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Organization of the
United Nations



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

**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 Fridtjof Nansen Institute on 30 June 2018.

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

*Submission to the Secretary of the
International Treaty on Plant Genetic Resources for Food and Agriculture,
30 June 2018*

National implementation of Article 9 of the Plant Treaty

By Regine Andersen, Senior Research Fellow (Dr. Polit), Fridtjof Nansen Institute

Thank you for the invitation to submit views, experiences and best practices as examples of possible options for national implementation of Article 9 of the International Treaty, and information regarding the arrangements for the Ad Hoc Technical Expert Group on Farmers' Rights, in response to Resolution 7/2017 on Farmers' Rights.

The Fridtjof Nansen Institute (FNI) has been engaged in research on the realization of Farmers' Rights since 2005 when we established the Farmers' Rights Project to provide research-based guidance for the realization of Farmers' Rights as set out in the Plant Treaty. The overall objective of the Farmers Rights' Project was to provide an empirical basis for constructive proposals to the Governing Body of the ITPGRFA on the realisation of Farmers' Rights as they are formulated in the Plant Treaty. Three project objectives were followed towards this end:

1. To provide overview over, and assessment of, options available for the domestic implementation of farmers' rights under different conditions.
2. To identify potential ways and means for the Governing Body of ITPGRFA to promote the realisation of farmers' rights.
3. To contribute to the understanding of the options available for the implementation of farmers' rights under ITPGRFA among its Parties and stakeholders.

The project has spawned many events and publications, including the 2013 book *Realising Farmers' Rights to Crop Genetic Resources – Success Stories and Best Practices*, recently reprinted and released as a paperback, *Stewardship or Ownership: How to realise Farmers' Rights?*, a chapter in the recent *Routledge Handbook on Agricultural Biodiversity*, and side events at each session of the Governing Body. FNI also helped organize and facilitate the previous international/global consultations on Farmers' Rights in relation to the Plant Treaty in Zambia in 2007 (organized by the governments of Zambia and Norway and FNI)¹ and *Addis Ababa in 2010* (organized by the government of Ethiopia and FNI), and Regine Andersen² co-chaired the *2016 Global Consultation on Farmers' Rights* in Bali, Indonesia (organized by the governments of Indonesia and Norway and the Secretariat of the Plant Treaty). She derived the co-chairs recommendations from this global consultation together with co-chair Carlos Correa. She also co-chaired the contact group that negotiated Resolution 7/2017 at the Seventh Session of the Governing Body.³

¹ See: https://www.regjeringen.no/globalassets/upload/lmd/vedlegg/brosjyre_veiledere_rapporter/lusakarapporten.pdf

² At that time Executive Director of Oikos – Organic Norway, see footnote 6 below, but chairing based on her work with the Farmers' Rights Project at the FNI.

³ See: <https://www.fni.no/news/fni-contributes-to-breakthrough-in-negotiations-under-the-plant-treaty-article1601-330.html>

This submission will first present an overview of key research and contributions from the FNI on Farmers’ Rights as input to the inventory on the realization of Farmers’ Rights that is to be carried out according to Resolution 7/2017 (**Chapter 1**). It then derives recommendations for the development of options, as set out in the same resolution (**Chapter 2**).

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1. Inventory of key research from the FNI on Farmers' Rights

According to Resolution 7/2017, an inventory is to be produced of national measures that may be adopted, best practices and lesson learned from the realization of Farmers' Rights, as set out in Article 9 of the International Treaty. This chapter presents key FNI publications and contributions of relevance for such an inventory. Section 1.1 highlights FNI publications from, and components of, the Farmers' Rights Project, whereas Section 1.2 presents key publications after this project.

1.1 The Farmers' Rights Project: Inventory of key publications and contributions

The Farmers' Rights Project⁴ was implemented from 2005⁵ until 2012.⁶ The key components of the project, to be further elaborated below, were:

- Survey on the history of Farmers' Rights, based on a review of documents and literature
- International multi-stakeholder questionnaire survey on Farmers' Rights.
- Case studies on Farmers' Rights in India, Peru, Ethiopia and Norway.
- Documentation of success stories and best practices from the realization of Farmers' Rights.
- The Lusaka informal international consultation on Farmers' Rights (together with the governments of Zambia and Norway).
- The 2010 Global Consultations on Farmers' Rights in Addis Ababa (together with the government of Ethiopia)
- A website on Farmers' Rights⁷
- Various workshops and consultancies on the realization of Farmers' Rights
- Research on civil society strategies for the implementation of Farmers' Rights
- Various side events and lectures on Farmers' Rights.
- Book on the realization of Farmers' Rights

1.1.1 The history of farmers' rights, international survey and case studies in 2005-2006

The project started out with a survey on the history of Farmers' Rights, based on a review of available documents and literature. The resulting report was designed as a guide to decision-makers and practitioners. On this basis, a questionnaire was developed, and an international multi-stakeholder survey carried out, to map views and experiences with Farmers' Rights around the world and to derive lessons for further implementation at the national as well as international levels. 60

⁴ The project was initiated and led by Senior Research Fellow Regine Andersen (Dr. Polit). Senior Research Fellow Tone Winge joined the project in 2008. The project collaborated with researchers in different countries and applied a multi-stakeholder approach in its communication with a wide network of individuals and institutions, among them government ministries, farmer organizations, research institutions, breeding companies, donor organizations and NGOs.

The activities were supported financially and professionally by six institutions:

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

⁵ Prior to this, a master thesis was published at the Fridtjof Nansen Institute with an analysis of the recognition of Farmers' Rights in the International Treaty on Plant Genetic Resources for Food and Agriculture by Svanhild-Isabelle Batta Bjørnstad (Bell Batta Torheim), see: <https://www.fni.no/publications/breakthrough-for-the-south-an-analysis-of-the-recognition-of-farmers-rights-in-the-international-treaty-on-plant-genetic-resources-for-food-and-agriculture-article743-290.html>

⁶ The project ended in 2012 when the project leader Regine Andersen went on leave from the FNI to work as executive director for Organic Norway, the national umbrella organization for organic farmers and consumers in Norway. She returned to the FNI in August 2017 and is currently working to re-establish the systematic research on the realization of Farmers' Rights at the FNI.

⁷ The website is currently not available, but funds are presently sought to improve, update and relaunch the website anew.

respondents from 31 countries participated, covering a wide range of stakeholders. On this basis, in-depth case studies on Farmers' Rights were carried out in India, Ethiopia and Peru. The results from the survey and studies so far were summarized in a publication and launched at a side event at the First Session of the Governing Body in Madrid (2006).

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

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

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

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

The report can be downloaded here: <https://www.fni.no/publications/the-farmers-rights-project-background-study-1-the-history-of-farmers-rights-a-guide-to-central-documents-and-literature-article749-290.html>

1.1.1.2 International Stakeholder Survey on Farmers' Rights

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

The international stakeholder survey on Farmers' Rights provided an overview over the state of implementation of Farmers' Rights under the International Treaty on Plant Genetic Resources for Food and Agriculture, and the options available, as seen from the view of stakeholders. It was based on 60 questionnaires from 31 countries from all parts of the world, covering a wide range of stakeholders. The survey showed that, despite the huge challenges ahead, efforts were already underway with regard to all issues addressed in the context of Farmers' Rights in the International Treaty. These findings indicated an already existing scope for sharing experiences, and for deriving models for the implementation of Farmers' Rights under different country specific conditions. The survey highlighted the most important barriers to the realization of Farmers' Rights, as perceived by the respondents, and pinpointed at the same time options to overcome them. One of the barriers was the diffuse understanding of the concept of Farmers' Rights. The survey compiled different interpretations and developed a common ground for the understanding and communication of Farmers' Rights. It further identified institutions and experts working for the realization of these

rights and indicated the potentials for pooling resources towards this goal. The survey suggested a potential path for the Governing Body to promote the realization of Farmers' Rights while respecting the freedom of countries to choose ways and means according to their needs and priorities.

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

The report can be downloaded here: <https://www.fni.no/publications/the-farmers-rights-project-background-study-2-results-from-an-international-stakeholder-survey-on-farmers-rights-article750-290.html>

1.1.1.3 Report on Farmers' Rights in Peru

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

This case study provided an overview of the state of Farmers' Rights in Peru as of 2006 and of the perceptions of central stakeholders in this regard. As a centre of origin and diversity of important food crops and a country where traditional farming practices coexist with modern and intensive farming, the study offered an analysis of the various and complex issues and problems which arise with regard to understanding and, especially, implementing these rights at the national level. Various perceptions and limited awareness about the implications of Farmers' Rights were found to pose an additional challenge. However, Peru had made some progress, particularly in the area of public policies and laws oriented towards the protection of traditional knowledge and seeking to ensure the fair and equitable sharing of benefits derived from the use of genetic resources. Most concerns in 2006 focused on the impacts that a seed certification system and new plant breeders' rights could have on traditional saving and use of seeds and propagating material by small scale farmers and native communities. Farmers' Rights appeared to be an important tool for small scale farmers and native communities to ensure the legitimacy of the traditional practices of saving, reusing and exchanging seeds.

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

The report can be downloaded here: <https://www.fni.no/publications/the-farmers-rights-project-background-study-3-farmers-rights-in-peru-a-case-study-article761-290.html>

1.1.1.4 Report on Farmers' Rights in India

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

India is among the first countries in the world to have passed legislation granting Farmers' Rights in the form of the Protection of Plant Varieties and Farmers' Rights Act, 2001. India's experience is important due to its international contribution to negotiations on Farmers' Rights, its position as a centre of biodiversity, and the complexities of agriculture in India within which the country is attempting to implement these rights. This case study provided an overview of the state of Farmers' Rights as of 2006, and opinions of over forty stakeholders in India including farmers, NGOs, industry and government representatives, on the prospects for the further realization of Farmers' Rights. India's law is unique in that it simultaneously aims to protect both breeders and farmers. The study analysed the achievements, barriers and limitations of India's approach so far. One of the findings was that the attempt to evolve a multiple rights system could pose several obstacles to the utilization and exchange of plant genetic resources among farmers. India has framed a unique legislation, but still faced the task of implementation without any clear consensus among the various stakeholders on how to achieve these rights. This should serve as a signal internationally that establishing legislation is insufficient to effectively promote Farmers' Rights. The report concluded that an international mechanism is urgently required to promote some level of consensus on defining and

implementing these vital rights. If the global community would not face up to the challenge of unambiguously articulating Farmers' Rights, what has been achieved so far in the battle to establish these rights may be lost, the report warns. Such a loss would be heavy for farmers in India and other developing countries which need Farmers' Rights to protect their livelihoods, secure their access to resources, protect their rights to seeds, and, above all, lift them out of poverty.

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

The report can be downloaded here: <https://www.fni.no/publications/the-farmers-rights-project-background-study-4-farmers-rights-in-india-a-case-study-article762-290.html>

1.1.1.5 Report on Farmers' Rights in Ethiopia

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

Ethiopia is an agrarian country with 85% of its population deriving their livelihood from small scale agriculture. It is also one of the centres of diversity and origin of agricultural crop genetic resources to which farmers' role and activities are strongly linked. Farmers therefore, play an important role in the agricultural sector of the country, and their varieties serve as major sources of planting materials. The role of farmers and the importance of their varieties were for the first time officially recognized with the National Seed Industry Policy in 1992. Various policies that recognize farmers' and community rights have been formulated since then. This study highlighted perceptions of different stakeholders, the achievements made, and existing barriers and opportunities regarding the implementation of farmers' rights in Ethiopia as of 2006. It also proposed possible measures to be taken at the global level. The study revealed that development of various legislative measures to implement the formulated policies was lagging, and the level of awareness among various stakeholders regarding the issues of farmers' or community rights was still found to be rather low. For these reasons, and because it involves diverse social, economic and cultural elements, the realization of farmer rights was seen as a challenging task in the Ethiopian context. To overcome the challenges at the national level, concerted support from the international community through the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture was regarded as critically important. The international community should support efforts to minimize the serious problems of erosion of plant genetic resources for food and agriculture which takes place in almost all countries, the report stressed. This would require clear commitments by states and intergovernmental actors to protect and support farm communities in order to ensure present and future food security.

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

This report can be downloaded here: <https://www.fni.no/publications/the-farmers-rights-project-background-study-5-farmers-rights-in-ethiopia-a-case-study-article763-290.html>

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

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

The summary of the findings from Phase 1 of the Farmers' Rights project was designed as a guide to delegations and stakeholders concerned with Farmers' Rights. It presented the components of the Farmers' Rights Project and identified two approaches to the understanding of Farmers' Rights in the debate: the ownership approach and the stewardship approach. There would be a latent conflict between these two, and the report argued that the stewardship approach must prevail if

Farmers' Rights are to be realized within the framework of the ITPGRFA. A working definition was presented and reasons why these rights are so important were highlighted. Most importantly, the realization of Farmers' Rights was seen as a precondition for the maintenance of agrobiodiversity and a central means in the fight against poverty in the world. The report summarized the state of realization of Farmers' Rights and showed that achievements were already being made with regard to all measures addressed in the ITPGRFA. It pinpointed the central barriers to further progress in this area and indicated what steps were required to overcome these barriers and to implement the ITPGRFA with regard to Farmers' Rights. Finally, the report recommended measures to be taken by the Governing Body of the ITPGRFA, and highlighted issues of importance for further discussion.

Measures proposed for the Governing Body included:

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

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

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

The two approaches to Farmers' Rights termed 'the stewardship approach' and the 'ownership approach', first coined in this report (and later developed in further publications, see section 1.2), have been widely used in later discussions on Farmers' Rights. The concept 'legal space', for the first time introduced in this report in the context of Farmers' Rights, has also been widely employed in subsequent discussions on Farmers' Rights. The term refers to the legal requirements for farmers to continue to conserve and sustainably use crop genetic diversity by saving, developing, exchanging and selling farm-saved seed and other propagation parts. The results presented in the summary report paved the ground for the second phase of the Farmers' Rights Project and was presented to the first informal international stakeholder consultation in Lusaka, Zambia, in 2007.

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

This document can be downloaded here: <https://www.fni.no/publications/realising-farmers-rights-under-the-international-treaty-on-plant-genetic-resources-for-food-and-agriculture-summary-of-findings-from-the-farmers-rights-project-phase-1-article767-290.html>

1.1.2 Informal international consultation on Farmers' Rights, Lusaka, Zambia in 2007

At its First Session, the Governing Body decided to put Farmers' Rights on its working agenda upon a suggestion from the Norwegian delegation and with the support of several developing countries. Thus, Norway (through its Ministry of Agriculture and Food) took the initiative to organize informal international consultations on Farmers' Rights together with Zambia (Ministry of Agriculture, Food

and Fisheries) and the Fridtjof Nansen Institute. Consultations were held in Lusaka, Zambia, and gathered 27 participants from 20 countries. The ensuing report was presented by Norway at the Second Session of the Governing Body together with an input paper from Norway and Zambia. Resolution 2/2007 on Farmers' Rights was informed by this process.

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

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

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

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

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

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

This report can be downloaded here:

https://www.regjeringen.no/globalassets/upload/lmd/vedlegg/brosjyrer_veiledere_rapporter/lusakarapporten.pdf

1.1.3 A book on the governance of agrobiodiversity and a report on IPR, 2007–2008

The next milestone was the publication of *Governing Agrobiodiversity: Plant Genetics and Developing Countries* by Regine Andersen. This book analysed the interaction between international agreements related to plant genetic resources in agriculture and how this affected the management of these resources in developing countries. It also showed how the core challenges related to the conservation and sustainable use of crop genetic resources boil down to the implementation of Farmers' Rights as a precondition for the further maintenance of these vital resources *in situ* on-farm. The book was finalized in 2007 and published in 2008. In 2007, also a report on the important interlinkages of Farmers' Rights and intellectual property rights (IPR) appeared.

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

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

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

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

These are quotes from the reviews of the book: '...provides a fascinating account of the policy-making process related to agrobiodiversity. The analysis documents how the clash between access regulations, breeders' rights and patent rights has had adverse effects on the management of plant genetic resources in developing countries...makes a valuable contribution to the policy debate on the national and international management of agrobiodiversity.' Jean-Paul Chavas, University of Wisconsin, USA 'The proliferation of overlapping international regimes poses new challenges for international governance. This study provides an extremely useful and timely overview of the complexity and negative aggregate effects of the regime constellation governing agrobiodiversity at the national level. This is a theoretically and empirically rich analysis, with direct policy relevance, which will stimulate much needed research into new forms of international environmental governance.' Philippe Le Prestre, Université Laval, Canada

The book was produced with support from the Research Council of Norway.

The book can be accessed here: <https://www.fni.no/publications/governing-agrobiodiversity-plant-genetics-and-developing-countries-article386-290.html>

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

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

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

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

The policy brief can be downloaded here: <http://www.sawtee.org/publications/Trade-Insight-9.pdf>

1.1.4 First collection of success stories and best practices in 2008

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

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

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

This is a collection of 17 inspiring stories from 11 countries illustrating the achievements that had been made in implementing the elements of Farmers' Rights indicated in Article 9 of the International Treaty. The report also contained an introductory part defining success stories in the context of Farmers' Rights, which was a contribution to understanding the contents of these rights, based on the research at the FNI. There were many examples of projects, legislation and policies which contribute to the realization of Farmers' Rights. The chosen examples were not necessarily perfect; the main criterion was that significant achievements had been made and that they can provide inspiration for others. The success stories were sorted into four categories of achievements: The realization of Farmers' Rights to save, use, exchange and sell farm-saved seed; protection of traditional knowledge related to agricultural biodiversity; participation in benefit sharing and in decision-making.

Within each of these categories a handful of stories were offered:

- Success stories from the realization of Farmers' Rights to save, use, exchange and sell farm-saved seed include India's Protection of Plant Varieties and Farmers' Rights Act; Norway's 'no' to stricter plant breeders' rights; and a story on how farmers in the Basque country in Spain circumvent the law in order to maintain agrobiodiversity. The stories show how it is possible to create and improve the legal space for farmers' customary rights related to seeds within existing or evolving legislative frameworks.

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

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

The report was produced in collaboration with the German GTZ (now GIZ), commissioned by the German Federal Ministry for Economic Cooperation and Development; and the Development Fund, Norway. The report can be downloaded here: <https://www.fni.no/publications/the-farmers-rights-project-background-study-7-success-stories-from-the-realization-of-farmers-rights-related-to-plant-genetic-resources-for-food-and-agriculture-article786-290.html>

1.1.5: Farmers' Rights from farmers' perspectives and implementation issues in 2009

Another lesson from the work on Farmers' Rights was that this issue has emerged at the international level and was not really rooted in the farming population. Thus, we wanted to explore the potentials of involving farmers in bottom-up processes for the realization of Farmers' Rights. Together with a Peruvian partner, Maria Scurrah of Grupo Yanapai, the Farmers' Rights Project carried out a study on Farmers' Rights in Peru, as seen from farmers' perspectives, involving 180 farmers in various regions of the Andes. This work was undertaken with assistance from the Peruvian Society for Environmental Law (SPDA) and the German GTZ (now GIZ, commissioned by the Federal Ministry for Economic Cooperation and Development of Germany) and in close cooperation with the responsible national authority, Instituto Nacional de Innovación Agraria, Ministry of Agriculture, Peru. The process led to a report (available in Spanish and English) which served as a point of departure for implementation of Farmers' Rights at that time in Peru. A study was also commissioned to explore implementation issues related to the realization of Farmers' Rights in South Asia.

1.1.5.1 Farmers' Rights in Peru: Farmers' Perspectives

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

The realization of Farmers' Rights is crucial to the maintenance of Peru's rich agrobiodiversity and for poverty alleviation. This report presented the perceptions and experiences of 180 farmers from various regions of the Peruvian Andes on issues related to Farmers' Rights as they are addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture. A series of regional workshops were held in the Andes from March to May 2008 to map the views, experiences and suggestions of farmers on the realization of Farmers' Rights. Their views were presented at a national multi-stakeholder workshop in Lima in September 2008, where also central government institutions, NGOs, farmers' organizations, as well as gene bank officials and breeders were represented. In this report the results from these workshops were presented and analyzed as to how they can form the basis for future policies on Farmers' Rights in Peru. Central recommendations included documentation of traditional knowledge; the establishment of agro-biodiversity reserves; support to community gene banks, seed fairs and exchange visits; participatory research on traditional seed systems and participatory plant breeding; assistance in processing and marketing products made from traditional varieties; improved economic incentive structures for maintaining traditional crop varieties; and the establishment of pilot villages to bolster the conservation and exchange of genetic resources and traditional knowledge. Suggestions for activities to foster farmers' participation in decision-making were elaborated as well as institutional questions on how to coordinate the realization of Farmers' Rights.

The report was produced in collaboration with Instituto Nacional de Innovación Agraria, Ministry of Agriculture Peru; the German GTZ (now GIZ), commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ); Grupo Yanapai, Peru; and Sociedad Peruana de Derecho Ambiental (SPDA). This report can be downloaded here; <https://www.fni.no/publications/the-farmers-rights-project-background-study-8-farmers-rights-in-peru-farmers-perspectives-article798-290.html>, The Spanish version can be found here: <https://www.fni.no/publications/los-derechos-del-agricultor-en-el-peru-las-perspectivas-de-los-agricultores-estudio-de-antecedentes-8-farmers-rights-in-peru-farmers-perspectives-background-study-8-article801-290.html>

1.1.5.2 Farmers' Rights and implementation issues for South Asia

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

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

The discussion paper was commissioned by South Asia Watch on Trade, Economics & Environment (SAWTEE). It can be downloaded here: <http://www.sawtee.org/publications/Discussion-Paper-11.pdf>

1.1.6 Global Consultation on Farmers' Rights in 2010

In 2010 the FNI was contacted by the Secretariat of the Plant Treaty to explore whether we would be in a position to organize regional consultations in response to Resolution 6/2009 of the Governing Body, which called for regional workshops on Farmers' Rights. We would also need to source for the financial support of such events, since the decision had been made dependent upon available resources, and there were no resources available at the Secretariat for the purpose. With good help from the Bureau of the Plant Treaty and the government of Ethiopia, we managed to raise the funds, and organize a global consultation on Farmers' Rights, with regional components. The Consultation had two phases, one e-mail-based and one meeting in Addis Ababa. The idea was to include as many participants as possible in this endeavour. In the two phases of the consultations, a total of 177 experts and stakeholders from 46 countries in Africa, Asia, the Near East, Latin America and the Caribbean, North America and Europe, and from farmer organizations, government institutions, the seed industry, NGOs, IGOs, research institutions and other relevant groups participated. The participants shared their views and experiences and discussed obstacles to and options for the realization of Farmers' Rights. The consultation conference resulted in recommendations from the regional groups as well as joint recommendations from the conference. Ethiopia presented an input paper to the Governing Body of the Plant Treaty based on the recommendations at the Fourth Session of the Governing Body.

1.1.6.1 Global Consultation on Farmers' Rights in 2010

Regine Andersen and Tone Winge, with contributions from Bell Batta Torheim (2011): Global Consultations on Farmers' Rights in 2010. FNI Report 1/2011. Lysaker, FNI, 2011, 131 p.

This report presents the results and proceedings of the Global Consultations on Farmers' Rights carried out in 2010. Consisting of both an e-mail-based survey and an international consultation conference with regional components held in Addis Ababa, Ethiopia, the consultations were organized as a response to Resolution 6/2009 of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, which called for regional workshops on Farmers' Rights. In the two phases of the consultations, a total of 177 experts and stakeholders from 46 countries in Africa, Asia, the Near East, Latin America and the Caribbean, North America and Europe, and from farmer organizations, government institutions, the seed industry, NGOs, IGOs, research institutions and other relevant groups participated. The participants shared their views and experiences and discussed obstacles and options to the realization of Farmers' Rights. The consultation conference resulted in recommendations from the regional groups as well as joint recommendations from the conference. The prime concern among most participants was the need for guidance, support and capacity building to develop or adjust national legislation, policies, strategies and programs for the realization of Farmers' Rights. To arrive at joint recommendations was perceived as a major achievement of this consultation. The recommendations, both the regional ones and the joint recommendations are part of this submission to the Secretary of the Plant Treaty. Since they are comprehensive, they are not repeated here. Please follow the link below.

The 2010 Global Consultations on Farmers' Rights were organized and led by the Fridtjof Nansen Institute, Norway, and the Global Consultation Conference was hosted by Institute of Biodiversity Conservation, Ethiopia. It was sponsored by the Swedish International Biodiversity Programme (SwedBio), the Norwegian Agency for Development Cooperation (NORAD), the Norwegian Ministry of Agriculture and Food, the Development Fund, Norway, and the Spanish Agency for International Development Cooperation (AECID).

The report from the Global Consultation on Farmers' Rights in 2010 can be downloaded here:
<https://www.fni.no/publications/global-consultations-on-farmers-rights-in-2010-article829-290.html>

1.1.6.2 The 2010 Global Consultations on Farmers' Rights: Results from an Email-based Survey

Regine Andersen and Tone Winge (2011): The 2010 Global Consultations on Farmers' Rights: Results from an Email-based Survey. FNI Report 2/2011. Lysaker, FNI, 2011, 161 p.

This report presents the results of the e-mail-based survey on Farmers' Rights carried out in 2010 as part of the Global Consultations on Farmers' Rights. The consultations were organized in response to Resolution 6/2009 of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, which called for regional workshops on Farmers' Rights. A total of 131 respondents from 36 countries participated. These were sorted into the groups 'farmers', 'the public sector', 'seed industry', 'NGOs' and 'others', as well as regional groups. Through the questionnaire the respondents shared their views and experiences on the realization of Farmers' Rights, including achievements, obstacles and options. The prime concern among most participants was the need for guidance, support and capacity building to develop or adjust national legislation, policies, strategies and programs for the realization of Farmers' Rights. The results were presented and discussed at the global consultation meeting in Addis Ababa in 2010 (see above).

The 2010 Global Consultations on Farmers' Rights were organized and led by the Fridtjof Nansen Institute, Norway, and the Global Consultation Conference was hosted by Institute of Biodiversity Conservation, Ethiopia. It was sponsored by the Swedish International Biodiversity Programme (SwedBio), the Norwegian Agency for Development Cooperation (NORAD), the Norwegian Ministry of Agriculture and Food, the Development Fund, Norway, and the Spanish Agency for International Development Cooperation (AECID).

The report on the e-mail based consultation on Farmers' Rights in 2010 can be downloaded here: <https://www.fni.no/publications/the-2010-global-consultations-on-farmers-rights-results-from-an-email-based-survey-article830-290.html>

1.1.7 Study on Farmers' Rights in Norway in 2011 and 2012

The realization of Farmers' Rights has mostly been discussed in relation to developing countries but is also highly relevant to the management of agrobiodiversity in developed countries. In 2011 a report on crop genetic diversity and Farmers' Rights in Norway was published in Norwegian, and the year after the report came out in English. This report took the International Treaty on Plant Genetic Resources for Food and Agriculture as a point of departure and analysed achievements, gaps and needs with regard to its implementation in Norway, with focus on its provisions on Farmers' Rights. It showed that the legislation had become quite conducive to Farmers' Rights, after a 'prohibition-period' from 2004 until 2010 when Farmers' Rights to save, use, exchange and sell farm-save seed had been severely restricted. Also, there were conducive policies and measures, even though much remained to fully realize Farmers' Rights also in Norway.

1.1.7.1 Plant Genetic Diversity and Farmers' Rights in Norway

Regine Andersen (2012): Plant Genetic Diversity in Agriculture and Farmers' Rights in Norway. FNI Report 17/2012. Lysaker, FNI, 2012, 119 p.

This report took the International Treaty on Plant Genetic Resources for Food and Agriculture as a point of departure and analysed achievements, gaps and needs with regard to its implementation in Norway, with focus on its provisions on Farmers' Rights. Although much of the crop genetic diversity had been lost in Norway, substantial efforts were made to save what was left, and to ensure Farmers' Rights. The plant variety and seed marketing regulations provided some of the barriers in this work, but much would depend on how they were to be implemented in the time to come. At the other hand, Norway made a clear decision already in 2005 that the country remains a member of the Union for the Protection of New Varieties of Plants (UPOV) based on its 1978 Act and would not accede to the 1991 Act of UPOV. The key argument was that the 1978 Act of UPOV was better

balanced with regard to Farmers' Rights. Traditional knowledge was disappearing, despite efforts to stop this. A consolidated strategy for this purpose was lacking. Economic incentive structures were not yet in place, except for some 'seed money', and thus most of the work was based on pure idealism. Farmers involved in crop genetic diversity could participate better in decision making if they were better organized. The hearing system was seriously challenged by the EEA-membership, due to a high 'turn-over' of decisions to be implemented at the national level, lack of transparency, and since Norwegian opinions had little to say against decisions from the EU. To have a say in these matters, it would probably be more useful to link up with European organizations involved in the issue. Nevertheless, much had happened which supported the realization of Farmers' Rights and enhanced the crop genetic diversity available to farmers.

The report was funded by the Norwegian Ministry of Agriculture and Food, the Research Council of Norway and the Norwegian Genetic Resources Centre.

The English version of the report can be downloaded here: <https://www.fni.no/getfile.php/132143-1469870399/Filer/Publikasjoner/FNI-R1712.pdf>. The Norwegian version of the report can be downloaded here: <https://www.fni.no/getfile.php/131999-1469869972/Filer/Publikasjoner/FNI-R1111.pdf>

1.1.8 Book on success stories and best practices – summarizing the findings from the project

The results of the Farmer' Rights Project were presented in the book 'Realising Farmers' Rights to Crop Genetic Resources – Success Stories and Best Practices', that was published in 2013 and reprinted in 2017 when it was selected for inclusion in the Routledge Paperbacks Direct programme.

1.1.8.1 Realising Farmers' Rights to Crop Genetic Resources: Success Stories and Best Practices
Regine Andersen and Tone Winge (eds) (2013, reprinted 2017): Abingdon (UK), Routledge, 232 p.

Farmers' Rights are essential for maintaining crop genetic diversity, which is the basis of all food and agricultural production in the world. The International Treaty on Plant Genetic Resources for Food and Agriculture recognizes Farmers' Rights and provides for relevant measures. However, implementation is slow, and in many countries, there is resistance. This book shows the necessity of realizing Farmers' Rights for poverty alleviation and food security, the practical possibilities of doing so, and the potential gains for development and society at large. It provides decision-makers and practitioners with a conceptual framework for understanding Farmers' Rights and success stories showing how each of the elements of Farmers' Rights can be realized in practice. The success stories have brought substantial achievements as regards one or more of the four elements of Farmers' Rights: the rights of farmers to save, use, exchange and sell farm-saved seed; the protection of traditional knowledge; benefit-sharing; and participation in decision-making. Challenges encountered on the way are also conveyed and offer important lessons. The stories represent different regions and localities, including Europe, Asia, Africa and Latin America, as well as various categories of stakeholders and types of initiatives and policies.

As such, the book is *the* key contribution from the Farmers' Rights Project to the inventory that is currently to be developed. A copy of the book has been provided to the Secretariat. If further copies are required for the purpose of the inventory, please contact us.

The book was produced with the support of the Research Council of Norway, the German GIZ and the Development Fund, Norway.

The book is accessible her: <https://www.routledge.com/Realising-Farmers-Rights-to-Crop-Genetic-Resources-Success-Stories-and/Andersen-Winge/p/book/9780415643849>

1.1.9 Other components of the Farmers' Rights Project

Along the way the Farmers' Rights Project has organized and participated in side events, conferences and seminars, produced articles, flyers and other information material and taken part in discussions on Farmers' Rights. A multi-stakeholder workshop module for the implementation of Farmers' Rights was developed. It was tested in the Philippines, and the contents were transmitted to the Secretariat of the Plant Treaty for their development of an educational module and learning materials on Farmers' Rights. The website www.farmersrights.org was the official website of the Farmers' Rights Project and was developed as a tool for decision-makers, practitioners and others involved in the realization of Farmers' Rights. It was also intended as an information source for researchers and other interested individuals. The website contained information on the history, legal status and contents of Farmers' Rights, on the state of implementation of these rights, with a comprehensive database on legislation and policies. There were concrete recommendations on how to go about implementing Farmers' Rights nationally, including success stories from different parts of the world. Prospects for implementing Farmers' Rights internationally were also discussed, and there were overviews of literature and organizations related to Farmers' Rights, a calendar of coming events, and answers to frequently asked questions (FAQ). Due to the project leader's absence the last almost five years (on leave, see footnote 6 above), it was not updated, and is currently not accessible. It is hoped that new funds can be attracted to update, improve and relaunch www.farmersrights.org.

1.2 Inventory of research and contributions from the FNI related to Farmers' Rights after the Farmers' Rights Project

After the end of the second phase of the Farmers' Rights Project, articles have been produced on seed laws as well as on more general issues related to the realization of Farmers' Rights and in particular related to the dichotomy of the stewardship and ownership approach to the realization of Farmers' Rights. Also, the co-chairs recommendations from the Global Consultation on Farmers' Rights in Bali (2016) represents a contribution. Here follows a brief overview.

1.2.1 Seed legislation in Europe relevant to the realization of Farmers' Rights

In 2015 and 2016 two articles were published on the European seed legislation, which are of great relevance to Farmers' Rights in Europe: Tone Winge's *Seed Legislation in Europe and Crop Genetic Diversity* (2015) and Christian Prip's and Ole Kristian Fauchald's article *Securing Crop Genetic Diversity: Reconciling EU Seed Legislation and Biodiversity Treaties* (2016).

1.2.1.1 Seed Legislation in Europe and Crop Genetic Diversity (2015)

Tone Winge (2015): Seed Legislation in Europe and Crop Genetic Diversity. Sustainable Agriculture Reviews, Vol 15, 2015, pp. 1-64.

Crop genetic diversity has always been important for food production. With changing climatic conditions, the importance of crop genetic diversity is increasing as diversity is central to agriculture's ability to adapt to higher temperatures, precipitation changes and new pests and diseases. Maintenance of and access to this genetic diversity has become crucial. Legislation on the marketing of seed and plant propagating material, often referred to as 'seed legislation', specifies the requirements that seed and other propagating material must fulfil to be marketed legally, and how this marketing may be conducted. Such legislation can have a great impact on the composition of the seed market, as well as on cultivation and breeding, not least as it has the potential to restrict access to and maintenance of crop genetic diversity. In the European Union (EU) seed legislation is based on the principles of variety registration and certification of seed lots. Seed may be marketed only if it belongs to a variety that has been registered and the seed lot has

been certified. A variety must satisfy distinctness, uniformity and stability requirements. For heterogeneous varieties this can be problematic, which in turn has potential consequences for the maintenance and further development of crop genetic diversity.

The introduction of derogations for the marketing of certain types of varieties and seed mixtures for conservation purposes provided greater legal space for the maintenance of crop genetic diversity in the EU. However, these derogations cover only some of the crop genetic diversity excluded from marketing by the main legislation. In addition, restrictions limit where and to what extent such varieties and seed mixtures can be marketed. In a preliminary ruling on the validity of current restrictions on the marketing of unregistered varieties, the Court of Justice of the EU in 2012 held that the legislation was valid. Many central stakeholders had expected the judgment to follow the opinion of Advocate General Kokott, who had reached the opposite conclusion. While the opinion had found that the disadvantages of the restrictions in question outweighed the benefits, the judgment concluded that the legislation was not manifestly inappropriate, given the objective of improved productivity. However, current legislation has been under review, and some changes are expected. During the review process various stakeholders voiced a wide range of differing views. Also, in the literature, various suggestions for changing the EU seed legislation have been offered. As the details of seed legislation have received little attention outside a small circle of stakeholders and decision-makers, it is hoped that this article can help bring greater awareness of its importance and potential impact on the maintenance of crop genetic diversity.

The article can be accessed here: https://link.springer.com/chapter/10.1007%2F978-3-319-09132-7_1

The report on which the article is based can be downloaded here: <https://www.fni.no/publications/a-guide-to-eu-legislation-on-the-marketing-of-seed-and-plant-propagating-material-in-the-context-of-agricultural-biodiversity-article853-290.html>

1.2.1.2 Securing Crop Genetic Diversity: Reconciling EU Seed Legislation and Biodiversity Treaties

Christian Prip and Ole Kristian Fauchald (2016): Securing Crop Genetic Diversity: Reconciling EU Seed Legislation and Biodiversity Treaties. Review of European Community & International Environmental Law, Vol 25, No 3, 2016, pp. 363-377.

In May 2015, the European Commission withdrew its proposal for a new Regulation on Plant Reproductive Material. For decades, the European Union (EU) has struggled to strike a balance between seed legislation and the rights of farmers to save and exchange seed. The shelving of the draft Regulation was a major setback, given the need for legislative action in the aftermath of the Kokopelli judgment of the Court of Justice of the EU. This article discusses EU seed legislation in light of the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture. It analyses possible options and dilemmas for Norway in reconciling commitments to promote effective and high-quality food production in a well-functioning market and securing long-term crop genetic diversity. Norway's association with the internal market through the European Economic Area Agreement, as well as the fact that the Norwegian seed market is small and of scant interest to major seed companies, indicate that Norway enjoys flexibility in policy design. The article finds that EU seed legislation does not allow effective regimes for exchange and use of conservation varieties, possibly at odds with the two treaties and the principles of subsidiarity and proportionality.

The article can be accessed here: <https://onlinelibrary.wiley.com/doi/abs/10.1111/reel.12178>

1.2.2 General issues and the stewardship and ownership approach to Farmers' Rights

Five book chapters by Regine Andersen⁸ have been published, of which two are highlighted here, as they are of particular relevance for the inventory. References to the other three are provided below:

1.2.2.1 *Farmers' Rights in Times of Change: Illusion or Reality?*

Regine Andersen: Farmers' Rights in Times of Change: Illusion or Reality (2013): In W.S. de Boef, A. Subedi, N. Peroni, M. Thijssen and E. O'Keeffe (eds), Community Biodiversity Management: Promoting Resilience and the Conservation of Plant Genetic Resources. New York/London, Routledge, 2013, pp. 306-313.

This chapter is about Farmers' Rights as they are addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture. It discusses the progress that has taken place with regard to the implementation of these rights so far, and whether the realization of Farmers' Rights is an illusion or a reality. While awareness regarding the need to put Farmers' Rights into practice is increasing among many stakeholders and there are many examples at national and local levels that can be regarded as models for the further efforts and much has been achieved internationally with regard to developing a joint understanding of Farmers' Rights and their importance, major incentive structures and regulations are often detrimental to the conservation and sustainable use and represent serious obstacles to the full implementation of Farmers' Rights. Such structures and regulations often include legislation on the marketing of seed and propagating material. The chapter argues that without the implementation of Farmers' Rights, it will be almost impossible to maintain and further develop the world's plant genetic heritage and ensure that future generations will enjoy the benefits of it.

The book chapter can be accessed here: <https://www.fni.no/publications/farmers-rights-in-times-of-change-illusion-or-reality-article577-290.html>

1.2.2.2 *'Stewardship' or 'ownership': how to realise Farmers' Rights?*

Regine Andersen (2017) 'Stewardship' or 'ownership': how to realise Farmers' Rights? Chapter 28 in Danny Hunter, Luigi Guarino, Charles Spillane and Peter McKeown (eds), Routledge Handbook of Agricultural Biodiversity. Routledge, 2017, pp. 449-470.

Farmers' Rights as addressed in the International Treaty on Plant Genetic Resources for Food and Article 9 can be seen as a cornerstone of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture. Farmers are custodians of crop genetic diversity and their contribution to the conservation and sustainable use of these resources is a basis of crop diversity and food security. Farmers' Rights are basically about enabling and rewarding farmers for this indispensable contribution. However, the rights have not been clearly defined and they can be viewed from different rationales: the 'stewardship' and 'ownership' approaches. These approaches provide different answers to how farmers' rights may be realized. The 'stewardship' approach describes the long-standing idea that agro-biodiversity belongs to the common heritage of mankind and that it should be shared for the common good as part of the public domain. The 'ownership' approach evolved when the interests in the commercial use of genetic resources increased along with the growing economic stakes of biotechnologies, followed by demands for intellectual property rights. Power asymmetry was met with protest and the emergence of the ownership approach to realizing

⁸ Produced while on leave from the FNI but based on the work done at the FNI. Therefore it is included here.

Farmers' Rights. The stewardship approach could, seen in isolation, provide a solid basis for the on-farm conservation and sustainable use of crop genetic resources. The paradox is, however, that genetic resources from the public domain can be made subject to private ownership. Understanding the backgrounds and bridging the gap between the two are essential to making progress in the implementation of Farmers' Rights under the Treaty.

The book chapter can be accessed here: <https://www.routledge.com/Routledge-Handbook-of-Agricultural-Biodiversity/Hunter-Guarino-Spillane-McKeown/p/book/9780415746922>

1.2.2.3 Other book chapters on Farmers' Rights

Other book chapters on Farmers' Rights in the period 2013 until 2017 comprise:

Regine Andersen (2018): 'The International Treaty on Plant Genetic Resources for Food and Agriculture: Toward the Realisation of Farmers' Rights as a Means of Protecting Biodiversity'. In Charles McManis and Burton Ong (eds.): Routledge Handbook of Biodiversity and the Law, London/New York: Routledge, 2018, pp. 135–153

Accessible here: <https://www.fni.no/publications/the-international-treaty-on-plant-genetic-resources-for-food-and-agriculture-toward-the-realization-of-farmers-rights-as-a-means-of-protecting-and-enhancing-crop-genetic-diversity-article1663-290.html>

Regine Andersen (2016): 'Farmers' Rights: Evolution of the International Policy Debate and National Implementation'. Chapter 8 in: Michael Halewood (ed.), Farmers' Crop Varieties and Farmers' Rights: Challenges in Taxonomy and Law. London/New York, Routledge, 2016 pp. 129-152.

Accessible here: <https://www.fni.no/publications/farmers-rights-evolution-of-the-international-policy-debate-and-national-implementation-article1176-290.html>

Regine Andersen (2016): 'Historical Context: Evolving International Cooperation on Crop Genetic Resources'. Chapter 7 in: Michael Halewood (ed. See above), 2016 pp. 99-128.

Accessible here: <https://www.fni.no/publications/historical-context-evolving-international-cooperation-on-crop-genetic-resources-article1175-290.html>

1.2.2.4 A report on community seed banks with relevance for the realization of Farmers' Rights

Andersen, Regine, Pitambar Shrestha, Gloria Otieno, Yoshiaki Nishikawa, Patrick Kasasa and Andrew Mushita: Community Seed Banks – Sharing Experiences from the North and South, Paris: DIVERSIFOOD, 2018.

The number of community seed banks is rapidly increasing, in response to the growing demand for greater diversity of crop genetic resources among farmers and gardeners around the world. Two major studies shed light on this development, enabling a closer look at the differing approaches, methods, outreach and achievements. These studies were presented and illustrated with examples at a side-event at the Seventh Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (Plant Treaty) in Kigali, Rwanda, in 2017, aimed at sharing experiences. This report presents the contents of the side-event as well as key decisions from

the Governing Body Session of relevance for community seed banks, with particular emphasis on Farmers' Rights.

The side-event was conducted, and the report was produced as a part of the EU Horizon2020 project DIVERSIFOOD, in collaboration with Bioversity International and Local Initiatives for Biodiversity, Research and Development (LI-BIRD), Nepal.

The report can be downloaded here: <https://www.fni.no/publications/community-seed-banks-sharing-experiences-from-north-and-south-article1696-290.html>

1.2.3 Co-chairs recommendations from the global consultation on Farmers' Rights, Bali (2016)

The Global Consultation on Farmers' Rights in Bali 2016 was organized by the Governments of Norway and Indonesia and the Secretariat of the Plant Treaty. Regine Andersen co-chaired the event together with Carlos Correa. The Co-Chairs were mandated to develop recommendations to the Governing Body based on the consultation. These recommendations are contained in the report from the consultation (pp. 30–31), which can be downloaded here: <http://www.fao.org/3/a-bs767e.pdf>. These recommendations represent a major contribution to the inventory.

2 Developing options for the realization of Farmers' Rights

According to Resolution 7/2017, options are to be derived from the inventory, for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty. Based on our experiences in the Farmers' Rights Project, a process of identifying options would include (1) operationalizing what Farmers' Rights might mean; (2) deriving options; and (3) illustrating these options with examples of best practices.

2.1 Operationalizing Farmers' Rights

In order to operationalise what Farmers' Rights might mean in different contexts, we found it useful to take the four elements of Farmers' Rights contained in Articles 9.2 and 9.3 as points of departure and to seek to operationalise them in light of other parts of the Plant Treaty, the negotiations that led to the Treaty, resolutions of the Governing Body, the global consultations that have taken place, as well as other relevant international agreements. The results of this can be viewed in the book 'Realizing Farmers' Rights to Crop Genetic Resources for Food and Agriculture' and several later book chapters, i.e. 'Stewardship or Ownership: How to realize Farmers' Rights', presented above. The reports from the three international/global consultations on Farmers' Rights are also highly recommended. This work can certainly be further developed. The contributions here may provide points of departure towards this end.

2.2 Deriving options for the realization of Farmers' Rights

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.

Our work has revealed many different options to realizing each of the elements of Farmers' Rights. The options differ due to various contexts, needs, framework conditions and forms of interaction. In many of our contributions, we have sought to highlight options available. The contributions highlighted in 2.1 provide useful points of departure for that, but also other contributions provide rich input to the development of options, as outlined out above.

2.3 Illustrating these options with examples of best practices

It is useful to illustrate each of the options identified above with real life examples, highlighting achievements as well as challenges. We sought to do this in our report and book on best practices from the realization of Farmers' Rights. There are many more examples of the realization of Farmers' Rights, and it could be useful to include a literature survey in the inventory, seeking to broaden the basis from which such examples can be derived. For example, several books on community seed banks have been published during the last years, which may be assessed with a view to relevance for the realization of Farmers' Rights. Also, publications on participatory plant breeding and on other measures which qualify as options for the realization of Farmers' Rights may be useful in this regard.

In our experience, the real-life examples of the realization of Farmers' Rights showed the importance of these rights for poverty alleviation, food security and livelihoods particularly in developing countries. They also showed the realization of Farmers' Rights as important pathways to food sovereignty and seed security in developed countries of importance for nutrition and sustainable agricultural practices, such as organic farming. By exemplifying what the realization of Farmers' Rights means in practice, in addition to operationalising these rights and defining options, the Governing Body will most likely encourage, guide and promote the realization of Farmers' Rights.