



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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Views, Experiences and Best Practices on the Implementation of Farmers' Rights 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 Development Fund on 8 October 2012.

The submission is presented in the form and language in which it was received. Minor editorial changes include the full rendering of acronyms and the correction of spelling.

RELEVANT ORGANIZATIONS

Development Fund

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

DF's support is to increase on-farm genetic diversity (both number of species and number of varieties) as well as strengthen local initiatives for conserving traditional and wild relative species. Being the supporter and promoter of the community agrobiodiversity management practices¹, DF would like to share its views, experiences and best practices on the implementation of Farmers' Rights as requested by the Secretariat International Treaty on Plant Genetic Resources for Food and Agriculture. DF has gained a lot of experiences related to Farmers' Rights mainly because of the work done by our partners. Thus, our inputs here are partly the results of the work they have conducted.

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

Recognition of farmers' contribution

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

¹ The Community Biodiversity Management (CBM) Practices that DF support through its local partners include establishment of functioning Community Seed Banks (CSB) which are managed by farmers, Community Based Seed Production (CBSP) by organized farmers in order to secure good and diverse seeds for farmers. Other CBM practices include participatory community sensitization on values of agricultural biodiversity (e.g. biodiversity fairs), Community Biodiversity Register (CBR), Community Biodiversity Management (CBM) funding mechanism, crop diversification, Participatory Variety Selection (PVS) and Participatory Plant Breeding (PPB) and value addition in local crops for marketing to enhance local biodiversity and increase food security at the same time.

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

- *Banking for the future: Savings, Security and Seeds*. Case studies of Community seed banks that include a chapter on how to upscale community seeds banks as a mean to implement Farmers' Rights:
http://www.utviklingsfondet.no/files/uf/documents/Rapporter/Banking_for_the_future.pdf
- *Agricultural Transition- a different logic*. By Angela Hilmi, published by the More and Better Network. <http://ag-transition.org/>
- *A Viable Food Future Part I*
http://www.utviklingsfondet.no/files/uf/documents/A_Viable_Food_Future_updated_web.pdf
(also in Norwegian, French and Spanish)
- *A Viable Food Future Part II* http://www.utviklingsfondet.no/files/uf/documents/Rapporter/A-Viable_Food_Future_part2_en_web.pdf
- *More than Rain: identifying sustainable pathways for climate adaptation and poverty reduction*.
http://www.utviklingsfondet.no/files/uf/documents/Rapporter/More_Than_Rain_Full_report.pdf

DF considers *ex situ* conservation as an important back up to *in situ*/on farm conservation. Thus, it is important to stress at different occasions that *ex situ* can never replace the need and importance of farmers' continuous on-farm conservation efforts through their active use of PGRFA. Evolution, knowledge and culture cannot survive in minus 18 degree Celsius. The official opening of the Global Seed Vault at Svalbard is an example of one big investment in ex-situ conservation. At the request of the Ministry of Agriculture of Norway, DF identified a representative of the thousands of farmers who have conserved and developed diversity of PGRFA. During the opening in February 2008, late Mr. Tay Gipo from the Philippines was one of the prominent speakers who presented his experiences in developing several rice varieties that has been used and gained high popularity among farmers in his country.²

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

In many of the countries where DF supports projects, awareness on Farmers' Rights and the value of agricultural biodiversity is limited. Awareness is low even in countries that have Farmers' Rights acts. For instance, our partners in Ethiopia witness that majority farmers have not even heard the word 'Farmers' Rights' though the country had its proclamation on Farmers' Rights in 2006. A number of other countries that are working to develop their Farmers' Rights Acts like Nepal and Malawi need to do more awareness raising work at

² <http://newcityph.com/archive/0907/culture.htm>; <http://www.regjeringen.no/en/dep/lmd/whats-new/Speeches-and-articles/speeches-and-articles-by-the-minister/speeches-and-articles-/one-year-anniversary-seminar-of-the-sval/one-year-anniversary-seminar-of-the-sval.html?id=547254>

various levels, to avoid the fact that a rather limited group of stakeholders are drafting these acts. Understanding these challenges, DF has been supporting awareness creation workshops and seminars through its partners to raise understanding about Farmers' Rights among the public. Through its partners, DF is also supporting policy advocacy on Farmers' Rights in some of the countries listed above.

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

In this way, farmers' knowledge and experience are combined with professional plant breeders' expertise. Farmers have developed several improved varieties that are now liberated at national level in some of the DF partner countries f. example in Vietnam, Honduras and Nepal. Apart from this, thousands of varieties of different crops has been breed and selected through participatory approach and farmers are using these varieties. However, there are still a lot of challenges in PPB. National agricultural research and professional breeders are yet to recognize the role of farmers' knowledge in plant breeding. Moreover they are reluctant to provide segregating varieties to farmers' organization for participatory variety selection due to concerns like the IPR. PPB has not received necessary financial and policy support from national governments, despite its contribution to the majority farmers who can't access seed and technologies from private sector like the seed industries. Financing of PPB programmes through the Benefit-sharing Fund should be done so that the farmers can have indirect benefit of developing new preferred varieties of their own because PPB provides farmers to develop varieties according to their need and with their ownership suitable for small holder farmers dependent of local seed system.³

Protection of traditional knowledge relevant to PGRFA

Through its partners, DF supports and promotes local exchange of genetic resources and knowledge through project activities like Community Biodiversity Registers (CBRs) and Community Seed Banks (CSBs) at local level. Farming communities were trained to document their genetic resources and associated traditional knowledge using CBR. CBR facilitates bioprospecting, provide the basis for the ownership of genetic resources and associated traditional knowledge and specify the communities that must be involved in providing prior informed consent and in ABS. This is because CBRs are useful for locating the source of genetic material and identifying the holder of associated traditional knowledge. Farmers see the benefits of CSBs in terms of getting local varieties of seed easily, obtaining

³ More info on PPB experiences in Nepal, see e.g. this short summary:
http://www.farmersrights.org/bestpractices/success_benefit-sharing_5.html

information/knowledge about them. Since national Genebanks are not well linked to farming communities in order to promote conservation of PGRFA and associated traditional knowledge, DF sees that CSBs should be supported and linked with the national and international gene banks as an effective model for exchanging genetic resources and knowledge on them. Adding value to genetic resources and associated traditional knowledge through participatory plant breeding and grass root breeding as well as for marketing of local genetic resources has also played a significant role to promote conservation and promotion of traditional knowledge.

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

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

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

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

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

DF experiences that several national programs on PGRFA are being designed and managed by government institutions and they are out of reach of farming communities. Understanding this, DF supports project activities that empower communities to make decisions about conservation and use of genetic resources through trainings on community based biodiversity management practices like diversity fairs, diversity blocks, community biodiversity registers⁴, participatory plant breeding etc. Such community lead practices would be very effective ways to exchange genetic resources and associated traditional knowledge within, to create awareness and interest among diverse stakeholders regarding the importance and value of local genetic resources. Above all, it leads to community planning that guides community actions on conservation and sustainable use of PGRFA.

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

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

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

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

The main obstacles to recognize Farmers' Rights to save, use, exchange and sell farm-saved seeds are linked to intellectual property rights (IPR) and seed regulations. Due to the

⁴ More info on an example of community registry, see e.g. http://www.farmersrights.org/bestpractices/success_tk_3.html

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

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

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

The impact of PVP on Farmers' Rights depends on how the PVP law is drafted nationally. Some countries have joint PVP and Farmers' Rights Acts, which might facilities at better balance between these two sets of rights. At the international level, UPOV is the main international body negotiating PVP. The UPOV Act of 1978 has less negative impact of the realization of Farmers' Rights compared to UPOV Act of 1991. DF has advocated for Norway to continue its membership to the Act of 1978. Thus, farmers in Norway are allowed to freely save seeds from own harvest of PVP protected varieties.⁵

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

At the international level, DF works for more transparency, accountability and recognition of Farmers' Rights in UPOV. Together with several other CSO from different parts of the world, DF established the Association for plant breeding for the benefit of society (APBRES). APBRES has now gained observer status at UPOV meetings and is

⁵ More info about this case, see e.g. http://www.farmersrights.org/bestpractices/success_seed_2.html

working to put the Farmers' Rights agenda on UPOV discussions. Apart from APBREBES and European Coordination Via Campesina (ECVC), there are no observers at UPOV meetings from CSOs and farmers' organizations. One of the results so far of APBREBES' activities is the increased transparency in UPOV with more of its documents now publically available (removing of "first restricted area").