in collaboration with German GTZ, commissioned by the Federal Ministry for Economic Cooperation and Development; and the Development Fund, Norway. The Philippine workshop was hosted by the Department of Agriculture, the Philippines. The final version of the workshop module will be posted here: [http://www.farmersrights.org/realization/workshop\\_module.html](http://www.farmersrights.org/realization/workshop_module.html)