



**Views, Experiences and Best Practices as an example of possible options for  
the national implementation of Article 9 of the International Treaty  
Submitted by Contracting Parties and Relevant Organizations**

*Note by the Secretary*

*This document presents the views, experiences and best practices on the implementation of Farmers' Rights, as set up in Article 9 of the International Treaty submitted by the European Seed Association (ESA) on 28 June 2018.*

*The submission is presented in the form and language in which it was received.*



## Position on Farmers' Rights

---

*Implementation of Farmers' Rights is a matter for national laws that are harmonized with other international conventions, and that are adapted to the particular circumstances of national agricultural infrastructure. This will assure a balance between advancing quality standards demanded by commercial farmers and the rights of subsistence farmers to save, use, exchange and sell farm-saved seed/propagating material.*

### *Farmers' Rights: an important international political topic for farmers and breeders*

While terms like “farmer”, “traditional”, “breeder” and “seed industry” are simple, it must be remembered that each term represents a wide diversity of approaches suited to varied circumstances around the world. ESA recognizes that farmers have been contributing to the development and conservation of plant genetic resources for food and agriculture (PGRFA) ever since our ancestors began to domesticate and selectively cultivate plants. In some areas farmers maintain traditional practices for sourcing seeds, while in other regions diversified forms of specialized seed providers (i.e. “the seed industry”) have evolved. Along with farmers, the seed industry positively contributes to maintaining and developing the diversity of food systems and the conservation of PGRFA; moreover, its breeders enhance PGRFA by developing varieties with improved yield, nutrition, environmental resilience and resource use efficiency.

### Farmers' Rights in the International Treaty

Article 9 of the International Treaty on PGRFA (the Treaty) outlines the concept of Farmers' Rights. Although the Treaty is an international instrument, its text explicitly assigns to national governments the responsibility to protect and promote Farmers' Rights according to their needs and priorities which may differ from each other to a great extent. Therefore, Farmers' Rights protection and Farmers' Rights promotion are tasks for national, not international legislators.

#### The farmers' right to protection of traditional knowledge<sup>1</sup>

ESA acknowledges that in many indigenous and local communities, traditional knowledge is part of the daily life as it often relates to agricultural or farming systems and practices, but at the same time it is also part of

---

<sup>1</sup> According to Article 9.2 (a), the concept of Farmers' Rights includes the “protection of traditional knowledge relevant to PRGFA”.

the cultural heritage. However, whether a specific system to protect traditional knowledge is provided for should be a decision at the national level.

### The farmers' right to participate in decision-making<sup>2</sup>

When national policies and legislation for the conservation and use of PGRFA are developed, it is critical to involve all relevant stakeholders, including farmers and breeders. Inclusive decision-making occurs now in multiple countries. ESA is of the view that it is core to realizing Farmers' Rights.

### The farmers' right to participate in benefit-sharing<sup>3</sup>

ESA supports that farmers, breeders and other PGRFA conservers enjoy a fair share of benefits arising from the utilisation of PGRFA. For sustainable use of PGRFA, ESA advocates for *open access for breeding purposes* to all genetic resources, including landraces, gene bank accessions, wild relatives and protected varieties.

In the plant breeder's right system, the breeder's exemption (as foreseen in Article 15(1)(iii) of the 1991 Act of the UPOV Convention) reinforces the benefit-sharing element of Farmers' Rights and addresses biodiversity and innovation needs too. The breeder's exemption provides that all varieties protected by plant breeder's rights can be used for further breeding, and resulting varieties can be commercialized without any obligation towards the right holder. Anyone who breeds, or discovers and develops, plants is considered to be a breeder; therefore everyone is allowed free (more than facilitated) access and free breeding under this exemption: farmers, breeders, hobbyists, public research institutes and gene banks alike. The information exchange and technology transfer enabled by the breeder's exemption delivers practical benefit-sharing for farmers.<sup>4</sup>

### The farmers' right to save, use, exchange and sell farm-saved seed:

Article 9.3 of the Treaty notes the right of farmers to save, use, exchange and sell farm-saved seed, while at the same time it clearly indicates that this right is subject to national laws which may limit such acts. Thus, the Treaty does not give an unconditional right to farmers but merely states that Article 9.3 does not intend to limit any rights that farmers may be granted by national law.

---

<sup>2</sup> Article 9.2 (c) of the Treaty provides that Farmers' Rights include "the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of PGRFA".

<sup>3</sup> Article 9.2 (b) states that "the right to equitably participate in sharing benefits arising from the utilization of PGRFA" is also a part of Farmers' Rights. Article 13 elaborates on benefit-sharing in the context of the Multilateral System. Article 13(1) states that facilitated access to PGRFA is a major benefit in itself and Article 13(2) adds that benefit-sharing mechanisms include: „ *exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization*".

<sup>4</sup> For more information read the ESA paper on « [Benefits and benefit-sharing value of the breeding exemption](#) ».

The plant breeder's rights system was developed because most plant varieties can easily be reproduced and breeders need a fair remuneration in order to continue to invest in breeding new varieties that generates value to society. ESA strongly favours the time-limited, plant breeder's rights system that the UPOV 1991 Convention outlines because, (1) it provides protection against inappropriate exploitation of plant varieties and (2) it grants a number of exceptions to the right which are important for breeders, farmers and society.

**Subsistence farmers:** UPOV also grants an exception for „acts done privately and for non-commercial purposes“. By definition subsistence farmers in developing countries are understood to act for private and non-commercial purposes, hence ESA is of the view that they do not fall under the scope of plant breeder's rights. Therefore, any acts with protected varieties by subsistence farmers (including exchange, barter or sales of farm-saved-seeds to their neighbours or other subsistence farmers) are outside the scope of plant breeder's rights. And while subsistence farmers may benefit from modern, UPOV-protected varieties, most subsistence farmers use traditional varieties or locally-available, heterogenous material for which plant breeder's rights are not applied (unless the farmers themselves apply for them).

**Commercial farmers:** Farmers who do not qualify as subsistence farmers are commercial farmers. One can distinguish between small-scale and large-scale commercial farmers, but the distinction will vary with national circumstances. When commercial farmers save and re-use the product of their harvest with protected varieties, their acts fall under the scope of plant breeder's rights. Under UPOV, national laws may allow some practices with the protected variety to take place without the consent of the breeder. However, these exceptions must remain within reasonable limits to safeguard the legitimate interests of the breeder.<sup>5</sup> National laws should limit such exceptions to food and feed crops where farm-saved seed has been used traditionally and should also subject such exceptions to the payment of an equitable remuneration. National circumstances will also be considered when defining the balance of interests. Many UPOV member countries, such as the EU Member States, have used the flexibility offered by this provision to exempt small farmers from payments of remuneration on their use of farm-saved-seeds of protected varieties.

Free and unlimited use of farm saved seed of protected varieties undermines the financial return for breeders in important food and feed crops. Insufficient income for breeders will lead to less breeding investments and eventually stop the release of new varieties to the detriment of farmers and society as a whole. It is nevertheless important to emphasize that farmers have and should continue to have the choice to decide whether they use seeds of protected varieties (i.e. new ones) or non-protected ones.

### *Seed systems and Farmers' Rights*

Farmers should have the right to access quality seeds of new, modern varieties. Access and use enables them to adapt crops to their local environments, and it provides chances to develop their livelihoods and/or businesses.

---

<sup>5</sup> Article 15(2) of UPOV 1991 Convention

EU Member States, as many countries, have regulations for variety registration/variety listing and seed certification. These regulations are meant to guarantee farmers access to high quality seeds of improved varieties and to objective information about the potential value of varieties. ESA emphasizes that these formal regulations have contributed extensively to the successful development of agriculture in Europe. In addition, ESA acknowledges that typical standards of performance, quality, distinctiveness, and uniformity may be adapted to accommodate other types of material. In some countries such material is often sold or exchanged via less formal seed systems. In some localities such systems provide the majority of the seed supply to smallholder farmers.

### On the interrelations between UPOV and the Treaty

A joint exploration of the inter-relations between UPOV and the Treaty started some years ago. ESA supports the continuation of this process, noting that the UPOV Convention and the Treaty have been set up for different purposes. UPOV aims to encourage the development of new varieties of plants for the benefit of society; while the Treaty promotes the conservation and sustainable use of PGRFA and the fair and equitable sharing of benefits arising out of their use. Despite the independent aims, the two systems are complementary and should be regarded as mutually supportive.

UPOV's open innovation system with its exceptions to the breeder's right (private and non-commercial use exception; breeder's exemption; and the optional exception for the use of farm-saved seed) encourages the conservation and sustainable use of PGRFA. Furthermore, the breeder's exemption constitutes a powerful way to share benefits arising from the use of PGRFA. Also, the Treaty honors the benefit-sharing value of the breeder's exemption and acknowledges the open-access model that is needed in plant breeding by ensuring facilitated access to PGRFA through its Multilateral System.

### Conclusion

Implementation of Farmers' Rights is a matter for national laws that are harmonized with other international conventions, and that are adapted to the particular circumstances of national agricultural infrastructure. This will assure a balance between advancing quality standards demanded by commercial farmers and the rights of subsistence farmers to save, use, exchange and sell farm-saved seed/propagating material.