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ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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**COMPILATION OF SUBMISSIONS BY CONTRACTING PARTIES
AND OTHER RELEVANT ORGANIZATIONS, AND THE REPORTS
OF REGIONAL WORKSHOPS ON THE IMPLEMENTATION OF
ARTICLE 9**

Note by the Secretary

1. This document compiles the views and experiences on the implementation of Farmers' Rights, as set up in Article 9 of the International Treaty, submitted by Contracting Parties and other relevant organizations, according to the request made by the Governing Body to the Secretary of the Treaty at its Fourth Session. The Secretary received all submissions contained in this document before 10 April 2013.
2. The submissions of three Contracting Parties and eleven international organizations have been inserted in this compilation, in the form and language in which they were received. Minor editorial changes include the full rendering of acronyms and the correction of spelling.
3. Some submissions received reflect the results of meetings held by Contracting Parties and stakeholders regarding the implementation of Farmers' Rights with policy-makers, farmers, researchers and Non-Governmental Organizations.

TABLE OF CONTENTS

	<i>Page.</i>
I. Introduction	3
II. Compilation of submissions by Contracting Parties	
2.1 Madagascar	4
2.2 Poland	7
2.3 Norway	13
III. Compilation of submissions by relevant organizations	
3.1 Asocuch	19
3.2 Berne Declaration	29
3.3 Biowatch	33
3.4 Development Fund (Norway)	41
3.5 European Seed Association	46
3.6 Fridjof Nansen Institute	47
3.7 Green Foundation	54
3.8 La Via Campesina	60
3.9 Let's Liberate Diversity- Coordination of the European Forum	63
3.10 Li-Bird	68
3.11 Practical Action	71

I. INTRODUCTION

1. At its Fourth Session, the Governing Body, through Resolution 6/2011, *Implementation of Article 9, Farmers' Rights*, recognized that the exchange of experiences and mutual assistance between Contracting Parties could significantly contribute to making progress in the implementation of Farmers' Rights under Article 9 of the International Treaty.

2. The Governing Body encouraged Contracting Parties and other relevant organizations to submit to the Secretariat of the International Treaty:

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

3. On 21 September 2011 the Treaty Secretariat posted a notification letter inviting Contracting Parties, international relevant organizations and National Focal Points to submit views, experiences and best practices on the implementation of Farmers' Rights. A reminder notification letter was posted on the Treaty website on 25 July 2012.

4. All the submissions of views, experiences and best practices on the implementation of Farmers' Rights received by the Secretariat before 10 April 2013 have been compiled and made available in this information document.¹

¹ All the submissions are available online at: <http://www.planttreaty.org/content/farmers-rights-submissions>

II. COMPILATION OF SUBMISSIONS BY CONTRACTING PARTIES

2.1 MADAGASCAR

Introduction

After the participation in the Global Consultations on Farmers' Rights held in Addis Ababa in 2010 and the Fourth Session of the Governing Body of the ITPGRFA, in March 2011 in Bali, Madagascar, through the Department of Environment within the Ministry of Agriculture which is the National Focal Point of the ITPGRFA, has organized 2 debriefing meetings and 1 open ended working Group Meeting, which have debated topics on Farmers' Rights.

First meeting, debriefing of the Global Consultation on Farmers' Rights (January 2011)

At this debriefing of the Global Consultation on Farmers' Rights, Farmers' Rights and the implementation of Article 9 of the ITPGRFA have been extensively debated and discussed for the first time in Madagascar.

Farmers' Rights in general and Farmers' Rights as set out in Article 9 of the ITPGRFA were perceived in different ways; however, the participants unanimously recognized that measures in accordance with the needs and priorities of farmers should be taken to protect and promote these rights.

Follow-up of this first meeting

At the end of this debriefing, participants requested to obtain more explanations and clarifications concerning the main components of ITPGRFA, including Farmers' Rights, the implementation of Article 9 and the main measures for the implementation of Farmers' Rights for the next brainstorming session on these related topics:

- The protection of traditional knowledge relevant to PGRFA;
- The right to equitably participate in the sharing of benefits arising from the use of PGRFA;
- The right to participate in decision-making at the national level, on matters related to the conservation and sustainable use of PGRFA;
- The right that farmers have to save, use, exchange and sell farm-saved seed/ propagating material, subject to national legislation.

Second meeting, debriefing of the GB4 (June 2011)

This second meeting held after GB4 was marked by the presence of the Madagascar Farmers' Coalition (Coalition Paysanne de Madagascar /CPM) which is member of the Organization of the Civil Society "Via Campesina" that has been represented by Mr David Richard Rabetrano, the Vice-President at the Fourth Session of the Treaty's Governing Body (GB4).

After the debriefing and the presentation of all Resolutions adopted at GB4, in particular the implementation of Art 9 by the CPM, it was decided that one day of reflection will be jointly organized by the Department of the Environment and the representative of the CPM.

During the discussion, participants raised first what is meant by farmers (peasants? small farmers in small scale? farmers? breeders?)

For the moment, the participants decided to define as farmers those who cultivate PGRFA. Especially since the former Ministry of Agriculture, Livestock and Fisheries was divided into three departments.

Farmers' Rights: Follow up/outputs

The majority of participants had never heard of Farmers' Rights. According to the responsible of Farmers' Association Department who attended the meeting and according to the needs of farmers expressed during the various meetings, she experienced, Farmers' needs are the merits: Insurance and monthly pecuniary support while in retirement, easy access to agricultural loan (Retirement Insurance Merit and Agricultural Loan / Mérite Assurance Retraite et Crédit Agricole/MARCA in French).

After discussion and debate, series of questions and answers and suggestions from participants, particularly with regard to access to plant genetic resources for food and agriculture, the fair and equitable sharing benefits as well as the Farmers' Rights, the stakeholder group has decided:

- to hold regular meeting, to exchange and to share information through a network of PGRFA;
- to include farmers to all meetings;
- A committee comprising of:
 - a representative of the Madagascar Farmers' Confederation, the CPM, the National Farmers House/Tranoben'ny Tantsaha Nasionaly/TTN;
 - the NFP/ITPGRFA, the National Gene Bank of PGRF staff, the National Research Center/ FOFIFA staff, the legal department and policy makers of the Ministry of Agriculture, the Farmers 'support Department of the Ministry of Agriculture (SAIEA).

The committee should be created to elaborate the terms of references (ToRs) of the next meeting, in order to define first who are the farmers and what are Farmers' Rights and to identify the outline as well as the different steps to be followed for the implementation of the Farmers' Rights in Madagascar. The proposals will then be presented in plenary meeting of stakeholder group. The committee will hold one meeting per month, the last Thursday of each month.

Working Group Meeting on the implementation of Farmers' Rights in Madagascar (March 2012)

1. Presentation of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA): objectives and scope, main components and obligations.
2. Reflection on the implementation of Farmers' Rights and the achievement of the main second meeting recommendations.

Highlights

- The meeting followed the second reflection in June 16 2011 in the FAO Office;
- The implementation of Farmers' Rights is one of the main obligations of the Contracting Parties;
- Madagascar has ratified the Treaty in March 2006. It is necessary, after 6 years of membership, to implement the process to fulfill this obligation (more than 75% of the Malagasy population are agricultural);

- There is no text addressing in particular the Farmers' Rights in Madagascar apart from the draft law on PGRFA which really needs to be finalized;
- The explanation of the NFP referred to the ToRs which have been elaborated through the Farmers' Rights in the Article 9 of the ITPGRFA stating that farmers are the custodians of crop diversity, and it is necessary to recognize and reward them for their contribution. The 4 following points have been mentioned with regard to the Farmers' Rights:
 - Protection of traditional knowledge (article 9.2.a)
 - Access and Benefits-sharing (paragraph 9.2.a)
 - Participation in decision-making (paragraph 9.2.c)
 - Rights of farmers to save, use, exchange and sell farm seeds (Article 9.3).

Follow-up

After a long discussion about how to realize effectively the Farmers' Rights, taking into account the provisions of Art 9 of the ITPGRFA and taking into account the achievements and experiences of the Ministry of Agriculture concerning the farmers and farmers' association supervision, the participants to the third meeting have decided as following:

- Farmers to be considered are those in the agriculture sector dealing with PGRFA;
- The 4 components mentioned above will be taken into account for the next steps;
- As the different steps to follow are not as clearly defined, the presence of lawyers, legal officers at all the meetings and reflections on the farmers was strongly recommended and required by all participants;
- Other stakeholder and other relevant entities will be involved in all future meetings and steps;
- An informal consultation will be held on April 03, 2012 for the Farmers' confederation member and other 5 Farmers' Associations;
- As the committee mentioned above was not created, the responsible of farmers support Department of the Ministry of Agriculture asked that the creation of the Committee is required to carry out and implement the activities concerning the Farmers' Rights.

Conclusions

- Concerning the informal consultation: Farmers agreed with the necessity of the consultation and requested that this issue regarding Farmers' Rights should be taken and re-examined through workshops with an expert assistance if possible and explanations so that they can formulate their needs and priorities;
- The committee has not been yet created;
- These actions need really financial support and capacity building. The Department of Environment, the NFP of the ITPGRFA, can't afford to realize or organize the required workshops, including the participations of the stakeholder groups, although the implementation and realization of Farmers' Rights rest with the national governments;
- Madagascar is among the LDC, as such needs support for the implementation of the Farmers' Rights and the Article 9 and for the finalization of the bill on the PGRFA which include some provisions on Farmers' Rights and a regulation (decree) on Farmers' Rights.

2.2 POLAND

Implementation of Farmers' Rights in Poland, described in Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture, results mainly from enforcing EU law and from national legislation.

Poland presently doesn't have any act of law concerning strictly genetic resources, and related to this issue - Farmers' Rights. Nevertheless, Farmers' Rights are being partially implemented in Poland through the other act, i.e. Seed Act, the Law on the Legal Protection of Plant Varieties and Community Programs, i.e. Agri - Environmental Plan.

Article 9.2.a: *What are the best measures to ensure that traditional knowledge can be shared without being misappropriated? How can formal science be used to protect and promote the sharing of traditional knowledge? How could other laws, such as cultural heritage laws and laws on the rights of indigenous peoples, be supportive in protecting traditional knowledge in relation to plant genetic resources?*

Traditional knowledge in Poland is protected, promoted and disseminated by diverse stakeholders:

1) Non-government organisation:

- Social Ecological Institute - <http://sie.org.pl/>
- Society "for Traditional Varieties and Breeds" - <http://www.ddoir.org.pl/site/>
- Society of Low Vistula Friends - <http://www.stareodmiany.pl/>
- Polish Chamber of Regional and Local Product - <http://www.produktyregionalne.pl/>

2) Government and government organisation:

Ministry of Agriculture and Rural Development – by participation in the EU food quality schemes - <http://www.minrol.gov.pl/pol/Jakosc-zywnosci/Produkty-regionalne-i-tradycyjne/Produkty-zarejestrowane-jako-Chronione-Nazwy-Pochodzenia-Chronione-Oznaczenia-Geograficzne-oraz-Gwarantowane-Tradycyjne-Specjalnosci>

1. Geographical indications and traditional specialities

Since accession to the EU in 2004 Poland participate in the following EU quality schemes: PDO (protected designation of origin), PGI (protected geographical indication) and TSG (traditional specialty guaranteed) promote and protect names of quality agricultural products and foodstuffs.

The following EU schemes encourage diverse agricultural production, protect product names from misuse and imitation and help consumers by giving them information concerning the specific character of the products:

PDO - covers agricultural products and foodstuffs which are produced, processed and prepared in a given geographical area using recognised know-how.

PGI - covers agricultural products and foodstuffs closely linked to the geographical area. At least one of the stages of production, processing or preparation takes place in the area.

TSG - highlights traditional character, either in the composition or means of production.

Until now have been registered 35 polish names: 9 PDO, 9 TSG, 17 PGI. DOOR database covers product names which are registered or have been applied for:
<http://ec.europa.eu/agriculture/quality/door/list.html;jsessionid=4B1CLDQX5f2sF1JxGLTvTLv0s4njsjkhQMqrcY2Gj2n2LPRbFSm!152874623>. For more information visit:
http://ec.europa.eu/agriculture/quality/index_en.htm

Moreover, a List of Traditional Products was created by virtue of the Act of 17 December 2004 on registration and protection of names and indications of agricultural products and foodstuffs and on traditional products. The List is a catalogue of traditional products and its main aim is to inform and to promote traditional products. It does not offer any protection or other privileges. It concerns only products as such, not producers. On the List may be inserted agricultural products or foodstuffs intended for human consumption as listed in the Annex I to the Treaty on the functioning of the European Union and in the annexes to the regulations of the Council No. 509/2006 and No. 510/2006 and spirit drinks as referred to in the regulation of the European Parliament and the Council No. 110/2008. Such products must have quality and characteristics, which result from using traditional methods of production and they have to be a part of cultural heritage of a region, in which they are produced. Moreover, they have to constitute an element of a local identity. Traditional methods of production are methods used for at least 25 years. For more information visit: <http://www.minrol.gov.pl/pol/Jakosc-zywnosci/Produkty-regionalne-i-tradycyjne/Listaproduktow-tradycyjnych/>

- Arboretum and Department of Physiography in Bolestraszyce – Cultural Institution of Podkarpackie Voivodeship.

Article 9.2.b: How can sufficient participation of farmers be ensured in making decisions on the distribution of funds from the benefit-sharing fund under the Treaty, and in receiving such funds? How to ensure financial resources to national benefit-sharing funds? How to balance incentive structures to adjust the current emphasis on industrial agriculture, and to meet the needs of diversity farming? How can promising local benefit-sharing projects be upscaled to the national level? How can substantially more funds be channelled into benefit-sharing?

Article 9.2 b of the International Treaty, referring to the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture, is implemented on the way of Seed Act of 26 June 2003 (O.J. of 2007 No. 41, item. 271, with amendments). This act has been amended with the aim of adjust national legislation to directive 2008/62/EC - COMMISSION DIRECTIVE 2008/62/EC of 20 June 2008 providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties.

This amendment makes farmers eligible to be maintainers of the varieties and to benefit from these activities.

The second formal legal basis is Agri-Environmental Plan as part of Rural Development Plan in years 2007 – 2013, which gives possibility for farmers to received financial support for cultivation of landraces and relict species of crop plants (described in attached annex 1).

Article 9.2.c: Who represents farmers, and which farmers are represented by formalized means of participation? How to ensure that farmers engaged in agricultural biodiversity participate effectively in decision-making processes, such as hearings, committees and media discussions? How can farmers be more adequately represented in the work of the Governing Body? What are the needs for awareness-raising and capacity-building as a basis for efficient participation?

Article 9.2 c of the International Treaty referring to the right to participation in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture is implemented by formal conveying to the farmer's organizations acts of law regarding agricultural sector, as a public consultations.

Article 9.3: How can the legal systems be developed to accommodate formal and informal seed systems? How to balance the need for legal space for farmers' practices with phyto-sanitary concerns in regulations on variety release and seed distribution? How to balance the need for farmers to continue conserving and sustainably using crop genetic resources with the needs of plant breeders for compensation and incentives to continue crop breeding? How does GM-contamination influence Farmer' Rights to save, use, exchange and sell farm-saved seed?

Article 9.3. of the International Treaty, referring to the rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, is implemented through The Law of June 26th, 2003 on the Legal Protection of Plant Varieties (P.O.J. No 137/2003, item 1300; with amendments P.O.J No 126/2006, item 877, 2011.186.1099).

Farmers' privilege (agricultural exemption)

This exemption gives the farmers the right to use saved seed without the consent of the owner (right holder) of the variety in question (Art. 23).

However, the farmer (with the exception of small farmers) have to pay the holder an equitable remuneration (Art. 23.1, 3).

If the parties cannot agree upon the level of the remuneration, such remuneration should be 50% of the amounts charged for the licensed protection of propagating material (Art. 23.5).

A holder of agricultural land of up to 10 ha (in case of potato varieties) and 25 ha for rest species listed below (small farmer) - may use the harvested material of variety protected by the exclusive right, being a plant variety mentioned above, as propagating material, *without the necessity to pay the remuneration to the breeder.*

Species covered (17): field bean, field pea, barley, maize, linseed, lucerne, narrow leaved lupin, yellow lupin, oat, durum wheat, wheat, triticale, oilseed rape, turnip rape, common vetch, rye, potato.

Proposals for ways and means through which these views, experiences and best practices can be exchange between and among Contracting Parties and relevant stakeholder groups

This issues are disseminated in Poland on the forum of scientific conferences and on the web-sites of appropriate stakeholders.

POLAND -Annex 1 (Summary of the agri-environmental Plan)

AGRI-ENVIRONMENTAL PLAN AS PART OF RURAL DEVELOPMENT PLAN IN YEARS 2007 – 2013

Main aims of Agri-Environmental Plan are preservation of the biodiversity in the agricultural systems, preservation of the cultural legacy and diversifying the agricultural production.

The purpose of the accomplishment of Agri-Environmental Plan is sustainable development of the rural areas and preservation of the biodiversity trough:

- Restoring advantages or keeping of valuable settlements used agriculturally and maintaining the biological diversity in the rural areas;
- Promotion of the sustainable farming practice;
- Proper usage of soil and protection of waters;
- Protection of endangered landraces of crop plants and local breeds of farm animals.

Agri-Environmental Plan consists of 9 packages and 41 variants:

Package 1. Sustainable farming.

Package 2. Organic farming.

Package 3. Extensive long-lasting grasslands.

Package 4. Protection of the endangered species of birds and natural settlements outside areas of Natura 2000.

Package 5. Protection of the endangered species of birds and natural settlements inside areas of Natura 2000.

Package 6 Conservation of endangered plant genetic resources in agriculture.

Package 7. Conservation of endangered animal genetic resources in agriculture.

Package 8. Water and soil protection.

Package 9. Buffer zones.

Agri-Environmental Plan came into effect according to regulation of The Minister of Agriculture And Rural Development, dated 28 February 2008, regarding detailed conditions and granting the financial assistance within "Agri-Environmental Plan" covered by Rural Development Plan for years 2007-2013 (O.J. 2008, Nr 34, item 200).

The regulation exactly defines, who and on what conditions can apply for payment.

It is possible to grant the farmer the financial assistance, when:

- Farmer is the owner of the farm or farmer rents or uses the farm on territory of the Republic of Poland. Farmer means the physical, legal person or the group such persons irrespective of the status of the group, whose farm is located on territory EU and who conduct

agricultural activity – as in direct payments. Agricultural activity means the production, breeding or the cultivation of agricultural products, involving harvest, milking, breeding of animals and keeping animals for economic purposes, or keeping the ground in the good agricultural culture in accordance with environmental protection;

- The total area of agricultural plots had by farmer comes to at least 1 ha, minimal area to the payment amounts to 0,1 ha. Date for applying in accordance with the one for direct payment was from 15 of March to 15 of May 2008. The programme started on 1 of March 2008. Beneficiaries are obliged to participate in the programme by 5 years;
- Preservation long-lasting grasslands and demand of not-used agriculturally elements of the landscape on the farm area is followed.

The aim of the 6 package of agri-environmental plan is conservation of endangered plant genetic resources in agriculture. In the frame of this package 4 variants are prepared. Two of them are dedicated for landraces and rare species of crop plants, 3rd variant is intended for vegetables, agricultural plants and species of weeds endangered by extinction, multiplied on gene bank order. 4th variant is designated for old orchards of fruits trees conservation.

Table 1. Description of variants in package No 6 Agri-Environmental Plan.

Package	Agri-environmental variants	Amount of the payment 2007-2013
6. Conservation of endangered plant genetic resources in agriculture	6.1. Trade production of local varieties of crop plants	570 PLN/ha
	6.2. Seed trade production of local varieties of crop plants	800 PLN/ha
	6.3. Seed production ordered through gene bank	4700 PLN/ha
	6.4. Traditional orchards	2100 PLN/ha

* exchange rate in 2007 y. 1 EU =3,9 PLN

Package 6

Package enables supporting farmers, who participate actively in the protection and improving local varieties, i.e. landraces or old varieties of crop plants, as well the species of crop plants currently in danger of extinction. According to Seed Act of 26 June 2003, a local variety shall mean a plant grouping within a species of crop plants, formed as a result of a long-term effect of the local natural and agricultural factors, but not as a result of breeding.

The package 6 (variants 6.1 and 6.2) refers also to the species, which have been included into the list on endangered cultivated species, according to the annex to the regulation of the minister of agriculture.

Variant 6.1. “Trade production of local varieties of crop plants” requires:

- minimal total area of agricultural cultivation 0,3 ha and minimal total area of vegetable cultivation 0,15 ha;
- cultivation of plants from the category of certified seed material (C1) of varieties registered with the National Register during first generation and the exchange of the seed material every 2 years;
- cultivation of other plants species, which don't require the registration, according to the annex to the Regulation of the Minister of Agriculture and Rural Development dated 28 February 2008, regarding detailed conditions and granting the financial assistance within “Agri-environmental Plan” covered by Rural Development Plan for years 2007-2013.

List of the species listed in above mentioned annex:

- *Triticum dicoccon* Schrank (emmer)
- *Triticum monococcum* L. (small spelt, einkorn)
- *Panicum miliaceum* L. (true millet, French millet)
- *Avena strigosa* Schreb. (lopsided oat, bristle oat, black oat)
- *Secale cereale* var. *multicaule* Metzg. ex Alef. (fodder rye)
- *Camelina sativa* L. (false flax)
- *Lotus uliginosus* Schkuhr (greater birdsfoot-trefoil)
- *Melilotus albus* Medik. (melilot)
- *Lactuca sativa* var. *angustana* Hort.
- *Lathyrus sativus* L. (chickling pea, chickling vetch)
- *Lens culinaris* Medik. (lentil)
- *Pastinaca sativa* L. (common parsnip)

Variant 6.2. “Seed trade production of local varieties of crop plants” requires:

- maintenance the identity and purity of varieties;
- record-keeping of the data of plantation and data of treatments carried out. Making available it to inspection (Plant Health and Seed Inspection Service);
- having the certificate of the laboratory assessment;
- in the production of the seed material of category certified - area of seed plantations of crop plants (according to the Seed Law).

Variant 6.3. Seed production ordered through gene bank

Description: the realization of this variant will concern propagating and keeping:

- landraces of crop plants;

- species of crop plants endangered by extinction;
- weeds of crop plants endangered by extinction, in places of their natural appearing, in order to keeping their primitive traits;
- old varieties of fruit trees.

Variant 6.3. requires:

- agreement with the gene bank for seed multiplication;
- preparing the plan of the realization of the variant;
- minimal total area of cultivation contracted by gene bank - 0,1 ha;
- maximal area - 0,3 ha;
- the seed production on small areas requires special principles of the isolation. At least 50% areas are cultivations, rest should be a lag;
- record-keeping of the plantation and making them available to supervising worker of the gene bank;
- the quality of seeds confirmed by the gene bank.

Variant 6.4. Traditional orchards:

Agri-environmental payment is determined on the basis of the areas of orchards- not smaller than 0,1 ha with the amount of trees reaching quantitative and qualitative criteria.

Variant 6.4. requires:

- varieties of fruit trees from a list being the annex to the regulation of the minister of agriculture, which are at least 60% of the total number of trees;
- traditional orchard contains at least 12 trees in age over 15 years, representing no less than 4 varieties or species, in addition crowns of trees are at the height 120 cm and above and circumference of their trunks at the about 1 m level is at least 47 cm;
- when orchard meets above conditions can be supplemented to 40% of all trees planting. Supplementation requires increasing the number of variety or species by at least three variety or species. Trees are propagated on vigorous rootstock, (e.g. apple-tree on the Antonovka seedlings, pear tree on seedlings of Caucasian pear tree, plum tree on cherry plum seedlings, sweet cherry tree on wild cherry seedlings, cherry tree on rock cherry or wild cherry seedlings) led as high-trunk trees about the minimal height of the trunk 1,20m, in the distance not smaller than 4 x 6 m and not bigger than 10 x 10 m.

2.3 NORWAY

Options for the development and strengthening of Farmers' Rights in Norway: Report from the Norwegian Genetic Resource Centre to the Norwegian Ministry of Agriculture and Food.

The 4th Governing Body of the ITPGRFA recognized, in its Resolution 6/2011 *Implementation of Article 9, Farmers' Rights*, that exchange of experiences and mutual assistance between Contracting Parties can significantly contribute to making progress in the implementation of the provisions on Farmers' Rights in the International Treaty. The Governing Body therefore

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

In November 2011 Ms. Regine Andersen's study *Plant genetic diversity in agriculture and farmers' rights in Norway*, FNI-report 17/2012 was first published in Norwegian by the Fridtjof Nansen Institute. In order to follow up on the findings in Ms. Andersen's study, The Norwegian Ministry of Agriculture and Food commissioned the Norwegian Genetic Resources Centre to develop a plan for the development and strengthening of Farmers' Rights in Norway. This work is currently in progress, and will focus on challenges to crop genetic diversity in Norwegian agriculture, and recommendations for increasing crop diversity on both small and large scale.

This submission below is inspired by the key findings from the FNI-report and includes some initial reflections by the Norwegian Genetic Resources Centre and the National Committee for Plant Genetic Resources for Food and Agriculture with regard to the strengthening of Farmers' Rights in Norway. The views and ideas portrayed below are those of an array of different stakeholders and do not reflect governmental policy.

The context of Farmers' Rights in Norway

Given the cold climate and mountainous terrain, only about 3 per cent of Norway is cultivated. The main share of agricultural land is used for fodder production for livestock. Grains are mostly grown in the south-east and middle of the country with barley and wheat being the most important crops. Livestock raising and dairy farming is important throughout the country, especially in mountain regions. Fruit and vegetable production varies from region to region. Potatoes are the main staple. In many coastal and mountainous areas the farms were traditionally small and subsistence oriented, often accompanied by fishing. Industrialization throughout the 20th Century and especially the development of the oil and gas industry from the 1970s and onwards, has generated many new jobs in industry and service sectors, and become the backbone of the modern Norwegian economy. Farming has been greatly affected by modernization; through emigration to the towns, farm closures and structural changes (bigger units).

Though not a member of the European Union (EU), Norway is closely integrated with the EU through the European Economic Area (EEA) agreement. The EEA Agreement provides for the inclusion of EU legislation covering the four freedoms; the free movement of goods, services, persons and capital, in addition to cooperation in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture. Norwegian agricultural policy is not a part of the EU's Common Agricultural Policy (CAP), but is informed by EU-policy in areas under the jurisdiction of the EEA-agreement, e.g. food safety, animal welfare and seed legislation. The high level of cost in Norway means there is need for strong protection of farmers by the Norwegian government if this sector is to survive, through grants and tolls on imported agricultural produce.

Norway is a member of the 1978 Convention of the International Union for the Protection of New Varieties of Plants (UPOV), This version of the UPOV-Convention protects Plant Breeders' Rights' but still allows farmers to save seed from their own harvest of protected varieties to use the following season and exchange them with other farmers. The 1991 Convention under UPOV restricts this possibility, and was rejected by the Norwegian government in 2005 on the grounds of Farmers' Rights.

The conservation of plant genetic resources for food and agriculture (PGRFA) is one of many areas where Nordic cooperation is important. Together with the other Nordic countries Norway has established The Nordic Genetic Resource Centre (NordGen). The centre administers the common Nordic gene bank and the depositing of material in the Global Seed Vault in Svalbard. The centre is also involved in development of new material, including through a pre-breeding partnership programme that will involve farmers.

The awareness of Farmers' Rights among the Norwegian authorities, in the population at large, and among farmers themselves can be argued as being generally low. Although there is no single organization for Farmers' Rights in Norway, the different farmers' organizations are becoming increasingly aware and involved in this area, e.g. through participating on the national committees for genetic resources, chaired by the Norwegian Genetic Resources Centre.

The following key areas were identified in the enclosed report *Plant genetic diversity in agriculture and farmers' rights in Norway, FNI-report 17/2012*. These areas have in turn informed the current debate in the National committee for plant genetic resources for food and agriculture.

The right to save, use, exchange and sell seeds

Norwegian farmers today mainly use commercial varieties and modern methods of cultivation/production. They are mostly satisfied with the available assortment of seeds and propagating material – but many farmers outside the mainstream bulk production, e.g. organic and biodynamic farmers find that their needs are not met by supplies available from authorized seed shops, and seek out other channels. In 2010, some 4.4% of the total Norwegian agricultural land was being cultivated organically (including biodynamic agriculture). There are probably fewer than 100 farmers who cultivate older or special varieties (FNI-report 17/2012). Most of these farmers are engaged in small-scale agriculture.

The right to save, use, exchange and sell seeds is related to regulations regarding the approval and protection of crop varieties, requirements for listing on the National list of varieties, DUS-testing (distinctness, uniformity and stability of crops) and the costs associated with this. In practice these regulations influence farmers' possibilities to use their own seeds and to develop their own crop material, as well as exchange and sell such material.

New regulations for conservation varieties and amateur varieties have improved farmers' possibilities to grow and sell plant varieties that do not meet the normal DUS requirements for listing on the National list of varieties. Reduced fees have lowered the threshold for production and sale of seeds in small quantities of such varieties and the first authorized seed shop for conservation varieties has been established. The Norwegian Genetic Resources Centre is currently working with the Nordic Genetic Resource Centre (NordGen) and the Norwegian Food Safety Authority on facilitating the inclusion of relevant conservation/traditional varieties on the official crop list, so more such crops can be grown and their seeds sold.

A remaining legislative hindrance is related to the crops' area of origin. Old varieties from the Nordic climate zone, and thus have properties that make them suitable for cultivation in Norway, can't be listed on the National list of varieties as long as it's not proven that they were historically cultivated in Norway. Although it is very likely that varieties or very similar crop varieties have grown in Norway sometime in the past, it has to be documented that this is actually the case. Presenting such documentation is often difficult, and advocates of crop diversity believe the requirements for documenting traditional use in Norway should be relaxed.

Legislation regarding the improvement of old varieties/landraces and development of amateur varieties of cereals is another unresolved issue. Norwegian regulations for amateur

varieties make it possible to register new small scale varieties and to further develop varieties/landraces of vegetables, but not crops used for grain or fodder.

Farmers that improve landraces and develop new varieties of cereals on farm conduct important work that could be stimulated further. Currently, there is no real opportunity to multiply and sell seeds of new or improved landraces, unless one expects sales so great that they will justify the investments required to register new plant varieties on the variety list. Listing on the variety list, on the other hand, entails fulfillment of additional requirements that it might be hard for landraces to meet.

Instead of the existing restrictions one could establish incentives that encourage the use and development of locally adapted varieties, which is precisely the type of effort that the world's farmers have gained great appreciation for, and that is also a major reason why Farmers' Rights has gained a central role in eg. The Plant Treaty.

Rights related to relevant traditional knowledge

The FNI-report also stresses the importance of ensuring that traditional knowledge is preserved. For biodiversity farmers' traditional knowledge is invaluable and even decisive for their ability to conserve and develop crop genetic diversity on their farms, and for building up economically sustainable production based on this diversity. Preserving traditional knowledge takes place at all levels, from the individual farmer, institutions working with crop genetic diversity to national governments and international organizations.

At the level of the Genetic Resources Centre it is of great importance that traditional crops' properties are thoroughly scrutinized and that all knowledge is made readily available. Obtaining information on the characteristics, use, and relevant history of crop varieties and other genotypes of plants is a huge and almost endless task that amongst others; NordGen and the Norwegian Genetic Resources Centre are working on. NordGen's standard for information on varieties includes passport data (data on a variety's origin intellectual etc.), characterization data (morphological descriptions), and evaluation data (studies of utilization potential). The information database on preserved material in NordGen gene bank and the national collections is gradually being expanded. There is still a huge gap between needs and goals regarding documentation, preservation and dissemination of the knowledge on preserved genetic material, and the resources available for this.

There is hope that the Norwegian Nature Diversity Act of 2009 may open up new doors for the funding of agrobiodiversity in the future. An Action Plan for Hay Meadows and the choice of hay meadows and wetlands as Selected Habitat Types is already in place under the Act, and involves some allocations of funds and activities to protect these areas.

The FNI-report points out that there no integrated plan on how this "cultural treasure" should be maintained and transmitted exists and that a strategic approach to the traditional knowledge of agricultural plant genetic resources is missing. The report recommends the development of an overall strategy for traditional knowledge. Clearly defining "responsibility" is an important task for such a strategy. The responsibility of the Norwegian Genetic Resources Centre should be limited to knowledge on crop varieties and genetic diversity, while others must focus on entrepreneurship on the farms, the cultural heritage this knowledge represents etc. Collaboration between different organizations and government agencies in the field of agriculture and environment would be important for the development of a strategy for traditional knowledge.

The right to share benefits accruing from the use of genetic resources

Benefit sharing is about recognizing and compensating farmers for their contribution to the conservation of plant genetic resources. This entails supporting farmers and communities in their efforts to preserve the diversity and making sure that farmers of all regions benefit from the further development of plant varieties. Providing farmers with financial support for their excess costs of using and developing crop diversity can be an efficient measure in this regard.

Such costs arise when seeds, seed potatoes and other propagating material is more expensive than that of the commercial varieties that are traded in larger quantities, and when the yields obtained from the traditional crop varieties are lower and of less value than other varieties. On the other hand, crops and products from special plant varieties can obtain higher prices because they have particular characteristics or qualities that consumers are willing to pay for. The general rule though, is that products from such varieties involve an excess price in the market.

Financial support could be used to ensure that reasonably priced breeding material is available on the market, but also to compensate farmers for cultivating certain varieties that give lower yields. Financial support for a scheme for crop insurance compensation for traditional varieties is also much sought after. In Norway a financial support scheme is already in place for valuable, historic cattle breeds and the Norwegian Genetic Resources Centre has suggested that such support is also given to preserve valuable historic breeds of sheep.

The Norwegian Genetic Resources Centre is involved in a partnership that has set up a gene bank for traditional grain varieties in order to ensure that seeds of conservation varieties and other old varieties that are not in regular trading are available in quantities large enough for farmers to be able to cultivate an area mechanically and thus check if a variety is appropriate for professional cultivation on farm. The gene bank currently holds about 50 varieties. A Norwegian gene bank for potatoes is being established and the Norwegian Genetic Resources Centre plans to help the enrichment of potato minitubers at the scale necessary for professional testing. It must be stressed that these measures for the time being only will give the necessary quantities needed for trials and testing and that farmers cultivating special varieties of grain and potatoes will still need to produce the breeding material needed for cultivation for sale themselves.

The Norwegian Genetic Resources Centre hopes that the gene banks for grain and potatoes will help increase farmers demand for conservation varieties and other old varieties and in turn stimulate regular production of such varieties on commercial terms. It could still, however, be necessary to consider financial support for enrichment to ensure that the price of seed, etc. is on par with seeds of conventional varieties. Such support could be given both to specialist seed suppliers specializing in crops rarely used and regular suppliers as a compensation for trading in varieties that are less profitable than commercial varieties.

Direct financial support for cultivation of valuable historical plant varieties that are otherwise not being used could also be considered. If public authorities want such varieties to be grown by farmers who have their income from agriculture, it is possible to encourage this through direct financial support, in line with eg. support schemes for organic farming. In the EU there is provision for support for cultivation of plant varieties of high genetic value through the European Agricultural Fund for Rural Development (EAFRD), but to our knowledge there are few examples of established support schemes where farmers are supported directly for cultivating traditional crop varieties. In Norway, the EU and other countries with agricultural grant schemes, financial support towards cultivation of valuable plant varieties could be integrated into the established system of land grants for farming, as a type of payment for ecosystem service.

There is also a case for separate crop insurance compensation scheme for old and small scale varieties. In 2011 many farmers in Norway experienced weather related crop injury, both conventional farmers and those who cultivated conservation varieties and other traditional crop varieties were affected. As compensation is given in term of the volume of the lost crop, and not

crops' quality and value, farmers that cultivate small scale, higher valued crops with smaller yields were hit extra hard.

The regulation on crop compensation already allows compensating the reduced value of fruit from crop injury, and not just the total quantity. The Norwegian Genetic Resources Centre suggests that the rules are changed, so that lost revenue from reduced quality and value, not only volume can be compensated when cultivating landraces and plant varieties that contribute to the sustainable use and conservation of plant genetic diversity.

The right to participate in decision-making processes

Norwegian farmers are on the whole active in political decision-making processes, mainly as members of either one of the two main unions for farmers and smallholders. Organic producers have their own organization (Oikos). The unions' networks stretch across the whole country and are also generally well connected at the national political level. At the international level, e.g. EEA-relevant policy, the farmers unions and other organizations play an important role, exerting influence through contact with sister organizations at the European level. Every spring the two main farmers unions negotiate with the Norwegian government in order to set the level of grants that Norwegian farmers receive. Agrobiodiversity is relevant for these negotiations, especially as the Ministry of Environment is on the government's negotiating committee.

A large part of the agricultural sector is organized through cooperatives that are fully or partially managed by the farmers themselves. To some extent this is also the case with genetic resources as both plant breeding and seed sale in Norway takes place under the auspice of a large cooperative (Felleskjøpet Agri), and is in principle controlled by farmers. As mentioned earlier farmers are also represented in the National Committee for Plant Genetic Resources chaired by the Norwegian Genetic Resources Centre. As in other European countries, farmers' influence in Norway is often regarded as weak facing the dominating retailers in the grocery market. This was also the conclusion of the National Inquiry Commission for the Power Relations in the Food Supply Chain, established by the Norwegian government in 2010.

Despite that farmers in principle have great influence in Norway, the farmers who are especially interested genetic diversity ("biodiversity farmers") are usually in minority and will often feel that their views are not shared or understood by other farmers. As a result they often experience that their views aren't heard in cooperative boardrooms and other relevant fora. Organization – whether within an existing body or by creating a separate organization or network – might be one way of facilitating a better flow of information, enabling the biodiversity farmers to become more actively involved in relevant decision-making processes. This has already been the case with regard to organic farming that with support from the environmental movement has had great impact on the design of regulations and measures for encouraging organic farming, in Norway as in the rest of Europe.

Norwegian Genetic Resource Centre, as the 9th of October 2012

III. COMPILATION OF SUBMISSIONS BY RELEVANT ORGANIZATIONS

3.1 ASOCUCH

Fitomejoramiento Participativo: estimulando uso diversidad local y empoderamiento de comunidades en Mesoamérica²

El programa de Fitomejoramiento participativo

El Programa Colaborativo de Fitomejoramiento Participativo en Mesoamérica (FPMA) es uno de los programas pioneros con más de 10 años de trabajo, en relación a la participación de los agricultores en la toma de decisiones y acceso a conocimientos para el mejoramiento de variedades. El FPMA es un programa de colaboración que además está establecido por alianzas entre instituciones de gobierno, organismos no gubernamentales y centros de investigación nacionales e internacionales. Los proyectos nacionales vinculados al FPMA en Costa Rica, El Salvador, Guatemala, Honduras y Nicaragua han trabajado con los pequeños agricultores, conservando, caracterizando y mejorando variedades de maíz, frijol, sorgo y otros cultivos.

Metodología Utilizada

Las acciones a nivel regional se realizan tomando como base la organización comunitaria en cualquiera de sus modalidades (Cooperativas, Asociaciones, Comités de Investigación), el desarrollo de talentos a nivel comunitario con participación de agricultores y agricultoras líderes y el desarrollo de alianzas estratégicas; teniendo como fin último **“Mejorar la calidad de vida de familias del área rural”** (FPMA, 2010); para lo cual se contemplan seis pasos que se describen a continuación: (Figura 1):

- a) Agrobiodiversidad: acá los agricultores y los investigadores, realizan acciones de rescate de variedades criollas y poblaciones silvestres de los cultivos de maíz, frijol y sorgo; posteriormente se procede a realizar la caracterización y la conservación *in situ* y *ex situ* de los materiales; aunado a lo anterior se realiza diseminación de semillas por medio de ferias de diversidad e intercambios y utilización de cultivares o progenitores en mejora.
- b) Mejora Genética: estas acciones se impulsan haciendo uso del germoplasma local, aplicando métodos participativos de mejoramiento de plantas (FP), haciendo uso de criterios de evaluación y selección con participación de agricultores en sus campos de producción. Los agricultores identifican los problemas que quieren resolver en un cultivo determinado y se procede a hacer uso de germoplasma criollo para realizar el mejoramiento genético.
- c) Semillas de Calidad: acá se impulsan acciones de producción, acondicionamiento y accesibilidad a semillas de calidad en comunidades con la utilización de variedades de mayor adaptación a condiciones cambiantes; acompañados de los procesos de capacitación en producción y procesamiento.
- d) Seguridad Alimentaria: acá se impulsa el acceso y la disponibilidad de variedades de cultivos alimenticios, considerando aspectos de inocuidad y valor nutricional; aunado a lo anterior se impulsa la diversificación de fincas para la reducción de riesgos.
- e) Generación de Ingresos: acá se impulsan acciones para mejorar la productividad a través de la generación de variedades altamente productivas y requeridas en los mercados locales, regionales, nacionales e internacionales.

² Sergio Romeo Alonzo, Mario Roberto Fuentes López, Juan Carlos Rosas, Silvio Aguirre y Rolando Herrera. Programa Colaborativo de Fitomejoramiento Participativo en Mesoamérica. www.programafpma.com alonzo.sergio@gmail.com

- f) **Efecto Multiplicador:** en este escalón lo que impulsa es que otros actores pueden involucrarse en los procesos de mejoramiento participativo, incluyendo agricultores, instancias de gobierno y ONGs, con la finalidad de diseminar la metodología.

Experiencia 1: FITOMEJORAMIENTO PARTICIPATIVO EN EL CULTIVO DEL MAÍZ EN GUATEMALA:

La mayor producción de maíz en Guatemala la realizan agricultores en áreas marginales y de subsistencia. Generalmente tienen limitado acceso al uso de variedades mejoradas y/o estas no se adaptan a los sistemas locales de producción. Iniciativas de Fitomejoramiento Participativo (FP) en diferentes ambientes agroecológicos ha posibilitado el uso de la agrobiodiversidad del maíz y las variedades de mayor importancia comunitaria disponen de un proceso de evaluación y selección.

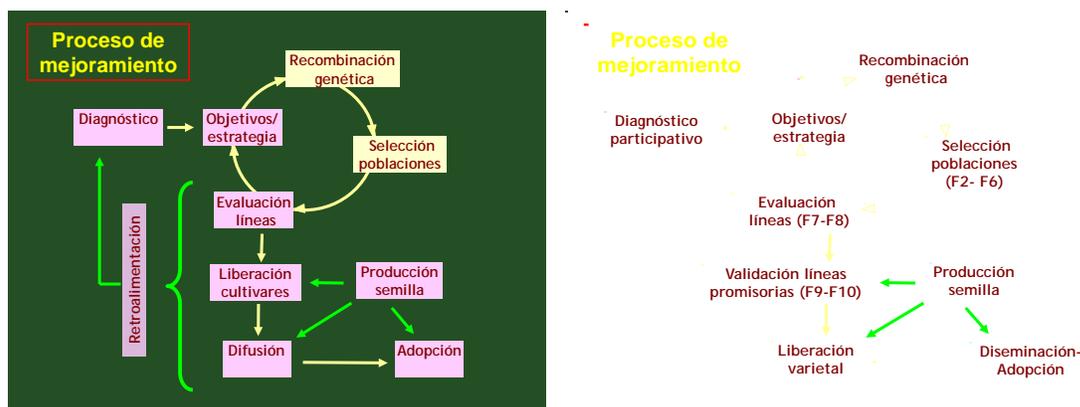
Las variedades locales de mayor importancia comunitaria se utilizan para fortalecer los sistemas locales de semillas. El FP involucra diferentes fases operativas, tales como colección y caracterización varietal de la agrobiodiversidad del maíz, procesos de mejoramiento y selección con amplia participación de agricultores en la fase de elote y cosecha, capacitación comunitaria en la implementación de selección masal y procesos de validación en diferentes nichos agroecológicos.

La metodología que se utiliza es la selección recurrente recíproca de medios hermanos y esta metodología posibilita la evaluación de familias en diferentes condiciones ambientales y la selección de la fracción superior para la conformación de variedades experimentales y familias que continúan el proceso de mejoramiento. Bajo este esquema de trabajo, se han desarrollado 10 variedades FP y que se encuentran en la fase de masificación a través de la producción de semillas.

Experiencia 2: FITOMEJORAMIENTO PARTICIPATIVO EN EL CULTIVO FRIJOL EN HONDURAS:

El proceso de desarrollo de nuevas variedades de frijol incluye la generación de poblaciones mediante cruzamientos de variedades criollas con variedades o líneas elites donantes de genes para características a ser mejoradas en las criollas. En el enfoque de FP, familias segregantes son evaluadas y seleccionadas *in situ* usando los criterios de los agricultores. En el enfoque de Selección Participativa de Variedades (SPV), líneas avanzadas (altamente homocigotas en generaciones avanzadas) con combinaciones de caracteres deseables son evaluadas y seleccionadas *in situ* por los agricultores. Las líneas promisorias de ambos procesos de mejoramiento son validadas en varios ambientes (fincas) de los agricultores participantes, incluyendo las evaluaciones agronómicas, comerciales y de consumo recomendadas, hasta la liberación de la (s) más sobresaliente (s), y su posterior diseminación mediante la producción y diseminación de semilla de calidad. A la fecha los agricultores han logrado liberar 13 variedades de frijol, bajo el proceso de mejoramiento siguiente:

Figura 1 y 2: Proceso de Mejoramiento



Experiencia 3: FITOMEJORAMIENTO PARTICIPATIVO EN EL CULTIVO DE SORGO EN NICARAGUA

Un diagnóstico realizado en 4 localidades de Madriz en 2002 determinó que las variedades locales de sorgo tortillero y millón presentan bajos rendimientos, mala calidad de guate, vulnerables a enfermedades y plagas, ciclo tardío y poca variabilidad genética (Martínez 2002).

A partir de estos resultados se inicia en 2002 el Programa de Fitomejoramiento Participativo (FP) por el CIAT-CIRAD, estableciendo ensayos con líneas avanzadas introducidas de origen africano. Se inicia una capacitación a los participantes en la metodología de evaluación participativa de líneas (EVP). En el año 2003 se da una ampliación, se introdujeron nuevas líneas, se incorporan más productores y comunidades; durante un ejercicio de EVP, el productor Orlando Gómez planteó que le gustaba la variedad *Estopa negra* por su adaptación local, que le gustaría más si se podía bajar la altura, mejorar el grano y guate. Esto dio inicio a un programa de cruzamientos para generar poblaciones de selección, y luego capacitación y entrenamiento a los productores en la metodología de selección de plantas en estas poblaciones segregantes (PPB). Se crearon las poblaciones CIR-1 hasta CIR-6 para generar líneas del gusto de los productores. En 2004 se forman nuevas poblaciones de millón y sorgo tortillero, se incorporan más municipios. A partir de 2005 el proceso de FP de sorgo lo **ASUME el CIPRES** dándole continuidad a la metodología; se crean más poblaciones de sorgo tortillero, una de escoba, poblaciones sintéticas con mas diversidad. Entre 2006 y 2010 se da continuidad con los trabajos de selección procedentes de las diferentes poblaciones, con varios grupos de productores. En 2007 se registra la variedad **Blanco Tortillero** (BF 89-12/1-1-1). En 2008 se liberan localmente sorgo Blanco Alto, Oro Alto, Sorgo Ligerio; las variedades de millón Coludo Nevado, Rojo Gigante, Amarillo Norteño y Crema Robusta. En 2010 (se realizan) nuevas cruces de sorgo y se libera localmente la variedad de millón **Orgulloso Temprano** y la variedad de sorgo **Crema Nacional**, procedente del programa PPB CIR-6.

Principales Logros: dentro de los principales logros obtenidos en los primeros dos Fases se pueden mencionar (FPMA, 2010):

- Liberación de 57 variedades de cultivos alimenticios (18 de maíz, 28 de frijol y 11 de sorgo) con participación de agricultores e investigadores de la región; haciendo uso de la diversidad genética de la región (Cuadro 1).

- La generación de variedades conlleva la selección de características deseables por los agricultores (precocidad, altura de planta, aumento del rendimiento, posición de mazorcas, resistencia a sequías) y aumento en el rendimiento.
- Se ha logrado aumentar el rendimiento de maíz, frijol y sorgo en un rango que va del 12 al 200%, lo cual ha beneficiado directamente a los pequeños productores de la región; permitiendo que mejoren su seguridad alimentaria.
- Más de 5,000 agricultores vinculados a organizaciones de productores, involucrados en procesos FP.
- 450 productores y 30 técnicos cuentan con capacidades mejoradas en manejo de recursos fitogenéticos, para impulsar la mejora genética y la conservación *in situ* de germoplasma criollo.
- En Costa Rica, Nicaragua y Honduras existen organizaciones que producen semillas y grano para el mercado; las cuales cuentan con infraestructura para el procesamiento de las semillas y el grano (secado, limpieza, clasificación, empaque y almacenamiento).

Lecciones aprendidas

La zona de Mesoamérica constituye un reservorio estratégico de la agrobiodiversidad del maíz, frijol y cultivos alimenticios. El FP constituye un modelo y la ruta correcta para contribuir al manejo, conservación, caracterización y utilización a nivel nacional y regional. El FP al integrar a los actores técnicos y agricultores, constituye un procedimiento sencillo para mejorar y seleccionar variedades de maíz y frijol, cuyos resultados son fácilmente identificables; lo cual genera apropiación en el uso de las tecnologías. Convertir al productor en mejorador de su propia variedad de semilla constituye una fortaleza para el mejoramiento y utilización de la agrobiodiversidad de variedades locales de maíz y frijol a nivel comunitario; lo cual contribuye a mejorar la producción del grano.



Cuadro 1 Variedades Liberadas del 2001 al 2010

Cultivo	País					TOTAL
	Guatemala	El Salvador	Honduras	Nicaragua	Costa Rica	
Maíz	10		4	4		18
Frijol			13	6	9	27
Sorgo				11		9
TOTAL	10	0	17	21	9	57

Fuente: Línea Base Programa FPMA 2011

Figura 2: Proceso de fitomejoramiento participativo



Este documento se constituye en el esfuerzo de organizaciones de productores, investigadores y la cooperación internacional, especialmente el Fondo de Desarrollo de Noruega (FDN) que han creído en el desarrollo de variedades adaptables a cambio climático con participación de agricultores y que reconocen la contribución de las comunidades rurales en la conservación de la agrobiodiversidad en Mesoamérica; un agradecimiento sincero a los Coordinadores Nacionales del Programa FPMA (Dr. Juan Carlos Rosas, Honduras; Ing. Norman Alfaro, Nicaragua; Ing. Juan Carlos Hernández y Dr. Rodolfo Araya, Costa Rica e Ing. Carlos Reyes, El Salvador).

Reservas Comunitarias de Semillas en Centro América: estrategias de vida en tiempos de cambio³

“La combinación de la ciencia con el conocimiento local permite: la conservación de la biodiversidad, aumento de la producción, generación de ingresos y formación de recursos humano local para hacer frente a las condiciones cambiantes del clima y la inseguridad alimentaria”

En Centro América se reconocen cultivos de importancia alimentaria, constituyéndose en centro de origen de cultivos, los cuales fueron domesticados por las comunidades aborígenes y rurales y hoy en día son los responsables de conservar bajo sus propios métodos y prácticas la agrobiodiversidad. Entre estas principales especies se encuentra en maíz (*Zea mays* L), frijoles (*Phaseolus* sps), entre otras, que contribuyen significativamente en la dieta básica de la población y llegan a suplir el 60% de los requerimientos de proteína y 70% de energía (Fuentes et al, 2011). La región se ubica en una zona altamente vulnerable a las condiciones cambiantes del clima, viéndose afectada por problemas tales como: sequías, inundaciones, heladas, granizos, deslizamientos, etc.; lo cual afecta directamente las áreas de cultivos de las poblaciones marginales. La crisis alimentaria se ha acentuado en los últimos años y las comunidades rurales en general carecen del maíz y frijol suficiente para suplir sus requerimientos alimenticios básicos. Alto porcentaje de los hogares en la región solamente disponen de reserva de grano para su alimentación para 2-3 meses al año; lo cual dimensiona la fragilidad del sistema alimentario en la zona.

Manejo de agrobiodiversidad

El Programa Colaborativo de Fitomejoramiento Participativo en Mesoamérica (FPMA), es uno de los programas pioneros en la región, con más de 10 años de trabajo. Los proyectos nacionales vinculados al FPMA en Costa Rica, El Salvador, Guatemala, Honduras y Nicaragua han trabajado con los pequeños agricultores, conservando, caracterizando y mejorando variedades de maíz, frijol, sorgo y otros cultivos. Su tercera fase se establece como eje fundamental el Manejo, Conservación y Desarrollo (MCD) de la Agrobiodiversidad con enfoque de Fitomejoramiento Participativo (FP); esto es de suma importancia ya que durante años los agricultores han conservado variedades criollas de cultivos que hoy en día están siendo utilizadas por agricultores y técnicos mejoradores para obtener variedades de cultivos resistentes a condiciones cambiantes de clima.

Las reservas comunitarias de semillas: una alternativa para enfrentar desastres climáticos

Las reservas comunitarias de semillas (RCS) es una estrategia viable para el fortalecimiento de la seguridad alimentaria en comunidades que frecuentemente son vulnerables a los cambios climáticos extremos (Fuentes, 2010). A nivel comunitario existen variedades locales de mayor importancia porque se utilizan en mayor área de siembra en la comunidad o porque presentan cualidades agronómicas que son muy apreciadas por los agricultores locales. Estas semillas posterior a un proceso de identificación y priorización comunitaria se almacenan en un lugar seguro y bajo la custodia de un comité local. La cantidad de semilla a almacenar está en función del área de siembra y número de familias que pueden utilizarla en la comunidad. De existir un evento climatológico extremo está puede ser utilizada de manera inmediata y de lo

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contrario de no existir este evento, puede convertirse en la semilla estratégica que puede apoyar los sistemas locales de producción. Esta estrategia fortalece las respuestas locales frente a situaciones de emergencia, posibilita que los procesos productivos continúen y garantice la seguridad alimentaria comunitaria. En Guatemala a través de la experiencia generada en diferentes proyectos comunitarios con enfoque participativo en diferentes áreas geográficas y condiciones agroecológicas, se ha consolidado la estrategia de “Reservas Comunitaria de Semillas”.

Categorías de reservas de semillas *in situ*:

Existen diferentes categorías de implementación de reservas de semillas *in situ* (Fuentes, 2010). Este sistema se presenta como una alternativa comunitaria que posibilita la conservación de semillas estratégicas en una zona definida y que tiene influencia a nivel comunitario. El sistema de conservación de semillas se realiza dentro de la zona de la comunidad prioritaria y con condiciones de manejo accesible a los productores, lo cual posibilita la conservación de semillas en el corto plazo. Bajo este esquema se disponen de dos posibilidades de conservación.

- **Reserva Comunitaria de agrobiodiversidad:** Esta categoría posibilita la colección, conservación y utilización de variedades locales de diferentes especies de semillas de importancia comunitaria. Generalmente se dispone del almacenamiento de una muestra representativa (1 kg) de la variedad y requiere frecuentemente de la renovación para mantener la calidad de semilla.
- **Reserva Comunitaria de semillas para su utilización en caso de emergencia:** Esta categoría de almacenamiento de semillas posibilita la identificación, conservación y utilización de semillas estratégicas (1-3 variedades) utilizadas en una comunidad en caso de existir un evento climatológico extremo y posibilita la reacción inmediata para la reactivación de la producción comunitaria.

Fases operativas: Las RCS deben ser parte de un componente estratégico del FP y organizaciones que dispongan de un área geográfica de cobertura y grupo meta a atender. Se requiere de la implementación de diferentes fases:

1. **Fase de Planificación:** En esta fase se delimitan diferentes elementos relacionados a la RCS. Se debe considerar la identificación, priorización y categorización del problema derivado de un cambio climático extremo (sequía, inundaciones, fuertes vientos, etc). Identificar comunidades dentro de un área geográfica con mayor probabilidad de problema; definir la ubicación geográfica de la comunidad y cuantificación de la población meta en base a los requerimientos alimenticios. Así mismo, valorar la disponibilidad de la RCS en un grupo organizado, municipalidad u organización y la gobernabilidad de la misma.
2. **Fase de implementación:** Esta fase corresponde a la construcción del proceso de RCS y requiere de los pasos siguientes:
 - 2.1. **Socialización, diseño e implementación de la RCS:** Informar a autoridades locales, grupos organizados, organizaciones en general, sobre el objetivo y estrategia operativa de la RCS. Esta actividad contribuye a disponer de información sobre la RCS, ventajas y desventajas, comprender la importancia ante el cambio climático, sensibilizar a los actores y propiciar el empoderamiento de la actividad; así mismo, se posibilita tener reacciones de la comunidad. Se convoca a un grupo seleccionado de actores a nivel comunitario, tales como: autoridades locales, representantes de grupos organizados, municipalidad, instituciones que operan a nivel local. En esta fase se posibilita realizar la priorización de la comunidad, ubicación de la RCS, identificación de potenciales proveedores de semilla, oferta de semilla a nivel comunitario y estimación del tamaño de la RCS.
 - 2.2. **Identificación, priorización y categorización del problema:** Al disponer de la identificación de la comunidad, es importante definir y priorizar el tipo de problema que con frecuencia ocurre en la comunidad. Esta identificación contribuye a un mejor diseño y operatividad de la RCS.

- 2.3. Identificación del grupo organizado a nivel comunitario: El éxito de la RCS está relacionado a la correcta identificación del grupo organizado a nivel comunitario. Existen diferentes opciones, pero se deben priorizar grupos organizados sólidos que dispongan de trayectoria operativa o bien integrar a grupos organizados que tengan la representatividad de la comunidad o ligados a la municipalidad. El elemento más importante se relaciona a que dispongan de semillas de importancia comunitaria y que estén involucrados en la implementación de procesos de fitomejoramiento participativo.
- 2.4. Identificación del proveedor de semillas a nivel comunitario: En las comunidades existen personas que se distinguen por disponer de la mejor semilla en función de calidad y características agronómicas a nivel de la comunidad. Estos elementos son reconocidos a nivel comunitario. En el proceso previo a la implementación de la RCS a nivel de la comunidad se identifica a esta persona. La semilla que este agricultor proveerá para la RCS debe disponer de calidad (germinación, vigor, identidad).
- 2.5. Estimación de la oferta de semilla comunitaria y el tamaño de la RCS: A nivel comunitario se debe conocer la disponibilidad de semilla local (número de variedades estratégicas), características agronómicas, calidad, fecha de cosecha y volumen estimado. Cada comunidad priorizada debe disponer de información relacionada al número de familias a atender, área de siembra y el requerimiento de semilla. En base a esta información se solicita el requerimiento de silos y espacio en el lugar de almacenamiento de la semilla.
- 2.6. Conformación del comité de RCS: El comité es el responsable de establecer la ubicación, mantenimiento y sostenibilidad de la RCS. Así mismo, establecer los criterios de calidad de la semilla, identificación de proveedores, negociar condiciones de compra-venta de la semilla y propiciar el buen funcionamiento. El comité tiene vigencia por dos años.
- 2.7. Normativa: Es el documento base que rige el funcionamiento de la RCS. Esto incluye responsabilidades del comité, criterios de elección del proveedor de semilla, criterios de distribución de la semilla en casos de emergencia y de no ocurrir algún evento, solución de conflictos, entre otros.
- 2.8. Apoyo comunitario: La implementación de las RCS requiere inversiones económicas. El apoyo comunitario está relacionado a cubrir los costes de planificación y talleres que posibilite la implementación de RCS. Posterior a este proceso la experiencia de promover un capital semilla para la compra de la semilla y silos de almacenamiento como una sola asignación ha posibilitado la implementación y sostenibilidad de las RCS a nivel comunitario.
- 2.9. Estrategia post implementación RCS: luego de establecida es importante definir procesos de capacitación sobre temas de selección de semillas, calidad de semilla, almacenamiento, control de plagas y enfermedades del grano y estrategias de distribución de la semilla si esta no fue utilizada para cubrir un evento climatológico extremo.
- 2.10. Adopción y seguimiento: A nivel de programas de FP se debe evaluar el proceso de adopción y sostenibilidad de la RCS. Estos elementos junto a la participación comunitaria posibilita estimar la sostenibilidad en el mediano y largo plazo.

Experiencia 1: RCS en los Cuchumatanes, Huehuetenango, Guatemala

La reserva comunitaria de semilla en Quilenco, constituye un primer paso para el conocimiento y experiencia de la implementación de este tipo de actividad en la zona de Los Cuchumatanes. La RCS se ubica a una altitud de 2650 msnm y para la conformación de esta reserva han participado activamente cuatro grupos que pertenecen a cuatro aldeas; los cuales han sido responsables de la colección de las principales variedades locales de importancia comunitaria.

La RCS dispone de 130 colecciones de maíz (variedades nativas, variedades en proceso de selección, variedad experimental), de color blanco, amarillo, pinto, rojo y negro. Así mismo,

diferentes razas tales como Salpor, San marceño, Quicheño entre otras; 10 colecciones de haba, 4 de frijol amarillo, 5 de frijol negro y 6 colecciones de plantas aromáticas de importancia comunitaria. En el proceso han participado 40 hombres y 20 mujeres de los cuatro grupos y la disponibilidad de semilla le ha dado vida a una RCS que constituye un orgullo para los pobladores de esa comunidad. Simultáneamente se tiene en la RCS silos para el almacenamiento de semillas de importancia estratégica en caso de ocurrir algún evento extremo de tipo climático. Actualmente se tienen identificados, documentado y almacenados en recipientes especiales todas las colecciones de agrobiodiversidad. El grupo de la RCS ha concluido la normativa del uso y manejo de la RCS y esto posibilita la sostenibilidad comunitaria de este importante centro de agrobiodiversidad comunitaria.

Experiencia 2 RCS, Nueva Esperanza Concepción Sur Santa Barbara Honduras:

Esta reserva de semilla se inició en el 2007 con los CIALES (Comité de investigación Agrícola Local) de Nueva Esperanza y El Barro; los agricultores iniciaron a recolectar y a identificar las variedades criollas de sus comunidades y a colocar cantidades de 1 libra por cada variedad en un local, con la finalidad de recuperar muchas variedades que se estaban perdiendo y asegurar la disponibilidad de semilla para la próxima siembra, por pérdidas de cosechas ocasionadas por efectos de cambio climático. Actualmente la reserva dispone de: 8 variedades criollas de Maíz, 2 variedades de Maíz mejoradas con FP, 3 variedades de Maíz mejoradas convencionalmente, 12 variedades criollas de frijol, 8 variedades de frijol mejoradas con FP, 6 variedades de Frijol mejoradas convencionalmente, 5 variedades de frijol de abono y otras especies de importancia local.

Actualmente miembros de los CIALES han empezado a producir semilla de Maíz y frijol, vendiendo un promedio de 40 qq de semilla de frijol 4 variedades y 50 qq de semilla de maíz, beneficiando a otros productores, con la dotación de semilla de calidad generadas bajo el enfoque FP y aumentado sus ingresos económicos.

Comparación bancos institucionales e comunitarios

Las Reservas Comunitarias de Semillas y/o Bancos de Semillas constituyen una alternativa viable y barata para que los productores pueden realizar conservación *in situ* de su biodiversidad; en comparación con los bancos institucionales constituyen una pieza fundamental en la conservación de la agrobiodiversidad pero muchas veces no se cuenta con los recursos económicos para realizar el refrescamiento del material genético poniendo en riesgo la variabilidad genética de una región determinada; lo cual no sucede en las fincas de los productores ya que constantemente están haciendo el refrescamiento respectivo; aunando a lo anterior el material esta disponible para enfrentar daños ocasionados por el cambio climático, obtener producción asegurando la alimentación de la familia y mantener el control de sus semillas, lo que se resume en soberanía.

Cuadro 1 Reservas Comunitarias de Semillas en la Región

Pais	Reserva Comunitaria de Semillas	Organización	Ubicación	Beneficiarios Directos	Bancos Institucionales	Instituciones	Beneficiarios Directos
Guatemala	6	ASOUCUH / FUNDIT	Quilínco	150	1	ICTA	200
			Climentoro	120			
			Quisil	27			
			San Francisco	45			
			Secheu	23			
			Los Lucas	75			
El Salvador	2		Guazapa	12	1	CENTA	100
		La Presa	10				
Honduras	14	PRR	Palmichan Carmen	15	3	ZAMORANO	500
			Nueva Esperanza	25		PRR/ASOCIALAYO	300
			Santa Cruz	45		FIPAH/ASOCIAL YORITO	100
			Higero Quemado	50			
			Cafetales Victoria	100			
			San Isidro Vallecillo	108			
			San Jose de la Mora, Vallecillo	120			
			Agua Blanca, Vallecillo	110			
			Maye	100			
			Barrio Nuevo	90			
			Ojo de Agua	85			
			El Aguila	125			
			El Matasano, Lempira	95			
			Opalaca, Monte Verde	100			
			Nicaragua	3		CIPRES / FECODESA	Unile Somoto
COSENUP/ Pueblo Nuevo	94						
Cayantu/Totogalpa	60						
Costa Rica	1	ASOPRO EL AGUILA	El Aguila	700	1	Universidad de Costa Rica	1200
Total	26			2550	6		2400

Fuente: Línea Base Programa FPMA e información proporcionada por coordinadoras nacionales FPMA

Lecciones aprendidas

En los últimos 5 años de trabajo por miembros de FPMA, se han implementado 26 reservas comunitarias de semillas con participación de 2550 agricultores y se han fortalecido 6 bancos de germoplasma a nivel institucional; conservando variedades y líneas avanzadas de 1300 materiales de frijol, 568 de maíz; 56 materiales de sorgo; 157 materiales de millón; 10 de haba, 6 de plantas aromáticas; 14 de frijol abono; 15 de arroz y 78 de escoba. La estrategia de utilizar la agrobiodiversidad como base para apoyar procesos de seguridad alimentaria y productiva posibilita apoyar los sistemas alimentarios de las comunidades de ingerencia del FPMA. Convertir al productor en mejorador de su propia variedad de semilla constituye una fortaleza para el mejoramiento y utilización de la agrobiodiversidad de variedades locales de maíz y frijol a nivel comunitario; lo cual contribuye a mejorar la producción del grano. Las reservas comunitarias de semillas locales es una estrategia viable para la zona que constantemente se ve afectada por eventos climatológicos extremos y constituye un mecanismo para fortalecer y garantizar la producción de alimentos en la comunidad.

Este documento se constituye en el esfuerzo de organizaciones de productores, investigadores y la cooperación internacional, especialmente el Fondo de Desarrollo de Noruega (FDN) que han creído en el desarrollo de variedades adaptables a cambio climático con participación de agricultores y que reconocen la contribución de las comunidades rurales en la conservación de la agrobiodiversidad en Mesoamérica; un agradecimiento sincero a los Coordinadores Nacionales del Programa FPMA (Dr. Juan Carlos Rosas, Honduras; Ing. Norman Alfaro, Nicaragua; Ing. Juan Carlos Hernández y Dr. Rodolfo Araya, Costa Rica e Ing. Carlos Reyes, El Salvador).

3.2 BERNE DECLARATION

Introduction

Swiss federal patent and plant variety protection laws were revised in 2008, and a revised ordinance on seeds and propagation material entered into force in 2010. The revised patent law explicitly allows for patents on biological material, and both laws narrow the farmer's privilege by restricting the reproduction and suppressing the exchange of protected varieties. These amendments contradict the principles of facilitated exchange and use of crop genetic resources that underlie the International Treaty. This has been a step backward for the implementation of Farmers' Rights. Nevertheless, despite their striking limitations, both laws also contain a number of provisions that may reduce the adverse impacts of the patent and plant variety protection laws on the enjoyment of Farmers' Rights. In addition, the ordinance on seeds and propagation material provides for an innovative approach to promote the use of traditional varieties.

Views, experiences and best practices

Shortcomings

Patentability of biological material including crops and forages

Under the revised patent law, patents can be taken out on microbiological or other technical processes and their resulting products, provided that the processes are not limited to any specific plant variety.⁴ Furthermore, if an immediate product of a patented process is biological material, the effects of the patent even extend to the products obtained through further propagation of the material and any material into which the product is integrated and where its genetic information fulfills its function. Compared to the previous law, this constitutes a substantial expansion of the possibility of patenting crop genetic resources, which works primarily in favor of the interests of the biotechnology industry, at the expense of smaller breeding companies and farmers.

Prohibition of exchange and restriction to reproduce propagating material

Under the revised patent and plant variety protection laws, farmers do not have the right to offer, sell, market or stock propagating material of patented or protected varieties without the agreement of the holder of the patent or of the title of plant variety protection, respectively, except for private, non-commercial and experimental purposes and breeding of new varieties.⁵ In addition, the reproduction of many protected plant genetic resources including fruits, vegetables, vines and berries was officially banned by the revised plant variety protection law and the corresponding ordinance.⁶

The Swiss Fruit Association (Fruit-Union Suisse) requested that the farmer's privilege for fruits and berries should be maintained, based on the claim that on-farm reproduction of planting material is an important safeguard against phytosanitary problems and therefore constitutes an economic necessity for fruit farmers. In direct contradiction with Article 6.2 f. of the Treaty, which foresees that Contracting Parties shall maintain policies that support the wider use of crop

⁴ Swiss federal patent law, articles 2.2 b., 8 a. and 8 b.

⁵ Swiss federal patent law, articles 8 and 9; Swiss federal plant variety protection law, articles 5 and 6.

⁶ Swiss federal plant variety protection law, article 7. Annex 1 of the ordinance on the protection of new varieties of plants of 2008 provides for an exclusive list of crop genetic resources for which reproduction is allowed, which is limited to selected fodder crops, cereals, potatoes, oil crops and fiber crops.

diversity on-farm in order to reduce crop vulnerability and genetic erosion, this request was disregarded by the responsible government agencies.

Both revisions thus exhibit serious drawbacks with regard to the implementation of Farmers' Rights as laid down in Articles 9, 5, 6 and the Preamble of the Treaty. In fact, the relevant provisions of the Treaty were not even considered in the discussions of the revision process. This is evidenced in the messages of the Swiss Federal Council concerning the revised plant variety protection law and the revised patent law, where the Treaty was only briefly touched upon in the context of the obligation to disclose the source of genetic material in patent applications. This was a major shortcoming in the revision process. Indeed, the Treaty should be fully taken into account in any revision of intellectual property laws that has an impact on Farmers' Rights and the conservation and sustainable use of crop genetic resources.

Positive developments

Nevertheless, and particularly if compared to the current European patent and plant variety protection law landscape, the revised Swiss federal patent and plant variety protection laws and the ordinance on seeds and propagation materials also provide for a number of progressive provisions in specific areas. The provisions have the potential to reduce the adverse impacts of intellectual property laws on the enjoyment of Farmers' Rights in the spirit of the International Treaty:

Exceptions to the effects of patents and plant variety protection

Article 9.1 e. of the Swiss federal patent law:

The effects of the patent do not extend to the use of biological material for the purpose of the production or the discovery and development of a plant variety.⁷

Articles 6 of the Swiss federal plant variety protection law:

The breeder's authorization shall not be required for [...] acts which are done:

- a. privately and for non-commercial purposes;*
- b. for experimental purposes;*
- c. for the purpose of breeding of other varieties entailing the use of the protected variety [...].⁸*

Article 9.1 e. of the patent law and Articles 6 a.-c. of the plant variety protection law imply, concretely, that farmers and breeders can use crop genetic material (of a patented respectively protected agricultural variety) for breeding purposes without the obligation to ask for permission or to make payments to holders of patents or of titles of plant variety protection, respectively. However, under the patent law they are not free to market the product of their breeding efforts, as the newly developed plant variety would still fall under the scope of patent claims.

Article 9.1 f. of the Swiss federal patent law:

⁷ Unofficial translation. Please refer to '4. Relevant links' for the official version of the law in French.

⁸ Unofficial translation provided by UPOV.

*The effects of the patent do not extend to biological material that is obtained in the field of agriculture by chance or because it is technically unavoidable.*⁹

Article 9.1 f. of the patent law is intended to protect farmers from excessive claims. This means that a farmer cannot be held responsible for alleged patent breaches in cases where the patented genetic information was bred into his or her planting material without his or her knowledge or against his or her will (e.g. by wind-pollination). The inclusion of this provision was a direct reaction to court cases between seed companies and farmers in the United States and Canada.

In its message of 2005 on the revised patent law, the Swiss Federal Council has underlined the importance of these measures for the better achievement of the patent system's inherent goal of promoting research and development.

Farmer's privilege

Article 35a 1. of the Swiss federal patent law:

*Farmers who have acquired plant reproduction material placed on the market by the proprietor of the patent or with his consent may reproduce, on their own agricultural holding, the product of the harvest from the cultivation of this material on the said holding.*¹⁰

Article 7 of the Swiss federal plant variety protection law:

*Farmers who have acquired propagating material from a protected agricultural variety put in circulation by the holder or with his consent may, on their holdings, propagate the harvested material they have obtained by growing such material.*¹¹

The wording used in the corresponding provisions of the patent law and the plant variety protection law is largely congruent. Under both laws, farmers are entitled to reproduce the product of the harvest from the cultivation of rightfully acquired propagating material (of a patented respectively protected agricultural variety) on their own holdings. In fact, it is important to mention that by adopting the revised patent and plant variety protection laws, the Swiss parliament has explicitly rejected the introduction of any forms of payment by farmers to holders of patents or of titles of plant variety protection, for farm-saved seeds. Therefore, the current law does not foresee any forms of payments for material that is reproduced on-farm.

Article 35a 4. of the Swiss federal patent law:

*Contractual agreements which limit or revoke the farmer's privilege in the area of food and feed production are invalid.*¹²

Article 8 of the Swiss federal plant variety protection law:

⁹ Unofficial translation. Please refer to '4. Relevant links' for the official version of the law in French.

¹⁰ Unofficial translation. Please refer to '4. Relevant links' for the official version of the law in French.

¹¹ Unofficial translation provided by UPOV.

¹² Unofficial translation. Please refer to '4. Relevant links' for the official version of the law in French.

*Any agreement which restricts or annuls the exceptions to the right to protection for the varieties referred to in Art. 6 and 7 shall be deemed to be null and void.*¹³

These articles imply that the provisions in this regard that are included in several private contracts in use on the international seed market, do not apply in Switzerland.

The farmer's privilege as translated into national law under the Swiss federal plant variety protection law thus figures among the most progressive implementations of the UPOV '91 Act.

Promotion of traditional varieties

Through the ordinance on seeds and propagation material, seeds of so-called "niche varieties" (i.e. varieties of landraces, ecotypes of forages, varieties that have been eliminated from the variety catalogue since more than two years and other varieties, that exhibit interesting traits but do not meet the requirements for inclusion in the variety catalogue set out in the ordinance¹⁴) can be legally put on the market, once approved by the Swiss Federal Office for Agriculture (FOAG). In addition, seeds and propagation material of "candidate varieties" (i.e. varieties for which approval for inclusion in the variety catalogue is pending and that are not genetically modified) can be legally circulated for propagation or experimental purposes, if the variety is registered with FOAG.¹⁵ The ordinance thereby contributes towards the implementation of Farmers' Rights by promoting the expanded use of local and locally adapted varieties and their management on-farm (Articles 5.1 c., 6.2 e. and 6.2 f. of the Treaty).

Ways and means for the exchange of views, experiences and best practices

The implementation of Article 9 and other provisions of the Treaty related to Farmers' Rights still lags behind with regard other main components of the Treaty. The exchange of views, experiences and best practices among all relevant stakeholders of the Treaty is an important first step to remedy this situation. We would therefore like to propose the following non-exhaustive list of measures:

- Establishment of a database of national and regional plant variety protection, patent and seed laws and regulations, including notably non-UPOV plant variety protection systems.
- Strengthening the involvement of farmers, farmers' organizations and other relevant stakeholders in processes and discussions related to Farmers' Rights under the Treaty, including by:
 - broadening the participation of civil society organizations in sessions of the Governing Body and other relevant intersessional processes of the Treaty;
 - producing and disseminating farmer-friendly outreach material (materials in print version in addition to the internet, use of non-technical language, translations in a variety of languages, etc); and
 - organizing regional Farmers' Rights consultations and capacity development workshops.

Online notifications and dissemination of information by electronic means, and notably through the Treaty web site, are an important way of exchanging experiences. However, the potential of these measures to reach directly concerned farmers is very limited. This fact needs to be taken into account, and the Governing Body of the Treaty should adopt adequate means for the exchange of views, experiences and best practices that allow farmers to get actively engaged in the discussions related to their Farmers' Rights.

¹³ Unofficial translation provided by UPOV.

¹⁴ For the requirements for inclusion in the variety catalogue see *Ordinance on seeds and propagation material*, articles 13-19.

¹⁵ *Ordinance on seeds and propagation material*, articles 29 and 30.

Relevant links

- Swiss federal patent law (revised 2008): <http://www.admin.ch/ch/f/rs/2/232.14.fr.pdf> (French)
- Swiss federal plant variety protection law (revised 2008): http://www.upov.org/upovlex/en/text.jsp?file_id=179796 (English)
- Ordinance on the protection of new varieties of plants (2008): http://www.upov.org/upovlex/en/text.jsp?file_id=224332 (English)
- Ordinance on seeds and propagation material (revised 2010): http://www.admin.ch/ch/f/rs/916_151_1/index.html (French)
- Message of the Swiss Federal Council concerning the modification of the plant variety protection law (2004): <http://www.admin.ch/ch/f/ff/2004/3929.pdf> (French)
- Message of the Swiss Federal Council concerning the modification of the patent law (2005): <http://www.admin.ch/ch/f/ff/2006/1.pdf> (French)

3.3 **BIOWATCH**

Policy Brief: South Africa

Securing Farmers' Rights and Seed Sovereignty in South Africa

This policy brief draws from fieldwork conducted with small-scale farmers of Ingwavuma and KwaHhohho in the KwaZulu-Natal province, whom we gratefully acknowledge. We also thank all those who were willing to speak to us about the constraints facing small-scale farmers conserving plant genetic resources for food and agriculture in South Africa. Debbie Collier and Robert Lewis-Lettington provided legal opinions and reviews to support the study, for which we are grateful. Discussions held with policy-makers, farmers, researchers and NGOs at a Farmers' Rights meeting in Cape Town in April further helped to enrich the contents of this brief. Our thanks to two external reviewers and Peter Munyi who suggested improvements to the draft. Regine Andersen of the Fridtjof Nansen Institute, Norway, is especially acknowledged for her inputs and improvements to the draft.

The research was funded through grants from the Centre for International Governance Innovation, the Giuseppe & Rita Raimondo Charitable Trust and Comic Relief. We are most appreciative of this support.

Cover photo: Ntombenhle Sithole from Zimele Rural Women's Empowerment Organisation in KwaHhohho, with her Jugo bean crop.

Farmers' varieties and landraces are vital for livelihoods: they enhance food security, strengthen social cohesion, maintain cultural integrity, and build climate resilience. At the same time a significant proportion of crop diversity has been lost and is increasingly vulnerable to continued erosion.

Small-scale farmers in South Africa have a rich body of knowledge and practices about traditional agriculture and agro-ecology, but these are under threat.

South Africa's policy framework for ensuring the conservation and sustainable use of landraces, farmer varieties, agricultural biodiversity and associated traditional knowledge is uncoordinated, unbalanced and sometimes contradictory. The national Department of Agriculture should spearhead a process to develop a coherent and supportive national policy for Farmers' Rights and agricultural biodiversity that involves small-scale farmers and includes the voices of the poor and marginalised. Particular attention should be given to reducing internal contradictions

within the Department of Agriculture that lead to the contamination of traditional farming systems with genetically modified and hybrid seed.

Extension services and support remain weak and inappropriate for small-scale farmers practising agro-ecology and traditional agriculture. Government must, as a priority, strengthen extension support systems and, in collaboration with training institutions, ensure the provision of more holistic and integrated training approaches supportive of agro-ecological practices.

Farmers have strong customary rights to their genetic resources but face threats from more restrictive statutory regimes to protect commercial plant breeders. Plant breeders' rights laws should give adequate recognition and protection to small-scale farmers and their unrestricted rights to save, exchange and develop seeds. South Africa should not ratify UPOV 1991 and should work towards realising Farmers' Rights through giving farmers the legal space to freely save, use, exchange and sell farm-saved seed.

Continued access to plant genetic resources for food and agriculture is vital. Different policies are needed to regulate different kinds of use. National access and benefit-sharing policies and laws should support and not impede the continued sharing of plant genetic resources for food and agriculture and related knowledge among farmers.

Recognition should be given to the strong customary rights communities have over varieties and landraces, the need for prior informed consent, and the use of incentives and agreements to enable equitable benefit sharing.

Key Messages:

- Securing Farmers' Rights; and
- Seed Sovereignty in South Africa

Ex-situ conservation of plant genetic resources for food and agriculture is highly fragmented and poorly coordinated. A coherent, needs-based and well-resourced strategy should be developed and implemented for the ex-situ conservation of plant genetic resources for food and agriculture at national, community and household levels.

Insufficient research is being undertaken on plant genetic resources for food and agriculture.

Research on these resources needs to be strengthened to support the development of appropriate and unprotected climate-resilient varieties for small-scale farmers. Links need to be fostered between researchers and farmers to ensure that research is needs-driven.

South Africa largely remains outside of international policy frameworks for the conservation and sustainable use of plant genetic resources for food and agriculture. It is vital for South Africa to be part of international systems of exchange, use and conservation for genetic resources, more especially as we move towards a climate-changed world. South Africa should sign and ratify the International Treaty for Plant Genetic Resources and Agriculture as a matter of priority.

“Without seed security, there is no food security.”Richard Haigh, Enaleni Farm

Seed selection, saving and exchange are at the heart of traditional agricultural systems for millions of African farmers, contributing significantly to livelihoods and the conservation of agricultural biodiversity. Enabling farmers to maintain and develop this diversity, along with their rich knowledge of and practices in traditional agriculture and agro-ecology, is vital for ensuring present and future food security and sovereignty.

Recognising and rewarding farmers for this crucial contribution is equally important. In a changing and changed world, however, these farming systems, and the genetic diversity,

landraces and farmer varieties they nurture, are under increasing threat. Loss of this diversity not only undermines the ability of households to cope with external shocks, but also diminishes social cohesion, leads to increased reliance on the cash economy and reduces the ecological resilience of ecosystems.

This policy brief provides a review of Farmers' Rights in South Africa, and the extent to which existing policies, laws and practices support seed security and the conservation of agricultural biodiversity. Its objective is to help inform the policy debate on these matters and so enable small-scale farmers to freely use, exchange and sell their seeds and have greater control over their food production and security. It also aims to stem the imposition on smallscale farmers of inappropriate, costly varieties that cannot be replanted from year to year due to intellectual property and technology restrictions.

The focus of the brief is on small-scale farmers, their indigenous agricultural knowledge and practices, and the traditional varieties that they grow.

The policy brief is a collaborative effort between the Environmental Evaluation Unit at the University of Cape Town and Biowatch South Africa. It draws on recent research conducted by the University of Cape Town; Biowatch's long-term work with small-scale farmers in the Eastern Cape, KwaZulu-Natal and Limpopo provinces; and the ongoing engagement of both organisations in the policy arena.

53 Farmers' varieties and landraces are vital for livelihoods: they enhance food security, strengthen social cohesion, maintain cultural integrity, and build climate resilience. At the same time a significant proportion of crop diversity has been lost and is increasingly vulnerable to continued erosion.

Small-scale farmers in South Africa – and women farmers in particular – rely on a range of traditional crops for their staple food. These include grains such as maize, sorghum, and millet; a variety of legumes such as mung beans, cowpeas, peanuts and jugo beans; cucurbits such as pumpkins and melons; indigenous leafy vegetables such as morogo; and other crops such as sesame, Zulu potatoes and amadumbe. These traditional crops are often preferred over commercial varieties because of their hardiness, good yields, drought resistance and high nutritional value.

Not only do traditional crops provide food security to extended families, but they also lead to better nutrition and improved immune systems, both of which are critical in areas with high HIV infection rates. Traditional crops are also valued because they save money; by saving and replanting seed, farmers do not have to buy seed, and traditional agricultural methods reduce the need for costly inputs such as pesticides and fertilisers.

Saving seed thus means precious cash reserves can be set aside for necessities such as clothing, school fees and health care. But traditional crops go beyond food security, forming an integral part of culture, heritage, identity and sense of community. Seed is often inherited, and strong beliefs exist as to the importance of its safeguard for the ancestors and for future generations.

Exchanging seed with relatives, community members and other farmers strengthens social bonds and networks and builds community resilience. This becomes all the more significant with increased urbanisation, the deterioration of the social fabric of communities, the weakening of traditional seed systems, and the decline of indigenous knowledge transfers to the next generation.

Small-scale farmers in South Africa have a rich body of knowledge and practices about traditional agriculture and agro-ecology, but these are under threat.

Traditional farmers in South Africa are active plant breeders, conserving traditional varieties, continuously selecting seed with characteristics such as hardiness, drought resistance,

good storage qualities and taste in mind, and using seed preservation and storage techniques which have been passed on orally for generations.

Besides traditional agricultural knowledge related to seed and crops, farmers also have insight into a suite of ecologically sound farming practices such as natural pest and disease control, soil preparation and water management.

Combined, these knowledge sets help small-scale farmers to deliver food security to their families and immediate communities. Strong promotion of the industrial model of agriculture in South Africa, however, along with externally driven interventions such as the Alliance for a Green Revolution in Africa (AGRA) model of small-scale production advocated elsewhere in Africa, means that traditional agricultural knowledge has been marginalised, and is at risk of being further eroded through the continued introduction of hybrid varieties or genetically engineered seed by multinational seed companies. The distribution of this seed through government programmes aggravates these threats.

Other causes of the erosion of indigenous agricultural knowledge include a loss of arable land due to insecure land tenure or biophysical changes such as erosion; out-migration to urban areas, along with a loss of interest by the youth in traditional agriculture; reduced transfer of indigenous agricultural knowledge between generations; a weakening of customary governance of natural resources; and the extreme weather patterns attributed to climate change.

South Africa's policy framework for ensuring the conservation and sustainable use of landraces, farmer varieties, agricultural biodiversity and associated traditional knowledge is uncoordinated, unbalanced and sometimes contradictory.

South Africa's mix of commercial and small-scale agriculture, combined with its developed and developing economies, has spawned a convoluted policy and regulatory environment for Farmers' Rights and PGRFA. A dense web of international law instruments regulating trade, intellectual property, biosafety, food safety, human rights and environmental conservation has further shaped this context. At national level a complex set of laws has emerged to regulate genetic resource use and conservation – legislation that has, at best, little coherence and at worst, inherent contradictions.

Relevant national government departments that oversee legislation or programmes pertaining to genetic resource use and conservation include the Department of Agriculture, Forestry and Fisheries; the Department of Water Affairs; the Department of Environmental Affairs; the Department of Science and Technology; and the Department of Trade and Industry. In addition, the parastatal Agricultural Research Council and a range of provincial departments, research institutions, companies, and non-governmental and community-based organisations are also involved in implementing relevant national and/or provincial laws and programmes. Despite increased international awareness of the value of local seed systems in maintaining genetic diversity, and growing recognition of the importance of landraces and farmers' varieties, there remains little coherence or coordination between these initiatives, which are still extremely fragmented. A serious concern is the contradiction within the Department of Agriculture, which simultaneously promotes Farmers' Rights and traditional farming practices, along with the proliferation and distribution of genetically modified and hybrid seed.

The national Department of Agriculture should spearhead a process to develop a coherent and supportive national policy for Farmers' Rights and agricultural biodiversity that involves small-scale farmers and includes the voices of the poor and marginalised. Particular attention should be given to reducing internal contradictions within the Department of Agriculture that lead to the contamination of traditional farming systems with genetically modified and hybrid seed.

Extension services and support remain weak and inappropriate for small-scale farmers practising agro-ecology and traditional agriculture. Small-scale farmers need good, regular and unbiased advice about agro-ecological farming practices, about setting up and running household or community seed banks, about the rights they have over genetic material, and about the choice

of seed they plant. Yet government extension services and support for small-scale farmers practising agroecology and traditional agriculture are severely limited, erratic, under-resourced and non-existent in many areas. Government programmes have also been criticised for not being needs-driven, and for disregarding participatory approaches to decisionmaking.

A worrying trend is that seed companies, whose primary interest is to sell proprietary seed and associated herbicides and pesticides, have increasingly replaced government extension services. A growing number of non-governmental organisations have stepped up to the plate to provide advice to small-scale farmers, but these efforts, although important, remain piecemeal and under-resourced.

The appropriate training of extension officers is paramount, yet continues to be sorely neglected. Agricultural training at tertiary level is largely skewed towards industrial and high-input agriculture, and this produces extension officers who promote inappropriate solutions for small-scale farmers, such as the use of chemicals, genetically modified crops and hybrid seed, rather than lowcarbon approaches to agriculture that obviate the need for expensive farming inputs and are better suited to small-scale farmers.

Government must, as a priority, strengthen extension support systems and, in collaboration with training institutions, ensure the provision of more holistic and integrated training approaches supportive of agro-ecological practices.

“Throw away your gogo seeds!”

Farmers have strong customary rights to their genetic resources but face threats from more restrictive statutory regimes to protect commercial plant breeders.

South Africa’s Constitution provides strong recognition of customary law, and thus of the rights of farmers to save and exchange, and to claim proprietary rights over, seed of traditional crop varieties and any associated traditional knowledge.

In practice, however, small-scale farmers in South Africa operate in a plural legal system, where the existing statutory system, designed for the commercial seed sector, could well be prejudicial to their interests. At a broader level, the multiplicity of laws and institutions governing plant genetic resources are likely to create a disabling environment for the realisation of Farmers’ Rights.

Farmers’ Rights are increasingly under siege as escalating restrictions are placed on seed saving and exchange. The controversial TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement of the World Trade Organization, for example, requires countries to provide some form of intellectual property protection for plant varieties, constituting a significant departure from previous practice in Africa and elsewhere, which typically emphasised the free sharing of knowledge and germplasm.

Over the years there has been significant pressure on developing countries to adopt systems based on the International Convention for the Protection of New Varieties of Plants (UPOV), an international agreement that offers common rules for the protection of the ownership of new plant varieties by commercial plant breeders. Rights granted to breeders under UPOV are powerful, and are widely regarded as promoting genetic uniformity in agriculture and biased towards privatising agriculture and pushing the commercial interests of industrial breeders. Plant breeders’ rights make seed saving and seed exchange of protected material a form of counterfeit that countries can ban, or permit only if royalties are paid.

South Africa is one of the few African countries to have a plant variety protection regime in place, in keeping with the country’s history of industrial agriculture and the presence of a strong commercial breeding sector. South Africa has signed, but not ratified, the highly restrictive 1991 UPOV agreement and is a party to the significantly more flexible 1978 UPOV agreement.

Current legislation exclusively protects the rights of the commercial breeder and seed sector, which is dominated by a handful of multinational corporations. As an example, the laws governing the seed sector prevent the cultivation and sale of noncertified seed varieties, thereby destroying the market value of non-certified seeds and promoting reliance on varieties sold by registered commercial seed producers. This creates an unhealthy bias towards monoculture as the best form of agricultural production and favours large-scale commercial seed producers at the expense of small-scale, traditional farmers.

In contrast, little supportive legislation exists to broaden the system to include farmers and communities that have traditionally bred and developed crops and that have, in some instances, provided knowledge and resources to commercial breeders. Moreover, the country's historical – and current – focus on industrial-scale agriculture and the cultivation of a limited number of commercial crops has led to a wider neglect of the so-called orphan crops responsible for the food security of many people. As a result, the genetic base of smallscale farmers will likely continue to erode, along with the resilience of small-scale farmers and their ability to provide food security in the region.

A significant recent development has been the emergence of a plant breeders' rights policy which attempts, for the first time, to develop a more holistic policy approach that incorporates Farmers' Rights within a highly regulated and well-developed sector comprising formal plant breeders. A new Plant Breeders' Rights Bill has also been tabled. This new legislation does not, however, include any recognition of Farmers' Rights and, in contrast, proposes to strengthen restrictions on the propagation and exchange of protected varieties.

This has potentially negative impacts for small-scale farmers, in particular those blending open-pollinated protected varieties with their saved seed stock as a means of maintaining the vitality of that stock.

Plant breeders' rights laws should give adequate recognition and protection to small-scale farmers and their unrestricted rights to save, exchange and develop seeds. South Africa should not ratify UPOV 1991 and should work towards realising Farmers' Rights through giving farmers the legal space to freely save, use, exchange and sell farm-saved seed.

Continued access to plant genetic resources for food and agriculture is vital. Different policies and incentives are needed to regulate different kinds of use. Although policy debates about bioprospecting, access and benefit sharing have been ongoing in South Africa for nearly 20 years, and have led to the development of a comprehensive body of law, the policy focus has largely been on indigenous plant use and drug discovery, rather than PGRFA (which are typically not indigenous) and Farmers' Rights.

Most tellingly, South Africa has neither signed nor ratified the International Treaty on Plant Genetic Resources for Food and Agriculture, and a national policy discussion on Farmers' Rights has yet to transpire. Unique solutions to benefit sharing are needed for PGRFA because of their importance for food and agriculture, and the difficulties of identifying "providers" of these resources.

There is also limited demand for access to wild species or landraces outside research and conservation. For example, an estimated 90-95% of all genetic resources used in the plant breeding industry today are elite, modern varieties, and the remaining 5-10% represent landraces or wild relatives. The effort required to turn landraces or wild relatives into commercially viable resources is considerable, when compared to using an established elite variety that already incorporates desired characteristics. Wild species are thus typically considered to have little commercial value, requiring considerable investment with risky returns.

New biotechnological tools are likely to increase interest in crop wild relatives, more especially with a move towards precision breeding and the ability to incorporate traits from crop wild relatives into cultivated crop material in a more efficient, effective, and faster, manner. Whether this demand will lead immediately to the increased collection of wild genetic material is,

however, debatable, especially given the fact that many companies now have their own private gene banks or ready access to those of international agricultural research centres.

Genetic resource exchange at the community level remains largely unrestricted, and there are strong flows of traditional seeds within and among communities. Elaborate systems of exchange, loan or donation play an important role as a safety net in case of harvest failure, encourage crop diversity within household gardens, and maintain good community and family relations. Procedures for seed exchanges outside of the community are less clearly defined, however, and represent a potential area of abuse.

National access and benefit-sharing policies and laws should support and not impede the continued sharing of plant genetic resources for food and agriculture and related knowledge among farmers. Recognition should be given to the strong customary rights communities have over varieties and landraces, the need for prior informed consent, and the use of incentives and agreements to enable equitable benefit sharing.

Ex situ conservation of plant genetic resources for food and agriculture is highly fragmented and poorly coordinated.

The *ex-situ* conservation of PGRFA in South Africa is thwarted by a lack of coordination between the diverse institutions responsible for different gene banks, the absence of an overall strategy for *ex situ* PGRFA conservation, insufficient funding and low capacity.

A key constraint is the poor description of many accessions (items lodged in a collection), leading to inadequate information about the PGRFA held in *ex-situ* collections. This is partly why demand for *ex-situ* material held in national collections is low, along with the fact that mergers and acquisitions have now given many companies access to vast private collections that they are able to utilise for research and development.

Although efforts have been made to ensure the conservation of landraces and farmer varieties, these initiatives are similarly hampered by an absence of resources, capacity and political will.

At a local level, household seed banks represent a practical and viable approach to the storage of genetic material. These seed banks are vital for food security, enabling seed to be kept from year to year, so maintaining the breeding characteristics selected by farmers, such as better performance, bigger seeds, adaptation and insect resistance.

A coordinated, needs-based and well-resourced strategy should be developed for the *ex-situ* conservation of PGRFA at national, community and household levels. Despite the importance of landraces and farmers' varieties, these crops have been historically neglected in both research and development.

Private companies have little interest in their commercial development, and government and university funding is very limited. The potential of farmers' varieties to adapt to climate change, coupled with increased donor attention, has, however, led to increased research interest.

Research is essential not only for the development of possible commercial varieties, but also to support small-scale farmers. Although farmers reliant on rainfed agriculture have been selecting locally adapted seed for generations, rapid climate change will require them to have access to a wider pool of genetic diversity and the help of modern plant breeders to develop appropriate varieties. Given existing institutional and technical capacities, South Africa could well be considered as a logical location to focus this research.

Research on plant genetic resources for food and agriculture needs to be strengthened to support the development of appropriate and unprotected climate-resilient varieties for small-scale farmers. Links need to be fostered between researchers and farmers to ensure that research is needs-driven.

Insufficient research is being undertaken on plant genetic resources for food and agriculture. South Africa largely remains outside of international policy frameworks for the conservation and sustainable use of plant genetic resources for food and agriculture.

South Africa participates actively in meetings of the Commission on Genetic Resources for Food and Agriculture, yet has not signed the International Treaty on Plant Genetic Resources for Agriculture, which entered into force in 2004. The treaty sets in place an international framework for the conservation and sustainable use of PGRFA and recognises the importance of farmers as custodians and developers of genetic diversity in food and agriculture.

Even though South Africa is not a party to the treaty, many of its provisions are implemented through various national programmes. Moreover, South Africa remains contractually bound by provisions of the mandatory standard material transfer agreement when obtaining genetic material from the international agricultural research centres for crops listed in Annex 1 of the treaty.

With climate change, many crops are likely to face conditions that have never been encountered before during their history of domestication. Severe dislocations in parts of the world and dramatically different growing conditions could well lead to a situation in which farmers require an entirely new set of genetic diversity.

If South Africa were to sign the International Treaty on Plant Genetic Resources for Agriculture, it would not only signal the importance of acting cooperatively to meet this challenge, but also enable the country to be part of the multilateral system for plant genetic resource exchange and benefit sharing, and to have a say in the way in which it operates.

It is vital for South Africa to be part of international systems of exchange, use and conservation for genetic resources, more especially as we move towards a climate changed world. South Africa should sign and ratify the International Treaty for Plant Genetic Resources and Agriculture as a matter of priority.

present and future food security – are under increasing threat. “

References

Andersen, Regine (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, p. 5, The Fridtjof Nansen Institute, Lysaker, Norway

EnAct International (2003). Review and analysis of legislation and policy relevant to the formal and informal seed sectors in South Africa. Legal Review Prepared for Biowatch South Africa.

FAO (1998). State of the World's Plant Genetic Resources for Food and Agriculture, Food and Agriculture Organization of the United Nations, Rome.

FAO (1999). International Treaty on Plant Genetic Resources for Food and Agriculture, Food and Agriculture Organization of the United Nations, Rome, www.planttreaty.org

van Niekerk, Jaci and Wynberg, Rachel (2012). Securing Farmers' Rights and Seed Sovereignty – Case Studies from KwaZulu-Natal. Waterloo, Canada: Africa Initiative, Centre for International Governance Innovation.

3.4 **THE DEVELOPMENT FUND (Norway)**

The Development Fund (DF) works to bring the issue of Plant Genetic Resources for Food and Agriculture (PGRFA) on the development agenda. DF supports development projects in Africa (Ethiopia, Malawi and Zambia), Central America (Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador), Southeast Asia (Bhutan, Lao PDR, the Philippines and Vietnam) and South Asia (Bangladesh, Nepal, India and Sri Lanka) through our local partners for the promotion and implementation of community-based conservation, development and sustainable use of PGRFA and promotes Farmers' Rights. Our main partners in regard to implement Farmers' Rights are SEARICE (Philippines), LI-BIRD (Nepal), Green Movement (Sri Lanka), EOSA (Ethiopia), MELCA (Ethiopia), CEPA (Malawi), ASOCUCH (Guatemala), PRR and FIPAH (Honduras), CIPRES (Nicaragua) and La Via Campesina.

DF's support is to increase on-farm genetic diversity (both number of species and number of varieties) as well as strengthen local initiatives for conserving traditional and wild relative species. Being the supporter and promoter of the community agrobiodiversity management practices¹⁶, DF would like to share its views, experiences and best practices on the implementation of Farmers' Rights as requested by the Secretariat International Treaty on Plant Genetic Resources for Food and Agriculture. DF has gained a lot of experiences related to Farmers' Rights mainly because of the work done by our partners. Thus, our inputs here are partly the results of the work they have conducted.

DF understands that the implementation of the Farmers' Rights requires public awareness on the value of PGRFA, relevant knowledge and practices and operational policies, laws and regulations relevant to the sector in a country. Another general observation based on our experience, is the close links between Article 9 and the other provisions of the ITPGRFA, particularly Article 6.

Recognition of farmers' contribution

As stated in Article 9.1 of the ITPGRFA, local and indigenous communities and farmers have contributed enormously to the conservation and development of plant genetic resources, which constitute the basis of food and agriculture production throughout the world. To what degree, however, that they will continue to do so depends heavily on the agricultural policies of countries and donor agencies. The "industrial model for agriculture" promotes the wide adoption of few varieties, thus contributing to loss of genetic diversity.

DF has contributed to document the negative impact of industrial agriculture as well as the need for agroecological approaches to food production in several publications. These reports also value the importance of PGRFA. Our recent reports (where DF is one of several contributors) in this regard are:

- *Banking for the future: Savings, Security and Seeds.* Case studies of Community seed banks that include a chapter on how to upscale community seeds banks as a mean to implement Farmers' Rights:
http://www.utviklingsfondet.no/files/uf/documents/Rapporter/Banking_for_the_future.pdf

¹⁶ *The Community Biodiversity Management (CBM) Practices that DF support through its local partners include establishment of functioning Community Seed Banks (CSB) which are managed by farmers, Community Based Seed Production (CBSP) by organized farmers in order to secure good and diverse seeds for farmers. Other CBM practices include participatory community sensitization on values of agricultural biodiversity (e.g. biodiversity fairs), Community Biodiversity Register (CBR), Community Biodiversity Management (CBM) funding mechanism, crop diversification, Participatory Variety Selection (PVS) and Participatory Plant Breeding (PPB) and value addition in local crops for marketing to enhance local biodiversity and increase food security at the same time.*

- *Agricultural Transition- a different logic*. By Angela Hilmi, published by the More and Better Network. <http://ag-transition.org/>
- *A Viable Food Future Part I*
http://www.utviklingsfondet.no/files/uf/documents/A_Viable_Food_Future_updated_web.pdf (also in Norwegian, French and Spanish)
- *A Viable Food Future Part II*
http://www.utviklingsfondet.no/files/uf/documents/Rapporter/A-Viable_Food_Future_part2_en_web.pdf
- *More than Rain: identifying sustainable pathways for climate adaptation and poverty reduction*.
http://www.utviklingsfondet.no/files/uf/documents/Rapporter/More_Than_Rain_Full_report.pdf

DF considers *ex situ* conservation as an important back up to *in situ*/on farm conservation. Thus, it is important to stress at different occasions that *ex situ* can never replace the need and importance of farmers' continuous on-farm conservation efforts through their active use of PGRFA. Evolution, knowledge and culture cannot survive in minus 18 degree Celsius. The official opening of the Global Seed Vault at Svalbard is an example of one big investment in *ex situ* conservation. At the request of the Ministry of Agriculture of Norway, DF identified a representative of the thousands of farmers who have conserved and developed diversity of PGRFA. During the opening in February 2008, late Mr. Tay Gipo from the Philippines was one of the prominent speakers who presented his experiences in developing several rice varieties that has been used and gained high popularity among farmers in his country.¹⁷

DF is of the opinion that the recognition of farmers' contributions should be reflected in donor agencies policies and level of funding. DF is thus promoting the balanced funding to *in situ* to match the Norwegian government's current funding to *ex situ* activities.

In many of the countries where DF supports projects, awareness on Farmers' Rights and the value of agricultural biodiversity is limited. Awareness is low even in countries that have Farmers' Rights acts. For instance, our partners in Ethiopia witness that majority farmers have not even heard the word 'Farmers' Rights' though the country had its proclamation on Farmers' Rights in 2006. A number of other countries that are working to develop their Farmers' Rights Acts like Nepal and Malawi need to do more awareness raising work at various levels, to avoid the fact that a rather limited group of stakeholders are drafting these acts. Understanding these challenges, DF has been supporting awareness creation workshops and seminars through its partners to raise understanding about Farmers' Rights among the public. Through its partners, DF is also supporting policy advocacy on Farmers' Rights in some of the countries listed above.

Being the supporter and promoter of participatory plant breeding (PPB), DF realizes that PPB unifies efforts to strengthen farmers' capacity of conservation and sustainable use of PGRFA. Farmers' organizations and highly recognized research institutes, such as e.g. the Zamorano University in Honduras, work together in plant breeding, variety selection and testing of new varieties. In PPB processes, farmers are involved in plant breeding programs to make decisions throughout from defining breeding objectives, conducting trials, selecting lines, registration of the variety produced, its maintenance, multiplying and commercializing the seeds of the selected lines. Farmers get opportunities to influence the development of technologies that are based on their specific needs, priorities and environments.

In this way, farmers' knowledge and experience are combined with professional plant breeders' expertise. Farmers have developed several improved varieties that are now liberated at

¹⁷ <http://newcityph.com/archive/0907/culture.htm>; <http://www.regjeringen.no/en/dep/lmd/whats-new/Speeches-and-articles/speeches-and-articles-by-the-minister/speeches-and-articles-/one-year-anniversary-seminar-of-the-sval/one-year-anniversary-seminar-of-the-sval.html?id=547254>

national level in some of the DF partner countries f. example in Vietnam, Honduras and Nepal. Apart from this, thousands of varieties of different crops has been breed and selected through participatory approach and farmers are using these varieties. However, there are still a lot of challenges in PPB. National agricultural research and professional breeders are yet to recognize the role of farmers' knowledge in plant breeding. Moreover they are reluctant to provide segregating varieties to farmers' organization for participatory variety selection due to concerns like the IPR. PPB has not received necessary financial and policy support from national governments, despite its contribution to the majority farmers who can't access seed and technologies from private sector like the seed industries. Financing of PPB programmes through the Benefit-sharing Fund should be done so that the farmers can have indirect benefit of developing new preferred varieties of their own because PPB provides farmers to develop varieties according to their need and with their ownership suitable for small holder farmers dependent of local seed system.¹⁸

Protection of traditional knowledge relevant to PGRFA

Through its partners, DF supports and promotes local exchange of genetic resources and knowledge through project activities like Community Biodiversity Registers (CBRs) and Community Seed Banks (CSBs) at local level. Farming communities were trained to document their genetic resources and associated traditional knowledge using CBR. CBR facilitates bioprospecting, provide the basis for the ownership of genetic resources and associated traditional knowledge and specify the communities that must be involved in providing prior informed consent and in ABS. This is because CBRs are useful for locating the source of genetic material and identifying the holder of associated traditional knowledge. Farmers see the benefits of CSBs in terms of getting local varieties of seed easily, obtaining information/knowledge about them. Since national Genebanks are not well linked to farming communities in order to promote conservation of PGRFA and associated traditional knowledge, DF sees that CSBs should be supported and linked with the national and international gene banks as an effective model for exchanging genetic resources and knowledge on them. Adding value to genetic resources and associated traditional knowledge through participatory plant breeding and grass root breeding as well as for marketing of local genetic resources has also played a significant role to promote conservation and promotion of traditional knowledge.

The right to equitably participate in sharing benefits arising from the utilization of PGRFA

DF experienced that countries are not paying sufficient attention to ensuring that farmers' organizations represent all farmers, or to using participatory processes to identify and address the problems farmers face in their national programs. Because of that, DF supports establishment of strong farmers' institution (f. example Biodiversity Conservation and Development Committee in Nepal, Seed Clubs in Vietnam, Farmer Conservator Association in Ethiopia and Comité Técnico in Guatemala) with the objective to conserve and sustainably use genetic resources and associated traditional knowledge. DF also supports these farmers' institutions that are establishing Community Biodiversity Management Fund (CBM fund) that farmers themselves are managing and establishing a funding mechanism that works locally. The CBM fund is given to farmers as loan with minimum interest rate for income generation activities. Farmer themselves set the norms and supports those members with a loan who combine income generation activities with conservation efforts. The condition is that each farmer who got loan from CBM fund must conserve and share seeds of at least one local genetic resource that is rare or threatened. This is a local mechanism that work very well and can be an alternative to channel ABS fund directly to

¹⁸ More info on PPB experiences in Nepal, see e.g. this short summary: http://www.farmersrights.org/bestpractices/success_benefit-sharing_5.html

the work of the farming communities. Otherwise DF is financing on-farm management of PGRFA through projects that indirectly contribute to the benefit sharing.

The Benefit-sharing Fund of the MLS of the ITPGRFA has the potential to be an efficient funding mechanism to ensure that farmers and local communities continue to conserve and sustainable use PGRFA. However, so far no compulsory payment has been made to the fund. Thus, there is a need to look into how it is possible to change the decisions on what should trigger compulsory payment as this should not be limited to patents (which are in themselves problematic). One possible model is the Norwegian one: a certain percentage of the commercial sales of seeds are paid to the BS fund. Together with Berne Declaration, DF commissioned a study on the outstanding issues on ABS under the MLS in 2009: http://www.evb.ch/cm_data/ITPGR_ABS_Study_1.pdf The ABS under the MLS is also challenged by the possibilities of accessing seeds outside of the MLS system, thus not recognizing the contributions of farmers by contributing to the sharing of benefits, see e.g. the report on US and sorghum: <http://www.evb.ch/en/p25019094.html>

To what degree the Benefit-sharing Fund will be a good tool for implementing Farmers' Rights also depends on to what degree these funds actually reach farmers who are still conserving and developing PGRFA.

Rights to participate in making decisions at the national level on matters to the conservation and sustainable use of plant genetic resources for food and agriculture

DF experiences that several national programs on PGRFA are being designed and managed by government institutions and they are out of reach of farming communities. Understanding this, DF supports project activities that empower communities to make decisions about conservation and use of genetic resources through trainings on community based biodiversity management practices like diversity fairs, diversity blocks, community biodiversity registers¹⁹, participatory plant breeding etc. Such community lead practices would be very effective ways to exchange genetic resources and associated traditional knowledge within, to create awareness and interest among diverse stakeholders regarding the importance and value of local genetic resources. Above all, it leads to community planning that guides community actions on conservation and sustainable use of PGRFA.

Since decisions regarding Farmers' Rights are also being taken at the international level, farmers' participation should also be ensured here to a certain degree. DF has funded farmers and representatives from Southern NGOs at all the Governing Body meetings of the ITPGRFA. Funds to cover such representation should be ensured from a more formal body than a relatively small NGO like DF.

Rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material

Despite its significant role in local seed security, local seed supply system is being threatened due to the promotion of formal seed system in many countries. Because of that DF is supporting a community seed bank system i.e. a local institution dedicated to the management of plant genetic resources of importance to farming communities. The experience from DF's support to Community seed banks is that there are wide forms of practice from germplasm collection, regeneration, distribution and maintenance of local crop diversity to documentation of traditional knowledge. A number of CSBs are also engaged in production and marketing of seeds including of improved varieties. However, CSB is an effective practice promotes Farmers' Rights to save, use, exchange and sell farm-saved seed/ propagating material.

¹⁹ More info on an example of community registry, see e.g. http://www.farmersrights.org/bestpractices/success_tk_3.html

DF is also supporting community-based seed production (CBSP) where the production and exchange of seed of local varieties are coordinated by farmers. CBSP may be an option for ensuring the rights of farmers to save, exchange and sell seed, reducing their dependency on the commercial seed supply.

The main obstacles to recognize Farmers' Rights to save, use, exchange and sell farm-saved seeds are linked to intellectual property rights (IPR) and seed regulations. Due to the fact that seed regulations often include DUS (distinct, uniform and stable) as a criterion for certifying seeds, farmers' seeds are excluded from certification despite their agronomic value. DF has been advocating for changes in the Norwegian seed regulation in order to allow for the use of traditional varieties. DF also supports partners who are working for the recognition of Farmers' Rights to use, sell and exchange farmed saved seeds of farmers' varieties. E.g. in Costa Rica, farmers have set up a bean seed catalogue as a participatory mechanism to guarantee farmers high quality seeds by using traditional knowledge.

Regarding IPRs, both patents and plant variety protection limit Farmers' Rights to save, use, exchange and sell farmed-saved seeds.

Patents on plants, plant breeding processes and genes constitute a severe threat to food security. Depending on the national definition of the patent law, patents usually prohibit farmers to save seeds from their own harvest, or they have to pay a license if they do so (small scale farmers might be excluded from paying). Usually, patenting of plants/genes never allows farmers to exchange or sell patented seeds. DF is a member of a coalition of civil society organizations monitoring patenting of plants at the EPO: <http://www.no-patents-on-seeds.org/en>. DF is concerned over the increasing trend in EPO to grant patents on conventionally bred plants. Breeders are usually not allowed to do further breeding on patented material. This is a real obstacle to further breeding activities due to the accumulative character of breeding always needing access to breeding material in order to meet the continuous need for new varieties.

The impact of PVP on Farmers' Rights depends on how the PVP law is drafted nationally. Some countries have joint PVP and Farmers' Rights Acts, which might facilitate a better balance between these two sets of rights. At the international level, UPOV is the main international body negotiating PVP. The UPOV Act of 1978 has less negative impact of the realization of Farmers' Rights compared to UPOV Act of 1991. DF has advocated for Norway to continue its membership to the Act of 1978. Thus, farmers in Norway are allowed to freely save seeds from own harvest of PVP protected varieties.²⁰

DF is worried that potentially new member countries of UPOV have to adhere to UPOV 1991, which has stricter interpretation of Farmers' Rights to save seeds. There is a strong push on developing countries to become members of UPOV through the lobbying activities of UPOV, e.g. through processes such as establishing regional PVP at ARIPO, and the "World Seed Project" jointly implemented by UPOV, ISA and FAO. Developing countries are also faced with a pressure to implement UPOV 1991 and patents on plants through bilateral trade agreements that have so-called TRIPS+ requirements (i.e. stronger rules on IPRs than the minimum level of TRIPS of WTO).

At the international level, DF works for more transparency, accountability and recognition of Farmers' Rights in UPOV. Together with several other CSOs from different parts of the world, DF established the Association for plant breeding for the benefit of society (APBREBES). APBREBES has now gained observer status at UPOV meetings and is working to put the Farmers' Rights agenda on UPOV discussions. Apart from APBREBES and European Coordination Via Campesina (ECVC), there are no observers at UPOV meetings from CSOs and farmers' organizations. One of the results so far of APBREBES' activities is the increased transparency in UPOV with more of its documents now publically available (removing of "first restricted area").

²⁰ More info about this case, see e.g. http://www.farmersrights.org/bestpractices/success_seed_2.html

3.5 EUROPEAN SEED ASSOCIATION²¹

Brussels, 28 November 2008

“Farmer’s Rights” have become an important subject on the international political agenda for farmers and the seed industry alike. Therefore, ESA, the representative organization of the European seed industry herewith makes its views known on this specific issue.

ESA appreciates the historic and valuable contribution of farmers to the development and conservation of genetic resources of food and feed crops as mentioned in Article 9(1) of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

At the same time, ESA points out the important function of the European seed industry in contributing to better yields of food and feed crops by conservation and characterization of genetic resources in gene banks and further enhancing these genetic resources through breeding and development of improved varieties.

Therefore ESA, as a means of sustainable use, fully supports an open access to all genetic resources, including land races, gene bank accessions, wild relatives and protected varieties for breeding purposes by all breeders: farmers or companies alike. ESA is against any regulation which forbids or discourages farmers to breed or participate in plant breeding or to use other ways of improving the value of their crop.

For their continuous and substantial investment in the breeding work, breeders need a fair remuneration for the additional genetic value of their new varieties. Because plant varieties, especially the open pollinated types, can very easily be reproduced by anybody, breeders, whether companies or individuals, must have the opportunity to protect their new varieties through intellectual property rights. ESA is strongly in favour of Plant Breeder’s Rights based on the UPOV 1991 Convention as it provides an adequate protection of plant varieties against inappropriate exploitation by others. This protection is combined with free access and use for further breeding purposes²² (breeder’s exemption) and the compulsory exception of acts done privately for non-commercial purposes¹ allowing subsistence farmers in developing countries to save and use seed from their own harvests.

Although the ITPGRFA - in general - recognizes the right of farmers to save, use, exchange and sell farm saved seed, its Article 9(3) clearly indicates that this right is subject to the national law in force in a given country, where such acts may be prohibited or subject to specific requirements and/or limitations. This paragraph thus does not give an unconditional right to farmers but merely states that Article 9 does not intend to limit any rights that farmers are granted at national level.

Under the UPOV 1991 Convention, national laws may allow farmers to replant on their own farm the seed produced on that same farm without the consent of the breeder of the protected variety. This exception however must remain within reasonable limits and is subject to the safeguarding of the legitimate interests of the breeder²³. This optional exception to Plant Breeder’s Rights should be limited to food and feed crops where farm saved seed has been used traditionally and subject to the obligation that the farmer provides information concerning the use to the breeder and to the payment of an equitable remuneration. Free and unlimited use of farm saved

²¹ Note by the Secretariat: submitted in October 2012

²² Article 15(1) of UPOV 1991 Convention

²³ Article 15(2) of UPOV 1991 Convention

seed undermines the financial return for breeders in important food and feed crops. Insufficient income for breeders will lead to less breeding efforts and eventually stop the release of new varieties to the detriment of farmers and society as a whole. However, farmers still have the opportunity to use seeds of varieties that are not or no longer protected, including landraces, independently of the consent of the breeder.

In the EU Member States, like in many countries, governments have implemented regulations for variety registration, variety listing and seed certification, in order to guarantee a good seed quality combined with objective and adequate information for farmers about the quality and potential value of the best varieties. ESA draws the attention to the fact that these regulations have contributed extensively to the successful development of agriculture in Europe.

For this purpose, like for Plant Breeders' Rights, varieties need to be tested for distinctness, sufficient uniformity and stability (DUS). ESA emphasizes that these requirements must be applied to all varieties entering such systems, irrespective of their origin and purpose, in order to avoid confusion about varietal identity and to prevent the registration of too heterogeneous varieties hampering the introduction of new and better varieties. However existing varieties not meeting these requirements (e.g. landraces) may still be allowed on a case by case basis and under adapted DUS requirements. In the EU, this approach is being followed by the specific conditions set for the marketing of seed of conservation varieties.

In conclusion, ESA fully supports farmer's rights as mentioned in Article 9 of the ITPGRFA, taking into account the contribution of farmers to the conservation of genetic resources and the mutual benefits of improved varieties for farmers and breeders by sustainable use of genetic resources for further breeding and safeguarding the legitimate interest of the breeder.

3.6 FRIDTJOF NANSEN INSTITUTE

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

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

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

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

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

The Fridtjof Nansen Institute (FNI)²⁴ has followed the developments of Farmers' Rights under the Plant Treaty closely since 2005, through its Farmers' Rights Project, which was established to assist the implementation of Farmers' Rights under the Treaty with research based guidance.²⁵ FNI has contributed reports, input papers and side events at each session of the Governing Body, presenting views, experiences and best practices from a long range of countries in all regions.²⁶ Our book *'Realising Farmers' Rights to Crop Genetic Resources: Success Stories and Best Practices'* will be published in June 2013, and presented at the Fifth Session of the Governing Body.²⁷

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

The First Session of the Governing Body

At the First Session of the Governing Body in 2006, Norway stressed the importance of Farmers' Rights, noting that the responsibility for their implementation lay with national governments, and Norway reported that it was accordingly funding a project that focused on how countries could best implement Farmers' Rights, the need for cooperation in this regard within the framework of the Treaty, and how the Governing Body could support these efforts (the Farmers' Rights Project). An international stakeholder survey had been conducted, which gathered the perceptions and opinions of various stakeholders from all parts of the world, as expressed in 60 questionnaires from 31 countries. The survey gave an overview of the state of realization of Farmers' Rights which showed that, despite the huge challenges ahead, efforts were already underway with regard to all issues addressed as Farmers' Rights in the International Treaty. Mindful of the workload that the Secretariat was carrying, and that the first priority of the Treaty was make the Multilateral System functional, Norway requested that a follow-up to Article 9, *Farmers' Rights*, be considered by the Bureau for possible inclusion in the agenda of the Governing Body's second session. Many regions supported this proposal.²⁸

The Lusaka international consultations on Farmers' Rights

In preparation of the Second Session of the Governing Body, an informal international consultation was organized in Lusaka, Zambia 18–20 September 2007. The consultation was co-hosted by Zambia Agricultural Research Institute, Ministry of Agriculture and Food, Norway, and the Fridtjof Nansen Institute, Norway. The three-day meeting had a total of twenty-seven participants, invited in their personal capacities and drawn from governments, NGOs, international organizations, research institutions and other private and public institutions, from twenty countries of different regions and with various backgrounds and expertise. It resulted in a comprehensive report.²⁹ Based on the findings, Zambia and Norway submitted an input paper on

²⁴ See: www.fni.no

²⁵ See: www.farmersrights.org

²⁶ See: http://www.farmersrights.org/about/fr_in_itpgrfa.html

²⁷ Edited by Regine Andersen and Tone Winge (eds.) and published by Routledge, see: <http://www.routledge.com/books/details/9780415643849/>

²⁸ Report from the First Session of the Governing Body (IT/GB-1/06/Report), paragraph 54, available at: <http://www.planttreaty.org/sites/default/files/gb1repe.pdf>

²⁹ Available at: http://www.farmersrights.org/pdf/farmers_rights_lusaka_consultation_final_report.pdf

Farmers' Rights to the Governing Body of the ITPGRFA for consideration at its second session.³⁰ In this input paper, they recommended the Governing Body to consider the following proposals on how it can assist countries in the realization of Farmers' Rights:

- The Governing Body may wish to ask the Secretary to collect information on national action plans, programmes and legislation related to Farmers' Rights as well as information on how international bodies and institutions could assist Contracting Parties in implementing Article 9 and the other provisions of the Treaty through which Farmers' Rights can be realized;
- The Governing Body may wish to consider how to guide and assist Contracting Parties in their implementation of Article 9 and related provisions. In this regard, the Governing Body may wish to consider developing guidelines for national implementation of Article 9 on Farmers' Rights. The guidelines should also take into account how the related provisions of the Treaty will assist in the implementation of Article 9 and how Farmers' Rights can be beneficial for implementation of these related articles. The guidelines could include practical and technical advice on steps and measures that Contracting Parties could take, in accordance with their needs and priorities;
- The Governing Body may wish to consider establishing an *ad hoc* working group mandated to develop the above draft guidelines through a transparent, participatory and inclusive process.

The Second Session of the Governing Body

At the Second Session of the Governing Body in 2007, the Secretary presented an Information Paper on the Development of Farmers' Rights in the Context of the International Undertaking and Article 9.³¹ Zambia and Norway presented the input paper from the Lusaka informal international consultations on Farmers' Rights as basis for discussions. The Governing Body extended its appreciation to the Governments of Norway and Zambia for convening the informal international consultations and for sharing the outcomes with the Governing Body and adopted a resolution in which (Resolution 2/2007):³²

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

Online Conference on Farmers' Rights

Based on Resolution 2/2007, the Centre for Genetic Resources, The Netherlands (CGN) and the Community Technology Development Trust (CTDT, Zimbabwe) opened an on-line conference platform to discuss legal options to facilitate the contribution of farmers to on-farm

³⁰ Available at: <ftp://ftp.fao.org/ag/agp/planttreaty/gb2/gb2c1e.pdf>

³¹ IT/GB-2/07/Inf.6, available at: <ftp://ftp.fao.org/ag/agp/planttreaty/gb2/gb2i6e.pdf>

³² Report from the Second Session of the Governing Body, IT/GB-2/07, p. 13, available at: <http://www.planttreaty.org/sites/default/files/gb2repe.pdf> See also press release from the Fridtjof Nansen Institute at: <http://www.fni.no/news/071119.html>

maintenance and development of plant genetic resources (titled *Options for Farmers' Rights*). The initiative was taken in a search for agreed principles shared widely between major stakeholder groups, and with the ambition to present to the Governing Body alternative options for the implementation of Farmers' Rights with their advantages and disadvantages. The output of the on-line consultation process, as well as the results of a number of farmers' workshops held in parallel to the internet-based discussion in Malawi, Zambia and Zimbabwe were summarized in a report submitted to the Governing Body as an information document. The consultations lasted for almost 6 months (2008-2009), had broad participation and resulted in the following recommendations:³³

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

The Third Session of the Governing Body

For the Third Session of the Governing Body in 2009, the Secretary of the Treaty had compiled submissions on the agenda item on Farmers' Rights from Ecuador, Germany, Mali, Niger, Pakistan, Syria and Zambia.³⁴ In addition there were submissions from CGN and CTDT (see above), from the Ministry of Agriculture and Food, Norway,³⁵ the Fridtjof Nansen Institute, Norway,³⁶ and France,³⁷ and others.³⁸

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

³³ Available at: <http://www.farmersrights.org/pdf/GB3Inf6a2.pdf>

³⁴ Available at: <http://www.planttreaty.org/sites/default/files/gb3i06e.pdf>

³⁵ Available at: <http://www.planttreaty.org/sites/default/files/gb3i06a5e.pdf>

³⁶ Available at: <http://www.planttreaty.org/sites/default/files/gb3i06a3e.pdf>

³⁷ Available at: <http://www.planttreaty.org/sites/default/files/gb3i06a4e.pdf>

³⁸ Other contributions are not anymore available at the Treaty website.

discussions of the proposed text. The 2009-resolution was proposed by Brazil on behalf of Africa, Latin America and the Caribbean. It has 10 preambular paragraphs and 5 operational paragraphs. Through the operational paragraphs the Governing Body:³⁹

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

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

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

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

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

Global Consultations on Farmers' Rights

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

A global consultation conference, with regional components and 52 participants representing a wide range of stakeholders and countries, took place in Addis Ababa 23-25 November 2010. The conference was organized by the Fridtjof Nansen Institute, Norway, and hosted by the Institute of Biodiversity Conservation, Ethiopia. The results of the global consultation process were presented in an input paper⁴⁰ (available also in Spanish⁴¹ and French⁴²) submitted by Ethiopia to the Governing Body of the Plant Treaty at its Fourth Session in 2011, as a basis for an agenda item on Farmers' Rights. In addition, two reports have been published. The first report presents the proceedings of the Consultation Conference, and contains a summary of

³⁹ The Report from the Third Session of the Governing Body (IT/GB-3/09/Report), available at: <http://www.planttreaty.org/sites/default/files/gb3repe.pdf>

⁴⁰ Available at: http://www.farmersrights.org/pdf/gb4c01e_%20FRinputpaper_eng.pdf

⁴¹ Available at: http://www.farmersrights.org/pdf/gb4c01s_FRinputpaper_spa.pdf

⁴² Available at: http://www.farmersrights.org/pdf/FR-2010-INPUT-PAPER_French.pdf

the findings from the email-based questionnaire survey,⁴³ while the second report presents the findings from the survey more in detail.⁴⁴

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

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

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

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

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

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

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

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

Fourth Session of the Governing Body

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

⁴³ Available at: <http://www.farmersrights.org/pdf/FNI%20Report%201-2011%20Farmers%20Rights.pdf>

⁴⁴ Available at: <http://www.fni.no/doc&pdf/FNI-R0211.pdf>

through which these views, experiences and best practices can be exchange between and among Contracting Parties and relevant stakeholder groups to the Secretariat. They were also invited to consider reviewing, and if necessary, adjusting their national measures affecting the realization of Farmers' Rights.

Where we stand

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

Patterns from the consultations prior to GB-sessions:

1. The need for information sharing among and between the Contracting Parties (Lusaka consultations);
2. The need for guidance from the Governing Body to assist Contracting Parties in their implementation of Article 9 and related provisions (Lusaka consultations);
3. The recommendation to develop voluntary guidelines for this purpose in a transparent, participatory and inclusive manner, with the effective involvement of farmers' organizations and other relevant organizations (Lusaka consultations, Online consultations, Global consultations);
4. The proposal that an *ad hoc* working group be established facilitate the development of such guidelines (Lusaka consultations and Global consultations);
5. The recommendation for the Governing Body to study options for provisions in national seed legislation of Contracting Parties, with a view to providing recommendations for the improvement of national legislation in order to allow for a balanced regulation for all types of seeds (online consultation and Global consultations).

Patterns of the Governing Body resolutions concerning Farmers' Rights:

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

With a view to the results of the consultations on Farmers' Rights, we can see that the first point on information sharing has been responded to by the Governing Body, by inviting the submission of views and experiences and making these available. It has also been responded to by the decision to hold regional workshops for this purpose. Also the fifth point from the consultations has been responded to, to some extent, in that the Governing Body has invited Contracting Parties to review their national measures and if necessary adjust them. This includes seed legislation. However, more could be done in this regard, i.e. in terms of guiding the Parties

as to how such legislation could be adjusted. The fourth point on an *ad hoc* working group has to some extent been responded too through the decision to establish a working group on Article 6, which will also consider aspects related to Article 9.

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

Conclusion

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

ii) Plant Genetic Diversity and Farmers' Rights in Norway

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

3.7 GREEN FOUNDATION

Farmers' Rights: a top down or bottom up approach?⁴⁵

Plant genetic diversity is crucial to the future of food security and the diverse genetic resources that provide the insurance against pest and diseases and the changing climatic conditions. Such diversity plays an important role for the millions of small and marginal farmers who depend upon small scale farming for their livelihoods.

The diversity of domesticated land races are disappearing at an alarming rate all over the world. This apart the interest in the commercial use of genetic resources has increased in line with the new interest in Bio technology, along with IPRs and new seed regulations initiated at the national level. Ever since the negotiations of the WTO and trade related IPRs were agreed upon by the Contracting Parties, a situation of an anti commons with multiple actors excluding each other from the right of access to plant genetic resources has emerged. Unfortunately this is not seen as a threat to conservation and sustainable use of this resource seriously impacting food security and the outlook for combating poverty in the world.

In order to stall this negative trend, the International Treaty on Plant genetic resources (FAO) (Called ITPGRFA) was initiated in the corner stone of the Plant Treaty.

⁴⁵ Contribution signed by Vanaja Ramprasad. He is the founding member of GREEN Foundation, an NGO working on seed saving and sustainable agriculture. www.greenconserve.com

Farmers' Rights are basically about enabling farmers to maintain and develop crop genetic resources as they have done since the dawn of agriculture.

The Plant Treaty was adopted by 120 Contracting Parties which entered in to force in 2004. The objectives of the Plant Treaty are conservation and sustainable use of crop genetic resources and the fair and equitable sharing of the benefits arising from use for sustainable agriculture and food security.

The concept of the Farmers Rights addressed in the FAO at a working group for the first time was developing countries as well as some industrialized countries like Norway advocated varieties where as countries like the US and Australia did not support the stand. In 1999 the heated debates Article 9 and Article 6.

Article 9 has the following provision on Farmers' Rights:

9.1 the Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all the regions of the world, particularly those centers of origin and crop diversity have made.

9.2 the Contracting Parties agree that the responsibility for realizing FRs as they relate to PGR for food and agriculture, rests with the national governments. In accordance with their needs and priorities each Contracting Party should as appropriate and subject to its national legislation, take measures for food and agriculture.

b) The right to equitably participate in sharing benefits arising from the utilization of plant genetic resources or food and agriculture.

c) The right to participate in decision-making at the national level, on matters related to the conservation and sustainable use of plant genetic resources.

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

Article 6 states that Contracting Parties shall develop and maintain appropriate policy and legal measures that promote sustainable use of crop genetic resources. On sustainable use of plant genetic resources the Treaty emphasizes that the Contracting Party shall develop and maintain appropriate policy and legal measures that promote the sustainable use of plant genetic resources.

a) Pursuing fair agricultural policies that promote as appropriate the development and maintenance of diverse farming system that enhance the sustainable use of agricultural and biological diversity and other natural resources.

b) Strengthening research which enhances and conserves biological diversity by maximizing intra and inter species variation for the benefit of farmers, especially those who generate and use their own varieties and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and pests.

c) Promoting as appropriate plant breeding efforts which with the participation of farmers particularly in developing countries, strengthen the capacity to develop varieties

particularly adapted to social, economic and ecological conditions including marginal areas.

- d) Broadening the genetic base of crops and increasing the range of genetic diversity available to farmers.
- e) Promoting as appropriate the expanded use of local and locally adapted crops varieties and underutilized species.
- f) Supporting as appropriate the wider use of diverse varieties and species in on farm management, conservation and sustainable use of crops and creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion and promote increased world food production compatible with sustainable development.
- g) Reviewing and as appropriate adjusting breeding strategies and regulations conserving variety release and seed distribution.

India has the distinct protecting both breeders and farmers (Bala ravi.S). It is a known fact that the act originally emerged as a response to the seed industry's demands for breeders' right and the provision on Farmers' Rights was added due to pressure from the non-government organizations.

Until the time this act was passed the system of free exchange and common heritage was prevalent. Farmers were free to save, use, sell and exchange seeds. It has been acclaimed farmers and is acclaimed as a success by many stakeholders. Despite the fact that many who constitute the stakeholders are not even aware of the bill but the PPVFR act of India is rights in the world.

Plant Variety Protection in the Indian law.

The articulation of Farmers' Rights and protection of traditional knowledge in the Indian legislation is a case in point to illustrate that it is spread over a number of national laws. Viz the PPVFR 2001, biological diversity Act 2002, the patent amendment and the pending seed bill of 2004 as stated in the International Treaty. Article 39 of the legislation states that farmers who have bred or developed a new crop variety shall be entitled to the same plant breeder rights to which breeders themselves are entitled. According to the Indian government it is a national response to *the sui generis* provision of the TRIPS to protect the plant varieties. From a review of literature on the PVP law one finds that the PVP law how good it appears, only PVP certificate there is no clarity on how counter claims on the same variety from another farmers is going to be dealt with. This raises the question how appropriate the PVP system is in the Indian context?

Also more PVP certificates being issued only means more breeders having control over plants and seedling material, which hitherto was freely available to the farmers. In the light of more patent like rights and more patents themselves what is the role of PVP? Any Attempt to equate Farmers' Rights under the law to be treated as plant breeders will not be resolving the fundamental issues. Some of the problems anticipated include staking ownership over traditionally shared varieties and thereby creating a situation where a farmer in Chatisgarh would be competing with his counterpart in Andhra Pradesh. The act does not offer solution towards conflicting claims by farmers from different parts of the

country (shalini Bhutani and kanchi koli).

With respect to the impact of international legislations the Indian PVP law is greatly influenced by the UPOV (Union for the protection of new varieties of plants). UPOV 91 is designed to protect products of modern bio technology and essentially derived crop varieties. The key criteria of UPOV followed by laws means that the plant variety must be novel, distinct, unique and stable (DUS criteria). These criteria contradict the needs of farmers involved in farming especially organic farming. Uniform is the opposite of diverse. Varieties that are able to adapt to different conditions are not stable. Novelty and distinctness apply to varieties that are stable and uniform.

The Indian PPVFRA has adopted the provisions of the CBD relating to benefit sharing, without a proper instrument to implement it. Given the vague system of registration and benefit sharing in the law and the inability of farmers to apply for registration, it seems far (Sahai2001).

Farmers varieties are usually developed as a collective and spread over large geographical regions and often the same variety is found in several villages and sometimes, even across national borders of neighboring countries with similar agro ecological regions.

Considering the fact that farming community in India is the largest seed producer, weak Farmers' Rights in the legislation will allow seed corporations and modern varieties to dominate the seed.

The national biodiversity authority recognizes the rights of the communities over traditional knowledge. Traditional knowledge is dynamic and changes over time. Traditional knowledge associated with biological diversity and agricultural diversity has to be treated with an understanding that they are two sides of a coin. The PPVFRA has also announced plant genome savior community recognition. Award to recognize the contribution of rural and tribal communities to genetic resource conservation and enhancement. The campaign for community control over genetic resources has pointed out that the law actually threatens to alienate farmers from their crops by granting IPR over plants to few individuals or corporations. The Act makes it clear that the reward is for only those farmer varieties that have some donor crop for further development by breeders. In other words the rewards to farmers are from money to go from privatization of farmers' genetic material. It is essential to remember that farmers do not simply save genes when they select and develop a variety, on the other hand they sustain a way of life and a culture. To even label them merely genome "saviors" is to reduce the holistic nature of what farmers do, to a phrase they would neither understand nor appreciate. Seeds and plants are not a sustainable life. The campaign further stresses the fact that an act like this which claims to be recognizing the contribution of farmers and tribal communities are actually stripping the poor of their collective rights over resources and paving the way for further marginalization. (farmers Alert <http://www.ddsindia.com/www/farmersalert.htm>)

The tightening of the PVP intent of regulating the seed quality. It focuses on private participation in seed production and distribution achieved through a system of compulsory licensing. The seed bill has been critiqued to have taken away the little benefits offered by the PVP law (ITPGRFA Bali Indonesia 2011).

In the light of legislations that are having a far reaching impact on farmer saved seeds a set of measures are called for to address the compatibility of seed laws and plant variety recommend reinforcing the traditional sharing system with a system of peer production and distribution of germplasm as an alternative way to develop crop varieties and dynamically sustain genetic diversity.

The debate around the Act has highlighted the fact that it has been defined by national level decision makers without taking into account the regional and local level perspectives. It has been pointed out by those who have studied the history and evolution of the law that the focus has been on asserting and assigning ownership rights, than on utilizing traditional knowledge and genetic resources for the benefit of the farmers (GRAIN 2004). There is a clear disconnect between what the Treaty aims to ensure as Farmers' Rights through Articles 6 and 9.

Yet another observation is the lack of co-ordination between various laws and bodies that has posed a problem in realizing Farmers' Rights. The different acts like the Biodiversity Act, patent act, the pending seed bill look at only one aspect and the overall agricultural development in the country is not taken into account. The act that has been passed even before the Treaty came into force, does not engage itself with the provisions of the different act have concluded that the ownership based approach have not provided the significant economic returns. There are glaring examples of farmers like Farmer Dadaji Khobragade from Maharashtra who has been struggling for the last 30 odd years in developing varieties like the HMT and has not been successful in registering his variety with the PPVFR authority (Lyla Bavadam 2011). For a farmer who has toiled for several years and has developed unique varieties that have been grown on almost one lakh acres in five states and in several districts of Chattisgarh, still lives of about two lakh people and his humanitarian outlook to freely share his seed with other farmers is commendable. Various researches have stressed the fact that it might be more beneficial for developing countries to employ Farmers' Rights as a tool to demand more access to public services and goods, rather than to work for an extension of IPR protection to cover farmer's varieties.

Various alternatives have been contemplated to protect the plant genetic resources and examples have been drawn from the open source software to Biology and other initiatives such as the community intellectual rights.

Achieving repossession, manifested as seed sovereignty, will not be easy. What is required is simultaneous and linked development of concepts and applications among farmers, plant scientists, seed vendors, public institutions and civil society advocacy groups in the face of corporate and state opposition. Considering the collective nature of plant genetic resource management stewardship by farmers is suggested in such a way that it accepts personal contribution to a common good and a form of ownership derived from that contribution. Very close to the collective innovation and ownership is the open source which can be compared to Linux or Wikipedia (Srinivas ravi).

Open source prevents and opposes the logic of monopoly right by making the source code made available for others. Using licences to create viral effect, open source enables user innovation as the user has the right to modify, redistribute, change and customize and offer it under the General Public License. The GPL is a legally tested license. It can be used by farmers to safeguard their varieties. It can be used by organic

farmers to develop new varieties.

A prominent exemplar of this approach is the General Public License (GPL) developed by Richard Stallman and promulgated by the Free Software Foundation. Software released under the GPL is copyrighted and made freely available through a license that permits modification and distribution as long as the modified software is distributed under the same GPL license through which the source code was originally obtained. That is, source code and in turn agree to the provisions of the GPL. It is be noted enforces continued sharing as the program is disseminated. Just as importantly, the GPL also prevents appropriation by companies that would make modifications for proprietary purposes since any software building on the licensed code is required to be openly accessible. Thus, software developed under the GPL is released not into an open access commons, but into a “protected commons” populated by those who agree to share (Klopper Berg).

Open source can be seen in the broader context as an alternative paradigm for innovation and a new way to approach the Intellectual property issue.

A number of nations, including Brazil, India, and the Philippines have passed or are considering laws that purport to provide a framework for “collective IP Rights” but farmers and indigenous peoples have so far lacked the political power to make them for legal recognition of “traditional resource rights” and “community based” or “informal” innovation the proposed right regime in defense of indigenous peoples’ local knowledge systems is yet to be realized.

Other alternatives include elaborating the work done hitherto on Community Intellectual Rights drawn from the acts drafted by Philippines and India. Community seed banks have been considered a viable way of farmers accessing their seeds. It is learnt from various experiences that support mechanisms need to be put in place to protect the community seed banks (CSB) that were seen as a need based solution and this system which was adopted to broaden the genetic base and revive an informal seed supply system to the farming community (Krystyna Swiderska 2006).

The establishment of community seed banks has spread on farm conservation and encouraged the formation of farmers’ networks thereby creating a farmers forum for exchange of crop varieties (Development fund Norway 2011). Community seed banks are the only solution to securing bio-resources, providing food and seed security to the larger section of the poor and marginal farmers. Mechanisms for legal protection to the farmer saved seeds are not yet in place and there is scope for exploring the same.

References:

1. FAO (2002) The International Treaty on Plant genetic resources for food and agriculture
2. Bala Ravi, S 2009, Seed Bill and the PPVFR Act of India . www.sawtee.org
- 3 Sahai, Suman 2003 India’s protection of Plant varieties and Farmers Rights act 2001. In state of the farmers and Plant breeders in Asia. Gene Campaign. New Delhi
4. Farmer alert 2007 registration or reward for genome saviours does not mean protection

of farmers interest. <http://www.ddsindia.com/www/farmersalert.htm>

5. ITPGRFA Fourth session of the Governing Body. Bali Indonesia 14 -18th March 2011

6. Shalini Bhutani, Kanchi Koli 2004 Hindu Business Line

7. GRAIN 2004 The great protection racket imposing IPRs on Traditional knowledge. Seedling

8. Lyla Bavadaqm 2011 Bitter Harvest Frontline from the publishers of Hindu

9. Srinivas ravi 2006 Intellectual property rights and bio commons; Open source and beyond , UNESCO published by blackwellpublishing ltd

10. Kloppenberg, Jack 2010 Seed Sovereignty: the Promise of Open Source Biology In Desmarais, Annette and Hannah K. Wittman (eds.), Food Sovereignty: Theory, Praxis, and Power. Fernwood Publishing.

11. Krystyna Swiderska (2006) Protecting Traditional Knowledge: A framework based on .Customary Laws and Bio-Cultural Heritage,Sustainable Agriculture, Biodiversity and Livelihoods Programme, IIED

12. Development Fund Norway 2011 Banking for the future

3.8 LA VIA CAMPESINA

BALI SEED DECLARATION

Peasant Seeds: Dignity, Culture and Life Farmers in Resistance to Defend their Right to Peasant Seeds

Farmers throughout the world are the victims of a war for control over seeds. Our agricultural systems are threatened by industries that seek to control our seeds by all available means. The outcome of this war will determine the future of humanity, as all of us depend on seeds for our daily food.

One actor in this war is the seed industry that uses genetic engineering, hybrid technologies and agrochemicals. Its aim is the ownership of seeds as a source of increased profits. They do this by forcing farmers to consume its seeds and become dependent on them. The other actor is peasants and family farmers who preserve and reproduce seeds within living, local, peasant and indigenous seed systems, seeds that are the heritage of our peoples, cared for and reproduced by men and women peasants. They are a treasure that we farmers generously place at the service of humanity.

Industry has invented many ways of stealing our seeds in order to manipulate them, mark them with property titles, and thereby force us, the farming peoples of the world, to buy new seeds from them every year, instead of saving and selecting them from our harvest to plant the following year. The industry's methods include genetically modified organisms (GMOs) and hybrid seeds, which cannot be reproduced by farmers, as well as industrial property over seeds, including patents and plant variety certificates, all of which are imposed through international treaties and national laws. These are but different forms of theft, as all industrial seeds are the product of thousands of years of selection and breeding by our peoples. It is thanks to us, peasants

and farmers, that humanity has at hand the great diversity of crops that, together with animal breeding, feeds the world today.

In their drive to build monopolies and steal our natural wealth, corporations and the governments who serve them place at risk all of humanity's food and agriculture. A handful of genetically uniform varieties replace thousands of local varieties, eroding the genetic diversity that sustains our food system. Faced with climate change, diversity is a strength, and uniformity a weakness. Commercial seeds drastically reduce the capacity of humanity to face and adapt to climate change. This is why we maintain that peasant agriculture and its peasant seeds contribute to the cooling of the planet.

Our communities know that hybrid and genetically modified seeds require enormous quantities of pesticides, chemical fertilizers and water, driving up production costs and damaging the environment. Such seeds are also more susceptible to droughts, plant diseases and pest attacks, and have already caused hundreds of thousands of cases of crop failures and have left devastated household economies in their wake. The industry has bred seeds that cannot be cultivated without harmful chemicals. They have also been bred to be harvested using large machinery and are kept alive artificially to withstand transport. But the industry has ignored a very important aspect of this breeding: our health. The result is industrial seeds that grow fast have lost nutritional value and are full of chemicals. They cause numerous allergies and chronic illnesses, and contaminate the soil, water and air that we breathe.

In contrast, peasant systems for rediscovering, re-valuing, conserving and exchanging seeds, together with local adaptation due to the local selection and reproduction in farmers' fields, maintain and increase the genetic biodiversity that underlies our world food systems and gives us the required capacity and flexibility to address diverse environments, a changing climate and hunger in the world.

Our peasant seeds are better adapted to local growing conditions. They also produce more nutritious food, and are highly productive in agroecological farming systems without pesticides or other expensive inputs. But GMOs and hybrids contaminate our seeds and put them in danger of extinction. They replace our seeds in their places of origin and lead to their disappearance. Humanity cannot survive without peasant seeds, yet corporate seeds put their very existence at risk.

Let us not be mistaken. We are faced with a war for control over seeds. And our common future depends on its outcome. It is through this lens that we must analyze the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), in order to understand what is at stake and what positions we should take.

The International Treaty on Plant Genetic Resources for Food and Agriculture

First we must situate the Treaty in its historical context of constant attempts to steal our seeds. The industry and most governments are using the Treaty to legitimate the industry's access to those peasant seeds that are stored in collections around the world. The Treaty recognizes and legitimizes industrial property over seeds, thus creating the required conditions for theft and monopoly control. In the Treaty, the florid language used to describe Farmers' Rights entrusts individual states with the responsibility for their implementation. However, states do not apply them. Therefore the mentioning of these rights is only an attempt to inoculate the Treaty against our possible protests and denunciations.

The result is a treaty that legitimates the World Trade Organization (WTO) and laws on industrial property rights. It is therefore legally binding with respect to industrial property rights and the rights of plant breeders, while allowing states not to respect Farmers' Rights. It is a contradictory and ambiguous treaty, which in the final analysis comes down on the side of theft.

This does not mean that all is lost. The Treaty can be amended from the peasant point of view, but the changes would have to be major and immediate. La Via Campesina affirms that:

1. We cannot conserve biodiversity and feed the world while our rights to save, use, exchange and sell our seeds are criminalized by laws that legalize the privatization and commodification of seeds. The Seed Treaty is the only treaty to date to contemplate farmers' rights. However states do not respect these rights, in opposition to their respect of industrial property rights. Therefore, the Treaty must give peasant rights the highest priority, and these rights must be legally binding. They must be guaranteed in every one of the 127 countries that have ratified the Treaty.
2. The Treaty itself contradicts farmers' rights when it promotes patents and other forms of industrial property over seeds. All forms of patents; plant variety protection and its royalties on farm-reproduced seeds; as well as all other forms of industrial property over life must be banned in the Treaty.
3. Industry incurred an immense debt by appropriating our seeds and by destroying cultivated biodiversity in order to replace it with a few manipulated varieties. Industry must repay this past debt, but doing so by no means gives it the right to continue appropriating our seeds. Industry must pay and it must also stop with the appropriation of seeds and the destruction of biodiversity.
4. The Treaty proposes the "sharing of the benefits" of the industrial property rights that it recognizes. These "benefits" result from the very theft of our peasant seeds. We do not want to be offered the proceeds from the theft of our seeds; we do not want benefit sharing because we do not want industrial property rights on seeds.
5. We demand public policies in favor of living, farmers' seed systems, systems that are in our communities and under our control. These public policies should promote reproducible local seeds, but not non-reproducible seeds, like hybrids. They should prohibit monopolies, and favour instead agroecology, access to land and good care of the soil. These policies should also facilitate participative research in farmers' fields and under the control of farmers' organizations, not the control of the industry. We call on our communities to continue to conserve, care for, develop and share our peasant seeds: this is the best form of resistance against theft and the best way to maintain biodiversity.
6. Centralized gene banks do not respond to the needs of farmers. They are seed museums for the benefit of biopirate corporations, and offer no real access to peasant peoples. Moreover, our seeds are in danger inside these banks, threatened by genetic contamination and industrial property rights. We cannot trust governments or the Treaty to conserve them. We refuse to turn our seeds over to the gene banks of the multilateral systems and of the industry as long as the following remain in existence: patents on plants, their genes or other plant parts; other industrial property rights systems such as plant variety protection which demand royalties on farm-saved seeds; GMOs.
7. The commodification of seeds is seriously threatening our peasant seeds in Asia, Latin America and Africa. But in some of our countries, especially in Europe and North America, the commercial monopoly of industrial seeds has already done away with the majority of local varieties. In these countries, we can no longer carry out farmer selection using the varieties that are commercially available, because they are manipulated in such a way that they will not grow well without chemical inputs or industrial processes. They have lost much of their nutritional value and are increasingly modified genetically. We cannot select our new peasant varieties based on the seeds of our parents which are locked up in gene banks. We must have unconditional access to the banks of the multilateral

system because it is our seeds that are kept there.

8. We farmers can keep our seeds first and foremost in our fields, but also in our granaries, seed barns and local community seed saving systems which also constitute small “ex situ collections”. We put these “ex situ collections” as close as possible to our fields so that farmers maintain control over them, responsibility for them and access to them. To paraphrase the Treaty, we farmers construct our own “multilateral system”. This is the basis upon which we can collaborate with the Treaty by reminding it that it is not the only entity carrying out seed conservation. If the Treaty wants to collaborate with us, it must respect our rules and our rights, and forbid Industrial Property Rights and GMOs.
9. Since the process of the Treaty is carried out within the United Nations, it is national states that have the responsibility to protect peasant seed systems. Yet, the World Trade Organization (WTO) renders the rights of plant breeders legally binding, while the rights of farmers are not respected. We demand that farmers’ rights be mandatory and that the rights of breeders be subordinated to these farmers’ rights. This necessarily entails the repeal of seed laws that privatize and commodify seeds and deny peasant rights. We demand the adoption of national laws that recognize Farmers’ Rights. La Via Campesina calls for the rapid approval and ratification of an international convention on peasant rights in the United Nations. Agriculture and seeds have no place in the WTO and Free Trade Agreements.
10. This Treaty is but part of a series of challenges that peasant and indigenous peoples are facing today. The Rio + 20 process is a clear confrontation between ‘greenwashed’ capitalism, and peasant agriculture, agroecology and our peasant seeds. La Via Campesina will act to defend agroecology and farmers’ seeds which represent hope and are the future of humanity. As we have shown, sustainable peasant agriculture can both contribute to the cooling of the planet and feed the world.
11. If governments commit to reforming the Treaty by effectively and actively defending Farmers’ Rights, we are willing to collaborate with the Treaty, including in a parallel committee, modeled on the Committee for Food Security that accompanies the FAO process in Rome. But we do not want to open the door to a collaboration with the Treaty that will thrust us into interminable discussions while GMOs, hybrids and industrial property rights expel us from our fields. Whether or not the Treaty recognizes those of us who are the stewards of biodiversity, we will continue to work within our own peasant seed systems, which have assured genetic diversity and fed the world in the past, and will continue to do so in the future. We are keeping seeds not only for ourselves, but also for our children. Peasant seeds are the heritage of peasant communities and indigenous peoples in the service of humanity.

3.9 LET’S LIBERATE DIVERSITY-COORDINATION OF THE EUROPEAN FORUM (DECLARATION OF SZEGED)*

Declaration of Szeged

On 24 February 2011, we, farmers and practitioners, from 17 European countries, who conserve and renew agricultural biodiversity met in Szeged, Hungary, which currently holds the Presidency of the European Union, and prepared this statement to be addressed to our governments, the European Union and the Governing Body of International Treaty on Plant Genetic Resources for Food and Agriculture.

On February 24, 2004, the European Union approved the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). In the 7 years that have elapsed, it has still not adapted its internal legislation to incorporate the commitments of the Treaty. This anniversary a few days before the next meeting of the Governing Body of the Treaty in Bali gives us the opportunity to highlight what is urgently needed.

We are farmers, gardeners, artisans, consumers and environmental groups organised in associations and networks of European civil society. We represent tens of thousands of people from varied cultural traditions.

In our fields and our gardens, we all contribute to the conservation of traditional varieties in their traditional ecosystems, the collective and local dynamic management of agricultural biodiversity for the purposes of our agricultural production, to its development by the constant creation of new varieties, their widespread use and their added value in local markets.

Assessment

Whenever farmers in Europe resow a portion of their harvest, they create new seeds, adapting them to their local environment and climate change, while reducing their dependence on chemical inputs. These farmers' varieties are always 'new' varieties, hence they are rarely homogeneous or stable.

The local collective organisation of seed exchange, of the management of agricultural biodiversity and the transfer of local knowledge guarantee the conservation and sustainable use of PGRFA. Since its origin, agriculture has been shaped by the collective rights of farmers to conserve, use and exchange their seeds, which we wish to preserve. Only 'reproducible' seeds allow for the conservation, renewal and increase of agricultural biodiversity, while nonreproducible seeds, e.g. F1 hybrids or others, are an important cause of the erosion of crop biodiversity.

We wish to reiterate the particular responsibility of the European Union, as the dominant agro-industrial power in the world, which, furthermore, supports in its own region and disseminates to the rest of the world agricultural policies and regulations that destroy agricultural biodiversity by giving preference to agro-industry, facilitating market concentration in the hands of a few international actors, financial speculation on food and land grabbing for industrial monocultures.

We cannot accept that the European Union regulation, restricts Farmers' Rights only to the right for registration of varieties in common or "conservation" catalogues, and to paying royalties to breeders every time farmers multiply their own seeds, while at the same time it permits the widespread introduction of patents on plants and animals. It is for these reasons why we would like to bring to the attention of the Treaty's Governing Body our contributions to the ongoing debate on the revision of seed laws in Europe.

In relation to the Treaty

We wish to reiterate the importance, for food and farming and for future generations, of Articles 5, 6 and 9, which deal with the contribution of farmers to the conservation and renewal of biodiversity, and their associated rights.

We recall that in relation to Article 5, Contracting Parties (CP) committed themselves to promote and support farmers and local communities in managing and conserving their plant genetic resources and to eliminate the threats to these resources.

We recall that in terms of Article 6, Contracting Parties have undertaken to develop and maintain policy and legal measures with the aim of fostering “the development and maintenance of diverse farming systems” and “maximizing intra- and inter-specific variation” of varieties. In article 9 CPs have undertaken to protect and promote Farmers’ Rights. These articles cover all PGRFA and are legally binding for all CPs.

The concept of benefit-sharing has not proved able to mobilise the necessary financial resources for on-farm conservation even though industry’s seeds are all developed from seeds collected for free from the fields of farmers who selected and conserved them. Instead, most of the funds mobilised by donor countries go to the Global Crop Diversity Trust for ex situ conservation. This bias is also depriving the Treaty of operating resources.

We observe that our governments are imposing many obstacles to the implementation of articles 5, 6 and 9 linked to Farmers’ Rights and instead are focusing their efforts on the facilitated exchange of genetic resources within the multilateral system. Similar to the situation in many other countries worldwide, European legislation is only interested in securing privileges for industry and ignores Farmers’ Rights.

In relation to Article 9 of the Treaty, the respect of Farmers’ Rights, which are collective, to save, use, exchange, sell and protect their farm-saved seeds and their knowledge is the principal condition for making possible their essential contribution to the conservation and sustainable use of plant genetic resources for food and agriculture.

Thus we demand of the European Union and all of its Member States recognition that European farmers are also contributing to the conservation of plant genetic resources for food and agriculture and to include this positively in legislation on Farmers’ Rights:

- to choose freely, select, develop and grow their own seeds (except for GMOs) and then to sell the crop, without respect to whether these come from varieties listed in the catalogue ;
- to be granted free access to plant genetic resources in ex situ seed banks;
- to exchange and sell seeds for conservation purposes and for the dynamic management or selection on the farm used for agricultural production. In this respect, we demand explicit recognition of farmer’s rights to select and conserve their own seeds and for this reason to exchange plant genetic resources of varieties not listed in the catalogue, as breeders are doing.
- to reproduce their own seeds in order to adapt them to local conditions. An explicit recognition of the right to use freely, and without need for a license, is needed for all varieties, regardless whether or not the varieties are protected by an industrial property right, in order to be able to develop new varieties.
- to protect their seeds from genetic contamination and appropriation through contamination by patented genes.

We demand that for each newly registered variety it should be mandatory to disclose the breeding method used.

We demand a ban on disseminating in open environment genetically modified (GM) plants (i.e. plants modified in ways which do not occur naturally) whether through transgenesis or any other unregulated genetic transformation. Coexistence between GM and non-GM crops is impossible. All forms of patenting of life should be prohibited.

We demand that industrial property rights on plants such as plant breeders' rights should not affect Farmers' Rights to multiply and exchange farm-saved seed.

We demand that the obligation to disclose all information on the origin of plant genetic resources used for new plant breeders' rights be implemented concretely.

We demand from the European Union and each Member State, which is a Contracting Party participating in the Governing Body of the Treaty in Bali, to support the implementation of Articles 5 and 6 of the Treaty, introducing new agricultural and research policies that:

- Promote participatory breeding, the dissemination and the use of reproducible seeds, in situ on-farm conservation, local seed banks managed collectively by farmers and gardeners and through the transfer of local knowledge;
- Discourage the widespread use of non-reproducible seeds.

These policies must also take into account the right to food sovereignty and the right to preserve local cultural heritage and related activities, which guarantee the added value of plant genetic resources and products derived from agricultural biodiversity on local markets, thereby helping to conserve and renew these resources.

These rights must be complemented by the positive recognition in the law of the possibility of selling non-GM seeds of varieties not included in the catalogue.

The decision of the European Union (Directive 98/95 and following) to take into account the needs of organic farming, of "*in situ*" conservation of biodiversity and locally adapted variety mixtures must be realised by opening the Catalogue to the registration of populations varieties that are not homogeneous and are non-stable for the purposes of organic farming, conservation of biodiversity or for other specific uses.

As our governments have not yet recognised the urgency for action, we reiterate to them today, 7 years after the signing of the Treaty, that the time has come to implement immediately and resolutely Farmers' Rights in Europe.

In relation to the Fourth Session of the Governing Body

We ask the European Union and other Contracting Parties attending the meeting of the Governing Body of the Treaty in Bali to put in place policies that support the implementation of Articles 5, 6 and 9 with new financial resources and appropriate measures at national level. Particularly in relation to the Treaty's funding status, either through its regular funds or other funds allocated to the support of conservation activities. We ask that members of the European Union make available regular funds for the Treaty's core administrative budget.

Even though we appreciate the effort of some countries to contribute to the Treaty's fund to support on-farm conservation, we reject the principle of funding only on a voluntary basis.

The money raised by the Global Crop Diversity Trust, which is dedicated exclusively to *ex situ* conservation, should also be made available, in equivalent amounts to the Treaty for on-farm conservation.

As already approved by the previous meetings of the Governing Body, we recall the importance of participation in Treaty negotiations of those farmers' organisations that actually participate in the conservation of agricultural biodiversity.

For this reason we request that a space for dialogue and debate be initiated with the Governing Body, with the participation of organisations that are defending biodiversity on-farm,

and that this participation be organised in line with the principles that States have agreed during the reform of the Committee on World Food Security (CFS), i.e. autonomy and self-organisation of farmers' organisations and civil society.

We also remind national governments the importance of ensuring active and effective treatment of farmers, practitioners and consumers who actually participate in the conservation of agricultural biodiversity.

Concerning Article 6, we ask Contracting Parties to support the Secretariat's proposal to create an ad hoc working group on the sustainable use of plant genetic resources with the active and effective participation of civil society.

Regarding Article 9, we support, based on the document IT/GB-4/11/Circ.1, *Global Consultations on Farmers' Rights in 2010*, the proposal to have guidelines for the establishment of Farmers' Rights.

List of signatories

-European Coordination on Farmers' Seeds:

Réseau Semences Paysannes, France
 Rete Semi Rurali, Italy
 Red de Semillas "Resembrando e Intercambiando", Spain
 Pro Specie Rara, Switzerland
 Arche Noah, Austria
 Védegylet/Protect the Future, Hungary

Other organisations:

Environmental Social Research Group, Hungary
 Ormánság Foundation, Hungary
 Centro Internazionale Crocevia, Italy
 ACRA -Associazione di Cooperazione Africa America Latina, Italy
 Associazione Italiana Agricoltura Biologica, Italy
 Aegilops, Greece
 Oikodiktio, Greece
 Farmer's Unions Confederation in Turkey – Cifti-Sen, Turkey
 Tohum Izi Association, Turkey
 Verein zur Erhaltung der Nutzpflanzenvielfalt VEN, Germany
 Dachverband Kulturpflanzen- und Nutztiervielfalt, Germany
 Confédération Paysanne, France
 BEDE, France
 Practical Action, UK
 Scottish Crofting Federation, Scotland
 Berne Declaration, Switzerland
 Clubul Ecologic Transilvania, Romania

ELKANA, Georgia

Latvijas Zemes draugi/Friends of the Earth Latvia

FOLL' AVOINE, France

ÉTER KHE, Hungary

Natúrhaló, Hungary

Kalocsakörnyéki Környezetvédelmi Egyesület, Hungary

Central Trans-danubian Organic Society – Biokultúra, Hungary

Camping Rural “Loma Taivilla” Casarabonela, Málaga – Spain

La Unió de Llauradors i Ramaders, País Valencià- Spain

Asociación de Consumidores/as Ecológicos/as de Castilla La Mancha ‘La Tierrallana’ – Spain

Garden Organic, England, UK

EcoRuralis, Romania

3.10 **LI-BIRD**

Summary

LI-BIRD in collaboration with other national stakeholders assessed the appropriateness of policy and legal instruments, identify and strengthen institutional arrangement, strengthen multi-stakeholder arrangement and support innovative practices serving as basis for implementing Farmers’ Rights and ABS in Nepal. LI-BIRD simultaneously empowered the right holders and duty bearers to strengthen right duty relation on GR and ATK. LI-BIRD took community based biodiversity management (CBM) framework and tested its relevancy for ensuring Farmers’ Rights and implementing ABS mechanism through ground demonstration and validation. We followed evidence based advocacy and multi-stakeholder consultation strategies for improvements in national policies and laws related to agriculture biodiversity and seed in Nepal. We were able to build the national stakeholder agreement on National policy framework for ensuring Farmers’ Rights in Nepal through different policy tools for local varieties, farmer bred varieties and IPR protected varieties. LI-BIRD is able to validate CBM framework for putting Farmers’ Rights in practice and implementing ABS in Nepal and able to draw policy recommendation for establishing mechanism to implement ABS and ensure Farmers’ Rights.

LI-BIRD is a part of review team to revise most of the national policy and legal documents through multi-stakeholder and multidisciplinary working groups, lead by concerned government authority and drafted amendments for most of the related policies and laws like seed policies, seed laws and regulations and agro-biodiversity policy of Nepal, refining the contradictory provisions and adding new tools. LI-BIRD established biodiversity conservation and development committees (BCDC) as an appropriate community level institution to organize custodian farmers to manage community level functions related to Farmers’ Rights. In the process, the farmers and farming communities were empowered to understand the issues of ABS and Farmers’ Rights. This structure has been strengthened to advocate for their rights on GR and ATK by them. We were also able to establish multi-stakeholder agreements on the modality and framework of implementing Farmers’ Rights in Nepal. Similarly, there was validation and promotion of innovative practices of in-situ biodiversity management like community biodiversity registers, community seed banks, biodiversity fairs, approach of value addition and marketing of local genetic resources, participatory plant breeding and grass-root breeding, participatory varietal selection and CBM fund management in community and policy level through the initiation of LI-BIRD.

Access and benefit sharing and Farmers' Rights

Nepal acted promptly to sign the CBD on 12 June 1992 and subsequently ratified on 15 September 1993 and became Party to it on 21 February 1994. However, the action of Nepal Government to fulfill its commitments remained very slow. The Ministry of Forest and Soil Conservation (MFSC), the focal ministry for CBD, formulated a National Biodiversity Strategy (NBS) in 2002. MFSC produced the first draft of Access to Genetic Resources and Benefit Sharing (AGRBS) Bill in 2002. The AGRBS Bill went through a series of review and revision and finally submitted for approval from the Constituent Assembly of Nepal in 2007. However, the approval process has not moved ahead due to current political context as well as due to a strong reservation and protest from the civil society organization, particularly indigenous peoples' organizations. This is largely because the process of drafting of bill was not very transparent and inclusive, and contained many contentious issues, particularly in benefit sharing.

The Bill needs critical review and should address shortcomings and resolve contentious issues, particularly with focus on the following:

- Provide legal provisions for access to and benefit sharing from the use of traditional knowledge associated with genetic resources and materials;
- Replace public hearing mode of obtaining PIC to more institutionalized form of PIC granted directly by concerned person, organization or organization of local community;
- Involvement of concerned person, organization or organization of local community in signing agreement for ABS, currently done by Council alone;
- Complete review of benefit sharing system;
- Consider for special ABS provisions for PGRFA in light of ITPGRFA commitments; and
- Establishment of Biodiversity Trust Fund as provisioned in NBS 2002 instead of NGRCC Fund and used solely for the purpose of conservation and sustainable use of GRs.

Regarding national legislation required to implement Treaty provisions, except for legal provisions to protect Farmers' Rights included in the Plant Variety Protection and Farmers' Rights (PVP&FR) Bill drafted as IPR law to comply with TRIPS commitment, a number of systematic initiatives are yet to be initiated. Law Associates Nepal (LAN) had proposed a Draft Bill on "Access to Genetic Resources for Food and Agriculture under Multilateral System 2006" in 2006 prepared under the Genetic Resources Policy Initiatives (GRPI) Nepal but it never entered into formal consideration by MoAC. Recently, MoAC has signed a project with Biodiversity International to review and formulate appropriate policy, laws and administrative mechanisms to implement the Treaty in Nepal and LI-BIRD and NARC is also a member of this project. This project is going to address the following actions:

- Identify PGRFA listed in Annex 1 that are under the management and control of the Nepal Government and in public domain (as specified in IT Article 11.2);
- Formulate national legislation for access to PGRFA found in *in-situ* condition, including identifying which PGRFA are in *in-situ* condition (as stipulated in IT Article 12.3h);
- Identify mechanisms – both legal and incentives for natural and legal individuals to voluntarily include their PGRFA in the MLS;
- Identify national institutions with authority to grant access to PGRFA in the MLS;
- Formulate national legislation to facilitate and regulate ABS for PGRFA; and
- Review PVP&FR for its adequateness in protecting Farmers' Rights (as stipulated in IT Article 9) and expedite for its early approval.

Nepal is yet to formulate policy and law to implement provisions of ILO Convention 169. However, the indigenous people (locally called *Adibasi* and *Janjati*) are closely following the policy and law being formulated to protect, conserve and use natural resources, including genetic resources and materials and associated traditional knowledge, and strongly lobbying to protect

their right on these resources. The Nepal Federation of Indigenous Nationalities (NEFIN), organization of these people has already started to take local action to prevent access without their consent and permission. They have also been challenging the existing legal provisions that conflict with Convention as such conflicting national legal provisions become null and void as per the Nepal Treaty Act 1990 (Lama, 2008). It is, therefore, very important these people and farming communities are involved in formulation of relevant policies and laws.

Exploration, conservation, distribution and exchange of Germplasm

The issue of ownership on these genetic materials collected from the farmers' fields is emerging policy issues. Until now, these materials have been exchanged with international gene banks and researches on the basis of standard material transfer agreement, assuming them as the property of state. Without institutional arrangements at the national and local level, and identifying both the concerned government and community institutions, it will be complicated to maintain or enhance access to plant genetic resources and benefit sharing (Gautam, 2008). Strong and useful local institutions like Biodiversity Conservation and Development Committees (BCDCs) and Community Seed Banks (CSB) have been emerged in Nepal. After establishment of Gene Bank, CSBs in Nepal are asking for their share of credit by proper linkage and coordination of gene bank and CSBs in material transfer. In principle, the linkage looks noble to provide the benefits to the communities by linking with ex-situ conservation to in-situ conservation. But, the mode of linkage has not been developed strong research base and stakeholder agreement is needed to foster in situ and ex situ linkage.

Recently, LI-BIRD in collaboration with Oxfam, USC Canada Asia and Bioversity Nepal organized a first national level workshop on Community seed bank from 14 to 15 June 2012 with the aim to explore *ex situ* and *in situ* links and related policy issues; identify challenges and opportunities of community seed banks, and to promote future collaboration and networking among relevant organizations in Nepal.

MODELS FOR ABS AND PRIOR INFORMED CONSENT (PIC)

In Nepal, considering the concerns of the ethnic groups and endogenous people; a balanced model having provisions that MTA signed by national authority based on PIC granted by communities looks feasible. Hence, a mechanism to improve these limitations was designed by a LI-BIRD project after consultations with policy experts and farming communities. The alternative mechanism consists of a form for providing PIC to the national bio-prospectors or national biodiversity authority by the representatives of custodian communities. The form can also serve as the localized access contract for the in-country bio-prospectors. The form consists of checklists of important provisions necessary for discussion and to be understood before providing PIC, commitments from parties and terms and conditions if any.

One of the inherent problems with the PIC mechanism is to identify the representative of the custodian communities. For that, LI-BIRD has tested different institutions ranging from VDC level Biodiversity Conservation and Development Committees (BCDCs), Community Seed Banks (CSB) and even the farmers' groups and other community based organizations. The piloting was started by distributing the forms to more than 25 BCDCs and more than 10 CSBs in Nepal. Till date, only two CSBs has been successful to take the commitments of the receivers (inside Nepal) while taking access to the genetic resources from them. CSB Kachorwa did two "access contracts" in pilot basis, to provide the access of 5 local land races to National Rice Research Center (NRRC). In the context that, there is no obligatory national legal backings these glimpses of successes are also meaningful and worth pursuing for wider replications.

Although there is a need of wider replications and research to validate this process, the mechanism provides a worth pursuing possibility of finding easy, less time taking, cost effective and respecting community rights compared to provision of "public hearing".

Farmers network in agricultural biodiversity

At national level, there are other initiatives on developing ABS legislation (draft) and Plant Variety Protection and Farmers' Rights legislation (draft). These drafts are important to fill the policy and legal gaps to protect the rights of farmers and local communities on genetic resources, rights of breeders on newly developed varieties, and types of benefit sharing. Looking at the trend of biodiversity loss, there is an urgent need to enact ABS law.

An analysis also indicated that one of clear gap in these policies and laws is that none of them imagined any local institutions with mandate of biodiversity management. This is likely to produce conflicting interests over the management and ownership of genetic resources and associated traditional knowledge resulting into complexities of access to genetic resources and sharing of benefits.

Farmers' Network which was established on 2010 as a coordinating network of Biodiversity Conservation and Development Committees (BCDC) have organized a day meeting with Natural Resource Committee of constituent Assembly at Kathmandu on 2011 November 3. In that meeting Constituent Assembly member and Chair of Natural Resource Sub-Committee with other 9 honorable committee members, politicians, LI-BIRD representatives and farmers participated. During that meeting, the organizational structure of BCDC along with its scope at national level was discussed and emphasized. Along with that the group also discussed on new ABS and Farmers' Right draft bill to put Farmers' Right issue on new constituency.

3.11 PRACTICAL ACTION⁴⁶

Context

Since the adoption of Resolution 5/89, the realisation of Farmers' Rights has been a hotly contested space in the international governance of plant genetic resources for food and agriculture (PGRFA). Practical Action (formerly ITDG) has been an active member of the Civil Society Organisations (CSO) lobby on this issue in FAO forums and latterly the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). It has also engaged with many local, national, regional and international organisations and processes in terms of related policy and practice – from Seed Fairs to debates on the inclusion of Farmers Rights in national legislation to the relevance of the Farmers' Rights discourse to the governance of genetic resources for food and agriculture for other sectors e.g. livestock keepers.

We recall that the Treaty was the result of a renegotiation of the International Undertaking to bring in harmony with the Convention on Biological Diversity (CBD). The Treaty shares the CBD's three overarching goals⁴⁷ and commits Contracting Parties to link the implementation of the Treaty with other normative processes facilitated by FAO, as well as with the CBD.

It is in this context that Article 9 needs to be interpreted, linking it closely with Article 5 (Conservation) and Article 6 (Sustainable Use) and Article 18 (Financial Resources).

We also recall and support an early description of Farmers' inalienable Rights, which was presented by La Via Campesina, the International Peasant Movement, to the CGRFA in December 1996 (see Annex 1). In this they called for “...a permanent and flexible consultation process that will permit [full] participation and adequate representation...” consistent with the

⁴⁶ <http://practicalaction.org>. Submission received on 22 October 2012.

⁴⁷ Note by the Secretariat. The objectives of the International Treaty are reflected in Article 1.

outcomes of the 1996 fourth International Technical conference on PGRFA, held in Leipzig, as elaborated in the parallel CSO “In Safe Hands” meeting.

They insist that “Farmers' Rights have a deep historic character, have existed since humans created agriculture to serve their necessities, have remained vital through our conservation of biodiversity, and we endorse them with our constant generation of new resources and their improvement. We are the guardians of these genetic resources, which support the evolution of species[/varieties]. We are the inheritors of the skills and knowledge of the generations that have created this biological wealth, and for this we only ask that you recognize our Rights”.

Furthermore, they recognise that “Farmers' Rights are of an eminently collective nature and for this reason should be recognized in a different framework from that of private property.”

Unfortunately, Farmers' Rights were developed in a farmer-free environment in Rome, Spoleto, Neuchatel... and agreed in 1999 without small-scale farmer involvement. Hence, the Treaty contains an Article that does not provide sufficient mandatory provisions to ensure that the inalienable rights, which small-scale, biodiversity-enhancing farmers have hitherto enjoyed, are protected and strengthened.

This perspective has been repeatedly presented to Contracting Parties, Members of the CGRFA and Parties to the CBD by La Via Campesina as well as support NGOs, including Practical Action/ITDG.

It is our observation that, as presented by us in the Farmers' Rights workshop in Addis Ababa in 23 November 2010, there has been little, if any, substantive and effective implementation of Farmers' Rights, as explicitly described in the Treaty Article 9, by governments at national level.

In the paper by Regine Andersen and Tone Winge, presented at the Addis workshop, summarising the electronic consultation about the implementation of Farmers Rights, on pages 52 to 63 is the section that deals with participation in decision making at national level. About a third of respondents said there was some kind of legal right to participation in their countries Africa (4), Asia (7) Latin America (2) Europe (7). There was no evidence presented that there has been any ‘effective’ participation in decision making by biodiversity-conserving farmers who develop, save and use a wide range of PGRFA – effective participation by them in changing laws, policies and programmes that destroy biodiversity and agreeing laws, policies and programmes that would enable, especially small-scale, farmers to be able to continue doing their vital work.

About half the respondents in the survey, said that farmers could participate in committees, hearings and so on but there was no evidence that these farmers were legitimate representatives of those who conserve and generate a diversity of PGRFA for the future. Few states enable farmers to engage effectively in processes necessary to defend, or change policy and practice towards, the biodiverse production systems, which conserve and sustainably use PGRFA.

The report does note, however, that there are some efforts to train decision makers in the importance of implementing Farmers' Rights at national level but clearly more needs to be done.

A possible example is the Kingdom of Bhutan in which there are a set of traditional and benign customs and practices by the state in concert with local organisations, which permit most actions set forth in the Treaty's Article 9, and which also protect farmers from many threats posed by the dissemination of industrial seeds and practices. Yet, most farmers and government officials are unlikely to see this as an innovation resulting from the coming into force of the Treaty.

On-farm and on-range conservation and sustainable use

In the United Kingdom (UK) there is:

- A rich diversity of organic seed breeders who struggle to keep their activities within prescribed regulations
- Increasing numbers of organic gardeners and farmers who conserve and develop local varieties
- The Heritage Seed Library (HSL), run by Garden Organic, that has a collection of 800 de-listed varieties of vegetables kept alive by 400 seed guardians. These seeds are lent to HSL members.
- An exciting network of more than 60 ‘Seedy Sundays’ (introduced to the UK from Canada). The original one in Brighton is now in its 12th year and attracts 2000 people on the first Sunday in February each year to swap seeds, exchange information and learn about related issues.
- Let's Liberate Diversity – 7th edition – was held in Scotland this year, hosted by the Scottish Crofters. It brought together people from across Europe concerned to keep diversity of seeds (and livestock breeds) regenerating on-farm. The realisation of Farmers' Rights would assist their endeavours.

These activities take place seemingly despite, not because of, the ratification of the Treaty by the UK.

In Europe, there are developments in seed legislation which will affect all Member States. At present, it seems the Commission proposals are not in line with the spirit of the Treaty's provisions with regard to Farmers' Rights. The legislation may further constrain the development and use of farm-saved seeds rather than enhance this.

Benefits

In the Treaty, it is clear “*that priority will be given to the implementation of agreed plans and programmes for farmers in developing countries, especially in least developed countries, and in countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.*” (Art. 18.5)

This deprioritises UK and European farmers, regrettably. There is merit in specific resources being made available from MS, European and Treaty funds, in harmony with the provisions of the Treaty's Articles 9 and 6, to farmers in this region who conserve, develop and use a wide range of PGRFA.

Non-monetary benefits are also of importance in realising Farmers' Rights. These can include the broadest interpretation of benefits such as the existence and implementation of the Treaty itself. This should be a benefit for humankind and especially for the farmers if their capacity to conserve, use sustainably and develop agricultural biodiversity on-farm were to be enhanced by the implementation of the Treaty, and also, of course, for those who eat the more biodiverse and healthier foods produced.

In order to realise improvements in non-monetary benefits a number of issues were discussed and summarised in the report of a working group at a workshop in Bogor in 2010 – see Annex 2. Among several proposals of the working group it was concluded that there was a need to:

- ‘Push’ and ‘promote’ the implementation of the provisions of the Treaty at national level in ways that support biodiverse agriculture

- Transform seed laws and other restrictive regulations that impact on the availability of seeds, especially farmers' varieties– more use of self-certification of farmers' varieties
- Promote appropriate transfer of technology (including knowledge and skills) between actors within and between different communities, countries and regions– South-South, South-North and North-South.
- Protect communities from inappropriate technologies offered by more powerful actors, respecting the Precautionary Principle, using mechanisms of prior informed consent, prior impact assessments etc.
- Increase skills of facilitators (government workers, researchers, NGOs) who interact with smallholder farming communities
- Reframe research priorities and protocols in order to help scientists and others to work better with smallholder communities.
- Improve information provision

Implementing these proposals alone would contribute significantly to realising Farmers' Rights.

Conclusions

In conclusion, farmers in all regions are looking for protection from the industrial production model that is capturing and destroying biodiversity, markets and livelihoods of small-scale food producers. They are also calling for protection from patents and IPRs and diversity-reducing seed laws. The protection from the industrial food system is not only to sustain agricultural biodiversity but also improve the local provision of healthy food produced sustainably.

And what is it that these small-scale biodiverse farmers are calling for the Treaty to do? They are looking for the promotion of a more biodiverse and ecological food system; for recognition of their collective rights to seed, land, water; looking for protection of their resilient production systems that can adapt to climate change and other threats. [These are all aspects of changes in agricultural production that have been found necessary by the international agricultural assessment IAASTD]. They are looking for laws that will prohibit the contamination and integrity of their seeds by GMOs. They are looking for a system that will defend their farmers' rights and the rights of PachaMama – the defence of Mother Earth.

Farmers' Rights will be better implemented if, in decision making, the Governing Body were to include legitimate representatives of the social movements of these biodiverse small-scale farmers, including in the allocation of the Benefit Sharing fund. They would be well advised to adopt similar procedures to those of the UN FAO Committee on World Food Security (CFS) that, now renewed, has a more open, transparent and effective mechanism for the inclusion of civil society, who self-organise their participation in the processes and debates in the Committee.