

March 2019



Food and Agriculture
Organization of the
United Nations



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FIRST MEETING OF THE AD HOC TECHNICAL EXPERT GROUP ON FARMERS' RIGHTS

Rome, Italy, 11-14 September 2018

Realization of Farmers' Rights: Experiences, Lessons Learned and Best Practices

Background Paper

FARMERS' RIGHTS:

VIEWS, EXPERIENCES, LESSONS LEARNED AND PROPOSED NATIONAL MEASURES FOR THE IMPLEMENTATION OF ARTICLE 9

Anja Christinck

This document was prepared at the request of the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture. The contents of this document are entirely the responsibility of the author and do not necessarily represent the views of the Secretariat of the International Treaty.

The Report of the First Meeting of the Ad Hoc Technical Expert Group on Farmers' Rights states in Item 5, paragraph 11, that Contracting Parties and relevant stakeholders that made submissions were invited to send to the Secretariat any corrections to the background paper that are of a factual nature. Suggested corrections were considered by the author while preparing this revised version.

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LIST OF ABBREVIATIONS AND ACRONYMS

ACRA	Cooperazione Rurale in Africa e America Latina
AHTEG	Ad Hoc Technical Expert Group
ANDES	Asociación para la Naturaleza y el Desarrollo Sostenible
APBEBES	Association for Plant Breeding for the Benefit of Society
Art.	Article
CBD	Convention on Biological Diversity
CFS	Committee on World Food Security
CTDT	Community Technology Development Trust
DUS	Distinctiveness, uniformity, stability
EC	European Commission
ECOWAS	Economic Community of West African States
EIP	European Innovation Partnership
ESA	European Seed Association
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FMPA	Fitomejoramiento Participativo en Mesoamérica
FNI	Fridtjof Nansen Institute
GIAHS	Globally Important Agricultural Heritage Systems (of FAO)
GPA	Global Plan of Action for Plant Genetic Resources for Food and Agriculture
IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
ISF	International Seed Federation
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
LI-BIRD	Local Initiatives for Biodiversity, Research and Development
MLS	Multilateral System
NDUS	Novelty, distinctiveness, uniformity, stability
NGO	Non-governmental organization
PGR	Plant genetic resources
PGRFA	Plant genetic resources for food and agriculture
PVP&FR	Protection of Plant Varieties & Farmers' Rights (India)
SDG	Sustainable Development Goals
SEARICE	Southeast Asia Regional Initiatives for Community Empowerment
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TWN	Third World Network
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPOV	International Union for the Protection of New Varieties of Plants
WIPO	World Intellectual Property Organization
WSSD	World Summit on Sustainable Development

EXECUTIVE SUMMARY

Farmers' Rights are addressed in the Preamble and Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). The responsibility for their realization rests with national governments.

The overall aim of this paper is to review, summarize and analyze relevant information on views, experiences and lessons learned with regard to the national implementation of Article (Art.) 9 as well as on national measures that have been proposed. Specific objectives are (1) to review and summarize the decisions of the Governing Body concerning Art. 9, Farmers' Rights; (2) to review and summarize views, experiences and proposed national measures and to analyze 'lessons learned'; and (3) to prepare a synthesis and derive elements for the further analysis of 'best practices'.

Farmers' Rights are assessed in this paper according to the way they are presented in the ITPGRFA. Five elements of Farmers' Rights are mentioned: (1) **Recognition** of the enormous contribution that local and indigenous communities and farmers of all regions of the world have made and will continue to make for the conservation and development of plant genetic resources (Art. 9.1); (2) **Protection of traditional knowledge** relevant to plant genetic resources for food and agriculture (Art. 9.2.a); (3) **Equitable participation in sharing benefits** arising from the utilization of plant genetic resources for food and agriculture (Art. 9.2.b); (4) **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 (Art. 9.2.c); and **rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material**, subject to national law and as appropriate (Art. 9.3).

A desk study of written documents was conducted, including the Resolutions of the Governing Body concerning Art. 9, Farmers' Rights, submissions of Contracting Parties and relevant Stakeholders to the ITPGRFA Secretariat (2012-2018), Country Reports as well as other significant documents, such as proceedings of workshops, consultations, symposia etc., scientific publications and background information from websites etc.

The Governing Body has addressed the issue of Farmers' Rights from its 1st Session in 2006 to its 7th Session in 2017. Decisions of and suggestions that were agreed upon by the Governing Body can be summarized as follows:

- Collect (knowledge), views and experiences (and best practices) on the implementation of Farmers' Rights, involving, as appropriate, farmers' organizations and other stakeholders.
- Consider reviewing and, if necessary, adjusting national measures affecting the realization of Farmers' Rights.
- Convene regional (and/or local, national, international) consultations on Farmers' Rights.
- Engage farmer organizations and relevant stakeholders in matters related to the conservation and sustainable use of PGRFA.
- Consider developing national action plans for implementation of Article 9 in line with implementation of Articles 5 and 6 of the International Treaty.
- Enhance coordination among relevant institutions.

- Identify and address critical issues (e.g. interrelations with other international instruments, e.g. UPOV/WIPO).
- Engage in capacity building, dissemination, networking.
- Consider success stories and best practices to promote Farmers' Rights.
- Derive options for national implementation of Art. 9.
- Address Farmers' Rights in conjunction with measures addressed under other Articles of the ITPGRFA, specifically Art. 5.1c to d and 6.2 c to g.
- Promote access to PGR under the MLS by local and indigenous communities and farmers.
- Promote sustainable biodiverse production systems and facilitate participatory approaches such as community seed banks, community biodiversity registries, participatory plant breeding, and seed fairs as tools for realizing Farmer's Rights.

The summary of views, experiences and lessons learned is structured by regions, except for some additional information on online or other consultations that cannot be assigned to a specific region. Each submission is briefly summarized. At the end of each regional section, 'lessons learned' are presented.

In some countries of the **African region** that submitted views and experiences, farmer-managed seed systems provide the major share of all seed used by farmers. In contrast, the importance of these seed systems is not always recognized, e.g. in international development cooperation projects, policies and legislation. Some countries try to establish options for the registration of traditional/farmer varieties as a prerequisite for legal seed exchange and marketing. Another focus is on awareness building among farmers regarding their rights, but also other stakeholders involved in the seed sector. Furthermore, several Contracting Parties report on positive experiences with Multi-Stakeholder Consultations on issues/priorities related to seed and PGRFA and/or suggest these as good practice. Practical experiences reported include participatory plant breeding and variety selection; participatory characterization of crop germplasm from genebank collections and/or communities; Community Biodiversity Registers/Biocultural Protocols; and seed fairs and community seed banks.

In the **Asian Region**, India is a country giving high priority to the realization of Farmers' Rights, with a special Act and Authority being in place to promote and protect these rights. For farmers to be able to effectively exercise their rights, additional measures and support are necessary, including training and capacity building or support in relevant legal procedures. Other Contracting Parties mention that governments can benefit from experiences gathered in projects for the realization of Farmers' Rights that are implemented by NGOs, also in partnership with local government units, and streamline good practices in their own national programs. Furthermore, the realization of Farmers' Rights can be linked to other objectives governments may have, such as increasing resilience and sustainability of farming and food systems, enhancing food and nutrition security or mitigating effects of climate variability and change. Thorough assessment of the existing complexities of seed systems appear crucial for developing appropriate policies and legal frameworks for the realization of Farmers' Rights at national level, according to the views of some NGOs.

Policies and legal frameworks in countries of the **European Region** depend largely on the respective policies of the European Union (EU), even for non-member states, due to bilateral agreements. The Common Agricultural Policy of the EU allows members states, or even regions or regional states, to develop rural development programs according to their own priorities. This option offers good opportunities for supporting farmers in their efforts to conserve and use PGRFA. The important role and of regions or federal states is repeatedly emphasized by Contracting Parties and other stakeholders. In European countries, there is a long tradition to consider traditional knowledge relating to PGRFA as common knowledge that is shared, rather than protected. This is why existing legal provisions for the protection of knowledge do in many cases not apply for this type of knowledge. However, options such as Geographical Indications are popular in some countries for the protection of traditional knowledge relating to PGRFA and products derived from them. A dominant view regarding benefit-sharing at national level is that farmers benefit from breeding progress; however, not all farmers benefit equally; particularly those who are involved in farming activities outside the 'mainstream' may have specific needs that are currently not fully addressed by the breeding and seed industry. Participation in decision-making is well established in the EU and its member states. However, the existing procedures do not always allow for participation of those farmers who are particularly interested in the conservation and use of PGRFA. The right to save, use, exchange and sell seed is restricted in all European countries, based on plant variety protection systems and seed legislations. However, the submissions show that there are many options for creating or widening legal spaces to support farmers' seed management practices and dynamic on-farm conservation of PGRFA.

Contracting Parties and relevant stakeholders in **Latin America and the Caribbean** report on substantial experiences regarding farmer participation in decision-making and share experiences on how consultation with farmers, including indigenous peoples and nations, can be implemented and addressed for various purposes, including for example research activities and policy development and/or continuous development of activities and priority setting. These consultations take various forms, including workshops, roundtables and technical expert groups. Another strong focus is on the recognition of farmers' role as 'guardians' of agrobiodiversity and on the protection of traditional knowledge. Here, examples are provided not only for the documentation and protection against misappropriation, but also on knowledge-sharing activities, e.g. between holders of traditional knowledge and researchers. Several countries of the region put high priority to the realization of Farmers' Rights, including through developing/reviewing/adjusting national policies, strategies and laws for their implementation at national level.

Little information is available so far on views and experiences concerning the realization of Farmers' Rights in the **Near East Region**. International cooperation projects could support the efforts of Contracting Parties and relevant stakeholders in this region to gain experiences on which they could build further. Positive experiences have been made with close cooperation between farmers and government programs/institutions as well as NGOs on issues related to the conservation and sustainable use of PGRFA. These include participatory variety selection, seed multiplication and selling/sharing/exchange of seed among farmer, as well as *in situ*

and *ex situ* conservation of PGRFA. Engagement of the National Focal Point with relevant government institutions can facilitate the development of legal and other measures for conservation and sustainable use of PGRFA in line with the provisions of the ITPGRFA.

Countries of the **North American Region** share the view that Farmers' Rights can be implemented under their current legislations. Farmers participate in decision-making on matters relating to PGRFA through their representation in several advisory committees. The protection of traditional knowledge is understood mainly as a protection against misappropriation; several existing laws are referred to that may be used by holders of traditional knowledge. One important aspect of benefit-sharing is understood as the ability of farmers to regularly purchase seed of newly developed varieties, and/or it is implemented based on a variety of agricultural programs. In some cases, the programs are targeted towards plant genetic resources specifically, but in many instances are beneficial to farmers in general. Consistent with Article 9.3, the right of farmers to save, use, exchange and sell seed is subject to national laws. In the North American context, this can be domestic seed laws, plant variety protection/plant breeders' rights legislation, or contractual agreements between farmers and seed enterprises.

Information from Contracting Parties and relevant stakeholders of the **South West Pacific Region** on the implementation of Art. 9 has so far been limited. Existing policies and laws are reviewed on a regular basis, taking treaty obligations into account. Farmers are allowed to use farm-saved seed on their own land, subject to national legislation. Networks of seed savers and small companies selling heirloom seed play an important role in Australia for maintaining traditional crop varieties and related traditional knowledge.

International NGOs call for particular attention for the implementation of the right to participate in decision-making at national level as well as in international/regional processes that affect national legislations. They further call for rules that ensure that those farmers who are engaged in the conservation and sustainable use of PGRFA are represented in processes and institutions relating to PGRFA. International NGOs focusing on development issues share the opinion that the 1991 Act of the UPOV Convention negatively affects Farmers' Rights in various respects and is not supportive to their realization, while the International Seed Federation (ISF), as an association representing the seed industry, has the position that the UPOV Convention and the ITPGRFA could be implemented in a mutually supportive manner. Examples of good practices for the implementation of Farmers' Rights exist, but lack of capacity and guidance is one of the reasons for the slow progress regarding the implementation of Farmers' Rights; some of the submitting NGOs, therefore, call for more efforts towards capacity building among key stakeholders.

Additional inputs and supportive measures have also been proposed in various multi-stakeholder consultations that were conducted between 2007 and 2016.

For the implementation of Art. 9.1 (Recognition of local and indigenous communities' and farmers' contributions to the conservation and development of PGRFA), some Contracting Parties have created awards and other explicit forms of expressing recognition.

Recognition of farmers contributions is, however, also shown indirectly, for example if governments or other stakeholders provide funding to projects implemented by farmers or farmer organizations for the conservation and sustainable use of PGRFA, e.g. via national funds or special programs to which farmers can apply. Furthermore, recognition is also implicitly shown if farmers participate in breeding programs, programs for on-farm conservation and evaluation of PGRFA or other similar activities, or if they are represented in committees and other relevant institutions.

For the implementation of Art. 9.2.a (Protection of traditional knowledge), it has frequently been stated that protection of traditional knowledge entails protection against misappropriation as well as protection against 'erosion' or loss. Regarding the risks of misappropriation, some Contracting Parties refer to existing legislations, e.g. plant variety protection, patent and copyright laws. Traditional knowledge that does not qualify for protection under these laws cannot be protected.

Some countries have addressed this issue by creating separate options for the protection of traditional and farmer varieties. Other countries have legislations in place that protect traditional knowledge held by indigenous peoples, or by excluding such knowledge from protection via patents.

For the protection of traditional knowledge relating to PGRFA against loss and 'erosion', proposed actions range from national dialogue for the identification of appropriate measures, the creation of databases, catalogues community biodiversity registers and Biocultural Protocols, knowledge sharing with researchers, networks of interested individuals, training centers for capacity building, etc.

National measures for the participation in decision-making at national level (Art. 9.2.b) are reported in nearly all submissions of Contracting Parties. However, some refer to general participation processes that are in place in their country or in relation to agricultural policies in general, not specifically for decision-making on PGRFA. In many cases, representatives of farmer organizations are also represented in relevant institutions and committees, e.g. variety release committees or committees focusing on conservation of PGRFA.

Most submissions do not provide details on how the farmer representatives are selected and how much influence they actually have on relevant processes. Also, details are scarce as to how different groups of farmers are represented, e.g. farmers operating at large or small scale, women and men, or farmers whose work is based on different sets of values and principles compared to the 'mainstream' of farmers in their country, e.g. organic/biodynamic farmers or farmers belonging to indigenous peoples and communities.

Particularly in countries where only a minority of farmers engages with activities for conservation and use of PGRFA, there is a risk that their voices and needs remain unheard.

Regarding **national measures for equitable participation in the sharing of benefits arising from the utilization of PGRFA (Art. 9.2.c)**, several Contracting Parties share the view that farmers in general benefit from the availability of newly bred varieties. While it is certainly true in general that farmers benefit from breeding activities, it is also known that not all groups of farmers may benefit equally, particularly if they work under certain highly specific conditions that make it economically less viable for breeding companies to invest in breeding efforts that target such conditions. Hence, indirect measures for benefit sharing bear the risk that they

cannot support all farmers equally, or not particularly those who contribute to the conservation and management of PGRFA.

Furthermore, national benefit sharing funds have been established or proposed by some Contracting parties and stakeholders. Such funds offer opportunities for more targeted benefit sharing, depending on the funding criteria they have developed. The effects and impacts of the proposed national measures for benefit sharing on the conservation, management and sustainable use of PGRFA and on farmers who engage in such activities would deserve further analysis.

National measures for realizing Farmers' Rights to save, use, exchange and sell seeds (Art. 9.3) are proposed to be identified in a way to create synergies with measures targeting other objectives of the Treaty as well as food and nutrition security or sustainable farming and food systems in general. In contrast, other Contracting Parties state more or less the opposite: by establishing seed quality standards and plant variety protection that both together restrict individual farmers' rights to sell and exchange seed, agricultural yields and incomes of farmers would increase.

This apparent contradiction may be addressed by looking deeper into the various aspect of context that have led Contracting Parties and other stakeholders to taking the views they share in their submissions.

A way forward, from sharing views and experiences towards identifying elements of 'good practices', would benefit from a deeper assessment of context-related factors and farmers' perspectives on options for the realization of their rights. Furthermore, it appears necessary to proceed towards establishing some sort of 'quality criteria' against which proposed measures for the national implementation of Art. 9 could be assessed. For this purpose, it could also be considered to broaden the base of evidence upon which such assessments are made, e.g. through scientific studies or fact-finding missions. Connecting actors and activities across various scales, from local to international, and actively seeking for the participation of farmers and other relevant actors would help increase the relevance of measures for them, while at the same time generating the necessary momentum for proceeding towards the full realization of Farmers' Rights.

1 INTRODUCTION AND BACKGROUND

Farmers' Rights in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)¹ are addressed in the Preamble and in Article (Art.) 9 of the Treaty. The responsibility for their realization rests with national governments. Contracting Parties have a general obligation to take measures to protect and promote Farmers' Rights (Art. 9.2), in accordance with their needs and priorities, as appropriate and subject to national legislation.

This notion of Farmers' Rights implies that the ways how these rights are implemented in different countries

The legal content of Farmers' Rights as they are addressed in the Treaty, the fact that the responsibility for their realization rests with governments, the various aspects of these rights that are mentioned in Art. 9.2, and particularly the wording of Art. 9.3 have been clarified and explained in various publications, including material published by the ITPGRFA Secretariat itself.

See for example: ITPGRFA Secretariat, 2017; Christinck and Tvedt, 2015; Andersen and Winge, 2013; <http://www.fao.org/plant-treaty/areas-of-work/farmers-rights/en/> (26 July 2018)

are diverse, since needs and priorities, or what is deemed appropriate in a specific context, are defined differently by governments and important stakeholders of each country.

Protecting and promoting Farmers' Rights as set out in Art. 9 of the Treaty further implies that the understanding of these rights, the appropriateness of measures for their realization, just as priorities and needs, are likely to evolve over time. Even within one country, it will not be possible to define 'once and for all' which way of realizing Farmers' Rights is appropriate and will still be so in the future.

Activities, practices and national measures for the realization of Farmers' Rights could also support and contribute to the implementation of other provisions of the Treaty and *vice versa*, for example, Art. 5, Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of Plant Genetic Resources for Food and Agriculture (PGRFA), and Art. 6, Sustainable Use of Plant Genetic Resources (see also Chapter 4). Hence, in order to achieve its overall goals, it may be necessary to understand the interrelations between Art. 9 and other provisions of the Treaty, and design activities and interventions accordingly.

Moreover, obligations of the Treaty cannot be seen in isolation from other international commitments a country may or may not have, or that could become relevant in the future; for example, as a Contracting Party of other international treaties, or member of regional organizations. As stated in the Preamble, the Treaty is not intended to create a hierarchy between itself and other international agreements; consequently, it is necessary to find ways to implement different treaty obligations in a harmonious manner.

To summarize, the implementation of Art. 9 of the Treaty may require a comprehensive consideration of surrounding factors and issues, and national measures taken by Contracting Parties are likely to evolve over time.

¹ Further referred to in this document as "the Treaty".

This is why a systematic review and analysis of views, experiences and measures that have been proposed could help in defining ‘best practices’ for the implementation of Art. 9 for a variety of contexts and situations.

2 OBJECTIVES OF THIS PAPER

This paper aims to review, summarize and analyze relevant information on views, experiences and lessons learned as well as on national measures that have been submitted and proposed by Contracting Parties and relevant stakeholders.

The specific objectives are:

1. To review and summarize the decisions of the Governing Body concerning Art. 9, Farmers’ Rights (Chapter 4).
2. To review and summarize views, experiences and proposed national measures relating to the implementation of Article 9 and to analyze ‘lessons learned’ (Chapter 5 and Annex).
3. To prepare a synthesis of views, experiences and lessons learned and derive elements for the further analysis of ‘best practices’ (Chapters 6 and 7).

3 APPROACH AND METHODOLOGY

3.1 General approach

Farmers’ Rights are assessed in this paper following the way they are presented in the Treaty.² In the Preamble, it is stated that *“the past, present and future contributions of farmers in all regions of the world, particularly those in centres of origin and diversity, in conserving, improving and making available these resources, is the basis of Farmers’ Rights”*.

This statement is followed by a clarification that *“the rights that are recognized in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers’ Rights, as well as the promotion of Farmers’ Rights at national and international levels.”*

All aspects or elements mentioned in the preamble are taken up again in Art. 9 of the Treaty, along with one further aspect: The protection of traditional knowledge relevant to PGRFA. Hence, the assessment of views, experiences, lessons learned and proposed national measures relies basically on the way how Farmers’ Rights are framed in the Treaty and includes the following elements:

² The text of the Treaty is available at <http://www.fao.org/3/a-i0510e.pdf> (26 July 2018).

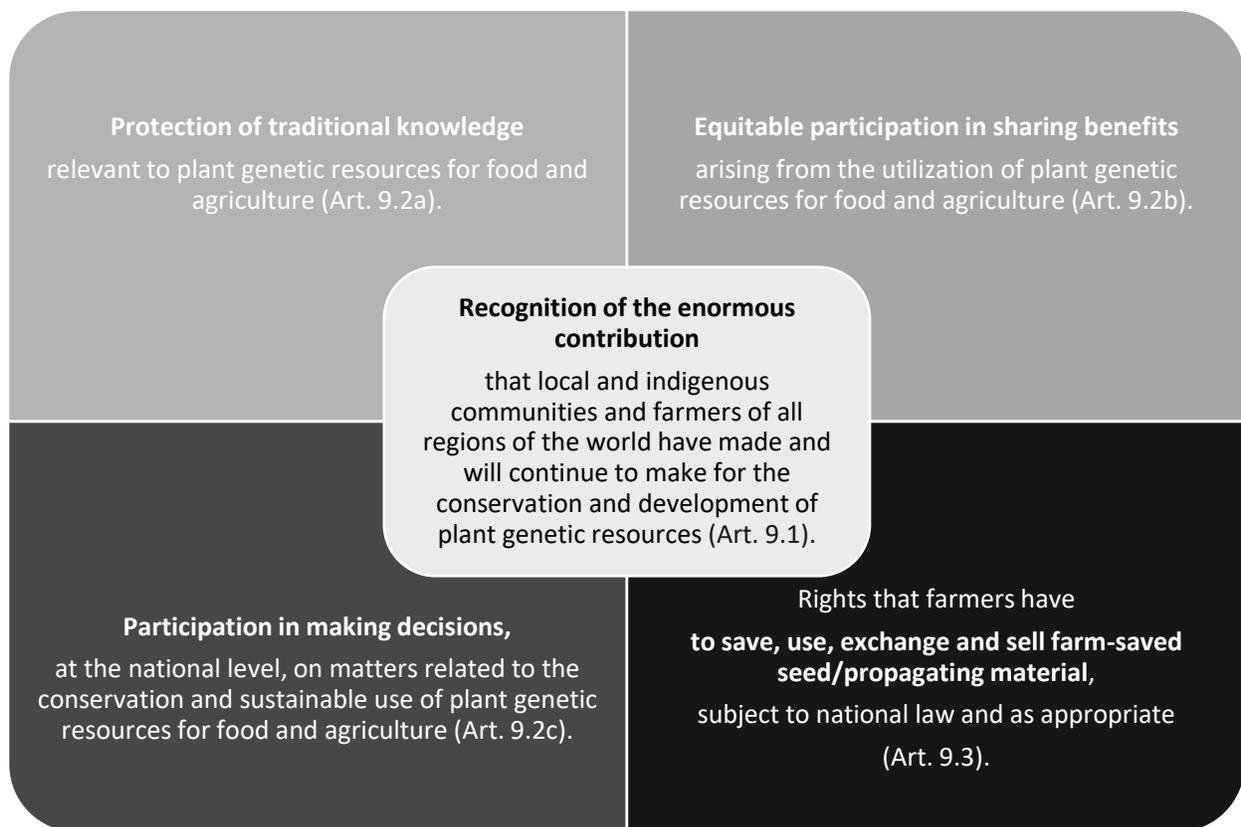


Figure 1: Basic Framework for assessing contributions to the realization of Farmers' Rights based on the five aspects that are mentioned in the International Treaty.

These elements of Farmers' Rights may be addressed and realized through a variety of measures, including: (a) measures identified by Contracting Parties; (b) measures proposed by the Governing Body; (c) measures identified through consultations and submissions of views and experiences, including by farmer organizations and relevant stakeholders.

This is why a review of the decisions of the Governing Body will be presented in Chapter 4, followed by a summary of views, experiences and national measures proposed by Contracting Parties and relevant stakeholders (Chapter 5). Chapter 5 is structured by regions, whereas the synthesis provided in Chapter 6 is structured according to the elements of Farmers' Rights presented in Figure 1 (above). Chapter 7 offers initial suggestions for the further analysis of proposed measures for further work towards identifying elements of 'best practices'. Lastly, concluding remarks are presented in Chapter 8.

3.2 Methodology

The methodology relied on a desk study of written documents. The following documents were considered:

- All resolutions of the Governing Body relating to Art. 9, Farmers' Rights.
- All submissions of Contracting Parties and relevant stakeholders to the ITGRFA Secretariat focusing on Farmers' Rights received between 2012 and 2018.

- All Country Reports.
- Other significant documents, such as proceedings of workshops, consultations, symposia etc. that have been conducted to address issues of relevance to the implementation of Art. 9, Farmers' Rights.
- Other sources available, including scientific and other publications or websites of relevant organizations, serving as background information or additional examples.³

In cases of repeated submissions of Contracting Parties and stakeholders, the focus was put on the most recent submissions, whereas earlier submissions were only briefly summarized. In cases where reports, studies etc. were attached to submissions of Contracting Parties and stakeholders, these could only be considered in selected cases. Documents that were submitted to the Governing Body before 2012, e.g. in the form of Information documents, were not considered in this paper, even though they may provide additional and valuable information.

Furthermore, the review was limited to documents that were available in English, Spanish or French languages. Few documents that had been submitted in other languages were translated. Minor inaccuracies in translation may have occurred unintendedly when summarizing French or Spanish documents in English language.

Summarizing the content of longer documents necessarily requires that a selection is made as to which information should be included. One guiding principle here was to avoid too much repetition; if a measure had already been described based on other submissions, it was only shortly mentioned elsewhere. Direct internet

Table 1 is structured by regions, with indication of the submitting party, to provide a transparent structure, leading from the review/summary of submissions in Chapter 5 to the list of proposed national measures in the Annex.

links are provided for documents such as resolutions, submissions to the ITPGRFA Secretariat and Country Reports in order to facilitate access for those who are interested in further details, e.g. relating to information provided by a specific Contracting Party or stakeholder.

Proposed national measures were extracted from the submissions of Contracting Parties and other relevant stakeholders and summarized in Table 1 in the Annex, followed by information in global programs/projects that were proposed to support the realization of Farmers' Rights.

Proposed national measures were extracted from the submissions of Contracting Parties and other relevant stakeholders and summarized in Table 1 in the Annex, followed by information in global programs/projects that were proposed to support the realization of Farmers' Rights.

³ In some cases, such publications were also attached to submissions of Contracting Parties or relevant stakeholders.

4 CONCEPTUAL DEVELOPMENT, EVOLUTION AND RELEVANCE OF FARMERS' RIGHTS

The history of Farmers' Rights as a concept has been presented and summarized in a number of previous publications.⁴ It emerged during discussions that were held at various international fora since the beginning of the 1980s. Key aspects of Farmers' Rights, such as the call for recognition of farmers' past, present and future contributions to the conservation and sustainable use of PGRFA, or the idea of a benefit-sharing fund, date back to these discussions, which lead to the first official recognition of Farmers' Rights at a conference of the Food and Agriculture Organization of the United Nations (FAO) in 1989.

Farmers' Rights were also addressed in the Agenda 21, the negotiations on the Convention on Biological Diversity, and the Global Plan for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture (1996). They were finally included in the ITPGRFA, a legally binding international agreement, which was adopted by the 31st Session of the FAO Conference in 2001 through Resolution 3/2001, and entered into force in 2004 (ITPGRFA Secretariat, 2017).

Since the Treaty leaves it to the discretion of Contracting Parties to decide how Farmers' Rights are to be realized in their jurisdictions (see section 1.1), the text of Art. 9 can be used as a starting point from which a more detailed understanding of Farmers' Rights and options for their realization can be developed for each country.

No resolution specifically dealing with Farmers' Rights was adopted during the First Session of the Governing Body. However, the topic was mentioned in a statement of Mr. Jacques Diouf, then Director General of FAO, to the ministerial session. Furthermore, a request was made to the Secretary to look into ways to facilitate the participation of civil society organizations, in particular farmer organizations, in the work of the Treaty, and to find practical ways to enhance their participation in the next session of the Governing Body. A proposal made by Norway to include the topic of Farmers' Rights into the agenda of the Second Session was adopted.⁵

From its Second Session in Rome, Italy, 2007 to its Seventh Session, which took place in Kigali, Rwanda, in 2017, the Governing Body has addressed the issue of Farmers' Rights on a regular basis, and has facilitated a steady process of discussion on Farmers' Rights, based on contributions of Contracting Parties and relevant stakeholders, which is reflected and laid down in a number of resolutions on the implementation of Art. 9, Farmers' Rights.

Resolution 2/2007⁶ does not mention any substantive aspects of Farmers' Rights, but represents an important step for defining a procedure: The Governing Body recalls the importance of fully implementing Art. 9 of the Treaty, acknowledges that there is uncertainty in many countries as to how Farmers' Rights can be implemented, and recognizes that exchange of experiences and mutual assistance between Contracting Parties can

⁴ See, for example, Andersen, 2005; Andersen and Winge, 2013; Andersen, 2016; ITPGRFA Secretariat, 2017.

⁵ See the report of the First Session of the Governing Body for details.

⁶ <http://www.fao.org/3/a-be008e.pdf> (5 July 2018)

significantly contribute to making progress in this regard. It further recognizes that the Governing Body itself has an active role to play in order to support the implementation of Farmers' Rights.

On this basis, the Contracting Parties and other relevant organizations are encouraged to submit their views on and experiences regarding the implementation of Art. 9, involving farmers' organizations and stakeholders as appropriate, while the Secretary is requested to collect these submissions as a basis for an agenda item for consideration by the Governing Body at its next session, and to disseminate relevant information through the website of the International Treaty.

In Resolution 6/2009,⁷ the Governing Body notes that the number of contributions had been limited. Besides encouraging Contracting Parties and other relevant organizations to continue submitting views and experiences, and inviting Contracting Parties to review and if necessary adjust national measures affecting Farmers' Rights as set out in Art. 9, a request is made to the Secretariat to convene regional workshops aiming at discussing national experiences on the implementation of Farmers' Rights, with the involvement of farmers' organizations and stakeholders, as appropriate.

A further request is to continue collecting and disseminating submissions of Contracting Parties and other relevant organizations on their views and experiences regarding the implementation of Farmers' Rights, along with the reports of the regional workshops, as a basis for an agenda item at the following Fourth Session of the Governing Body. Hence, the decisions taken by the Governing Body through Resolution 6/2009 are still limited to the definition of procedures for facilitating discussion and exchange, and hence do not touch the development of a joint conceptual understanding of the content of Farmers' Rights.

However, such an approach is taken for the first time in Resolution 6/2011,⁸ where each Contracting Party is encouraged *"to closely relate the realization of Farmers' Rights as appropriate and subject to national legislation with the implementation of Articles 5 and 6, in particular the measures in Articles 5.1(c and d), and 6.2 (c, d, e, f, and g)"*.

Art. 5 refers to *"Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of PGRFA"*; Art. 5.1. includes an obligation to promote an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture, subject to national legislation, and in cooperation with other Contracting Parties where appropriate. This is further specified in Art. 5.1.a-f; Art. 5.1.c suggests to *"promote or support, as appropriate, farmers and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture."* Art. 5.1.d refers to the promotion of *"in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, inter alia, the efforts of indigenous and local communities"*.

Art. 6 addresses *"Sustainable Use of Plant Genetic Resources"*; Art. 6.2.a-g specifies a number of concrete measures that may be included to promote sustainable use of PGRFA, such as participatory plant breeding and developing varieties that are *"specifically adapted to social, economic and ecological conditions, including*

⁷ <http://www.fao.org/3/a-be112e.pdf> (5 July 2018)

⁸ <http://www.fao.org/3/a-be456e.pdf> (5 July 2018)

in marginal areas” (Art. 6.2.c); “broadening the genetic base of crops and increasing the range of genetic diversity available to farmers” (Art. 6.2.d); promoting “the expanded use of local and locally adapted crops, varieties and underutilized species” (Art. 6.2.e); supporting “the wider use of diversity of varieties and species in on farm management, conservation and sustainable use of crops” and “creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion” (Art. 6.2.f); and “re-viewing, and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution” (Art. 6.2.f).

Hence, according to Resolution 6/2011, Farmers’ Rights should not be treated as a separate issue, but rather in conjunction with the core issues and obligations that are addressed in the Treaty, such as actions or measures that will be taken by the Contracting Parties for the conservation, exploration, collection, character-

In Resolution 8/2013, the Governing Body refers to document IT/GB-5/13/Inf.8, summarizing the submissions of three Contracting Parties and eleven organizations. The documented experiences and views cover a wide range of issues, from concrete experiences with community seed banks and participatory breeding to exemptions for small-scale farmers or certain types of crops that limit the scope of protection of plant breeders’ rights or patents and create a legal space for farmers to continue their own traditional practices for the propagation and selection of seed and planting material. Further examples of issues addressed are: the role of seed legislations for the realization of Farmers’ Rights; adequate representation not only of farmers, but different groups of farmers in decision-making bodies; reasons for the erosion of traditional knowledge; and needs for research and capacity building.

Source: <http://www.fao.org/3/a-be547e.pdf>; only a selection of the topics addressed in the document are summarized here.

ization, evaluation, documentation and sustainable use of PGRFA.

In Resolution 6/2011, the Governing Body also notes the results of the consultations on Farmers’ Rights, submitted to the Secretariat by Ethiopia, but without any further comments on the conference recommendations (see box on previous page). The invitation to Contracting Parties to submit views and experiences is maintained, but extended to “best practices”; furthermore, there is an invitation to submit “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”. Resolution 8/2013,⁹ adopted at the Fifth Session of the Governing Body in Muscat, Oman, entails a higher number of detailed suggestions and requests compared to previous resolutions.

One request to the Secretary is to review “the knowledge, views, experiences and best practices that have been submitted since the entering into force of the International Treaty and to date, including those submitted by farmers’ organizations, in order to derive examples, in a

⁹ <http://www.fao.org/3/a-be600e.pdf> (5 July 2018)

systematic way, as options for national implementation of Article 9 on Farmers' Rights, as appropriate and according to national legislation, to be presented at the next session of the Governing Body." Hence, the process that has been started from the Second Session is now becoming more focused and goes beyond just a basic assembly of views and experiences.

A further new request to the Secretary is to invite the International Union for the Protection of New Varieties of Plants (UPOV) and the World Intellectual Property Organization (WIPO) *"to jointly identify possible areas of interrelations among their respective international instruments"* — an indication that the areas of interrelation between instruments that address intellectual property rights for related to plants and plant varieties and Art. 9 of the Treaty are seen as critical by the Contracting Parties for the full implementation of Farmers' Rights.

Other requests to the Secretary include: to report on relevant discussions that relate to Farmers' Rights within other FAO fora; to facilitate support to Contracting Parties in building capacity for the implementation of Farmers' Rights, upon request and depending on availability of resources; to facilitate support to initiatives taken by Contracting Parties, such as regional workshops of other forms of consultations, including with farmers' organizations *"for the exchange of knowledge, views and experiences to promote the realization of Farmers' Rights as set out in the Treaty"*; and to report to the Governing Body on the implementation of the resolution at the following session.

Resolution 8/2013 further includes a number of invitations to Contracting Parties to take actions, including for example, to consider developing action plans for the implementation of Art. 9 in line with the implementation of Art. 5 and Art. 6, in particular the measures mentioned in the previous resolution (6/2011, see above); to promote access to plant genetic resources (PGR) under the Multilateral System (MLS) by local and indigenous communities and farmers; to take initiatives for workshops and consultations, as described above; to consider providing financial and technical support for the implementation of Farmers' Rights in developing countries; and to enable farmers and representatives of farmers' organizations to attend meetings under the International Treaty.¹⁰ Furthermore, the participation of farmer organizations in the work of the Governing Body is appreciated; these organizations are invited not only to continue participating actively in the sessions of the Governing Body, but also in relevant inter-sessional processes.

To summarize, Resolution 8/2013 takes up issues and processes that were started earlier but brings them to a new level by formulating a number of concrete invitations and requests. Furthermore, there is a decision to jointly address one issue that has been identified to be critical for the implementation of Farmers' Rights as set out in Art. 9 of the Treaty, based on experiences and views that had been submitted by Contracting Parties and other relevant organizations, which is the interrelations with other international agreements, specifically those concerning intellectual property rights on plant varieties. Furthermore, there is a focus on capacity building, continued active participation of farmer organizations in processes relating to the implementation of

¹⁰ This invitation is extended to development cooperation organizations.

the Treaty, and increased networking activities with discussions ongoing in other FAO fora, including for example the Committee on Food Security.

Resolution 5/2015¹¹ follows along these same lines, but also includes some new points. There is a request to the Secretary *“to engage Contracting Parties and other relevant organizations to take initiatives to gather information at national, regional and global levels for exchanging knowledge, views, experiences and best practices on the implementation of Farmers’ Rights as set out in Article 9 of the International Treaty”*. This request goes beyond the simple invitation formulated in previous resolutions to conduct workshops etc., which is maintained.

Furthermore, the Secretary is requested to prepare a study on lessons learned from the implementation of Farmers’ Rights, including policies and legislation, to be presented at the following session. Contracting Parties and all relevant stakeholders, especially farmer organizations, are requested to submit their views and experiences *“to derive examples as possible options for national implementation of Article 9 on Farmers’ Rights, as appropriate and subject to national legislation.”* *“Success stories”* in the national implementation of Farmers’ Rights are also to be considered in the following session, *“with a view to invite Contracting Parties to consider how to promote them further at the national level”*.

A new issue addressed is to enhance interaction and coordination among the different institutions dealing with Farmers' Rights as set out in Article 9 of the Treaty and PGRFA. Hence, the previous calls to address Farmers’ Rights in an integrated manner, along with activities targeting measures under Art. 5 and Art. 6, are identified here as an issue that requires coordination among institutions.

The Secretary is further requested to launch a joint program for capacity building together with other relevant organizations; to finalize an educational module on Farmers’ Rights, and encouraged to conduct active outreach on the extent of Farmers' Rights to relevant stakeholders as a *“necessary measure to advance the implementation of these rights”*.

The engagement with UPOV and WIPO should be continued *“to jointly, and including through a participatory and inclusive process, as appropriate and subject to availability of resources, finalize the process for identification of possible areas of interrelations between their respective instruments and the Treaty”*.

Finally, in Resolution 7/2017¹², the most recent resolution targeting the implementation of Art. 9, the Governing Body refers to the Global Consultation on Farmers’ Rights held in Bali, Indonesia, in 2016, and notes *“with appreciation”* their proceedings. Furthermore, the Governing Body also refers to the Informal International Consultation on Farmers’ Rights that had been conducted Lusaka, Zambia, in 2007 and the Global Consultation on Farmers’ Rights in Addis Ababa, Ethiopia, 2010, and notes their recommendations. This is remarkable

¹¹ <http://www.fao.org/3/a-bl144e.pdf> (5 July 2018)

¹² <http://www.fao.org/3/a-mv102e.pdf> (5 July 2018)

in so far as there had not been any official acknowledgement of these recommendations in previous resolutions;¹³ an acknowledgement of these recommendations appears ten years later, in a preambular paragraph of Resolution 7/2017.

The Global Consultation on Farmers' Rights in Bali, Indonesia (2016) was a response to the invitation of the Governing Body through Resolution 5/2015. 95 participants from 37 countries, including representatives of Contracting Parties, farmer organizations, seed industry, non-governmental and intergovernmental organizations and the ITPGRFA Secretariat, attended the meeting. The consultation covered various thematic areas, including discussions on the importance of Farmers' Rights, experiences and challenges, as well as possible ways forward. Recommendations included, inter alia, establishing an Ad Hoc Working Group to guide and assist Contracting Parties in the implementation of Farmers' Rights, producing an inventory of national measures that may be adopted to enhance the realization of Farmers' Rights, and developing voluntary guidelines on the realization of Farmers' Rights at national level. The proposed measures go beyond a compilation of views, experiences and practices; they rather focus on facilitating the development of a shared understanding of possible ways forward.

Source: ITPGRFA Secretariat (2016)

ations;¹³ an acknowledgement of these recommendations appears ten years later, in a preambular paragraph of Resolution 7/2017.

The resolution refers to the ongoing process with UPOV for identifying possible areas of interrelations between the UPOV Convention and the International Treaty, particularly Art. 9. In this regard, the Governing Body requests the Secretary, subject to the availability of financial resources, to continue this process and to explore the possibility of carrying out a similar process with the relevant instruments of WIPO, in cooperation with the WIPO Secretariat and in an inclusive and participatory manner. The Governing Body further requests the Secretary to explore how Contracting Parties could further contribute to these processes. A Symposium, co-organized by the office of UPOV and the ITPGRFA Secretariat, held in October 2016 at the UPOV Headquarters at Geneva, Switzerland, with the aim to explore areas of interrelations between both treaties, is explicitly referred to.¹⁴

While maintaining previous invitations to Contracting Parties, e.g. to consider developing national action plans for implementation of Article 9 or to convene further workshops, there are a number of new or more focused invitations, compared with previous resolutions. For example, concrete options for action that have been identified as tools for realizing Farmers' Rights are mentioned: sustainable biodiverse

¹³ "Results" of the Global Consultation in Addis Ababa had been noted in Resolution 6/2011, but not explicitly the recommendations. The report of the informal consultations on Farmers' Rights which took place in Lusaka, Zambia (2007) does not present any joint recommendations; however, individual contributions include recommendations, such as for example the need to review policies, the formation of an expert group, the development of voluntary guidelines, or options to implement Art. 9 in conjunction with other articles of the Treaty (https://www.regjeringen.no/globalassets/upload/lmd/vedlegg/brosjyrer_veiledere_rapporter/lusakarapporten.pdf, 7 July 2018).

¹⁴ Proceedings available at <http://www.fao.org/3/a-BS784e.pdf> (6 July 2018)

production systems, participatory approaches such as community seed banks, community biodiversity registries, participatory plant breeding and seed fairs.

The focus on training, capacity building and dissemination activities is maintained, with particular mention of the Educational Module and the Joint Capacity Building Programme on Farmers' Rights. Furthermore, the Secretary is requested to *"provide or facilitate the provision of technical assistance to Contracting Parties and relevant stakeholders to support their efforts to realize Farmers' Rights, including through procedures and mechanisms to mainstream Farmers' Rights in their national plans and programmes."* Mainstreaming Farmers' Rights into national plans and programs goes clearly beyond previous invitations to Contracting Parties to develop action plans, or to consider reviewing policies, even though these invitations are maintained.

Furthermore, the Governing Body, at its Seventh Session, took the decision to establish a group that was specifically tasked to look into Farmers' Rights: The Ad Hoc Technical Expert Group on Farmers' Rights (AHTEG); the tasks of this group are described in the Terms of Reference provided as an Annex to Resolution 7/2017. According to the Terms of Reference, the AHTEG is expected to *"produce an inventory of national measures that may be adopted, best practices and lessons learned from the realization of Farmers' Rights"*, and *"based on the inventory, develop options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty"*, with the aim to report back to the Governing Body on its work for consideration in the following session.

The establishment of the AHTEG represents a milestone in the process for realizing Farmers' Rights, underlining the determination of the Governing Body to support and facilitate the implementation of Art. 9, and to provide advice to Contracting Parties with regard to the process and practical options for implementation.

Decisions of and suggestions agreed upon by the Governing Body, described above based on the Resolutions on Art. 9, Farmers' Rights, can be summarized as follows:

- Collect (knowledge), views and experiences (and best practices) on the implementation of Farmers' Rights, involving, as appropriate, farmers' organizations and other stakeholders (Resolutions 2/2007, 6/2009, 6/2011, 8/2013, 5/2015, 7/2017)
- Consider reviewing and if necessary, adjusting national measures affecting the realization of Farmers' Rights (Resolutions 6/2009, 6/2011, 8/2013, 5/2015, 7/2017)
- Convene regional (and/or local, national, international) consultations on Farmers' Rights (Resolutions 6/2009, 6/2011, 8/2013, 5/2015, 7/2017)
- Engage farmer organizations and relevant stakeholders in matters related to the conservation and sustainable use of PGRFA (Resolutions 8/2013, 5/2015, 7/2017)
- Consider developing national action plans for implementation of Article 9 in line with implementation of Articles 5 and 6 of the International Treaty (Resolutions 8/2013, 5/2015, 7/2017)
- Enhance coordination among relevant institutions (Resolution 5/2015)
- Identify and address critical issues (e.g. interrelations with other international instruments, e.g. UPOV/WIPO) (Resolutions 8/2013, 5/2015, 7/2017)
- Engage in capacity building, dissemination, networking (Resolutions 8/2013, 5/2015, 7/2017)

- Consider success stories and best practices to promote Farmers' Rights (5/2015, 7/2017)
- Derive options for national implementation of Art. 9 (Resolution 8/2013, 5/2015, 7/2017)

Practical approaches and tools that have been recommended by the Governing Body as supportive to the implementation of Art. 9 include to:

- Address Farmers' Rights in conjunction with measures under Art. 5.1c-d and 6.2 c-g (Resolution 6/2011)
- Promote access to PGR under the MLS by local and indigenous communities and farmers (Resolution 8/2013)
- Promote sustainable biodiverse production systems and facilitate participatory approaches such as community seed banks, community biodiversity registries, participatory plant breeding and seed fairs as tools for realizing Farmer's Rights (Resolution 7/2017)

However, these are only some possible options for implementing Art. 9 of the Treaty in practice, so that this list could possibly be expanded, based on experiences that have been reported by Contracting Parties and relevant stakeholders (see Chapter 5).

5 SUMMARY OF VIEWS, EXPERIENCES, AND LESSONS LEARNED

In this chapter, summarized information on views and experiences from submissions and Country Reports is presented¹⁵ (see also Section 3.2), structured by regions. Additional sections summarize views and experiences that were submitted by organizations working at international scale, not focusing on a particular region, and information from an e-mail consultation with individual stakeholders.

At the end of each section, there is a summary of 'lessons learned', in most cases with indication of the submissions from which these lessons were drawn. In Table 1 (Annex), national measures that were proposed by Contracting Parties or relevant stakeholders through their submissions are presented in summarized form.

Unless stated otherwise, submissions made in the years 2013-18 are considered; replies to the Secretary's latest notification from 7th May 2018 are presented separately from previous submissions. The wording is close to the language used in the original documents. Regions and countries within regions are presented in alphabetical order.

Africa

REPLIES TO THE SECRETARY'S INVITATION FROM 7 MAY 2018

The **Central African Republic** submitted views and experiences¹⁶ in May 2018. The Central African Republic is among the poorest countries of the world, with rural populations being particularly affected by poverty

¹⁵ Submissions on Farmers' Rights are available at <http://www.fao.org/plant-treaty/areas-of-work/farmers-rights/submissions-by-the-contracting-parties-and-stakeholders/en/>; Country Reports are available at: <http://www.fao.org/plant-treaty/areas-of-work/compliance/compliance-reports/en/> (27 July 2018).

¹⁶ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_CentralAfricanRepublic.pdf (4 August 2018)

(nearly 70%) and food insecurity (around 40%). In this situation, Farmers' Rights are important as one element supporting rural development; however, they are framed here as a broader concept, which entails access to production means and infrastructure in general, including for example soil, markets and technologies. Furthermore, the situation of vulnerable groups is specifically addressed. Consequently, the recommendations made by the Central African Republic include the formation of farmer associations, groups or cooperatives for the management of natural resources and improved access to production means as well as developing opportunities for income generation in rural areas, e.g. based on tourism and agro-industries.

Eswatini submitted views and experiences¹⁷ in July 2018. In Eswatini, the traditional practices of saving, using and exchanging seeds are still widely practiced. Traditional knowledge associated with PGRFA is usually shared among individuals based on free will. However, international donor-funded agricultural development projects have completely disregarded the farmers' contributions and role in conservation and sustainable use of PGRFA; consequently, such projects have had negative impacts on farmers' practices and Farmers' Rights, which is however not adequately reflected, e.g. in project reports. Furthermore, farmers' practices and the genetic resources involved are also at risk due to changing government priorities and lack of or non-supportive agricultural policies and legal frameworks.

The view of Eswatini is that farmers' traditions and practices of saving and exchanging seed do not only contribute to the conservation and sustainable use of PGRFA, but also play a major role for food and nutrition security and income generation at household level. Therefore, Farmers' Rights should be promoted, and support provided to farmers to continue their seed-related practices. However, most farmers are not aware of their rights, so that awareness should be strengthened through adequate measures. Furthermore, farmers should be rewarded for their efforts, and imbalances in the distribution of benefits be addressed.

Direct recommendations include that farmer representatives should be part of the AHTEG; the realization of Farmers' Rights should not be solely the responsibility of national governments (since this may result in Farmers' Rights not being fully realized if governments do not see this as a priority); the Governing Body and the Treaty Secretariat should also share this responsibility, and they should ensure that farmers around the world, especially from Contracting Parties, benefit directly from the Benefit Sharing Fund of the Treaty.

While there is no national legislation yet in Eswatini for the national implementation of Art. 9, national guidelines for Access and benefit Sharing have been developed that include principles/practices such as Prior Informed Consent, Mutually Agreed Terms, participation of PGRFA custodians in decision-making and compensation.

Madagascar submitted views and experiences¹⁸ in August 2018. Since 2010, sensitization and information sessions have been held that helped farmers and other stakeholders to better understand what Farmers' Rights are, and to become increasingly aware of their relevance for the conservation and sustainable use of PGRFA as well as food security.

¹⁷ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_SWZ.pdf (4 August 2018)

¹⁸ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Madagascar.pdf (4 August 2018)

Biocultural Community Protocols are proposed as a form of national measure for enforcing Farmers' Rights. Biocultural Community Protocols are instruments through which indigenous and local communities communicate to governments and other interested actors the terms and conditions for access and use of their traditional knowledge and resources. They are developed within communities through participatory decision-making processes related to the cultural context and build on the norms, values and customary laws of these communities.

Niger submitted views and experiences¹⁹ in June 2018. One experience Niger shares is that traditional varieties should be recognized, and farmer-managed seed systems supported. For example, through the Seed Regulation of the Economic Community of West African States (ECOWAS) and respective national laws for its implementation, only varieties that are included in the regional or national variety registers qualify for the production of certified seed, so that traditional/farmer varieties are excluded. Furthermore, community seed banks are proposed as a means to support *in situ* conservation of PGRFA.

The submission entails various practical/ options for the implementation of Art. 9 at national level. These include: definition of 'farmer'; create a national committee on PGRFA with participation of all actors for farmers' to realize their right to participate in decision-making; organize workshops at various locations for awareness creation on farmers' rights, including for policy and decision-makers, researchers, trainers/extensionists, farmers, private sector, etc.; establish a variety catalogue for traditional varieties so that they qualify for the production of certified seed; revise the SMTA in order to clearly state the percentage of monetary benefits that is to be paid to farmers and other actors involved (a suggestion for a good practice in this regard is described in the submission).

Zambia submitted views and experiences²⁰ in June 2018. Zambia has long-standing experiences regarding programs and activities relating to on-farm conservation of PGRFA that were mainly implemented by the National Plant Genetic Resources Centre and non-governmental organizations (NGOs) with support of the government, various donors and the Benefit Sharing Fund of the Treaty. The activities undertaken include on-farm evaluation of farmers' own varieties and genebank collections as well as restoration of crop genetic resources considered lost from some traditional farming systems. The participatory evaluation of germplasm resulted in the selection or identification of preferred varieties of crops like maize, groundnuts, cowpea and sorghum, which have been considered for possible registration in the official national variety register.

Based on these experiences, Zambia suggests the following national measures for the implementation of Art. 9: (1) Push for a holistic seed policy and legal framework that enables the inclusion of all types of seed, including farmers' varieties that may currently not qualify for inclusion on the official variety list; (2) Support a multi-actor dialogue process that involves all stakeholders in a broader seed value chain that links crop diversity to seed in a direct manner; (3) strengthening farmer knowledge and awareness on issues relating to crop diversity and seed; (4) make benefit sharing more relevant at national and community level, e.g. by develop-

¹⁹ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Niger.pdf (4 August 2018)

²⁰ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Zambia.pdf (4 August 2018)

ing mechanisms for seed companies operating in the country to contribute a portion of their profit into a national fund that can be used to support work towards implementing Article 9; (5) adopt, as a matter of policy, participatory variety selection and participatory plant breeding, given the large potential of these approaches for sustainable use of PGRFA and benefits to farmers; and (6) explore and/or create policies and legislation for the national implementation of Farmers' Rights, like for example Zambia's Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act (2016; see also below).

OTHER SUBMISSIONS (2012-2018)

Benin submitted views and experiences²¹ in April 2013, with a focus on sustainable use of PGRFA. The importance of PGRFA for food security is emphasized, and a bundle of measures proposed, including to sensitize and encourage farmers to engage in *in situ*/on-farm conservation.

Madagascar submitted views and experiences²² in 2012 and a Country Report²³ in 2017. Madagascar shares the experience that 'debriefing' sessions were initiated by the National Focal Point to allow for discussions with national stakeholders, e.g. following the Global Consultations on Farmers' Rights in Addis Ababa (2010) and the 4th Session of the Governing Body (2011). This led to several follow-up meetings and the establishment of a working group for the implementation of Farmers' rights at national level.

A decree and regulations that allow access and benefit sharing under the MLS have been put in place in 2017. Furthermore, the seed legislation (1995) and related regulations had followed a different objective, mainly to favor private sector engagement in the seed sector. Treaty obligations, including from ITPGRFA and Nagoya Protocol, will need to be addressed in future revisions, also to facilitate the implementation of Farmers' Rights.

Farmers in Madagascar have developed their own Material Transfer Agreements as part of project activities on Community Biodiversity Registers and Biocultural Community Protocols (see above) under a project that was implemented by Bioversity International²⁴ and partners²⁵, based on funding by the Darwin Initiative.²⁶

Mali submitted views and experiences²⁷ in April 2017. In Mali, about 75% of the seed supply of major food crops stems from farmer-managed (informal) seed systems, mainly traditional varieties. For Mali, like other countries of the ECOWAS region, where a 'harmonized' seed regulation has been agreed and implemented since 2008 (see submission of Niger, above), it is a priority to create a possibility for registering such varieties in the national variety register to ensure that seed of these varieties can be legally exchanged and sold. A draft is presently underway for creating a specific section for traditional/farmer varieties in the variety register ("*catalogue C*"); technical guidelines for seed production of such varieties will need to be developed.

²¹ <http://www.fao.org/3/a-bb918e.pdf> (8 August 2018)

²² <http://www.fao.org/3/a-bb907e.pdf> (8 August 2018)

²³ <http://www.fao.org/3/a-br672f.pdf> (4 August 2018)

²⁴ <https://www.bioversityinternational.org/> (3 August 2018)

²⁵ A project report is available at: <http://www.darwininitiative.org.uk/documents/22017/24002/22-017%20AR2%20-%20edited.pdf> (3 August 2018).

²⁶ <https://www.gov.uk/government/groups/the-darwin-initiative> (3 August 2018)

²⁷ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Mali_2017.pdf (3 August 2018)

Furthermore, several consultations have been organized in order to bring farmer organizations, governmental and non-governmental organizations together to jointly identify priorities and necessary actions. Recommendations from these workshops, briefly summarized, include: to actively promote the participation of farmer organizations in all matters that affect seed, e.g. variety registration and biosafety committees, etc.; encourage farmer-researcher collaboration on seed issues; promote approaches such as seed fairs, community seed banks and participatory plant breeding; facilitate the production and dissemination of traditional/farmer varieties, including through standards for seed commercialization adapted to various categories of varieties; create awareness regarding the key role of traditional/farmer varieties for food and seed sovereignty; strengthen capacities of all actors with regard to conservation and sustainable use of PGRFA, with special emphasis on legal/policy issues.

Namibia submitted a Country Report²⁸ in 2016. Namibia has a comprehensive legal and policy framework applying to PGR, including the Plant Breeders and Farmers' Right Bill (2009), which has been revised in 2016, the Seed and Seed Variety Bill (2009), and the Access and Benefit Sharing Bill, which is expected to be soon enacted by the parliament. Within the National Plant Genetic Resources Centre, an on-farm conservation project has been established to work with farmers. Moreover, farmers were sensitized on the importance of crop wild relatives through workshops and farmer gatherings.

Sudan submitted a Country Report²⁹ in 2017. A National Biodiversity Strategy and Action Plan is in place. Revisions are deemed necessary to the Seed Law (2010), especially in sections concerning plant breeders' rights. A draft legislation on plant genetic resources and plant variety protection, also including necessary measures to recognize and implement Farmers' Rights in line with the provisions of the Treaty has been developed and submitted to the relevant authority, the Ministry of Justice, for approval.

Zambia submitted a Country Report³⁰ in 2017. The Treaty is implemented in Zambia through the Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act (2016), the Revised National Agricultural Policy (2012-2030) and the Second National Biodiversity Strategic Action Plan (2018-2030). Other policies and laws, including the Plant Breeders Rights Act (2007) and several environmental policies and laws also apply to the conservation and management of PGR. The Plant Breeders Rights Act may need revision in order to strengthen informal seed systems and farmer seed production. Current activities, mainly implemented by the National Plant Genetic Resources Centre, include promoting on-farm conservation of PGRFA through participatory evaluation of landraces, participatory variety selection, seed diversity fairs and field days. Many of these activities aim at creating awareness of the values of PGRFA. A major achievement for the implementation of Farmers' Rights has been the above-mentioned Act of 2016, particularly in view of the protection of Traditional Knowledge.

²⁸ <http://www.fao.org/3/a-br422e.pdf> (3 August 2018)

²⁹ <http://www.fao.org/3/a-bs779e.pdf> (3 August 2018)

³⁰ <http://www.fao.org/3/a-bu010e.pdf> (3 August 2018)

Biowatch South Africa³¹ is an NGO focusing on agrobiodiversity and social justice. Their submission³² of 2012 is a Policy Brief on Farmers' Rights and Seed Sovereignty in South Africa, in which they review the status of implementation of Farmers' Rights in South Africa. The Policy Brief provides important information of the use of PGRFA by small-scale farmers in South Africa and highlights the role of women farmers in this regard (see Biowatch's submission for details). One of Biowatch's conclusions is that South Africa should not join the 1991 Act of the UPOV Convention.

SUMMARY AND LESSONS LEARNED

- In some countries of the African region that submitted views and experiences, farmer-managed seed systems provide the major share of all seed used by farmers. Therefore, the importance of farmers' seed and biodiversity management for food security/sovereignty is highlighted (see, for example, submissions of Eswatini and Mali).
- In contrast, the importance of these seed systems is not always recognized, e.g. in international development cooperation projects, policies and legislation (see, for example, submissions of Eswatini, Niger, Madagascar, Mali, Zambia).
- Nearly all countries report of ongoing or recently finished processes of creating or adjusting national laws to facilitate the implementation of provisions of the ITPGRFA.
- Some countries try to establish options for the registration of traditional/farmer varieties as a prerequisite for legal seed exchange and marketing (see, for example, submissions of Niger, Mali, and Zambia).
- Another focus is on awareness building among farmers regarding their rights, but also other stakeholders involved in the seed sector (see, for example, submissions of Eswatini, Niger, Madagascar).
- Several Contracting Parties report on positive experiences with Multi-Stakeholder Consultations on issues/priorities related to seed and PGRFA and/or suggest these as good practices (see for, example, submissions of Niger, Mali, and Zambia).
- Some Contracting Parties also call for farmer representation in all relevant committees, institutions and processes (see, for example, submissions of Niger and Mali).
- Furthermore, practical experiences reported include participatory plant breeding and variety selection; participatory characterization of crop germplasm from genebank collections and/or communities; Community Biodiversity Registers/Biocultural Protocols; and seed fairs and community seed banks.
- Zambia suggests creating national funds for access and benefit sharing that is of direct relevance for farmers and communities.
- Niger suggests revising the SMTA and specify which part of the financial compensations goes to various actor groups, particularly farmers.

³¹ <http://www.biowatch.org.za/> (7 August 2018)

³² <http://www.fao.org/3/a-bb910e.pdf> (7 August 2018)

Asia

REPLIES TO THE SECRETARY'S INVITATION OF 7 MAY 2018

India replied to the Secretary's notification with an update on the status of implementation of Farmers' Rights³³. In India, these rights have been implemented through the Plant Variety Protection and Farmers' Rights (PVP&FR) Act. It establishes rights of plant breeders and farmers and provides for an effective *sui generis* system for plant variety protection, thus addressing the requirements of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

'Branded seed' in India means any seed that is packaged and labelled in a manner indicating that the seed is of a variety that is protected under the PVP&FR Act.

The PVP&FR Act provides farmers with far reaching rights, including for example the right to register farmer varieties; benefit sharing if new varieties are developed based on traditional/farmer varieties; or recognition and awards for conservation and sustainable use of PGRFA. Furthermore, Indian farmers are entitled to save, use, sow, re-sow, exchange, share

and sell seeds, including of protected varieties, as long as they do not sell it as 'branded seed'.

For implementing the various provisions of the Act, the Protection of Plant Varieties and Farmers' Rights Authority has been established by the Government of India in 2005. Among other tasks, the PVP&FR Authority is operating the National Gene Fund which was constituted by the Government of India under the above-mentioned Act. This fund is used for supporting *in situ* and *ex situ* conservation activities. Recognition to communities and farmers is expressed through different types of awards: The Plant Genome Saviour Community Award, the Plant Genome Saviour Farmer Award and an additional Plant Genome Saviour Farmer Recognition. All awards and recognitions include a citation, memento and cash payment. Altogether, 124 farmers and communities have been honored through these awards and recognitions since 2009.

The highest decision-making body of the PVP&FR Authority has 15 members of which three are representatives of the farming community: one representative from a National or State level farmers' organization, one from a tribal organization and one from a National or State level women's organization associated with agricultural activities. These members are nominated by the Central Government based on their credentials and contributions for a period of 3 years. Furthermore, the Chairperson of the PVP&FR Authority appoints a Standing Committee consisting of five members, one of whom shall be a member who is a representative from a farmers' organization, to advise the Authority on all issues including farmers' rights. This farmers' representative is nominated by the Chairperson of the PVP&FR Authority³⁴.

Protection and promotion of Farmers' Rights in India further includes training and capacity building to increase 'legal literacy' among communities and relevant stakeholders. Furthermore, literature on rules and

³³ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_India.pdf (23 July 2018)

³⁴ Details in this paragraph were kindly provided by Dr. R.C. Agrawal, Registrar General of the PVP&FR Authority, via e-mail to the ITPGRFA Secretariat (26 July 2018).

regulations of the PVP&FR Act, including frequently asked questions, has been published in various local languages. Support is provided for farmers in the process of registering varieties as well as to local Biodiversity Management Committees operating at *Panchayat*³⁵ level. To facilitate the registration of farmer varieties and other varieties, five branch offices of the PVP&FR Authority have been opened.

Greenpeace Southeast Asia – Philippines submitted experiences³⁶ gained through a program called ‘Farmer-to-Farmer Ecological Seed Response,³⁷ and calls to review national policies and programs to support such initiatives, as possible options for Contracting Parties to realize the implementation of Article 9 of the International Treaty. This initiative aims to respond to the situation in the Philippines, where disasters frequently affect farming and food systems, on top of widespread chronic food insecurity. Common disaster response programs include food as well as seed aid, but often fail to take specific conditions and needs into account. Seed distributed by government units and private companies is seldom adapted to site-specific conditions, practices or needs. Usually, there is neither a prior assessment of local seed systems, nor a post-response assessment of impacts on the sustainability and resilience of these systems, or of ways how they could be improved in the longer term.

The Farmer-to-Farmer Ecological Seed Response was part of a broader initiative to make farming and food systems in disaster-prone areas more climate resilient by facilitating a shift towards organic farming. From 2014-2016, Greenpeace Southeast Asia - Philippines facilitated several Farmer-to-Farmer Ecological Seed Responses’ in collaboration with farmer groups, civil society organizations and local government units in twelve municipalities that were affected by typhoons or droughts.

Greenpeace Southeast Asia – Philippines proposes a list of measures to promote this approach to disaster response, including research and extension activities to better understand local seed systems; mapping farmers who could provide seed to others in disaster situations; supporting farmers in producing high quality seed; and facilitating knowledge exchange. Furthermore, measures are proposed for a number of government programs and institutions to facilitate the approach, which mainly relies on strengthening Farmers’ Rights to save, use, exchange and sell seeds, along with protection and revitalization of traditional knowledge.

The Development Fund³⁸ together with the **Local Initiatives for Biodiversity, Research and Development (LIBIRD)**³⁹, **Nepal**, submitted a policy review⁴⁰ assessing seed-related regulatory frameworks from the perspective of farmer-managed seed systems. 17 policy instruments, relating to either PGRFA, seed or agricultural development, were identified. Overall, policies and practices in Nepal have been mostly supportive or at least

³⁵ *Gram panchayats* are the basic units of local administration in India.

³⁶ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Greenpeace-Philippines.pdf (28 July 2018)

³⁷ See also Greenpeace Philippines (2018).

³⁸ www.utviklingsfondet.no (14 July 2018)

³⁹ www.libird.org (14 July 2018)

⁴⁰ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/Farmers_Seed_Systems_in_Nepal_Review_of_National_Legislations.pdf (4 August 2018)

neutral to farmers' seed systems. However, most of these policies and legislations have been developed without a rigorous assessment of the overall socioeconomic 'landscape', agricultural situation and livelihood strategies of small-scale farmers, who represent the vast majority of agricultural producers in the country.

For example, most of the seed policies and regulations prepared and implemented so far largely considered the formal seed system, which accounts for less than 10% of total seed supply and operates with relatively few registered and released crop varieties; however, the system so far does not operate in a way that it can effectively support private sector investment, besides other challenges impeding such investments.

Nepal is one of few countries where participatory approaches in crop breeding, variety selection and dissemination have been widely practiced, particularly in initiatives led by NGOs, but also in partnership with public sector institutions. As a result, farmers' access to PGRFA and improved varieties has been enhanced, and the adoption of farmer-preferred and higher yielding varieties was accelerated⁴¹. This has also resulted in the emergence of a 'semi-formal' seed system, including community-based seed production, small seed enterprises and community seed banks. These are presented as "*good practices currently functioning*". However, the complexity and dynamics of seed systems in Nepal, including the variety of actors and institutions involved, and the links between them, have not been specifically addressed in policy development so far.

The authors conclude that efforts to improve the analytical capability of public as well as private sector stakeholders would result in high returns from the agricultural sector in the country. Furthermore, they identify two priorities with regard to the full development and implementation of new policies: (1) a *sui generis* plant variety protection and Farmers' Rights provision, which is in harmony with international and regional treaties and gives due consideration to safeguarding Farmers' Rights, and (2) a legislation specifically aiming to implement the provisions of the ITPGRFA at national level, particularly to enhance benefits from the MLS and access and benefit sharing.

OTHER SUBMISSIONS (2012-2018)

Bhutan submitted a Country Report on the implementation of the ITPGRFA in 2017⁴². The country has identified various threats to PGRFA and has addressed these, *inter alia*, through measures for awareness and sensitization on importance of PGRFA, biodiversity or seed fairs/exhibitions, encouraging seed exchange and on-farm conservation, e.g. through seed selection, value addition, product development and marketing, and community seed banks.

On-farm conservation work was first initiated with a project implemented in collaboration with the South-East Asia Regional Initiatives for Community Empowerment (SEARICE) in 2001. The project ended in 2015 but important activities were streamed as a sub-program under the National Biodiversity Centre, an agency of the Ministry of Agriculture and Forests.

⁴¹ Activities and outcomes of participatory plant breeding and variety selection activities in Nepal have been documented in scientific publications, including Witcombe *et al.* (2016), Joshi *et al.* (2012; 2014) (all three cited in LI-BIRD and The Development Fund (2017).

⁴² <http://www.fao.org/3/a-br647e.pdf> (27 June 2018)

Farmers' Rights in Bhutan are addressed taking into account all five aspects that are proposed in Art. 9 of the Treaty. National policies are generally supportive to the implementation of Farmers' Rights, but challenges lie mostly in the active empowerment of farmers through participation and capacity building, which tend to be curtailed due to shortage of financial resources. Nevertheless, there is an ongoing process to consult, engage and empower farmers on their role as custodians of PGRFA, to protect and promote their rights as providers of PGRFA and associated traditional knowledge, and possible benefits that can be harnessed by them.

The **Philippines** submitted a Country Report⁴³ in 2017. The Philippines do not have a special law for implementing the Treaty in their national legislation; no need to adjust or harmonize existing policies with provisions of the Treaty has been identified. On-farm conservation and management of PGRFA are promoted mainly through the implementation of projects of NGOs in partnership with local government units.

The **GREEN Foundation**,⁴⁴ an Indian NGO focusing on sustainable management of ecosystems, biodiversity and rural livelihoods, submitted views on Farmers' Rights⁴⁵ in February 2013. The GREEN Foundation's submission is a critical assessment of what has been achieved so far under the Indian PVP&FR Act (see India's submission, above, for details). The GREEN Foundation states that there are some unresolved problems; for example, the Act follows an 'ownership' approach, which allows farmers to register varieties but does not offer solutions towards conflicting claims by farmers from different parts of the Country on the same variety. For varieties to qualify for protection, they have to fulfill the so-called NDUS criteria (novelty, distinctiveness, uniformity and stability), similar to the requirements of UPOV. Varieties that do not fulfill these criteria cannot be protected, even if they may have proven useful to farmers. Furthermore, criteria for farmers or communities to get rewards and recognitions granted by the PVP&FR Authority are not based on the farmers' or communities' own criteria of 'usefulness' of PGRFA, or on their understanding of what these varieties are, why and how they are maintained. According to the GREEN Foundation, local-level perspectives have not been taken sufficiently into consideration when developing the Act. The foundation suggests taking an alternative approach that considers the collective nature of PGR management by farmers and communities and focuses on a 'stewardship' approach (rather than 'ownership'). Open Source Licensing, collective Intellectual property Rights along with practical approaches, such as community seed banks, could support such initiatives (see the Green Foundation's submission for more details on their suggestions).

LI-BIRD (see above) submitted views and experiences⁴⁶ in 2012. LI-BIRD reports of activities to review policies in Nepal, which have been described in more detail above (see joint submission of The Development Fund and LI-BIRD of 2018). The organization further shares experiences regarding their work with indigenous communities of Nepal, including for example the development of procedures for Prior Informed Consent (PIC) for issues related to PRGFA.

⁴³ <http://www.fao.org/3/a-br425e.pdf> (2 August 2018)

⁴⁴ <http://www.greenfoundation.in/> (2 August 2018)

⁴⁵ <http://www.fao.org/3/a-bb914e.pdf> (2 August 2018)

⁴⁶ <http://www.fao.org/3/a-bb911e.pdf> (8 August 2018)

The **Southeast Asia Regional Initiatives for Community Empowerment⁴⁷ (SEARICE)** submitted views⁴⁸ on the possible interrelationships between the Treaty and relevant instruments of UPOV and WIPO in November 2014 and a compilation of information documents and training materials⁴⁹ relating to Farmers' Rights in July 2018 (440 pages). SEARICE states that legal inconsistencies can be caused by overlapping non-hierarchical legal regimes for the same issue-area, where the component legal regimes are created and administered in distinct forums by different sets of actors.

About one third of UPOV Members and nearly all members of WIPO are simultaneously Contracting Parties to the Treaty. Both UPOV and WIPO also address Farmers' Rights, either by imposing conditions and restrictions on them (UPOV), or through developing instruments to address certain aspects of Farmers' Rights, e.g. traditional knowledge. Hence, Farmers' Rights can be considered as a 'common thread' in the work of these agreements. According to SEARICE, all three international agreements would gain significance with shared definitions on Farmers' Rights, as well as agreed methodologies on how to implement these rights within their respective spheres. The opposite path would tend to weaken these agreements, provided that harmonious implementation under national law is rendered impossible for the members/Contracting Parties.

SUMMARY AND LESSONS LEARNED

- Farmers' Rights in India are given high priority, with a special Act and Authority being in place to promote and protect these rights. For farmers to be able to effectively exercise their rights, additional measures and support are necessary, including training and capacity building or support in relevant legal procedures. Furthermore, effective links between the various administrative levels have to be created to allow farmers and communities to exercise their rights (see submission of India).
- The GREEN Foundation proposes to take a 'stewardship' approach, rather than an 'ownership' approach, to the protection of varieties and related knowledge, which requires fundamentally different instruments (e.g. Open Source Licensing, collective intellectual property rights, etc.) compared to those currently applied in most countries (see the GREEN Foundation's submission).
- Governments can benefit from experiences gathered in projects for the realization of Farmers' Rights that are implemented by NGOs, also in partnership with local government units, and streamline good practices in their own national programs (see, for example, submissions of Bhutan and the Philippines).
- The realization of Farmers' Rights can be linked to other objectives governments may have, such as increasing resilience and sustainability of farming and food systems, enhancing food and nutrition security or mitigating effects of climate variability and change (see, for example, submission of Greenpeace Philippines).
- Thorough assessment of the existing complexities of seed systems in countries like Nepal appear crucial for developing appropriate policies and legal frameworks for the realization of Farmers' Rights at national level (see submission of LI-BIRD/The Development Fund).

⁴⁷ <https://searice.org.ph/> (2 August 2018)

⁴⁸ <http://www.fao.org/3/a-bb925e.pdf> (2 August 2018)

⁴⁹ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_SEARICE.pdf (8 August 2018)

- Finding solutions to existing inconsistencies in the international legal system would strengthen international agreements, rather than weakening them, since continued tensions would render it impossible for members/Contracting Parties to implement different treaty obligations in a harmonious manner (see submission of SEARICE).

Europe

REPLIES TO THE SECRETARY'S INVITATION OF 7 MAY 2018

France submitted views and experiences⁵⁰ in July 2018. France emphasizes that the responsibility for the implementation of Art. 9 rests with national governments, so that ways for realization of Farmers' Rights can be found based on the situation of each country. For example, in the European Union (EU) and in France, seed marketing rules ensure farmers' access to high quality seed, which is seen as important to sustain agricultural production and incomes of farmers, even though it may limit individual expectations regarding possibilities to trade in and exchange seeds.

Regarding the protection of traditional knowledge, France is of the view that the definition of 'plant breeder' under the current variety protection system as 'anyone who breeds' offers the possibility for any natural or legal person to be recognized as breeder, including holders of traditional knowledge that leads to crop improvement. Moreover, Geographical Indications⁵¹ are used in France to protect traditional knowledge relevant to PGRFA associated with a geographic location; copyright law is also applicable in some situations for the protection of traditional knowledge, e.g. if holders of traditional knowledge act as co-authors of publications, rather than just being treated as informants.

The right to participate in benefit-sharing is enacted in France through the Intellectual Property Rights regime, which ensures that farmers can take advantage of steady progress in plant breeding. Also, the optional exception provided for farmers to re-use, on their own farm, the result of their harvest obtained from protected varieties of certain species, is considered a form of benefit sharing, given the fact that the remuneration that is to be paid to the breeder is lower than the normal royalty. Furthermore, voluntary contributions of the Groupement National Interprofessionnel des Semences et plants (GNIS)⁵², an interprofessional organization for seeds, which gathers stakeholders from breeders to farmers, are mentioned. These include voluntary payments to a public fund for genetic resources in France as well as to the Benefit-sharing Fund of the ITPGRFA. Furthermore, public funding is provided for activities of farmer organizations taking care of the conservation and sustainable use of PGRFA, such as for example participatory plant breeding activities of the farmer network Réseau de Semences Paysannes.⁵³

French farmers and other stakeholders are represented in various committees and institutions, including for example the National Bureau for Genetic Resources and the Technical Committee for Plant Breeding, which

⁵⁰ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_France-gov.pdf (5 August 2018)

⁵¹ For more information on Geographical Indications, visit <http://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications/> (3 August 2018).

⁵² <https://www.gnis.fr/> (12 September 2018)

⁵³ <https://www.semencespaysannes.org/> (3 August 2018)

aims to ensure the best possible match between the objectives of variety users (e.g. farmers, gardeners) and plant breeders.

Lastly, the use of farm-saved seed of protected varieties is allowed under certain conditions and for some crops — including cereals, potatoes and forage crops. Seed of non-protected varieties can be exchanged among farmers under certain conditions, e.g. based on ‘mutual support’. For so called ‘conservation varieties’ (see also below, submissions of Germany and EU), mainly landraces and farmer varieties, there is a facilitated process for registration which makes seed marketing easier compared to usual requirements. The submission of France entails many more details, also regarding relevant EU regulations and additional figures and facts.

In July 2018, **Germany** submitted an update⁵⁴ on the status of implementation of the various aspects of Farmers’ Rights as they are addressed in Art. 9. Traditional knowledge as it relates to PGRFA and which fulfils the requirements for granting intellectual property rights is protected by the general legislation regulating this area. If this knowledge does not qualify for protection under existing legal instruments, e.g. intellectual property of patent law, then the holder of such knowledge has no right to share any benefits that other users might possibly reap from the utilization of this knowledge. Many different actors in Germany, including NGOs, play an active role in publishing knowledge about the cultivation and use of traditional plant varieties, e.g. in books, journals, databases and the internet. Hence, knowledge as such is not considered to be threatened by loss, which is however the case for associated skills which need to be exercised in practice to be ‘preserved’. Here, a number of actors devote themselves to the cultivation, use, and distribution of traditional varieties, including cultivation and gardening techniques. Furthermore, there are several model and demonstration projects as well as centers for training and capacity that have been established with funding of the Federal Ministry for Food and Agriculture.

Germany participates actively in access and benefit sharing activities that have been established under the Treaty, Convention on Biological Diversity (CBD) and Nagoya Protocol. Sharing of benefits arising from the use of PGRFA for farmers in Germany is approached along similar lines as what has been described above for France (anyone who breeds can apply for plant variety protection, farmers benefit from income generation through breeding progress, the farm-saved seed remuneration for protected varieties is lower than normal license fees).

The participation of farmers in the decision-making process concerning conservation and sustainable use of PGRFA is well developed and working in line with generally established participation principles. Federations, general associations and expert groups working at federal level have to be involved timely in the drawing up of bills. For the National Program on Plant Genetic Resources of Agricultural and Horticultural Crops, a Consultation and Coordination Committee has been created, which consists of 17 members, including representatives of farmer organizations.

Options for farmers to save, use exchange and sell seed are regulated under EU and national seed trade law (details on the legal framework are provide in the submission), which generally restricts seed distribution and

⁵⁴ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Germany.pdf (3 August 2018)

marketing to certified seed of registered varieties: However, this does not apply for all species, but only for those listed in the directory of species associated with the Seed Trade Act. Furthermore, the implementation in 2009 and 2011 of EU directives on conservation varieties and seed mixtures facilitates the production and marketing of seed and planting material of farmers' varieties, old varieties and landraces, which are of interest for the conservation of PGRFA.

In May 2018, **Malta** shared information⁵⁵ on national measures that have been taken for the implementation of Art. 9, particularly participation of farmers in decision-making. The Agriculture Directorate of Malta regularly consults and is approached by individuals, organizations, cooperatives, associations, NGOs or other groups lobbying farmers' collective interests or purporting to represent farmers in matters concerning their rights and obligations. Therefore, it was found to be important for the Agriculture Directorate to ascertain in each case that such interlocutors have a clear mandate to advocate their members' or clients' interests, and in the case of entities or groups, that they are constituted and operate according to law and upon principles of good governance. This led to the establishment of guidelines for the representation of farmers, which are specified further in Malta's submission.

Norway submitted views and experiences⁵⁶ in June 2018. Norway has been involved in promoting Farmers' Rights at international level, e.g. by co-organizing the global consultation on Farmers' Rights in Bali in 2016 together with Indonesia, and other previous consultations. Norway considers it useful to bring together participants from different regions, different stakeholder groups and thus with different perspectives and experiences that are shared and documented through such events (for a summary of recommendations from the Bali Consultation, see box in Chapter 4).

Norway has also presented its policy and legislation on plant breeders' rights and how these are balanced towards Farmers' Rights, at the symposium on possible interrelations between the International Treaty and the different Acts of the UPOV Convention.⁵⁷ One key lesson drawn by Norway in this regard is that plant variety protection is an efficient tool for stimulating plant breeding activities, but not sufficient alone to ensure variety development for small markets, e.g. specific agroecological conditions of Northern Norway.

Regarding the realization of Farmers' Rights at national level, contributions of farmers and local communities are recognized through an annual Plant Heritage Award as well as government funding for projects run by farmers, gardeners, extension services and others, who contribute in conserving and sustainably use conservation varieties. Furthermore, individuals like retired farmers and gardeners play an important role in PGRFA activities in Norway, which implies recognition for the rich experience and knowledge they hold.

A key challenge for the protection of traditional knowledge in a modern agricultural setting such as Norway is to ensure that traditional knowledge is kept alive and can be further developed among farmers. Norway has

⁵⁵ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Malta.pdf (6 August 2018)

⁵⁶ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Norway.pdf (4 August 2018)

⁵⁷ This presentation is available at http://www.upov.int/edocs/mdocs/upov/en/upov_itpgrfa_sym_ge_16/upov_itpgrfa_sym_ge_16_2_proceedings.pdf, pp. 109-115 (5 August 2018).

conducted national discussions on this issue, through which possible measures were identified, e.g. improved knowledge sharing through databases.

Benefit sharing activities in Norway take many different forms (see Norway's submission for details). For example, a farmer cooperative is co-owner of Norway's only breeding company, which also received public funding to ensure that breeding progress is obtained for specific conditions and needs even if it is not economically viable due to small market size.

In general, farmers and their organizations have a multitude of channels for participation in and influence on policy processes in Norway. One specific approach is the annual agricultural negotiations between the Government and farmers' unions, resulting in the Annual Agreement on Agriculture.

The Norwegian plant variety protection law is compatible with the 1978 Act of the UPOV Convention, so that farmers are allowed to save and use farm-saved propagating material of protected varieties without any remuneration to the holder of the plant breeders' rights. The seed legislation was adjusted in 2010 to facilitate the approval and use of traditional varieties. For example, DUS criteria are applied in a less restrictive way and the registration fees for such varieties are reduced.

Spain submitted views and experiences⁵⁸ in June 2018. Spain recognizes the contributions of farmers all over the world to the conservation and development of PGRFA with its signature to the ITPGRFA. The Spanish Ministry of Agriculture, Fisheries and Food has established a national inventory of traditional knowledge relating to agrobiodiversity, which included information on about 170 species. The national law on seeds and planting materials and plant genetic resources, *inter alia*, obliges public administration to take measures for facilitating the conservation and use of PGRFA that are threatened by extinction and to support farmers in their efforts in this regard. The same law also defines 'conservation varieties' and sets out rules for the production and distribution of seed of such varieties, in line with the relevant EU regulations (see also submissions of France and Germany).

Sweden submitted an update⁵⁹ in July 2018 on measures that have been taken under Art. 9.2 and Art. 9.3. Traditional knowledge relating to PGRFA in Sweden (Art. 9.2.a) is protected through a regulation on the utilization of genetic resources and traditional knowledge about such resources. Matters relating to protection of Sami traditional knowledge relevant to PGRFA are handled by the Sami Parliament, which is the relevant authority for the Sami as officially recognized indigenous people.

Sweden does currently not restrict access to traditional knowledge relating to PGRFA, in line with the Right to Public Access, which guarantees free access of citizens to nature on the condition of respectful behavior. Use of such traditional knowledge shall, however, be declared according to the regulatory framework on due diligence⁶⁰. Furthermore, Sweden has a very long tradition in collecting, compiling and

⁵⁸ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Spain.pdf (2 August 2018)

⁵⁹ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Sweden.pdf (2 August 2018)

⁶⁰ According to EU-Regulation No. 511/2014, Article 4.

making public, through books, internet and other means, traditional knowledge associated with farming, horticulture, crop varieties, raw materials, food, etc.

Regarding the right to equitably participate in sharing benefits arising from the utilization of PGRFA (Art. 9.2.b), Sweden holds the position that free and unlimited access to genetic resources for all users, including farmers, is a form of non-monetary benefit-sharing in itself. All PGR held in the public domain, and not only those that are part of the MLS, are freely available to all users. This means, for example, that material from Swedish genebanks can be accessed and grown without restrictions other than those to prevent users from exercising exclusive rights on this material.

Sweden is also supportive to the UPOV Convention; however, a special situation in Sweden is that plant breeding has been historically a joint undertaking of farmers and plant breeders; today, commercial plant breeding is entirely in the hands of a farmer cooperative. Conservation varieties according to EU Directives 2008/62/EC and 2009/145/EC are implemented in national law, with the result that today, 62 conservation varieties and 11 amateur varieties are registered on the National List of Varieties.

Regarding the right to participate in decision-making (Art. 9.2.c), there is one large interest and business organization of Swedish farmers, which also serves as a national policy association. Members of this association are represented in a broad range of forums and committees, including the advisory committee of the national program for PGRFA, as part of the Swedish 'consensus tradition'.

Farmers in Sweden are authorized to save and use seed of protected varieties on their own holdings; however, this is restricted to the seed or planting material that is required for a certain amount of production; farmers whose production units are larger need to pay royalties on farm-saved seed. However, there is broad and common understanding among Swedish farmers that their businesses will profit from re-investing royalties into further plant breeding.

Switzerland submitted views and experiences⁶¹ in June 2018. In Switzerland, the preparation process of legislation foresees a prior public consultation procedure to give stakeholders the possibility to provide their views. Thus, the farmers' organizations are consulted systematically and can regularly participate in decision-making processes regarding legislative decisions, including on conservation and sustainable use of PGRFA. Furthermore, a national strategy and action plan for the conservation and sustainable use of PGRFA has been established based on a multi-stakeholder approach.

Farmers could not only participate in the process of establishing the Action Plan, but also from many of the foreseen activities, including for example capacity building, marketing of landrace-based products, facilitated access to information and participatory breeding and variety selection.

Switzerland has also developed a regulation on 'niche varieties', which serves similar objectives as the 'conservation varieties' of the EU. Niche varieties benefit from a simplified market access procedure,

⁶¹ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Switzerland.pdf (6 August 2018)

which does not require the official registration of the variety and the certification of seeds or planting material.

Furthermore, the ‘farmers’ privilege’ applies to 23 agricultural species; farmers, if they have legally acquired propagating material of a protected variety, can propagate the harvested material for use on their own holding, without a need to pay a remuneration to the holder of the breeder’s right.

In addition to the national measures, Switzerland also contributes to the implementation of Art. 9 through international cooperation, e.g. through activities of the Swiss Agency for Development and Cooperation (SDC) and other federal institutions (see submission of Switzerland for more details).

Centro Internazionale Crocevia⁶² is an Italian NGO focusing on international policy and development issues. In their submission to the Treaty Secretariat, they present views⁶³ on regulatory provisions for the marketing of seeds, from the Italian regions to the EU level (this is why these views are presented in the ‘Europe’ section).

In compliance with the principle of subsidiarity provided by Article 18 of the Italian Constitution, there are three legislative implementation levels: regional, national and European. The regional law of the Lazio region is presented by Centro Internazionale Crocevia as a ‘good practice’. The regional law on protection of autochthonous genetic resources of agricultural interest refers to *"native genetic resources of agricultural interest, including spontaneous plants related to the species cultivated, with regard to species, races, varieties, populations, cultivars, ecotypes and clones for which there are interests from an economic, scientific, environmental and cultural point of view and are threatened with genetic erosion."*

In order to protect this genetic heritage, it provides for the establishment of a Regional Voluntary Register; a Technical-Scientific Committee is to take care of the fulfillment of legal obligations that are established by the law. Farmers of the region can become members of a conservation network, and are then allowed to save, use and sell small amounts of farm-saved seed of varieties that are registered in the Regional Voluntary Register, without any other precondition than being member of the association. Especially, there is no need for the varieties to be registered in the National Variety Catalogue.

In contrast, the national law on for the protection and enhancement of biodiversity of agricultural and food interest is presented as a ‘bad practice’. Even though it entails provisions for seed marketing of conservation varieties (in line with the relevant EU Directives mentioned before), it states that only farmers who produce seed of varieties registered in the National Register of conservation varieties have the right to direct sale of seeds of these varieties; furthermore, there are far-reaching requirements, e.g. for labelling and documentation. Thus, in order to sell and exchange seeds of conservation varieties, farmers need to register a variety officially as conservation variety and comply with a number of detailed regulations.

⁶² <http://www.croceviaterra.it/> (7 August 2018)

⁶³ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Crocevia.pdf (6 August 2018)

Centro Internazionale de Crocevia concludes that *“in this way the development of agricultural biodiversity is just for those farmers that have resources to register the seeds. For this reason, the law does not implement correctly the Article 9 of the ITPGRFA.”*

Confédération paysanne⁶⁴ is a union of French farmers and farm workers and a member to the international peasants’ movement La Via Campesina⁶⁵. Confédération paysanne submitted their views on the state of implementation of Farmers’ Rights in France⁶⁶ in June 2018. France has become a contracting party to the Treaty in 2005, while maintaining the existing legislation on plant variety protection and seed, which, according to Confédération paysanne, are opposing the realization of Farmers’ Rights. Since then, several new laws and regulations have entered into force, which have furthering as well as hindering effects on the realization of Farmers’ Rights.

On the one hand, traditional knowledge of farmers continues not to be protected in France; except in the case of two indigenous communities in overseas departments belonging to French territory. Also, there is no law or regulation in place requiring disclose of origin if plant variety protection or patents are sought, or for marketing seed of a new variety. This allows the holders of such rights to avoid payments, e.g. to benefit-sharing funds, except those made on a voluntary basis.

Regarding the right to participate in decision-making, Confédération paysanne criticizes that the French government invites only one organization to participate in such processes, which is the Groupement National Interprofessionnel de Semences et plants (GNIS), in which those farmers who engage in the conservation, dynamic on-farm management and sustainable use of PGR, e.g. farmer varieties, are not represented. The French law in general prohibits the use of farm-saved seed of protected varieties, or requires payments to the right holder, like in the case of about 30 agricultural species.

On the other hand, the French parliament has decided that patents do not apply in the case of accidental contamination of seed or for plants that have been created mainly through biological processes (e.g. crossbreeding and selection). Furthermore, a decree issued in 2015 acknowledged *in situ* conservation, including dynamic on-farm conservation of PGR. In 2016, the French Parliament passed a law that allows farmers to exchange farm-saved seed of non-registered varieties in the context of mutual assistance, if they are not protected by a plant breeder’s right. France has also taken legal measures to protect local agro-ecosystems and supply chains that are classified as ‘free from genetically modified organisms (GMO)’ from contamination with GMO; in addition, the cultivation of genetically modified (GM) maize has been banned on French territory since 2014. In April of 2018, a new regulation of the European Union was introduced that allows for the commercialization of seed of heterogeneous plant populations that do not fall under the definition of a ‘variety’. When the High Council of Biotechnologies (Haut Conseil des Biotechnologies) was created in 2008, the government did not follow the above-described practice but opened this advisory body for several civil society and farmer organizations.

⁶⁴ <https://www.confederationpaysanne.fr/> (6 August 2018)

⁶⁵ <https://viacampesina.org/en/> (6 August 2018)

⁶⁶ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_France.pdf (6 August 2018)

The **European Seed Association (ESA)**⁶⁷ represents the European seed industry and acts as their umbrella organization. ESA submitted views and experiences⁶⁸ in June 2018. ESA acknowledges the contributions of farmers to the development and conservation of PGRFA; however, today there are also other actors, like the seed industry, who contribute to maintaining and developing the quality and diversity of PGRFA, along with farmers.

Whether a specific system to protect traditional knowledge is provided for should be a decision at the national level, based on the situation in each country. Furthermore, ESA is of the view that inclusive decision-making, with participation of all relevant stakeholders, is core to realizing Farmers' Rights. Information exchange and technology transfer enabled by the breeder's exemption in the plant variety protection system delivers practical benefit sharing for farmers.

ESA states that free and unlimited use of seed of protected varieties undermines the financial return for plant breeders and would thus lead to reduced investment in breeding and variety release *"to the detriment of farmers and society as a whole."* However, ESA is of the opinion that farmers should continue to have the choice to decide whether they use seeds of protected or non-protected varieties. Furthermore, ESA states that formal seed regulations have contributed extensively to the successful development of agriculture in Europe but acknowledges that typical standards (e.g. regarding performance and DUS criteria) may need to be adapted to accommodate other types of material.

Lastly, ESA welcomes the joint exploration of the interrelations between the UPOV-Convention and the Treaty, noting that both have been set up for different purposes and with different objectives. ESA concludes that *"despite the independent aims, the two systems are complementary and should be regarded as mutually supportive."*

The **EU Commission** submitted in July 2018 an overview⁶⁹ of how the provisions of Art. 9 are being addressed through various EU Regulations and Directives as well as related networking and funding activities. These include, for example, the Directives 2008/62/EC, 2009/145/EC, 2010/60/EU and 2008/90/EC on the marketing of seed and other propagating materials of various groups of crops (including agricultural, horticultural, fodder and fruit crops), which have been referred to by some Contracting parties above as 'conservation'/'amateur' varieties and seed mixtures. Since the realization of measures for the implementation of Art. 9, according to the Treaty, rests with national governments, the EU Commission has set some general rules and conditions, e.g. for support that may be provided for the conservation and sustainable use and development of PGRFA. The Commission also refers to their regulation for protected designations of origin. Funding and networking activities include several actions under the European Innovation Partnership (EIP)⁷⁰ and Horizon

⁶⁷ <https://www.euroseeds.eu/> (6 August 2018)

⁶⁸ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_ESA.pdf (6 August 2018)

⁶⁹ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_EU.pdf (6 August 2018)

⁷⁰ See <https://ec.europa.eu/eip/agriculture/> (7 August 2018) for details.

2020⁷¹ initiatives. Furthermore, stakeholders and citizens of the EU have their say through public consultations and various feedback mechanisms, from the preparation phase to proposals for new laws.

OTHER SUBMISSIONS (2012-2018)

Denmark submitted a Country Report⁷² in 2018. Denmark implements the Treaty under current law, including relevant EU regulations. National measures for the implementation of Art. 9 are not specified.

Finland submitted views and experiences⁷³ in March 2013, with a focus on sustainable use of PGRFA. Measures proposed include EU support for farmers maintaining landraces and local varieties as well as valorization of landraces and traditional food.

Germany submitted a Country Report⁷⁴ in 2016. In Germany, the Treaty was endorsed through a national law and the establishment of a National Program for Plant Genetic Resources (see also Germany's submission of 2018, above). Germany mentions that several German States have enrolled their own programs for the conservation and sustainable use of PGRFA under their responsibility relating to rural development. Other national measures taken in Germany have already been described above.

Italy shared views and experiences⁷⁵ in March 2013, including guidelines for the conservation of PRGFA (see Italy's submission for details). Italy emphasizes the importance of Agricultural Policies, particularly those focusing on rural development, and highlights the role regions can play in this regard. Italy states in this submission that *“regional Italian legislation can be considered one of the few operating examples or the protection and exploitation of PGRFA in Europe”* (see also submission of Centro Internazionale de Crocevia, above).

Furthermore, Italy suggests that scientific institutions, regions and other local institutions as well as NGOs have a potential to create important synergies for the conservation and sustainable use of PGRFA, particularly if they ally with farmers and consumers.

The **Netherlands** submitted a Country Report⁷⁶ in 2016. The Netherlands provide support to NGOs dealing with on-farm conservation of PGRFA. Other specific measures to protect and promote Farmers' Rights have not been taken.

Norway submitted views and experiences in 2012⁷⁷ and 2014,⁷⁸ and a Country Report⁷⁹ in 2016. In 2011, a study on plant genetic diversity in agriculture and Farmers' Rights in Norway (Andersen, 2012) was published by the Fridtjof Nansen Institute⁸⁰ (FNI). As a follow-up to this study, the Norwegian Ministry of Agriculture and Food commissioned the Norwegian Genetic Resources Centre to develop a plan for the development and

⁷¹ See <https://ec.europa.eu/programmes/horizon2020/en/news/horizon-2020-projects-have-been-published> (7 August 2018) for details.

⁷² <http://www.fao.org/3/i86888EN/i86888en.pdf> (8 August 2018)

⁷³ <http://www.fao.org/3/a-bb930e.pdf> (8 August 2018)

⁷⁴ <http://www.fao.org/3/a-br416e.pdf> (8 August 2018)

⁷⁵ <http://www.fao.org/3/a-bb916e.pdf> (8 August 2018)

⁷⁶ <http://www.fao.org/3/a-br423e.pdf> (8 August 2018)

⁷⁷ <http://www.fao.org/3/a-bb908e.pdf> (7 August 2018)

⁷⁸ <http://www.fao.org/3/a-bb921e.pdf> (7 August 2018)

⁷⁹ <http://www.fao.org/3/a-br424e.pdf> (8 August 2018)

⁸⁰ <https://www.fni.no/> (8 August 2018)

strengthening of Farmers' Rights in Norway, taking the considerations raised in the FNI report into account. These include, for example, that farmers' needs for varieties in Norway vary according to the agroecological conditions they face and their production goals; for example, organic and biodynamic farmers tend to seek for different varieties than what is offered through 'mainstream' channels.

Several hindering factors for the registration, enhancement and use of old/traditional varieties in Norway were identified, mainly conditions set for registration and legal seed marketing. Instead of facing restrictions, farmers who engage in the conservation and management of PGRFA could be actively supported, e.g. by reducing fees or providing financial support to farmers to cover costs for the registration and seed distribution for traditional/farmer varieties. Direct financial support for the cultivation of certain historical varieties could also be considered.

In the 2014 submission, Norway also shares the experience of an informal regional consultation which was organized by Norway, bringing together representatives of some European countries. This consultation focused on the interrelations between the ITPGRFA and the various Acts of the UPOV convention and resulted in recommendations how they could be implemented in a more supportive manner, acknowledging their complementary foci and objectives. Other views, experiences and proposed national measures shared by Norway in these earlier submissions are similar to what has been described above (see Norway's submission of 2018).

Poland submitted views and experiences⁸¹ in 2012 and a Country Report⁸² in 2017. Issues relating to PGRFA and Farmers' Rights on Poland are regulated under existing laws, e.g. the Seed Act and Plant Variety Protection Act, as well as relevant EU regulations. Traditional knowledge in Poland is protected through the activities of various stakeholders, including for example research organizations, associations, the Polish Chamber of Regional and Local Products and the Ministry of Agriculture, e.g. through participation in various EU Schemes. Furthermore, Geographical Indications are used to protect and promote traditional food crops and products.

The right to save, use, sell and exchange seed is restricted in Poland, like in other European countries, as far as protected varieties are concerned. Farmers who save and re-sow seed have to pay a remuneration to the holder of the plant variety protection right. However, there is an exemption for small farmers, defined by production area of the crop concerned (10 ha for potatoes and 25 ha for other agricultural field crops specified in a list); such farmers can save and re-sow seed of protected varieties without payment.

Furthermore, Poland established an Agri-Environmental Plan for the years 2007-2013, the main aims of which being diversification of agricultural production, preservation of biodiversity in agricultural systems and preservation of cultural legacy. It includes various 'packages' under which farmers can receive payments and support; one of these packages is dedicated to conservation of endangered PGRFA (see Poland's submission for more details).

⁸¹ <http://www.fao.org/3/a-bb902e.pdf> (7 August 2018)

⁸² <http://www.fao.org/3/a-br670e.pdf> (8 August 2018)

Slovenia submitted a Country Report⁸³ in 2016. In Slovenia, like in other European countries, the use of old/local varieties threatened by genetic erosion is supported under the Rural Development Program, through research activities and through the option for registration as ‘conservation varieties’. Regarding specific national measures for the implementation of Art. 9, the Ministry for agriculture and food has appointed a Council and working group (results of suggestions are not further specified in the report).

Spain submitted a Country Report⁸⁴ in 2016. It includes an overview of legal provisions that support the implementation of the Treaty; besides, the same activities and measures are presented that have been described in detail above (see Spain’s submission of 2018).

Sweden submitted a Country Report⁸⁵ in 2016, in which basically the same measures and activities are described as in Sweden’s submission of 2018 (above).

Switzerland submitted a Country Report⁸⁶ in 2016. The National Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture represents the heart of the Swiss undertakings in the conservation of PGRFA. Regarding the implementation of Farmers’ Rights, national measures taken by Switzerland have been described above (see summary of Switzerland’s submission of 2018).

The **United Kingdom** submitted a Country Report⁸⁷ in 2016. In Scotland, farmers’ efforts for conservation and sustainable use of PGRFA have been supported and promoted locally through the Scottish Landrace Protection Scheme, which is presented in more detail in the report. Like in other EU member states, farmers are supported to conserve PGRFA indirectly through environmental management measures that are incentivized through rural development/agri-environmental measures implemented under the Common Agricultural Policy. Other specific national measures for the implementation of Art. 9 are not presented in the report.

The **Berne Declaration**⁸⁸ submitted views and experiences⁸⁹ in 2012. In this submission, they focus on the revised Swiss federal Patent and Variety Protection Law. The Berne Declaration criticizes that compared to the previous law, the possibility of patenting crop genetic resources has been substantially expanded. Together with the revised and more restrictive plant variety protection law, this is considered as a drawback with regard to the implementation of Farmers’ Rights in Switzerland.

However, there are also some progressive provisions in specific areas, e.g. that under both laws, farmers are entitled to reproduce the product of the harvest from the cultivation of rightfully acquired propagating material on their own holdings without payment (see also Switzerland’s submission).

⁸³ <http://www.fao.org/3/a-br426e.pdf> (8 August 2018)

⁸⁴ <http://www.fao.org/3/a-br418s.pdf> (8 August 2018)

⁸⁵ <http://www.fao.org/3/a-br427e.pdf> (8 August 2018)

⁸⁶ <http://www.fao.org/3/a-br414e.pdf> (8 August 2018)

⁸⁷ <http://www.fao.org/3/a-br419e.pdf> (8 August 2018)

⁸⁸ An NGO now called „Public Eye“, see https://www.publiceye.ch/en/media/press-release/berne_declaration_becomes_public_eye/ (7 August 2018) for more information.

⁸⁹ <http://www.fao.org/3/a-bb904e.pdf> (8 July 2018)

The **European Seed Association (ESA)** (see above) submitted views and experiences⁹⁰ in 2012 and views on possible interrelations with instruments of UPOV and WIPO⁹¹ in 2016. ESA expresses their support to the realization of Farmers' Rights under the same considerations that have been summarized above. The association also refers to the options for Contracting Parties to create exceptions from the scope of plant breeders' rights in accordance with the various Acts of the UPOV Convention. ESA further suggests that analyses of possible interrelations should mainly focus on the interrelations between provisions of the Treaty and plant variety protection in national law.

The **European Coordination for Let's Liberate Diversity!**⁹² is a European umbrella organization of national farmer movements and networks focusing on agrobiodiversity conservation and use. The organization submitted views and experiences⁹³ in 2012. They submitted their Declaration of Szeged (2011), through which they declare that they feel insufficiently supported in the efforts to conserve and sustainably use PGRFA, and feel that their governments are imposing obstacles on the implementation of Art. 5 and 6 of the Treaty. Their submission includes a number of clear demands to the EU, their national Governments and the Governing Body of the ITPGRFA (see submission for details).

SUMMARY AND LESSONS LEARNED

- Policies and legal frameworks of most European countries depend largely on the respective EU policies. Even non-member states, like for example Norway and Switzerland, have to comply with many basic rules established by the EU, based on bilateral agreements (see, for example, submissions of EU member states and Norway).
- The Common Agricultural Policy of the EU allows members states, or even regions or regional states, to develop rural development programs according to their own priorities. This option offers good opportunities for supporting farmers in their efforts to conserve and use PGRFA, which are mentioned to be used by many Contracting Parties of the European Region (see, for example, submissions of Italy, Germany, Slovenia, United Kingdom, and others).
- The important role and of regions or federal states is repeatedly emphasized by Contracting Parties and other stakeholders. If local/regional/state governments ally with farmers, consumers and/or NGOs, important synergies can be created (see, for example, submissions of Italy, Centro Internazionale de Crocevia).
- In European countries, there is a long tradition to consider traditional knowledge relating to PGRFA as common knowledge that is shared, rather than protected. This is why existing legal provisions for the protection of knowledge do in many cases not apply for this type of knowledge (see, for example, submissions of Sweden and Germany). However, options such as Geographical Indications are popular in some countries for the protection of traditional knowledge relating to PGRFA and products derived from them (see, for example, submissions of France and Poland).

⁹⁰ <http://www.fao.org/3/a-bb903e.pdf> (8 August 2018)

⁹¹ <http://www.fao.org/3/a-bb929e.pdf> (8 August 2018)

⁹² <https://liberatediversity.org/> (7 August 2018)

⁹³ <http://www.fao.org/3/a-bb906e.pdf> (7 August 2018)

- A dominant view regarding benefit-sharing at national level is that farmers benefit from breeding progress. However, not all farmers benefit equally; particularly those who are involved in farming activities outside the ‘mainstream’, like for example organic/biodynamic farmers or small-scale farmers working under specific agroecological conditions, may have specific needs that are currently not fully addressed by the breeding and seed industry (see, for example, submissions of Norway and Confédération paysanne).
- In general, participation in decision-making is well established in the EU and its member states. However, the existing procedures do not always allow for participation of those farmers who are particularly interested in the conservation and use of PGRFA (see, for example, submission of Confédération paysanne). This is particularly the case in countries where there is more than one farmer association, of which not all are represented in decision-making processes and relevant councils/committees.
- The right to save, use, exchange and sell seed is restricted in all European countries, based on plant variety protection systems and seed legislations. However, the submissions show that there are many options for creating or widening legal spaces to support farmers’ seed management practices and dynamic on-farm conservation of PGRFA (see, for example, submissions of Centro Internazionale de Crocevia, Italy, Confédération paysanne, Norway, Switzerland).

Latin America and the Caribbean

REPLIES TO THE SECRETARY’S INVITATION OF 7 MAY 2018

The **Plurinational State of Bolivia** submitted views and experiences⁹⁴ in July 2018. In Bolivia, Farmers’ Rights are addressed in various legal instruments, including the national constitution and various laws that focus on environmental protection as well as rural and agricultural development.

The rights of Bolivia’s indigenous nations and peoples, originally farmers, include, for example, recognition of intellectual property rights concerning their knowledge, wisdom and science; the right to free, prior and informed consent and a right to benefit-sharing with regard to the exploitation and use of resources that exist in their territories. These rights also apply to PGRFA, including related traditional knowledge and practices.

Patents on seeds and traditional knowledge are generally not applicable in Bolivia. The state has a responsibility to support small-scale farmers in pursuing traditional/agroecological farming methods and related knowledge and practices, which also includes the conservation and use of traditional varieties and the production and dissemination of seed of these varieties. Furthermore, farmers have the right to save and re-sow seed of protected varieties on their own land, subject to certain conditions,⁹⁵ including (a) the seed has been acquired legally, e.g. through purchase (at least once); (b) it has been saved from the farmers’ own harvest exclusively for his/her own use; (c) the production area does not exceed specified standards; (d) the produce is sold as food or prime material.

⁹⁴ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Bolivia.pdf (3 August 2018)

⁹⁵ Bolivia is member of UPOV under the 1978 Act; see <http://www.upov.int/export/sites/upov/members/en/pdf/pub423.pdf> (3 August 2018).

Based on the abovementioned legal provisions and frameworks, a number of initiatives and projects have been developed to implement them; for example, in the process of establishing the national agrobiodiversity strategy, workshops have been conducted with representative organizations of indigenous peoples to set priorities. Several publications document traditional agricultural knowledge and practices of indigenous peoples; these publications help increase recognition of their role and contribution with regard to the conservation and use of PGRFA. Individual farmer families have been assigned the role of 'biodiversity guardians'; they maintain a high diversity of crops and promote their use, e.g. by participating in knowledge exchange activities with researchers on the nutritional value of these crops. Another project aims to improve human nutrition in five macro-regions of Bolivia through conservation and sustainable management of agrobiodiversity.

In the course of the above-mentioned project activities, steps have been developed that are to be followed for research activities that are conducted on indigenous territory, including research on PGRFA, which is suggested by Bolivia as a 'best practice'.⁹⁶

Chile submitted views and experiences⁹⁷ in June 2018. Chile has established a public-private roundtable on genetic resources (including plant and animal genetic resources), which aims to identify, agree upon and coordinate activities relating to the conservation and sustainable use of genetic resources in the country, including relevant legal frameworks. This roundtable is coordinated by a Unit for Agricultural Policy Studies under the Ministry of Agriculture, with participation from public and private sector, academia and farmer organizations.

For the further development of issues that have been identified by the public-private roundtable, a technical expert group has been established with participation of actors represented at the roundtable that focuses on traditional crop varieties. This group has, for example, developed different conservation categories for traditional varieties and an action plan, including short- and medium-term activities.

Furthermore, another technical group has been established that focuses on the conservation, multiplication and dissemination of seed of varieties that are of interest to small-scale women farmers. In this regard, an existing organization of women farmers representing members of several other farmer organizations, in cooperation with research and rural development units under the Ministry of Agriculture, plays a key role in up-scaling experiences that have been made at local level.

Another important initiative in Chile is a state foundation has been established under the Ministry of Agriculture to support innovation in the agricultural and food sector. Through this foundation, individuals and organizations can get support for their own projects, including for example strengthening value chains for traditional crop varieties of their own choice.

Lastly, Chile also refers to Globally Important Agricultural Heritage Systems (GIAHS),⁹⁸ as well as similar sites of national importance. GIAHS are a global program for protecting and valuing sites that host unique sets of agricultural biodiversity, based on active participation of local communities. Globally and Nationally Important

⁹⁶ See http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Bolivia.pdf (3 August 2018) for a detailed description.

⁹⁷ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Chile.pdf (3 August 2018)

⁹⁸ See the description of selected global programs in the Annex for more details on GIAHS and their relation to Farmers' Rights.

Agricultural Heritage Sites in Chile are coordinated at national level by the Office of Agricultural Studies and Policies under the Ministry of Agriculture, and globally by FAO.

Ecuador, in a submission⁹⁹ from May 2018, emphasizes that the realization of Farmers' Rights is seen as a national priority. In Ecuador's national law on agrobiodiversity, seeds and sustainable agricultural development, there is a chapter on rights, stating individual as well as collective rights (e.g. of communities, peoples and nations) relating to agrobiodiversity, nutrition as well as recognition for farmers. Ecuador suggests these rights, or the issues they address, to be considered in the further process of preparing an inventory of national measures. These rights/issues include: Freedom to produce healthy, nutritious and diverse food; freedom to store, produce, save, exchange, sell and access any type of seed, including indigenous, traditional or certified seed; freedom to form associations for the investigation, production and marketing of any type of seed; recognition for communities, peoples and nations regarding their traditional knowledge and wisdom relating to agrobiodiversity and seed production, including for the substantial role of women and the elder generation in this regard; conservation and restoration of good practices relating to agrobiodiversity management and sustainable food production; fair and equitable participation in sharing benefits arising from the use of agrobiodiversity; participation in decision-making on issues relating to conservation and sustainable use of agrobiodiversity; participation in the protection of traditional knowledge and wisdom relating to the use of agrobiodiversity; and participation in the benefits of public policies and scientific research on seed and sustainable agrobiodiversity management. Furthermore, states as well as international organizations should provide administrative and technical support to small and medium seed producers, seed associations and enterprises to support capacity development for the conservation, production and marketing of PGRFA.

OTHER SUBMISSIONS (2012-2018)

Cuba submitted a Country Report¹⁰⁰ in 2016. The country has started a 5-year-process to review, adjust or create several legal instruments to better comply with provisions of the ITPGRFA and other treaty obligations, including the CBD and Nagoya Protocol. One problem encountered was that there have so far not been any legal provisions for registration of traditional varieties, protection of traditional knowledge or regulations for selling and exchanging seed of traditional varieties. Hence, a legal instrument is to be created for the protection of traditional knowledge; furthermore, the seed legislation is currently being revised.

The country has participated in a number of international donor-funded projects, which included activities such as capacity and public awareness building on the importance of farmer-managed agrobiodiversity and the farmers' role as custodians of agrobiodiversity as well as seed and food diversity fairs. Furthermore, leaflets, technical information sheets, variety catalogues and scientific publications were produced as part of the project activities. These projects focused, *inter alia*, on home gardens, seed management, *in situ* management and use of traditional crops and varieties — also in view of enhancing food and nutrition security, adapting

⁹⁹ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Ecuador.pdf (3 August 2018)

¹⁰⁰ <http://www.fao.org/3/a-br415s.pdf> (1 August 2018)

production systems to climate change and developing more sustainable production systems. Further activities aimed at mainstreaming agrobiodiversity issues into activities of the Cuban Biosphere Reserves.¹⁰¹

Costa Rica submitted a National Seed Policy¹⁰² for the period 2017-2030 in April 2018. The process of developing this policy was based on the FAO Voluntary Guide for National Seed Policy Formulation (FAO, 2015) and an existing national guideline for the formulation of public policies. The process thus included stakeholder workshops and consultations at various stages, with participation of private and public sector, farmers, research organizations and other stakeholders. The policy takes a comprehensive approach to seed sector development, starting from variety development, further including production, distribution and marketing of seeds, measures targeting seed quality, extension and capacity building, strengthening seed enterprises as well as developing and regularly reviewing/adjusting legal frameworks. For each area, objectives and strategic actions are defined. The policy mentions treaty obligations and Farmers' Rights, without however presenting concrete actions for their further realization at the current stage.

A Country Report¹⁰³ was also submitted by **Ecuador** in 2016. A draft seed and agrobiodiversity law is under discussion that takes Farmers' Rights into account and that is expected to enter into force in 2017. Actions have been taken with regard to all aspects of Farmers' Rights that are addressed in the Treaty. However, it is still being discussed how these rights can be realized; farmers in the country claim that these rights are much more far reaching than what has been achieved so far.

The **Programa Colaborativo de Fitomejoramiento Participativo en Mesoamérica (FMPA)**¹⁰⁴ is an organization uniting several national programs of the Central American region that engage with and empower small-scale farmers through participatory characterization, evaluation, enhancement and use of traditional varieties, including of maize, bean and sorghum crops. In their submission¹⁰⁵ from April 2013, FMPA highlights its long-standing expertise in facilitating farmer participation in decision-making and access to/sharing of knowledge relating to agrobiodiversity management and participatory breeding. This work takes place in close collaboration with national governments, NGOs as well as national and international research organizations.

The general approach taken by FMPA includes activities for *in situ* and *ex situ* conservation and characterization, genetic enhancement, production of high-quality seed, food security and income generation, as well as multiplication/upscaling of experiences gained. Details on three projects are presented in the submitted document. FMPA summarizes achievements in terms of released varieties with farmer-preferred traits, increased yields and establishment of farmer-managed seed enterprises as well as improved capacities of farmers and technical staff for the management of agrobiodiversity and seed. FMPA suggest these experiences and achievements as a contribution to sustainable management and use of PGRFA and to the realization of the various aspects of Farmers' Rights, particularly participation in decision-making and benefit sharing.

¹⁰¹ See the description of selected global programs in the Annex for more details on Biosphere Reserves and their relation to Farmers' Rights.

¹⁰² http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_CostaRica.pdf (3 August 2018)

¹⁰³ <http://www.fao.org/3/a-br417s.pdf> (1 August 2016)

¹⁰⁴ <http://www.programafpma.com/> (3 August 2018)

¹⁰⁵ <http://www.fao.org/3/a-bb919e.pdf> (3 August 2018)

SUMMARY AND LESSONS LEARNED

- Contracting Parties and relevant stakeholders in Latin America and the Caribbean report on substantial experiences regarding farmer participation in decision-making, including effective links between local and national or even regional/international institutions, programs and actors (see for example submissions of Chile, Costa Rica, and FMPA).
- Contracting parties of the Latin American and Caribbean region share experiences on how consultation with farmers, including indigenous peoples and nations, can be implemented and addressed for various purposes, including for example research activities and policy development (see, for example, submissions of Bolivia, Costa Rica), or continuous development of activities and priority setting (see, for example, submission of Chile). These consultations take various forms, including workshops, roundtables and technical expert groups.
- Another strong focus is on the recognition of farmers' role as 'guardians' of agrobiodiversity and on the protection of traditional knowledge. Here, examples are provided not only for the documentation and protection against misappropriation, but also on knowledge-sharing activities, e.g. between holders of traditional knowledge and researchers (see, for example, submissions of Bolivia, Cuba, FMPA).
- Several countries of the region put high priority to the realization of Farmers' Rights, including through developing/reviewing/adjusting national policies, strategies and laws for their implementation at national level (see, for example, submissions of Bolivia, Ecuador, and Costa Rica).

Near East

REPLIES TO THE SECRETARY'S INVITATION OF 7 MAY 2018

Libya submitted views and experiences¹⁰⁶ on 5th June 2018.¹⁰⁷ In Libya, the Ministry of Agriculture and Livestock supports farmers in seed selection, saving and dissemination activities through technical assistance provided by its Department of Extension and Cooperation. Furthermore, the Department of Extension and Cooperation also established a program for participatory variety selection at 15 sites in different regions of the country, with the aim to introduce a range of varieties to farmers and involve them in decision-making with regard to the selection of varieties that correspond to their needs and the conditions of their farms. This program also helped farmers to produce their own seed of preferred varieties and to sell the surplus to fellow farmers. These activities addressed the problem of high seed prices in local markets that hampered some farmers' access to seed of improved varieties.

Furthermore, the Ministry of Agriculture and Livestock established an 'Improved Seed Propagation Center', which offers farmers seed of improved varieties of staple grain crops at affordable prices, or even for free in the case of vegetable seeds that were distributed to farmers in cooperation with FAO.

¹⁰⁶ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Libya.pdf (27 July 2018)

¹⁰⁷ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Libya.pdf (30 July 2018); the Secretariat of the International Treaty provided the translation of the original text submitted by Mr. Mustafa Ali Elagel (National Focal Point).

In Libya, farmers also participate in strategic decision-making of the Agricultural Research Center, a governmental organization, which also offers capacity building, e.g. via field days and demonstration plots. The National gene Bank is affiliated to this research institute and has cooperated with farmers on linking in situ and ex situ conservation of local varieties. Furthermore, some NGOs in Libya provide farmers with seedlings of various types of medicinal and aromatic plants as well as fruit and forest trees and shrubs.

A national draft law has been proposed as a result of cooperation between the National Focal Point for the Treaty and several governmental organizations involved in the conservation and use of PGRFA. This law, called “*Law for the Protection and Circulation of Plant Genetic Resources*”, is in line with the provisions of the Treaty, includes provisions on Farmers’ Rights (e.g. participation in decision-making, benefit sharing, protection of traditional knowledge, access to, use and exchange of PGRFA) and has been submitted to the Government of Libya in 2015.

OTHER SUBMISSIONS (2012-2018)

Lebanon submitted a Country Report¹⁰⁸ in January 2017. Regarding the status of implementation of Art. 9, Farmers’ Rights, no projects or legislation have been developed so far to protect and promote Farmers’ Rights. However, within the framework of LARI/GEF/UNDP Agrobiodiversity project,¹⁰⁹ activities for on-farm conservation and use of local herbaceous landraces and fruit trees were established, including mechanism for processing traditional foods with added value.

With the full implementation of ITPGRFA in Lebanon, the Government will take further action to implement Farmers’ Rights according to Art. 9 of the Treaty and develop the adequate legislations in this regard.

Libya submitted a Country Report¹¹⁰ in May 2016. It is stated that measures for protecting and promoting Farmers’ Rights had been taken, however without further specification of details (these were provided in the 2018 submission, see above).

SUMMARY AND LESSONS LEARNED

- Little information is available so far on views and experiences concerning the implementation of Art. 9, Farmers’ Rights, of Contracting Parties and relevant stakeholders in the Near East region.
- International cooperation projects such as the one provided as an example by Lebanon could support the efforts of Contracting Parties and relevant stakeholders in this region to gain experiences on which they could build further.
- Libya reports that positive experiences have been made regarding close cooperation between farmers and government programs/institutions as well as NGOs on issues related to the conservation and sustainable use of PGRFA. These include participatory variety selection, seed multiplication and selling/sharing/exchange of seed among farmer, as well as *in situ* and *ex situ* conservation of PGRFA.

¹⁰⁸ <http://www.fao.org/3/a-br421e.pdf> (27 July 2018)

¹⁰⁹ „Conservation and Sustainable Use of Dryland Agrobiodiversity of the Near East“ (<https://www.unescwa.org/conservation-and-sustainable-use-dryland-agrobiodiversity-near-east>) (27 July 2018).

¹¹⁰ <http://www.fao.org/3/a-br420e.pdf> (27 July 2018)

- Engagement of the National Focal Point with relevant government institutions has led to the development of a draft law for conservation and sustainable use of PGRFA that is in line with the provisions of the Treaty, including the provisions of Art. 9, Farmers' Rights.

North America

REPLIES TO THE SECRETARY'S INVITATION OF 7 MAY 2018

Canada submitted views and experiences¹¹¹ in June 2018. Canada highlights that in the Preamble of the Treaty, it is recognized that the Treaty and other relevant international agreements *“should be mutually supportive with a view to sustainable agriculture and food security.”* It is affirmed that *“nothing in this Treaty should be interpreted as implying in any way a change in the rights and obligations of the Contracting Parties under other international agreements.”* Furthermore, Art. 9 specifically states that the responsibility for realizing Farmers' Rights rests with national governments. Hence, based on these considerations, Contracting Parties have the required flexibility to apply the realization of Farmers' Rights within their own jurisdictions, based on their own needs and priorities. Canada therefore recommends a *“non-prescriptive approach”* to the realization of Farmers' Rights.

Regarding the protection of traditional knowledge (Art. 9.2.a), Canada refers to existing laws, e.g. copyright, patent, industrial design, trademark, trade secrets and indigenous laws. The holders of traditional knowledge relating to PGRFA are free to decide whether they want to make use of the provisions offered by these laws, e.g. if the traditional knowledge they have is susceptible to commercial application by others. Canada also stressed the importance of a flexible and non-prescriptive approach to implementing Art. 9.2.a so indigenous communities themselves can best identify measures to protect their traditional knowledge.

With regard to the equitable participation in benefit-sharing arising from the use of PGRFA (Art. 9.2.b), Canada's view is that farmers benefit from the ongoing release of new and improved varieties through public and private breeding programs. The steady development of new plant varieties is dependent on the domestic Plant Breeders' Rights Act, which is in line with the provisions of UPOV 1991. Therefore, Canada is of the view that the ITPGRFA and the UPOV Convention are instruments with complementary objectives; by implementing them in a mutually supportive manner, *“both instruments can effectively contribute to the development of new and innovative plant varieties”*, from which farmers would then benefit.

Regarding the right of farmers to participate in decision-making (Art. 9.2.c), there are a number of provisions and means for Canadian farmers to participate in decision-making on issues relating to agriculture in general, including for example the development of agricultural programs, policies, laws and regulations. More specifically relating to PGRFA, farmers (along with other representatives of the entire value chain) are represented in *‘Variety Registration – Recommending Committees’*, which test, evaluate and recommend varieties for registration, and also in the *‘Plant Breeders' Rights Advisory Committee’*, which has an advisory role in the application of the Plant Breeders' Rights Act.

¹¹¹ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Canada.pdf (27 July 2018)

Lastly, Canadian farmers have the ability to save, use, exchange and sell seed subject to national law, specifically the Plant Breeders' Rights Act and the Seeds Act. The Canadian Plant Breeders' Rights Act includes an exception to the breeder's right, allowing farmers to save and re-plant seeds of protected varieties on their own land without seeking authorization. Once the variety protection has expired or is surrendered voluntarily for a variety, it is considered 'public domain' and can be used without restrictions. The Seeds Act requires variety registration as a prerequisite for seed to be sold legally for most (but not all) agricultural crops. Hence, the seed of crops and varieties that are not subject to the Plant Breeders' Rights or Seeds Act can be used without restrictions.

The **United States of America** submitted views and experiences¹¹² in June 2018. In their submission, they provide examples of how Farmers' Rights are implemented in the United States of America through a variety of measures. Some programs are funded or governed at federal level, with some implementation aspects being designated to individual states, while others are purely run at the state level.

The described measures include a broad array of programs and instruments that support farmer in general, or farmers who apply certain practices with advantages for the environment. The proposed measures range from, *inter alia*, crop insurances and loans, compensation payments to farmers for removing environmentally sensitive land from agricultural production or for establishing certain agricultural practices with advantages for the environment, or promotion of 'Farmers' markets', where locally or regionally produced foods are offered.

Furthermore, the government has established several advisory committees that provide opportunities for farmers to participate in making decisions. These include the National Agricultural Research, Extension, Education, and Economics Advisory Board, which provides strategic advice on priority setting to the Secretary of Agriculture and agricultural colleges and universities; the Plant Variety Protection Board, which advises the Secretary of Agriculture concerning the adoption of rules and regulations to facilitate the proper administration of the Plant Variety Protection Act; and the Crop Germplasm Committees, who advice genebanks that belong to the National Plant Germplasm System, e.g. on the characterization of PGRFA. Furthermore, there is a federal law that provides a right to indigenous peoples ("tribes") to participate in making decisions, e.g. related to conservation and sustainable use of natural resources on their lands.

Under the U.S. Plant Variety Protection Act, farmers have the right *"to save seed of a protected variety for use on their own land as long as no other agreements have been established between the breeder and farmer, which may restrict this."*

OTHER SUBMISSIONS (2012-2018)

Canada submitted a Country Report¹¹³ in 2017. Measures to protect and promote all aspects of Farmers' Rights were taken; further details are not provided (see submission of June 2018 for details).

¹¹² http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_USA.pdf (29 July 2018)

¹¹³ <http://www.fao.org/3/I8691EN/i8691en.pdf> (30 July 2018)

SUMMARY AND LESSONS LEARNED

- Canada and the United States of America share the view that Farmers' Rights can be implemented under their current legislations.
- Farmers participate in decision-making on matters relating to PGRFA through their representation in several advisory committees (see submissions of Canada and the United States of America).
- The protection of traditional knowledge is understood mainly as a protection against misappropriation; several existing laws are referred to that may be used by holders of traditional knowledge (see submission of Canada).
- Benefit-sharing is understood as the possibility of farmers to regularly purchase seed of newly developed varieties (see submission of Canada); and/or by implementing a variety of agricultural programs that are beneficial for farmers in general (see submission of the United States of America).
- The right of farmers to save, use, exchange and sell seed is in both countries limited to farmers saving seed for re-sowing on their own land, unless this is further restricted by agreements between farmers and private seed enterprises.

South West Pacific

REPLIES TO THE SECRETARY'S INVITATION OF 7 MAY 2018

No submissions were received from Contracting Parties and relevant stakeholders of this region that directly replied to the Secretary's invitation from 7th May.

OTHER SUBMISSIONS (2012-2018)

Australia submitted a Country Report¹¹⁴ in February 2017. Australia continues to implement the Treaty under existing laws, regulations and policies. Treaty obligations are taken into account when amending or revising relevant policies and strategies.

Australia's intellectual property laws relevant to PGRFA are reviewed regularly; for example, several changes to the Patents Act (1990) were recommended in 2016, which are relevant to PGRFA. The Patents Act and the Plant Breeder's Rights Act (1994) together provide the legal framework for intellectual property protection for new plant varieties and patentable inventions derived from plant genetic resources. Australia's Plant Breeder's Rights Act is in line with the 1991 Act of the UPOV Convention. It protects and promotes the conditioning and propagation of farm-saved seed for the farmers' own use by exempting such acts from infringement of plant breeder's rights.

Farmers are not supported directly in their efforts to conserve and manage domesticated PGRFA; however, farmers as well as indigenous communities are supported through various programs that facilitate sustainable land management, including *in situ* conservation and/or use of wild or semi-wild PGRFA.

¹¹⁴ <http://www.fao.org/3/a-br584e.pdf> (June 2018)

Furthermore, there is a growing social movement based around traditional crop varieties, primarily horticultural crops grown by small-scale farmers. Such activities are supported by NGOs, including for example the Seed Saver's Network¹¹⁵ and networks of heirloom seed sellers.

SUMMARY AND LESSONS LEARNED

- Existing policies and laws are reviewed on a regular basis, taking treaty obligations into account.
- Farmers are allowed to use farm-saved seed on their own land, subject to national legislation.
- Networks of seed savers and small companies selling heirloom seed play an important role for maintaining traditional crop varieties and related traditional knowledge.

International organizations / NGOs

This section includes experiences and views of organizations that do not focus specifically on any of the above-mentioned regions. The submitting organizations include international development-oriented NGOs as well as one private sector association.

REPLIES TO THE SECRETARY'S INVITATION OF 7 MAY 2018

The **Association for Plant Breeding for the Benefit of Society (APBREBES)**,¹¹⁶ **The Development Fund**,¹¹⁷ **Public Eye**¹¹⁸ and **Third World Network**¹¹⁹ are NGOs focusing on international policies and development issues. In their joint submission,¹²⁰ they highlight three publications that deal with practical options for the implementation of Farmers' Rights.

The first publication mentioned (Shashikant and Meienberg, 2015) elaborates on the conflicts between the requirements of UPOV, especially its 1991 Act, and Art. 9 of the International Treaty, and highlights alternative systems for plant variety protection, like those adopted by India, Malaysia, Thailand or the Philippines. Certain elements of the national plant variety protection systems of these countries are explained to demonstrate that it is possible to put in place a *sui generis* legislation that advances implementation of Art. 9.

The second publication mentioned (Correa *et al.*, 2015) is a tool that aims to assist governments and stakeholders in developing countries in designing alternative *sui generis* systems for plant variety protection. It presents elements of such legislations, a 'model law' as well as recommendations for designing inclusive processes aiming to develop plant variety protection systems in a transparent and inclusive manner.

The third publication mentioned (Ling *et al.*, 2016) reviews the status of implementation of the right to participate in decision-making at national level. This right is not only enshrined in Art. 9.2 of the Treaty, but it is also well established in the human rights framework and the UN System in general. Hence, norms, principles, instruments, good practices and basic elements for designing processes that address the right to participate in decision-making have already been developed. These include, for example, a clear legal basis for this right and

¹¹⁵ <http://seedsavers.net/> (28 July 2018)

¹¹⁶ <http://www.apbrebes.org> (23 July 2018)

¹¹⁷ <http://www.utviklingsfondet.no/en> (23 July 2018)

¹¹⁸ <https://www.publiceye.ch/en/> (23 July 2018)

¹¹⁹ <https://www.twn.my/> (23 July 2018)

¹²⁰ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_APREBES.pdf (23 July 2018)

legally enforceability. Furthermore, it should be supported by inclusive, independent, impartial, transparent and non-discriminatory processes and mechanisms, allow for meaningful consultation, feedback and proposals in each stage of the decision-making process, provide access to full and up-to-date information over the process, include capacity building and financial support, and establish redress mechanisms.¹²¹ The publication further includes a number of recommendations to governments, the Governing Body of the ITPGRFA as well as international and regional organizations to facilitate the implementation of Art. 9.2.c according to the above-described principles and practices.

The **Development Fund**,¹²² a Norwegian NGO aiming to support small-scale farmers in their fight against hunger and poverty, submitted views to the ITPGRFA Secretariat in June 2018.¹²³ The Development Fund regards Farmers' Rights as a cornerstone of the International Treaty, and their realization as fundamental for achieving its objectives. Particularly in developing countries, the food system largely depends on farmer-managed seed systems; hence, the implementation of Farmers' Rights must be considered in light of ensuring food security, both in a short and long-term perspective. This is why the Development Fund is concerned with the slow progress of the implementation of Farmers' Rights among many Contracting Parties of the Treaty. The following four challenges hindering the implementation of Farmers' Rights have been identified:

- *Lack of knowledge and capacity to implement Farmers' Rights among key stakeholders*, including relevant government institutions, policy makers, civil society, farmers and the private sector: The Development Fund considers it as crucial to develop guidelines based on practical experiences and good practices and refers to capacity-building materials they developed together with various partner organizations.
- *Lack of priority to support biodiverse production systems such as community seed banks, participatory plant breeding, participatory variety selection, seed fairs etc.*: The Development Fund is concerned with the low priority given to such actions in policies and strategies of governments and development assistance programs, in spite of the fact that they were recognized by the Governing Body in Resolution 7/2017. Documented good practices from partner organizations are referred to that could be helpful to develop guidelines and recommendations.
- *Gaps in national legislations, and in some cases contradictory laws, hindering the realization of Farmers' Rights*: According to The Development Fund, many countries have plant variety protection policies that impede the realization of Farmers' Rights.¹²⁴ Furthermore, there is a lack of recognition of farmers' seed systems in national legislations, limiting the access to plant genetic resources and the benefits that may be obtained from their use, associated with a risk to contribute to the erosion of plant genetic

¹²¹ This list is not exhaustive; see the original submission and the publication for more details.

¹²² <http://www.utviklingsfondet.no/en> (15 July 2018)

¹²³ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_DevelopmentFund.pdf (15 July 2018)

¹²⁴ Here, The Development Fund refers to the joint symposium of the ITPGRFA Secretariat and UPOV in October 2016, where this kind of interrelations were exemplified.

diversity. In this regard, The Development Fund recommends to look at good practices of laws and policies that are coherent with the International Plant Treaty.

- *Non-fulfillment of the Farmers' Right to participate in decision-making on matters relating to PGRFA:* According to The Development Fund, the realization of this right is “severely lacking”. Farmers’ needs and interests are largely ignored when decisions on policies and laws are made, which affects their freedom to operate. The Development Fund, therefore, recommends to include good practices on farmer participation in the development of options, including participation in national genetic resources commissions, consultations on Farmers Rights and the sustainable use and conservation of plant genetic resources, development of benefit sharing mechanisms, participatory methods for plant breeding and variety selection, as well as policy drafting and processes.

The **FNI** (see above, Europe section) submitted views and experiences¹²⁵ in June 2018. FNI has engaged in research and policy advice on the implementation of Farmers’ Rights through their Farmers’ Rights Project since 2005. In the submission, FNI provides an inventory of research that has been done in the framework of this project and afterwards, including, besides scientific publications, documentations of surveys and consultations on Farmers’ Rights that have been conducted or co-organized by FNI (see FNI’s submission for details and direct links). Based on FNI’s long-standing experience, they suggest the following steps for encouraging, guiding and promoting the realization of Farmers’ Rights: (1) operationalizing what Farmers’ Rights might mean; (2) deriving options; and (3) illustrating these options with examples of ‘best practices’. FNI shares valuable insights on each of these steps. For example, they state: *“In our experience it was important to operationalise the elements of Farmers’ Rights before deriving options, as it may be difficult to establish how certain activities can be termed realization of Farmers’ Rights. Once that is done, it is easier to approach the question of options in a systematic way.”*

FNI further suggests that *“it is useful to illustrate each of the options identified above with real life examples, highlighting achievements as well as challenges”,* and that *“it could be useful to include a literature survey in the inventory [that is to be established by the AHTEG], seeking to broaden the basis from which such examples can be derived”*.

According to FNI’s experience, practical examples of the realization of Farmers’ Rights show the importance of these rights for poverty alleviation and food and nutrition security, particularly in developing countries, as well as their potential for food sovereignty and sustainable farming and food systems in general.

The **International Seed Federation (ISF)**,¹²⁶ an organization aiming to represent the seed industry at global level, contributed a position paper titled *“Supporting seed choices for farmers”,* dated June 2018.¹²⁷ The ISF acknowledges the contributions that *“farmers and local communities, as well as plant breeders, have made to the conservation and development of plant genetic resources”,* and re-emphasizes its commitment towards the ITPGRFA.

¹²⁵ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_FNI.pdf (7 August 2018)

¹²⁶ www.worldseed.org (15 July 2018)

¹²⁷ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_ISF.pdf (15 July 2018)

Furthermore, ISF encourages national governments to include all relevant stakeholders, including representative breeders and farmers, to facilitate their participation in decision-making for topics related to conservation, sustainable use, access and benefit sharing of PGRFA and related traditional knowledge.

The position of ISF with regard to intellectual property rights on plant varieties is that the 1991 Act of the UPOV Convention “*balances protection as an incentive for innovation and access to enable others to improve protected varieties, which benefits farmers and society in the end.*” Plant Breeders’ Rights are granted for a limited time period and would not affect other varieties, so that farmers could save, use, exchange and sell seed of non-protected varieties, provided that these practices comply with national law.

ISF and its members have the position that occasional sale of seeds produced from protected varieties by subsistence farmers does not significantly jeopardize intellectual property rights, and consequently does not substantially undermine incentives to innovate by breeders. ‘Subsistence farming’ is referred to as “*acts done privately and for non-commercial purposes*”, as set out in Art. 15.1.i of the UPOV convention. However, the free and unlimited use of farm-saved seed of protected varieties by commercial farmers would negatively impact the development of new varieties by breeders and thus limit farmers’ choice of varieties in the longer term.

ISF, therefore, calls for a mutually supportive implementation of the UPOV Convention and ITPGRFA at national level and urges governments and international organizations to promote farmers’ access to all kinds of varieties, including local and commercial, from the public or private sector, so that all farmers, irrespective of the scale of operation, have the opportunity to choose the seed that best meets their needs.

OXFAM Novib,¹²⁸ Netherlands, together with their partner organizations from Peru (**Asociación para la Naturaleza y el Desarrollo Sostenible (ANDES)**),¹²⁹ Zimbabwe (**Community Technology Development Trust (CTDT)**),¹³⁰ and Southeast Asia (**Southeast Asia Regional Initiatives for Community Empowerment (SEARICE)**)¹³¹ submitted views and experiences to the ITPGRFA Secretariat in June 2018.¹³² OXFAM Novib is part of the global network OXFAM international, focusing on poverty alleviation.

The submitting organizations refer to a global program called ‘Sowing Diversity – Harvesting Security’¹³³ led by civil society organizations in alliance with diverse stakeholders. This program focuses on empowering indigenous peoples and smallholder farmers to make food systems more diverse, sustainable and equitable. In the course of this program, pivotal areas for national implementation of farmers’ Rights have been identified. These include (a) strengthening support and recognition for farmer-managed seed systems, e.g. through Farmer Field Schools, community seed banks and farmer-led participatory plant breeding, aiming to enhance farmers’ access to seed of a broad portfolio of locally adapted crops and varieties; (b) to establish legal structures that support and facilitate the involvement of farmers in quality seed production, particularly seed of farmers’ varieties that are maintained only at limited scale; (c) balance plant breeders’ and Farmers’ Rights, so

¹²⁸ <https://www.oxfamnovib.nl/> (11 July 2018)

¹²⁹ <http://www.andes.org.pe/> (23 July 2018)

¹³⁰ <http://www.ctdt.co.zw/> (23 July 2018)

¹³¹ <https://searice.org.ph/> (23 July 2018)

¹³² http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_Oxfam.pdf (23 July 2018)

¹³³ <https://www.sdhsprogram.org/> (25 July 2018)

that smallholder farmers are free to exchange and sell farm-saved seed, including of protected varieties; (d) ensure equitable benefit sharing, e.g. through facilitated access to PGRFA (see above) or through the Treaty's benefit sharing fund; and (e) through inclusive decision-making processes, e.g. in national seed councils or during the formulation of breeding objectives in public research programs.

The submitting organizations emphasize that both farmers and breeders depend on the continuous use of multiple existing crop varieties for the creation of new varieties. Furthermore, special attention should be given to the inclusion of women farmers, whose knowledge, capacities and key role as managers of biodiversity for food and nutrition security tends to be overlooked. This is why inclusive decision-making processes need to be established that ensure women's participation and respond to their roles and needs.

OTHER SUBMISSIONS (2012-2018)

Some international NGOs, including The Berne Declaration and the Development Fund (see above), have submitted views and experiences regarding the implementation of Art. 9 in 2012. Between 2013 and 2018, contributions of international NGOs focused mainly on the interrelations between Art. 9 of the Treaty and instruments of WIPO and UPOV, in response to Res. 8/2013. Assessing the details of this discussion would go beyond the scope of this paper; however, there are a number of publications that address this debate, including those mentioned in the submissions (see for example Christinck and Tvedt, 2015; Correa *et al.*, 2015; Shashikant and Meienberg, 2015).

The **Berne Declaration** and **Third World Network** (see above) state in their submission¹³⁴ from November 2014 that the 1991 Act of the UPOV-Convention "*greatly expands the scope of breeders' rights and severely limits farmers' rights.*"

According to the submitting organizations, the exception to the scope of a plant breeder's right offered under Art. 15 (1) ("*Acts done privately and for non-commercial purposes*") does not correspond to the realities of small-scale farmers in developing countries, who often use crops for private as well as non-private, non-commercial well as commercial purposes (e.g. selling at local markets, exchange within the community).

Furthermore, the optional exception offered under Art. 15 (2) of the Convention is restricted (a) to certain acts (saving seed for use on a farmer's own landholding, thus no possibility to exchange or sell seed within the community or local region); (b) to certain crops for which there is a common practice in the country to use harvested material for sowing; (c) to certain conditions that need to be defined, e.g. size of landholding, value of crop etc.; and (d) by other conditions, like e.g. payment of a remuneration etc.

The submitting organizations recall that UPOV has consistently disapproved provisions in national legislation that support the freedom to save, exchange and sell seed/propagating material, even among small-scale farmers. Furthermore, since UPOV takes the position that disclosure requirements are incompatible with its provisions, it is difficult for countries to effectively implement other obligations, e.g. deriving from the CBD,

¹³⁴ <http://www.fao.org/3/a-bb924e.pdf> (14 July 2014)

Nagoya Protocol or rights of indigenous peoples. This includes fair and equitable benefit sharing as well as effective protection of traditional knowledge and meaningful participation in decision-making.

The submitting organizations further criticize rules that were established by UPOV concerning the participation of farmer and civil society organizations and draw attention to the fact that decisions affecting the implementation of Farmers' Rights in a country are increasingly taken at regional or international level. Trade agreements and donor initiatives play an important role in this regard and put pressure on governments of developing countries to join UPOV under the 1991 Act. Likewise, technical assistance, e.g. provided by WIPO, is used to promote UPOV 1991, without previous assessment of the situation and needs of farmers. Examples are given for other activities of WIPO that are not supportive or largely ignore Art. 9 of the Treaty.

Cooperazione Rurale in Africa e America Latina¹³⁵ (ACRA) and partners submitted views and experiences¹³⁶ in March 2013. The contribution synthesizes results of a project aiming to mobilize an operational multi-stakeholder network for the implementation of the ITPGRFA through promoting small-scale and agro-ecological models of agriculture. Through action-research activities, case studies were identified in six European (France, Italy, Hungary, Romania, Scotland and Spain) as well as two African countries (Tunisia and Senegal) that relate to the Global Plan of Action for Plant Genetic Resources for Food and Agriculture (GPA) under the framework of sustainable use. These case studies are briefly described in the submission, along with country profiles and deliberations on the relationship between Farmers' Rights and sustainable use of PGRFA. The case studies entail, for example, valorization of historic/local varieties, farmer-managed seed production, experiential learning and networking activities.

The **Development Fund** (see above) submitted views and experiences¹³⁷ in 2012 and information on the interrelations between the Treaty and relevant instruments of UPOV and WIPO in November 2014¹³⁸. The organization states that industrial agriculture negatively affects agrobiodiversity and calls for agroecological approaches to agricultural development. The Development Fund refers to several of their publications, which provide information on such alternatives, as well as to practical options for the implementation of Farmers' Rights at local level, such as participatory plant breeding and community seed banks (see 2012 submission for details). The organization further highlights that conditions for seed provision in developing countries are different from the situation in industrialized countries in that farmer-managed seed systems continue to provide for 80% or more of farmers' total seed demand. The UPOV system was not designed for this type of conditions; its focus is to create a standardized legal framework for countries where commercial breeding and seed systems prevail.

Due to pressure imposed on developing countries, e.g. via trade agreements or regional intellectual property frameworks, more and more of these countries join UPOV under the 1991 Act. However, according to The Development Fund, *"UPOV 91 narrows down the genetic diversity in the fields by suppressing farmers' traditional practices of saving and exchanging plant materials as it significantly expanded and strengthened plant*

¹³⁵ <https://www.acra.it> (7 August 2018)

¹³⁶ <http://www.fao.org/3/a-bb917e.pdf> (7 August 2018)

¹³⁷ <http://www.fao.org/3/a-bb905e.pdf> (7 August 2018)

¹³⁸ <http://www.fao.org/3/a-bb927e.pdf> (17 July 2018)

breeders' rights at the expense of farmers' rights to save, exchange and sell seeds from protected varieties by removing 'the farmers' privilege', a key component of Farmers' Rights under UPOV 78."

The organization suggests that the requirements of the 1978 and 1991 Acts of the UPOV Convention should be assessed for their impacts on the implementation of Farmers' Rights at national level. Furthermore, The Development Fund criticizes that Farmers' Rights to participate in decision-making as well as the implementation of benefit sharing provisions are hampered by highly centralized and standardized processes as well as UPOV's rejection to consider breeding history and origin of breeding materials when granting plant breeders' rights.

Regarding WIPO, The Development Fund calls for analyzing the processes going on in WIPO and the contributions of WIPO's technical assistance with regard to promoting Farmers' Rights, especially on the protection of traditional knowledge and equitable sharing of benefits arising from the utilization of PGRFA, given the slow process that has been made on these issues after 10 years of negotiations on a proposal that has been submitted by developing countries to the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

The **FNI** (see above) submitted an overview of their contributions to the work of the Governing Body¹³⁹ from its First to its Fourth Session in 2012 (see also complete inventory in FNI's submission of 2018).

La Via Campesina,¹⁴⁰ an international peasant's movement, submitted their Bali Seed Declaration¹⁴¹ in 2012. In this declaration, they put the ITPGRFA and its provisions in the context of a worldwide "*war for control over seeds*". According to La Via Campesina, the Treaty is an ambiguous instrument, since it acknowledges Farmers' Rights, but at the same time does not prevent or even facilitates that intellectual property rights are claimed on seed and plant varieties. La Via Campesina make their cooperation with the ITPGRFA subject to a number of conditions that are set out in their declaration (see submission for details).

Practical Action¹⁴² is an organization focusing on empowering people in developing countries to free themselves from poverty. In their submission¹⁴³ of 2012, they refer back to processes that were ongoing before the ITPGRFA was adopted, and where clearer definitions of the meaning of Farmers' Rights had already been established compared to the wording in the Treaty. They also refer to the various consultations that have been held, and where many representatives of Contracting parties stated that farmers could participate in hearings and committees, but there was no indication as to whether these farmer representatives were "*were legitimate representatives of those who conserve and generate a diversity of PGRFA for the future*". Among other issues, Practical Action calls the Governing Body "*to include legitimate representatives of the social move-*

¹³⁹ <http://www.fao.org/3/a-bb909e.pdf> (7 August 2018)

¹⁴⁰ <https://viacampesina.org/en/> (5 August 2018)

¹⁴¹ <http://www.fao.org/3/a-bb912e.pdf> (5 August 2018)

¹⁴² <https://practicalaction.org> (2 August 2018)

¹⁴³ <http://www.fao.org/3/a-bb913e.pdf> (2 August 2018)

ments of these biodiverse small-scale farmers, including in the allocation of the Benefit Sharing fund". The organization also refers to the procedures for participation that have been established by the FAO Committee on World Food Security (CFS).

The **South Centre**¹⁴⁴ is an intergovernmental organization of developing countries focusing on development-related policy issues. In their submission¹⁴⁵ from 28 November 2014, the South Centre recalls that balancing rights of farmers (as 'donors' and custodians of PGRFA) and intellectual property rights for breeders of commercial varieties (that are developed by using PGRFA) was at the very inception of the concept of Farmers' Rights.

This concept existed already and was referred to in FAO Resolutions¹⁴⁶ when the 1991 Act of the UPOV Convention was negotiated and adopted. However, compared to the 1978 Act of the UPOV Convention, Farmers' Rights were further restricted in the 1991 Act and depend on an (optional) exception in national law as well as on a number of conditions, established in Art. 14 and in the so-called Explanatory Notes that provide guidance on the interpretation of provisions laid down in the Act.¹⁴⁷ As a result, the 1991 Act of the UPOV Convention is not supportive to the realization of Farmers' Rights, but can effectively undermine them.

Thus, an incoherence can currently be observed in the international legal system, in that Farmers' Rights to save, use, exchange and sell seeds are recognized in the ITPGRFA, while at the same time they are restricted if a country is bound under the UPOV Convention in its 1991 version. In these countries, farmers face sanctions if they pursue activities that should be deemed legitimate and which are functional to society's interest in sustainable farming and food systems.

The South Centre concludes that the international community will have to take action to ensure consistency of the international legal system. Furthermore, with regard to the instruments of WIPO, the South Centre states that discussions of the concept of Farmers' Rights have been very limited, and that the issue has not been addressed systematically within WIPO.

The **UK Food Group**¹⁴⁸ is a network of around 50 development, environment, farmer and academic organizations in the UK working on global food and agriculture issues. In November 2014, the organization submitted views regarding the areas of interrelation between the Treaty, in particular its Article 9 (Farmers' Rights), and the relevant instruments of UPOV and WIPO¹⁴⁹. The UK Food Group underlines the importance of Farmers' Rights as they are recognized in the Treaty. Not only the requirements of the UPOV Convention, but also patent laws relevant to varietal and genetic trait protection, intellectual and seed variety related clauses in trade agreements, and restrictive commercial agreements and technologies, limit the full realization of Farmers' Rights.

¹⁴⁴ <https://www.southcentre.int> (14 July 2018)

¹⁴⁵ <http://www.fao.org/3/a-bb926e.pdf> (14 July 2018)

¹⁴⁶ See Section 1.1 for details.

¹⁴⁷ See the South Centre's submission for details.

¹⁴⁸ <http://www.ukfg.org.uk/> (11 July 2018)

¹⁴⁹ <http://www.fao.org/3/a-bb928e.pdf> (11 July 2018)

The UK Food Group would support establishing a detailed and comprehensive inventory of national and regional laws and regulations, including the relevant commercial environment and research activities, that impact on farmers' access to and sustainable use of PGRFA in order to improve understanding of the current situation, to address the impediments that these present to the full realization of Farmers' Rights, and to find out what steps are required internationally to ensure compliance.

With regard to the 1991 Act of the UPOV Convention, the UK Food Group sees a need for the statutes and activities to be substantially altered if it were to have any possible contribution to make to the realization of Farmers' Rights. Major criticisms include: (1) restrictions in re-use of seeds limit farmers' ability to adapt seeds to their local environment and markets; (2) no regulations available for the defense of local varieties and diverse plant populations that are essential for local food security; (3) reduced availability and access to farm-saved seed; (4) giving greater relative power to commercial plant breeders contributing to commercial farming systems compared to farmer breeders focusing on local food systems.

SUMMARY AND LESSONS LEARNED

- In their submissions, several of the submitting NGOs call for particular attention for the implementation of the right to participate in decision-making at national level as well as in international/regional processes that affect national legislations (see for example submissions of OXFAM Novib, 2018; The Development Fund, 2018; joint submission of ABPREBES/The Development Fund/Public Eye and Third World Network, 2018).
- They further call for rules that ensure that those farmers who are engaged in the conservation and sustainable use of PGRFA are represented in processes and institutions relating to PGRFA (see, for example, submission of Practical Action).
- International NGOs focusing on development issues share the opinion that the 1991 Act of the UPOV convention negatively affects Farmers' Rights in various respects and is not supportive to their realization. Areas of interrelation between Art. 9 of the Treaty and instruments of UPOV and WIPO are explained in detail in the submissions of these NGOs and concern all aspects of Farmers' Rights.
- The ISF as an association representing the seed industry has the position that the UPOV convention and the ITPGRFA could be implemented in a mutually supportive manner and encourages governments to include all relevant stakeholders, including representatives of farmer organizations, in decision-making on the conservation and sustainable use of PGRFA (see submission of ISF, 2018).
- The peasant farmer movement La Via Campesina makes clear that current processes for the implementation of farmers' Rights do not comply with their expectations and needs.
- Several of the submitting NGOs suggest reviewing and adjusting policies to resolve contradictions in international and national legal systems (see for example submissions of South Centre, 2014 and UK Food Group, 2014) and/or developing and implementing alternative *sui generis* laws for plant variety protection, rather than joining UPOV under the 1991 Act (see for example joint submission of ABPREBES/The Development Fund/Public Eye and Third World Network, 2018).

- Trade and commercial agreements that commonly include clauses on seed and intellectual property rights play an important role in putting pressure on developing countries to join UPOV in spite of possible negative effects on the implementation of Art. 9 at national level (see for example submissions of Berne Declaration and Third World network 2014; The Development Fund, 2014).
- Examples of good practices for the implementation of Farmers' Rights exist (see, for example, submission of FNI, 2018), but are given low priority in the development of government policies and strategies, which tend to largely ignore the existence and positive contributions of farmer-managed seed systems (see for example submission of The Development Fund, 2018; Practical Action, 2012).
- Lack of capacity is one of the reasons for the slow progress regarding the implementation of Farmers' Rights; some of the submitting NGOs, therefore, call for more efforts towards capacity building among key stakeholders (see, for example, submissions of the Development Fund, 2018 and FNI 2014 and 2018).
- Farmers' seed systems should be assessed not only in order to provide farmers' with the necessary freedom of choice, but also with regard to their contribution to the objectives of the Treaty, as well as general priorities and needs that may exist in a country, for example with regard to improving food and nutrition security, mitigating climate risks, or enhancing sustainability and resilience of farming and food systems (see for example submissions of Berne Declaration and Third World Network, 2014; The Development Fund, 2014 and 2018; OXFAM Novib, 2018, FNI 2014, 2018).

Results of an online consultation to gather views and needs on the implementation of Farmers' Rights

An online consultation was conducted between 1 June to 15 August 2016 based on a request of the Governing Body to the Secretariat (Resolution 5/2015) to engage Contracting Parties and relevant organizations to gather information at national, regional and global levels for exchanging knowledge, views, experiences and best practices on the implementation of Farmers' Rights and to conduct a study on lessons learned from the implementation of Farmers' Rights as set out in Article 9 of the Treaty.

The online consultation was meant to provide an additional basis to the study. 166 respondents from 53 countries participated in the consultation, among them representatives of governmental and non-governmental organizations, seed industry, research institutions, farmer organizations and indigenous communities.¹⁵⁰

Only 18% of respondents rated the implementation of Farmers' Rights in their country as *“good”*, *“very good”* or *“excellent”*; 65% rated it as *“insufficient”* and 17% as *“fairly good/tolerable”*. Major challenges or obstacles included limited promotion of the wider use of local or locally adapted crops; lack of enabling conditions, e.g.

¹⁵⁰ <http://www.fao.org/3/a-bs783e.pdf> (24 July 2018)

limited awareness among farmers and decision-makers; limited financial and technical support; lack of or limited implementation of national measures; limited legal space to enable farmers to continue the conservation and use of PGRFA; and lack of interconnected policy making with regard to PGRFA¹⁵¹.

According to the respondents, both the existence and the non-existence of policy measures/legal frameworks can affect the various aspects of Farmers' Rights, either positively or negatively; this is explored in more detail for each aspect. Furthermore, awareness and capacity building initiatives play a major role in supporting the realization of Farmers' Rights.

Overall recommendations to the Governing Body included developing guidelines on the national implementation of Farmers' Rights; developing model laws and regulations; developing a study on lessons learned; training, networking and awareness creation activities; promoting the shared management of germplasm collections between farmers and researchers; strengthening diversified production systems and traditional agricultural systems, e.g. GIAHS.

Other consultations on Farmers' Rights

Multi-stakeholder-consultations on Farmers' Rights were held in Lusaka, Zambia, 2007; Addis Ababa, Ethiopia, 2010; and Bali, Indonesia in 2016, complemented by other national and regional consultations. These consultations, their achievements and recommendations are described briefly in Chapter 4 and in more detail in the submission of FNI.¹⁵² The submission of FNI also provides links to the reports and other documents related to these consultations.

The Bali Consultation¹⁵³ resulted in a summary of recommendations for the Governing Body and/or Contracting Parties; however, the focus is less on national measures (other than those that have been identified and proposed in previous sections), but rather on steps supporting their implementation. This is why they could provide an important additional input to further work towards the realization of Farmers' Rights.

6 SYNTHESIS: CONTRACTING PARTIES' AND STAKEHOLDERS' VIEWS, EXPERIENCES AND NATIONAL MEASURES PROPOSED FOR THE IMPLEMENTATION OF ART. 9

In this chapter, the range of views and experiences as well as proposed national measures for the implementation of Art. 9 are summarized and assessed, based on the five aspects of Farmers' Rights that were presented in Figure 1 (Chapter 3).

¹⁵¹ This list is not exhaustive; see <http://www.fao.org/3/a-bs783e.pdf> (24 July 2018) for more details,

¹⁵² http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/submissions/FRs_FNI.pdf (8 August 2018)

¹⁵³ See the proceedings: IT/GB-8/AHTEG-FR-1/18/Inf.4

Views, experiences and national measures for the recognition of local and indigenous communities' and farmers' contributions to the conservation and development of PGRFA (Art. 9.1)

All Contracting Parties have generally affirmed their recognition of local and indigenous communities' and farmers' contributions to the conservation and development of PGRFA by signing the Treaty. It is generally accepted, in accordance with the Preamble of the Treaty, that these contributions form the basis for the realization of Farmers' Rights.

If and how Contracting Parties address the issue at national level varies widely. Some Contracting parties have created awards for farmers and communities or assign specific roles to experienced individuals or farmer families — for example in knowledge sharing activities or as advisors for government programs and other activities. Also, the recognition of landscapes or sites such as GIAHS involves direct and explicit recognition. Other Contracting Parties do not see any specific need for explicit recognition or for creating any special measures.

Recognition of farmers contributions is, however, also shown indirectly, for example if governments or other stakeholders provide funding to projects implemented by farmers or farmer organizations for the conservation and sustainable use of PGRFA, e.g. via national funds or special programs to which farmers can apply. Such options were actually mentioned in many submissions. Furthermore, recognition is also implicitly shown if farmers participate in breeding programs, programs for on-farm conservation and evaluation of PGRFA or other similar activities, or if they are represented in committees and other relevant institutions.

Recognition to indigenous peoples and communities obviously depends on whether such peoples and communities are present in a state's territory. If this is the case, they are often specifically addressed and have their own representatives in relevant processes and institutions.

Some submissions also report on cases of 'non-recognition', particularly of how local communities' and farmers' seed management could contribute to the objectives of the Treaty itself, or to broader policy goals, including food and nutrition security, adaptation to climate risks or more sustainable and resilient farming and food systems. If farmer-managed seed systems are entirely disregarded in policies and legal frameworks, even in countries that largely rely on such seed systems for their food production, this can hardly be seen as a way of expressing recognition.

Views, experiences and national measures for the protection of traditional knowledge relating to PGRFA (Art. 9.2.a)

It has frequently been stated that protection of traditional knowledge entails protection against misappropriation as well as protection against 'erosion' or loss of such knowledge.

Regarding the risks of misappropriation, some Contracting Parties refer to existing legislations, e.g. plant variety protection, patent and copyright laws. Traditional knowledge that does not qualify for protection under these laws cannot be protected. It obviously depends on the exact legal content of these laws whether they

can effectively be used for the protection of traditional knowledge relating to PGRFA. A detailed assessment may be helpful for improving understanding and identifying elements of 'best practice' for various contexts.

Common obstacles, e.g. for protecting traditional or farmer varieties under plant variety protection laws that are in line with the UPOV Convention, have been described by a number of stakeholders, including for example GREEN Foundation. Some countries have addressed such obstacles by creating separate options for the protection of traditional and farmer varieties. Other countries have legislations in place that protect traditional knowledge held by indigenous peoples, or also by excluding such knowledge from protection via patents.

For the protection of traditional knowledge relating to PGRFA against loss and 'erosion', many Contracting Parties and stakeholders shared experiences. Proposed actions range from national dialogue for the identification of appropriate measures, the creation of databases, catalogues community biodiversity registers and Biocultural Protocols, knowledge sharing with researchers, networks of interested individuals, training centers for capacity building, etc.

What can be observed here is that there are basically two general approaches again, those focusing on the knowledge itself and on documenting/sharing its contents, and others focusing on knowledge holders or actors and on strengthening their respective capacities, activities and networks. Since traditional knowledge relating to PGRFA, just as the PGRFA themselves, tends to continually evolve, approaches that focus on capacity building of actors and networks may have certain advantages for traditional knowledge to stay 'up to date' and relevant to the actors.

Views, experiences and national measures for equitable participation in the sharing of benefits arising from the utilization of PGRFA (Art. 9.2.b)

All Contracting Parties have agreed to the Benefit Sharing provisions of the Treaty itself. However, submissions of Contracting Parties and stakeholders vary widely with regard to the views and experiences shared and the national measures proposed for equitable participation in benefits arising from the utilization of PGRFA.

Several Contracting Parties share the view that farmers in general benefit from the availability of newly bred varieties and in some cases (depending on the crop species) from the possibility to save and re-sow seed with lower royalties than what would need to be paid for the original seed. While it is certainly true in general that farmers benefit from breeding activities, it is also known that not all groups of farmers may benefit equally, particularly if they work under certain highly specific conditions that make it economically less viable for breeding companies to invest in breeding efforts that target such conditions. Farmers who work under such specific conditions, grow particular 'minor' crops or follow different production objectives, like for example organic/biodynamic farmers, often feel that they do not benefit sufficiently from existing breeding programs, even though they may be particularly interested in conservation and management of PGRFA, or in following their own breeding activities. Hence, indirect measures for benefit sharing like those proposed above bear the

risk that they cannot support all farmers equally, or not particularly those who contribute to the conservation and management of PGRFA.

National benefit sharing funds have been established or proposed by other Contracting parties and stakeholders. Such funds offer opportunities for more targeted benefit sharing, depending on the funding criteria they have developed. The effects and impacts of the proposed national measures for benefit sharing on the conservation, management and sustainable use of PGRFA and on farmers who engage in such activities would deserve further analysis.

Government funding for such farmer activities through various programs have also been mentioned as an option for benefit sharing at national level — even though it is less clear in this case how the relation is between benefits from the use of PGRFA and the funding of such programs. Likewise, this relation is also weak for other agricultural policies and programs that aim to provide benefits to farmers in general.

Views, experiences and national measures for participation in decision-making at the national level (Art. 9.2.c)

National measures for the participation in decision-making at national level are reported in nearly all submissions of Contracting Parties. However, some refer to general participation processes that are in place in their country or in relation to agricultural policies in general, not specifically for decision-making on PGRFA. In many cases, representatives of farmer organizations are also represented in relevant institutions and committees, e.g. variety release committees or committees focusing on conservation of PGRFA.

Most submissions do not provide details on how the farmer representatives are selected, how many of them are represented in committees that involve other stakeholders as well, and how much influence they actually have on relevant processes. Also, details are scarce as to how different groups of farmers are represented, e.g. farmers operating at large or small scale, women and men, or farmers whose work is based on different sets of values and principles compared to the 'mainstream' of farmers in their country, e.g. organic/biodynamic farmers or farmers belonging to indigenous peoples and communities.

Particularly in countries where only a minority of farmers engages with activities for conservation and use of PGRFA, there is a risk that their voices and needs remain largely unheard. Hence, highly institutionalized participation processes can *de facto* exclude certain groups of farmers who play an active role in the conservation and use of PGRFA.

Just like in the case of traditional knowledge protection, a stronger focus on actors and their activities and networks could possibly help identify those groups of farmers who most actively contribute to the conservation and use of PGRFA, and who could thus contribute to the development of programs, processes and legal frameworks with their expertise and experience.

Views, experiences and national measures for realizing Farmers' Rights to save, use, exchange and sell seeds (Art. 9.3)

In contrast to the other aspects of Farmers' Rights, the right to save, use, exchange and sell seed and other propagating materials is framed in Art. 9.3 of the Treaty as *"nothing should be interpreted to limit rights farmers may have to save, use, exchange and sell seeds"* this implies that farmers may or not have these rights, for example depending on the legal situation in each country or also depending on the crop and production objective (e.g. private or commercial).

Several stakeholders emphasize in their submissions that the right to save, use, exchange and sell seed is not only fundamental for the realization of Farmers' Rights, but also to achieving other objectives of the Treaty as well as food and nutrition security, improved livelihoods of farmers and sustainable farming and food systems in general. Other Contracting Parties state that by establishing seed quality standards and plant variety protection that both together restrict individual farmers' rights to sell and exchange seed, agricultural yields and incomes of farmers would increase.

This apparent contradiction may be addressed by looking deeper into the various aspect of context that have led Contracting Parties and other stakeholders to taking the views they share in their submissions. Furthermore, it would also be useful to improve understanding why not all farmers agree that legal frameworks that restrict their seed-related practices and rights are beneficial to them.

Lastly, the right to save, use, exchange and sell seed is strongly related to other aspects of Farmers' Rights, e.g. protection of traditional knowledge, and particularly practical know-how and skills that form part of such knowledge. Hence, maintaining a legal space for such practices to continue would open up possibilities for the protection of important elements of knowledge which would otherwise be likely to lose relevance.

7 WAY FORWARD: FROM SHARING VIEWS AND EXPERIENCES TOWARDS IDENTIFYING ELEMENTS OF 'BEST PRACTICES'

In this chapter, some more far-reaching observations are shared that may be relevant for further work aiming to identify elements of 'best practices' for the implementation of Art. 9, Farmers' Rights.

Assess options for the realization of Farmers' Rights in relation to broader objectives, needs and priorities

The submissions show that each element of Farmers' Rights can be addressed either by specific, targeted measures that aim specifically at the realization of that particular aspect of Farmers' Rights, by measures that target various different aspects of Farmers Rights, or by measures that form part of a broader approach and set of objectives, e.g. improving sustainability and resilience of farming and food systems or improving nutrition and health. Also, landscape-based approaches and programs, such as GIAHS or Biosphere Reserves, have broader sets of objectives, which can however be synergistic to the realization of Farmers' Rights in their target area.

Taking the broad array of possible options for the realization of Farmers' Rights into account could be considered part of a process through which individual countries could assess their priorities and needs, and how Farmers' Rights could effectively contribute to addressing them.

Broaden the base of evidence

When going through the sections in Chapter 5, it can be observed that only few Contracting Parties and relevant stakeholders have participated in the process of submitting views on the implementation of Art. 9, Farmers' Rights. Particularly, there are only very few contributions of farmer organizations. On the other hand, a broad range of stakeholders have been reached through the various consultations.

The range of approaches, activities and practices that are being implemented 'on the ground' can be expected to be much broader than what has been considered in this paper, including in countries from which views and experiences have not been submitted so far. Furthermore, information on outcomes and impacts of proposed national measures is limited, which makes it difficult to assess their potentials and limitations.

Therefore, it may be useful to broaden the base of evidence upon which views, experiences and proposed national measures are assessed, e.g. through 'fact finding' missions or independent scientific studies, also including assessments of outcomes and impacts of proposed measures. This could help increase the range of options available for the implementation of Art. 9 at national level, as well as deepen the understanding of their respective potentials, limitations and impacts.

Assess context-related factors systematically

So far, views, experiences and national measures have been compiled and summarized, mainly without further analyzing the context in which or for which such views, experiences and national measures have been described, proposed or implemented. Submissions vary widely with regard to the level of detail provided or the degree of analysis offered in this regard.

For further activities aiming to collect, analyze and share views and experiences, e.g. studies or surveys, context-related factors should be assessed systematically. For example, it makes a difference for the views, experiences and measures if most of the seed used in a country is being produced by farmers and shared through farmer-managed seed systems, or if only a minority of interested farmers is involved in such activities. Furthermore, some countries host a rich diversity of crops and varieties, including extant and farmer varieties, whereas in other countries, the main staple food crops that are used nowadays do not have a long history of cultivation and use in these countries. Hence, such information is important for understanding and assessing the different views, experiences and national measures proposed by Contracting Parties and relevant stakeholders.

Address aspects of socio-economic and cultural diversity

In the majority of documents that were assessed for this paper, farmers tend to be addressed as a group without much differentiation among, for example, farmers operating at different scales, with different production objectives or under different sets of conditions. However, in many countries, large-scale farms may exist

alongside small family farms or women and men may grow different crops, or different varieties of the same crop, under different conditions. Furthermore, some groups of farmers may work based on different sets of cultural values than other colleagues, e.g. indigenous farmers or the organic farming community.

Consequently, different groups of farmers and their respective market partners may have different priorities, knowledge, practices and needs with regard to the conservation and use of PGRFA.

In the submissions that were evaluated for this paper, little information is provided on this socio-economic and cultural diversity among farmers of various countries. The important role of women farmers as custodians of PGRFA is occasionally mentioned, and very rarely are different groups of farmers represented in relevant institutions, but no convincing approach to addressing diversity has been proposed so far in the discussion on the implementation of Art. 9.

However, this differentiation is required to support those farmers more effectively who play an active role in creating, conserving and managing diversity of PGRFA. For example, it may be difficult to effectively protect traditional knowledge without a clear understanding of the various 'knowledge communities' that are potential holders of such knowledge. Also, questions could be raised with regard to the representation of various groups of farmers in processes and institutions where decisions relating to the conservation and use of PGRFA are made.

Actively seek for inclusion of farmers' perspectives

Farmer organizations have so far rarely participated directly in discussions on the implementation of Art. 9, Farmers' Rights. Even though in some submissions it is stated that farmer organizations have been involved, there are very few independent statements of farmers and their organizations.

This leads to the situation that mainly others, e.g. governments, research organizations and NGOs, discuss how traditional knowledge related to PGRFA can be protected, how farmers can participate in sharing benefits from the use of PGRFA in an equitable manner or more generally what is deemed 'beneficial' for farmers and what are 'appropriate' ways of implementing their rights.

This is why it seems advisable to actively seek the participation of farmer organizations that represent the diversity of the farming community as far as possible, and particularly those who conserve and sustainably use PGRFA, in further discussions on proposed measures for the implementation of Art. 9, Farmers' Rights, and to identify and address issues that may have hindered their active participation in the process so far.

Develop 'quality criteria' for assessing proposed measures

Best practices can only be identified and described based on a set of agreed-upon criteria, against which proposed measures for the implementation of Art. 9, Farmers' Rights can be assessed. Otherwise, anything could be declared as a good practice under some aspect or point of view.¹⁵⁴ Developing such criteria may be one of

¹⁵⁴ Work on these issues has been initiated by Andersen and Winge (2013) (see also Chapter 8).

the major challenges in the process of identifying best practices and developing guidelines for the implementation of Art. 9.

For certain elements of Farmers' Rights, Contracting Parties and relevant stakeholders have referred in their submissions to processes that are already going on elsewhere, e.g. in the UN System or other treaties; for example, good practices for participation in decision-making, or ways to define and protect traditional knowledge.

In order to save time and resources, and to ensure consistency with other initiatives, it is advisable to review, in a systematical manner, which other initiatives exist in the UN System or other treaties that relate to the various elements of Farmers' Rights, and to compile elements of established practices that are relevant to Farmers' Rights. A major step forward could be to agree that practices and guidelines that may be developed for the implementation of Art. 9 of the Treaty should not fall behind already established standards.

Address issues of scale

In many submissions, Contracting Parties and relevant stakeholders proposed measures that address the implementation of Farmers' Rights at various scales. For example, *in situ* management of PGRFA is usually implemented in villages and communities, while reviewing and adjusting policies takes place at the national level.

One major challenge for the discussion on options and best practices for the implementation of Art. 9 will be to find ways how activities that take place at various scales can be connected effectively. For example, for farmers to participate in decision-making at national level, a defined process of participation that allows individual farmers and/or their organizations to discuss and submit views or to propose measures may be more effective for connecting between different scales than appointing one 'farmer representative' who participates in meetings, etc.

For practical activities that take place at local level, e.g. community seed banks or community biodiversity management, it is possible to link such initiatives or even individual actors to regional or national 'head offices', e.g. like in the case of some networks of farmer breeders of seed savers. In such cases, the 'head offices' often relieve their members from administrative tasks, summarize and provide information and take part in policy discussion.

Furthermore, cooperation between individual farmers, communities or farmer organizations and national programs can be a way of connecting between scales. Also, support and capacity building to local actors to facilitate their participation in national processes or to enhance their capacities to exercise rights have been proposed by some Contracting Parties and stakeholders.

Linking initiatives that take place at different scales offers opportunities, for example more efficient use of resources or improved information flow, with advantages for taking better informed decisions at other scales.

Further research needs

Some gaps in understanding were identified while conducting this paper, which would need to be addressed in future research. One such issue is that among the countries that have joined UPOV under the 1991 Act of

the Convention, there are important differences with regard to exemptions from the scope of breeders' rights. Some Contracting parties stated that farmers in their countries have the right to save and re-sow seed on their own land (without any limitations mentioned), while in other countries, this right seems to be much more restricted, e.g. limited to certain crops, areas of land or subject to payments or other conditions. Furthermore, some Contracting Parties state that farmers have the right to freely save, use, exchange and save seeds of non-protected varieties, whereas this may be subject to conditions in other countries.

Thus, it would be helpful to study in more detail how the right to save, use, exchange and save seed is presently realized in various jurisdictions by comparing exemptions from plant breeders' rights, also in combination with the effects of seed legislations.

8 CONCLUDING REMARKS

This paper is an attempt to systematically review views, experiences and proposed national measures for the implementation of Art. 9, Farmers' Rights, in an ongoing process of preparing an inventory of such measures and identifying elements of 'best practices'. It relies on an independent assessment of a limited set of documents, and the observations shared as 'Synthesis' and 'Way forward' in preceding Chapters are based only on this assessment.

However, it should be said that earlier work done by other researchers, using different approaches, points in the same direction. For example, Andersen and Winge (2013), based on an assessment of 'success stories' for the realization of Farmers' Rights, present partly similar conclusions. One main factor of success identified by these authors was that farmers' perceptions, realities and own initiatives should be the main departure point for action relating to the realization of Farmers' Rights. Likewise, the roles of various actors and institutions as well as challenges to scale up locally-based initiatives were addressed.

Thus, the findings of this paper, even though they rely on an independent analysis, are not completely new; rather, they gather a part of the rich knowledge that is already available with relevant actors, and which could be used to generate the necessary momentum to proceed towards the full realization of Farmers' Rights.

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APPENDIX

Overview of national measures for the implementation of Art. 9, Farmers' Rights

This overview of proposed national measures for the implementation of art. 9, Farmers' Rights, is derived from the submissions of Contracting Parties and other stakeholders that were summarized in Chapter 5.

Table 1: Overview of national measures for the implementation of Art. 9, Farmers' Rights, proposed by Contracting Parties and/or relevant stakeholders.

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
Africa					
<ul style="list-style-type: none"> Capacity/awareness building 	<ul style="list-style-type: none"> Encourage farmers to engage in in situ/on farm conservation 	Proposed	Benin	Africa	Contracting Party
<ul style="list-style-type: none"> Participation in decision-making Other activities at local level 	<ul style="list-style-type: none"> Form farmer associations, groups or cooperatives for the management of natural resources Connect Farmers' Rights to income-generating activities in rural areas 	Proposed	Central African Republic	Africa	Contracting Party
		Proposed			
<ul style="list-style-type: none"> Review/adjust policies Protection of traditional knowledge Participation in decision-making Save, use, exchange and sell seed 	<ul style="list-style-type: none"> Develop national guidelines for access and benefit sharing that include principles/practices such as Prior Informed Consent, Mutually Agreed Terms Ensure participation of PGRFA custodians in decision-making and compensation Provide support to farmers to continue their seed-related practices 	Proposed	Eswatini	Africa	Contracting Party
		Proposed			
		Proposed			
<ul style="list-style-type: none"> Participation in decision-making Participation in decision-making Capacity/awareness building 	<ul style="list-style-type: none"> Conduct 'Debriefing' meetings in the country after important events, e.g. consultations on Farmers' Rights or Sessions of the Governing Body (also to create awareness) Use Biocultural Community Protocols to enforce Farmers' Rights Conduct awareness events for farmers on their rights 	Done	Madagascar	Africa	Contracting Party
		Done			
		Done			
<ul style="list-style-type: none"> Review/adjust policies Recognition/protection of traditional knowledge 	<ul style="list-style-type: none"> Establish a variety catalogue for traditional varieties so that they qualify for the production of certified seed Encourage farmer-researcher collaboration 	Proposed	Mali	Africa	Contracting Party
		Proposed/done			

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> • Participation in decision-making • Capacity/awareness building • Other activities at local level/ save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Conduct multi-stakeholder workshops (including farmers) on priority setting for national activities relating to PGRFA • Create awareness regarding the key role of traditional/farmer varieties for food and seed sovereignty. • Promote approaches such as seed fairs, community seed banks and participatory plant breeding 	<p>Done</p> <p>Proposed/done</p> <p>Proposed/done</p>			
<ul style="list-style-type: none"> • Capacity/awareness building • Other activities at local level/save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Conduct workshops and farmer gatherings on issues relating to PGRFA • Support on-farm conservation 	<p>Done</p> <p>Done</p>	Namibia	Africa	Contracting Party
<ul style="list-style-type: none"> • Review/adjust policies • Benefit-sharing • Participation in decision-making • Capacity/awareness building 	<ul style="list-style-type: none"> • Establish a variety catalogue for traditional varieties so that they qualify for the production of certified seed. • Revise the SMTA in order to clearly state the percentage of monetary benefits that is to be paid to farmers and other actors involved. • Create a national committee on PGRFA with participation of all actors (including farmers) • Organize workshops at various locations for awareness creation on Farmers' Rights, including for policy and decision-makers, researchers, trainers/extensionists, farmers, private sector, etc. 	<p>Proposed</p> <p>Proposed</p> <p>Proposed</p> <p>Proposed</p>	Niger	Africa	Contracting Party
<ul style="list-style-type: none"> • Review/adjust policies 	<ul style="list-style-type: none"> • Draft a legislation on plant genetic resources and plant variety protection, also including necessary measures for Farmers' Rights 	<p>Done</p>	Sudan	Africa	Contracting Party
<ul style="list-style-type: none"> • Review/adjust policies • Protection of traditional knowledge • Benefit-sharing 	<ul style="list-style-type: none"> • Establish a Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act (2016) • Revise Plant Breeders' Rights Act to accommodate informal seed systems/Farmers' Rights • Make benefit sharing more relevant at national and community level, e.g. through a national fund 	<p>Done</p> <p>Proposed</p> <p>Proposed</p>	Zambia	Africa	Contracting Party

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> • Participation in decision-making • Capacity/awareness building • Other activities at local level/save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Support a multi-actor dialogue process that involves all stakeholders in a broader seed value chain • Strengthen farmers' knowledge and awareness on issues relating to crop diversity and seed • On-farm conservation of PGRFA through participatory evaluation of landraces, participatory variety selection, seed diversity fairs and field days 	<p>Proposed</p> <p>Proposed</p> <p>Proposed/done</p>			
<ul style="list-style-type: none"> • Recognition/participation in decision-making 	<ul style="list-style-type: none"> • Address women as custodians of PGRFA 	Proposed	South Africa	Africa	Biowatch
Asia					
<ul style="list-style-type: none"> • Review/adjust policies • Recognition • Protection of traditional knowledge • Capacity/awareness building • Other activities at local level/save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Establish policies that are favorable for the implementation of Farmers' Rights • Conduct activities for active empowerment of farmers in their role as custodians of agrobiodiversity • Build awareness on farmers' role as custodians of PGRFA • Conduct seed fairs and biodiversity exhibitions, facilitate seed exchange and on-farm conservation, e.g. through seed selection, value addition, product development and marketing, and community seed banks 	<p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p>	Bhutan	Asia	Contracting Party
<ul style="list-style-type: none"> • Review/adjust policies • Recognition/protection of traditional knowledge/benefit-sharing/participation in decision-making/capacity/awareness building/other activities at local level/save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Establish an Act and Authority for the implementation of Plant Variety Protection and Farmers' Rights • Address Farmers' Rights in a comprehensive manner and through a variety of measures, including participation in decision making, protection of farmer varieties, rewards and recognition for farmers and communities, protection of rights to save, use, exchange and sell seeds, training and capacity building, support to local actors and institutions 	<p>Done</p> <p>Done</p>	India	Asia	Contracting Party
<ul style="list-style-type: none"> • Protection of traditional knowledge/ Benefit-sharing 	<ul style="list-style-type: none"> • Establish and follow the procedure of Prior Informed Consent (PIC) for work with indigenous communities. 	Proposed/done	Nepal	Asia	LI-BIRD

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> Review/adjust policies Protection of traditional knowledge Other activities at local level/ save, use, exchange and sell seed 	<ul style="list-style-type: none"> Review policies from the perspective of farmers' seed systems Develop and implement (1) a sui generis plant variety protection and Farmers' Rights provision; and (2) a legal framework for the implementation of other provisions of the ITPGRFA at national level Conduct participatory plant breeding, participatory variety selection, local/small seed enterprises, community seed banks 	<p>Done</p> <p>Proposed</p> <p>Done</p>	Nepal	Asia	LI-BIRD and The Development Fund
<ul style="list-style-type: none"> Review/adjust policies/recognition Other activities at local level/save, use, exchange and sell seed 	<ul style="list-style-type: none"> Assess potentials of farmers' seed systems in the broader context of increasing sustainability and resilience of food and farming systems Adjust/develop policies accordingly Facilitate Farmer-to-Farmer Ecological Seed Response 	<p>Done</p> <p>Proposed</p> <p>Proposed/done</p>	Philippines	Asia	Greenpeace South Asia – Philippines
<ul style="list-style-type: none"> Review/adjust policies/capacity/awareness building 	<ul style="list-style-type: none"> Promote a 'stewardship' approach 	Proposed	India	Asia	GREEN Foundation
<ul style="list-style-type: none"> Review/adjust policies 	<ul style="list-style-type: none"> Develop shared definitions and methodologies on/ options for the implementation of Farmers' Rights with UPOV/WIPO/ITPGRFA 	Proposed	Asian Region	Asia	SEARICE
Europe					
<ul style="list-style-type: none"> Benefit-sharing/other activities at local level 	<ul style="list-style-type: none"> EU support for farmers who maintain landraces and local varieties 	Proposed/done	Finland	Europe	Contracting Party
<ul style="list-style-type: none"> Protection of traditional knowledge Benefit-sharing Participation in decision-making 	<ul style="list-style-type: none"> Use Geographical Indications, copyright law Ensure steady progress in plant breeding Use the optional exception under UPOV Provide public funding for activities of farmer groups/associations relating to PGRFA Ensure representation of farmers in technical committees, institutions etc. relating to PGRFA Allow mutual assistance among farmers 	<p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p>	France	Europe	Contracting Party

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> • Other activities at local level/Save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Market seed of conservation varieties • Support on-farm conservation 	<p>Done</p> <p>Done</p>			
<ul style="list-style-type: none"> • Protection of traditional knowledge • Benefit-sharing • Participation in decision-making • Capacity/awareness building • Save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Publish/share traditional knowledge, e.g. via books, websites. • Ensure steady progress in plant breeding, plant variety protection system • Ensure farmers' participation in setting up bills, in developing strategies etc. • Build capacities in practical skills relating to PGRFA (e.g. cultivation and gardening techniques), training centers • Facilitate the use of conservation varieties or varieties of crops that do not require registration 	<p>Done</p> <p>Done</p> <p>Done</p> <p>Done (with involvement of various actors)</p> <p>Done</p>	Germany	Europe	Contracting Party
<ul style="list-style-type: none"> • Other activities as local level 	<ul style="list-style-type: none"> • Launch regional/local government initiatives • Create and make use of synergies among scientific institutions, regions and other local institutions as well as NGOs 	<p>Done</p> <p>Done</p>	Italy	Europe	Contracting party
<ul style="list-style-type: none"> • Participation in decision-making 	<ul style="list-style-type: none"> • Develop guidelines for the representation of farmers 	<p>Done</p>	Malta	Europe	Contracting Party
<ul style="list-style-type: none"> • Review/adjust policies • Recognition • Protection of traditional knowledge • Benefit-sharing • Capacity/awareness building 	<ul style="list-style-type: none"> • Take a balanced approach to plant variety protection, considering/accommodating Farmers' Rights and plant breeders' rights • Adjust seed legislation to facilitate use of traditional/farmer varieties • Appoint experienced farmers/gardeners as advisors, e.g. for government programs • Establish an Annual Plant Heritage Award • Improve/facilitate knowledge sharing, e.g. through databases • Provide public funding to breeding company co-owned by farmers • Conduct multi-stakeholder consultations at various levels 	<p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p>	Norway	Europe	Contracting Party

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> • Participation in decision-making • Save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Conduct annual consultations between government and farmers' union • Ensure representation of farmers in committees, institutions etc. relating to PGRFA • Maintain legal space (e.g. UPOV 78) for farmers to save and use farm-saved seed, including of protected varieties 	<p>Done</p> <p>Done</p> <p>Done</p>			
<ul style="list-style-type: none"> • Protection of traditional knowledge • Other activities as local level 	<ul style="list-style-type: none"> • Use Geographical Indications to protect and promote traditional food crops and products • Develop Action Plans and related funding schemes to which farmers who maintain and use PGRFA can apply 	<p>Done</p> <p>Done</p>	Poland	Europe	Contracting Party
<ul style="list-style-type: none"> • Participation in decision-making • Other activities as local level 	<ul style="list-style-type: none"> • Establish a Council and working group for the development of measures for the implementation of Art.9 • Develop actions to support conservation and sustainable use of PGRFA based on rural development programs (with EU co-funding; like many other EU member states) 	<p>Done</p> <p>Done</p>	Slovenia	Europe	Contracting Party
<ul style="list-style-type: none"> • Review/adjust policies • Protection of traditional knowledge 	<ul style="list-style-type: none"> • Establish laws and regulations to facilitate access to PGRFA, e.g. conservation varieties • Establish a national inventory of traditional knowledge relating to PGRFA 	<p>Done</p> <p>Done</p>	Spain	Europe	Contracting Party
<ul style="list-style-type: none"> • Protection of traditional knowledge • Benefit-sharing 	<ul style="list-style-type: none"> • Establish a national law on the utilization of genetic resources and traditional knowledge about such resources • Share, but declare the use of traditional knowledge ('due diligence') • Establish appropriate measures/consultation processes for protecting indigenous people's traditional knowledge • Make all PGR held in the public domain freely available to all users (no intellectual property rights can be claimed in such material) • Enhance/facilitate/maintain cooperation between farmers and plant breeders 	<p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p>	Sweden	Europe	Contracting Party

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> • Participation in decision-making • Save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Ensure representation of farmer organization in decision-making processes • Allow farmers to save and use farm-saved seed of protected varieties on their own holdings (in Sweden restricted by production amount/area) 	<p>Done</p> <p>Done</p>			
<ul style="list-style-type: none"> • Review/adjust policies • Participation in decision-making • Save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Develop a National Action Plan for the conservation and sustainable use of PGRFA • Develop a legislation for 'niche' varieties • Consult with farmer organizations systematically and ensure their participation in decision-making processes • Ensure participation of farmers in establishing Action Plans, programs and projects that concern conservation and use of PGRFA • Allow farmers to save and use seed of protected varieties if the material was legally acquired (at least once) 	<p>Done</p> <p>Done</p> <p>Done</p> <p>Done</p>	Switzerland	Europe	Contracting Party
<ul style="list-style-type: none"> • Other activities at local level/save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Develop a regional (Scottish) Landrace Conservation Scheme 	<p>Done</p>	United Kingdom	Europe	Contracting Party
<ul style="list-style-type: none"> • Review/adjust policies • Save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Establish regional seed legislation, including a Voluntary Regional Variety Register • Allow farmers to save, use, exchange and sell small amounts of seed of varieties of local interest without requiring registration in the National Variety Catalogue 	<p>Done</p> <p>Done</p>	Italy	Europe	Centro Internazionale de Crocevia
<ul style="list-style-type: none"> • Participation in decision-making 	<ul style="list-style-type: none"> • Ensure participation of farmers who engage in the conservation, dynamic on-farm management and sustainable use of PGRFA, e.g. farmer varieties, in relevant processes and institutions 	<p>Proposed</p>	France	Europe	Confédération paysanne
<ul style="list-style-type: none"> • Save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Ensure that farmers have a choice whether to use protected or non-protected varieties 	<p>Proposed</p>	European region	Europe	ESA
<ul style="list-style-type: none"> • Benefit-sharing 	<ul style="list-style-type: none"> • Provide funding for activities that strengthen/ enhance the conservation and sustainable use of PGRFA 	<p>Done</p>	EU & Third parties	Europe	EU Commission

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> Other activities at local level 	<ul style="list-style-type: none"> Use EU funding/co-funding for supporting local/regional activities (among many other measures that influence activities of EU member and non-member states) 	Done			
Latin America and the Caribbean					
<ul style="list-style-type: none"> Review/adjust policies Recognition Protection of traditional knowledge Participation in decision-making Save, use, exchange and sell seed 	<ul style="list-style-type: none"> Develop legal frameworks that support the rights of indigenous peoples and small-scale farmers Designate farmer families as 'biodiversity guardians' and give them an active role, e.g. in knowledge exchange with researchers Develop activities for documenting, valuing and sharing traditional knowledge Follow agreed-upon steps for research conducted on indigenous territories, including on PGRFA Conduct strategic planning workshops with representative organizations of indigenous peoples (e.g. for developing a national biodiversity strategy) Create legal space for and encourage/support farmers to save, use, exchange and sell seeds of local/traditional varieties Maintain legal space for farmers to save and use seed of protected varieties under certain defined conditions 	<ul style="list-style-type: none"> Done Done Done Done Done Done 	Plurinational State of Bolivia	Latin America/ Caribbean	Contracting Party
<ul style="list-style-type: none"> Recognition/Protection of traditional knowledge Benefit-sharing/other activities at local level Participation in decision-making 	<ul style="list-style-type: none"> Identify GIAHS and similar Agricultural Heritage Sites of national importance Establish a state foundation to support to support innovation in the agricultural and food sector through which farmers can apply for funding of self-developed activities relating to PGRFA Establish a public-private roundtable and technical expert group on PGRFA under a unit of the Ministry of Agriculture Establish a technical expert group specifically for issues relating to PGRFA that are important to small-scale women farmers 	<ul style="list-style-type: none"> Done Done Done Done 	Chile	Latin America/ Caribbean	Contracting Party

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> Review/adjust policies Protection of traditional knowledge Capacity/awareness building Other activities at local level 	<ul style="list-style-type: none"> Review, adjust or create several legal instruments to better comply with provisions of the ITPGRFA and other treaty obligations Revise the seed legislation to accommodate Farmers' Rights Create a legal instrument for the protection of traditional knowledge Participate in international donor-funded projects on capacity and public awareness building on the importance of farmer-managed agrobiodiversity and the farmers' role as custodians of agrobiodiversity as well as seed and food diversity fairs Mainstream activities for agrobiodiversity conservation and sustainable use in activities of Cuban Biosphere Reserves 	<p>Done/started</p> <p>Proposed</p> <p>Proposed</p> <p>Done</p> <p>Done</p>	Cuba	Latin America/Caribbean	Contracting Party
<ul style="list-style-type: none"> Review/adjust policies/participation in decision-making 	<ul style="list-style-type: none"> Develop a national seed policy based on the FAO Voluntary Guide for National Seed Policy Formulation 	Done	Costa Rica	Latin America/Caribbean	Contracting Party
<ul style="list-style-type: none"> Review/adjust policies/recognition/protection of traditional knowledge/ benefit sharing/ participation in decision-making Capacity/awareness building/save, use, exchange and sell seed/other activities at local level 	<ul style="list-style-type: none"> Establish a national law on agrobiodiversity, seeds and sustainable agricultural development which recognizes all elements of Farmers' Rights (also rights of indigenous communities/peoples, not only related to PGRFA or the Treaty) Provide administrative and technical support to small and medium seed producers, seed associations and enterprises to support capacity development for the conservation, production and marketing of PGRFA 	<p>Done</p> <p>Done</p>	Ecuador	Latin America/Caribbean	Contracting Party
<ul style="list-style-type: none"> Protection of traditional knowledge/benefit-sharing/participation in decision-making/capac- 	<ul style="list-style-type: none"> Establish and facilitate <i>in situ</i> and <i>ex situ</i> conservation and participatory characterization, participatory breeding and production of high-quality seed, also in view of food security and income generation 	Done	Central America	Latin America/Caribbean	FMPA

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
ity/awareness building/save, use, exchange and sell seed					
Near East					
<ul style="list-style-type: none"> Save, use, exchange and sell seed/other activities at local level 	<ul style="list-style-type: none"> Establish activities for sustainable on-farm conservation and use of PGRFA within the framework of an international cooperation project 	Done	Lebanon	Near East	Contracting Party
<ul style="list-style-type: none"> Review/adjust policies Participation in decision-making Save, use, exchange and sell seed/other activities at local level Capacity/awareness building 	<ul style="list-style-type: none"> Develop a draft law for the implementation of provisions of the ITPGRFA at national level Farmers participate in decision-making through cooperation with national programs, e.g. participatory variety selection, <i>in situ</i> conservation Facilitate access to PGRFA of a broad range of (local and improved) crops and varieties through activities of government institutions and NGOs Provide technical support to farmers for selecting among varieties and for producing/sharing/selling their own seed 	<ul style="list-style-type: none"> Proposed Done Done Done 	Libya	Near East	Contracting Party
North America					
<ul style="list-style-type: none"> Protection of traditional knowledge Participation in decision-making Benefit sharing Save, use, exchange and sell seed 	<ul style="list-style-type: none"> Use existing laws, e.g. copyright, patent, industrial design, trademark, trade secrets and indigenous laws, for the protection of traditional knowledge relating to PGRFA Ensure representation of farmers in advisory committees, e.g. of institutions that deal with variety release or variety protection Make new varieties available to farmers on a continual basis Allow farmers to save, use, exchange and seed of genetic resources that are not subject to plant variety protection or seed legislation restricting such activities 	<ul style="list-style-type: none"> Done Done Done Done 	Canada	North America	Contracting Party

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> • Participation in decision-making • Benefit sharing • Save, use, exchange and sell seed 	<ul style="list-style-type: none"> • Ensure representation of farmers in advisory committees, e.g. of institutions that deal with variety release or variety protection • Design and implement a broad range of programs that support farmers in general • Allow farmers to save and re-sow seed on their own land unless restricted through agreements with seed companies 	<p>Done</p> <p>Done</p> <p>Done</p>	United States of America	North America	Contracting Party
South West Pacific					
<ul style="list-style-type: none"> • Review/adjust policies • Save, use, exchange and sell seed • Other activities at local level 	<ul style="list-style-type: none"> • Review policies and legislation on a regular basis, taking treaty obligations into account. • Exempt farm-saved seed for farmers' own use from infringement of plant breeders' rights • Support networking among interested farmers/seed sellers/individuals focusing on conservation and use of traditional varieties 	<p>Done</p> <p>Done</p> <p>Done (mainly by NGOs)</p>	Australia	South West Pacific	Contracting Party
International organizations					
<ul style="list-style-type: none"> • Review/adjust policies • Participation in decision-making 	<ul style="list-style-type: none"> • Use a tool proposed by Correa <i>et al.</i> (2015) for designing <i>sui generis</i> plant variety protection systems according to priorities and needs and in harmony with Art. 9 of the Treaty, CBD and Nagoya Protocol. • Revise plant variety protection laws following examples of countries like India, Malaysia, Thailand and the Philippines • For the implementation of Art. 9.2, specifically participation in decision-making at national level, rely on principles, instruments and tools that have been developed in the human rights and UN framework 	<p>Proposed</p> <p>Proposed</p> <p>Proposed</p>	(Global)	(Global)	ABPREBES, The Development Fund, Public Eye, Third World Network
<ul style="list-style-type: none"> • Review/adjust policies 	<ul style="list-style-type: none"> • Assess requirements of requirements of the 1978 and 1991 Acts of the UPOV Convention for their impacts on Farmers' Rights 	<p>Proposed</p>	(Global)	(Global)	The Development Fund

Area(s) of intervention	Proposed national measure(s)	Status of implementation	Country	Region	Proposed by
<ul style="list-style-type: none"> • Participation in decision-making 	<ul style="list-style-type: none"> • Assess national legislations with regard to their recognition of informal/farmer-managed seed systems and close existing gaps in national legislations that hinder the implementation of Art. 9 • Give more priority to the implementation of Farmers' Right to participate in decision-making on matters related to plant genetic resources 	<p>Proposed</p> <p>Proposed</p>			
<ul style="list-style-type: none"> • Capacity/awareness building/review/adjust policies/participation in decision-making 	<ul style="list-style-type: none"> • Conduct multi-stakeholder workshops • Operationalize what Farmers' Rights might mean • Derive options for implementation • Illustrate options with examples of 'good practice' 	Proposed/done	(Global)	(Global)	FNI
<ul style="list-style-type: none"> • Participation in decision-making 	<ul style="list-style-type: none"> • Include relevant stakeholders in decision-making processes on conservation and use of PGRFA 	Proposed	(Global)	(Global)	ISF
<ul style="list-style-type: none"> • Recognition • Participation in decision-making 	<ul style="list-style-type: none"> • Give special attention to the inclusion of women farmers as managers of biodiversity for food and nutrition security • Establish inclusive decision-making processes that ensure women's participation and respond to their roles and needs 	Proposed	(Global)	(Global)	OXFAM Novib
<ul style="list-style-type: none"> • Review/adjust policies 	<ul style="list-style-type: none"> • Make an inventory of national and regional laws affecting the implementation of Farmers' Rights at national level, including relevant commercial and research activities 	Proposed	(Global)	(Global)	UK Food Group

Selected global programs or projects

Globally Important Agricultural Heritage Systems (GIAHS) and Biosphere Reserves have been proposed by Contracting parties and/or relevant stakeholders as being supportive to the national implementation of Farmers' Rights. Both are global programs or projects with relevance to agrobiodiversity conservation, management and sustainable use.

GLOBALLY IMPORTANT AGRICULTURAL HERITAGE SYSTEMS (GIAHS)

The GIAHS program started as a global partnership initiative launched in 2002 at the World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa. Defined as remarkable land-use systems and landscapes rich in globally significant biological diversity that has evolved as the result of the co-adaptation of a community with its environment and its needs and aspirations for sustainable development, this initiative promotes international recognition of heritage agricultural systems and their custodians, small-scale farmers, indigenous peoples, and family farming communities.

GIAHS Sites have to fulfill five criteria, all of which are linked to several Sustainable Development Goals (SDGs). All GIAHS include sites with rich and unique agrobiodiversity and related local/traditional knowledge and are defined at the level of a cultural landscape or agroecosystem. The program strongly builds on participation, multi-stakeholder cooperation, and dynamic approaches to biodiversity conservation. A further important area of action is policy advice.

GIAHS contribute to the realization of Farmers' Rights by recognizing farmers' past, present and future contributions to agrobiodiversity conservation, management and sustainable use, and by protecting and valuing related traditional knowledge.

Currently, there are 50 GIAHS sites in 20 countries all over the world. The GIAHS program has recently been given official status through decisions taken by the 39th FAO Conference in 2015, making regular program resources available to support core operations of the GIAHS program, which has many important links to other FAO programs, including those supporting the implementation of the CBD Articles 10c and 8j and ITPGRFA Article 9.

References and further information

Information on GIAHS at the FAO website: <http://www.fao.org/giahs/background/a-global-partnership/en/> (5 July 2018)

FAO (no year). FAO Project Document: Conservation and adaptive management of globally important agricultural heritage systems (GIAHS). Food and Agriculture Organization of the United Nations (FAO), Rome. Available at: https://www.thegef.org/sites/default/files/project_documents/5-4-07%2520-%25202050%2520GIAHS%2520FSP_24April2007%2520final%2520without_0.pdf (8 August 2018).

FAO (2018). Globally Important Agricultural Heritage Systems. Combining agricultural biodiversity, resilient ecosystems, traditional farming practices and cultural identity. Food and Agriculture Organization of the United Nations (FAO), Rome. Available at: <http://www.fao.org/3/i9187en/I9187EN.pdf> (8 August 2018).

BIOSPHERE RESERVES

Biosphere Reserves are a worldwide network of ‘Learning Sites’, where conservation of biodiversity is embedded in social and economic development. They have been established since 1976 under the UNESCO’s Man and the Biosphere (MAB) program.

Each Biosphere Reserve includes three interrelated zones:

- The core area(s) comprises a strictly protected ecosystem that contributes to the conservation of landscapes, ecosystems, species and genetic variation.
- The buffer zone surrounds or adjoins the core areas and is used for activities compatible with sound ecological practices that can reinforce scientific research, monitoring, training and education.
- The transition area is the part of the reserve where the greatest activity is allowed, fostering economic and human development that is socio-culturally and ecologically sustainable.

There are currently 686 biosphere reserves in 122 countries, including 20 transboundary sites. In practice, Biosphere Reserves are often based on multi-stakeholder approaches to biodiversity conservation and sustainable development/use. They integrate cultural and biological diversity, especially the role of traditional knowledge in ecosystem management, and act as sites of excellence for education and training.

Further information

Information on the MAB program: <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/man-and-biosphere-programme/about-mab/> (8 August 2018)

Information on Biosphere Reserves: <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/biosphere-reserves/> (8 August 2018)

Recommendations to the AHTEG

All the submissions of Contracting Parties and relevant stakeholders following the Secretary's invitation of 7 May 2018 are meant to support the work of the AHTEG, as mentioned in many of the 'cover letters'.

In addition, some submissions include explicit recommendations to the AHTEG, which are shortly summarized below:

Eswatini recommends that farmer representatives should be part of the AHTEG and that Farmers' Rights should not be solely the responsibility of national governments; the Governing Body and the Treaty Secretariat should also share this responsibility, and they should ensure that farmers around the world, especially from Contracting Parties, benefit directly from the Benefit Sharing Fund of the Treaty.

Norway recommends the following:

- The inventory should include a wide set of experiences, best practices and lessons learned, not only linked to laws and regulations (legal measures), but also policy, financial and technical measures
- The inventory should describe concrete examples in more detail (case studies) in order to understand the preconditions to get good results, as well as include links to websites and publications, where it is possible to get further information.
- In developing options for promoting Farmers' Rights, there will be no new obligations on Contracting Parties. Nevertheless, Norway hopes that the options could be a source of inspiration for Contracting Parties, who would like to implement measures to protect and promote Farmers' Rights. The options could be organized as a kind of knowledge hub, from which it is possible to select, according to national priorities, measures of relevance for implementation.
- One possible way of organizing the inventory and structuring the options, is to follow the different provisions of Article 9 of the Treaty. These provisions could be sought operationalized, so as to create a basis for identifying examples for the inventory, and subsequently to derive options from these examples. At the same time, the work of the AHTEG could bear in mind that the suggested list of measures in Article 9.2 is not an exhaustive list.