



**Food and Agriculture
Organization of the
United Nations**



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR
FOOD AND AGRICULTURE**

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

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Overview of the Historical Developments and Discussion on Farmers' Rights

I. Introduction

1. Since the dawn of agriculture, farmers around the world have been the custodians and innovators of agricultural biodiversity. Through careful selection of their best seeds and propagating material, and exchange with other farmers, it became possible to develop and diversify crop varieties. As new crops were found in the wild, some of these were domesticated and cultivated.

2. Farmers depend on the diversity of cultivated plants to maintain yields and quality, adapting their food production to different and often marginal environments and difficult conditions. Domesticated crops have been passed down through generations of farmers, a small range of initial crops and varieties evolved into an abundant wealth of plant genetic diversity for food and agriculture. Diversity between and within crops is a means of spreading the risk of crop failure due to pests and diseases or adverse environmental conditions, such as drought. And, it is probably fair to say that plant genetic diversity is more important for farming than any other environmental factor, because it enables adaptation to changing environmental conditions, such as those caused by climate change.

3. As farmers are the custodians and developers of crop diversity in the field, their rights in this regard are critical if they are to be able to maintain this vital role for food security and nutrition, particularly in an era of climate change. Farmers' Rights are an important component of the International Treaty, and the promotion and realization of these rights would enable farmers and farming communities to continue performing their role as custodians and developers of the plant genetic resources for food and agriculture.

4. This document briefly reviews the historical development of the concept of Farmers' Rights in FAO and the importance of its realization, and provides an update on the related discussions by the Governing Body.

II. The emergence of Farmers' Rights as a concept

5. The first use of Farmers' Rights as a concept dates back to the early 1980s, when it was employed by the civil society proponents to highlight the valuable and yet, unrewarded contributions of farmers to the global genetic pool and genetic diversity.¹ At the beginning, the idea developed as a way to respond to increased demand for plant breeders' rights at that time in international negotiations. It soon emerged as a way of drawing attention to innovations of generations of farmers, who provided the initial foundation for modern plant breeding, and for which they had not been recognized or rewarded adequately.

6. The proponents argued for benefits to be given to farmers, in recognition of their contribution to the global genetic pool,² and also made the case for support in the conservation of these resources. Proposals put forward included the establishment of a fund for this purpose, and argued against any legal arrangements that might hinder farmers in their practice of saving, reusing, improving and developing seeds. These elements came to form the cornerstones of the concept of Farmers' Rights during international negotiations within FAO.

7. Issues regarding control over genetic resources in the 1980s were marked by broad disparities between the positions of different FAO Member States. For this reason, the then Chair of the US National Board for Plant Genetic Resources made contact with the Keystone Centre in Colorado, to launch a dialogue on plant genetic resources among international stakeholders.³ The Keystone Approach was to invite stakeholders as individuals, with the aim of reducing conflict levels and fostering off-the-record discussions, leading to a report to be produced on the basis of consensus only. The Keystone Dialogues took place in 1988, 1990 and 1991, in Keystone, Madras (now Chennai) and Oslo, respectively.⁴ These dialogues played an important role in framing international discussions on such issues as *Farmers' Rights, the common heritage of mankind, international funding* and, to some extent, related *intellectual property rights*.⁵

8. At the 22nd Session of the FAO Conference, the International Undertaking on Plant Genetic Resources was unanimously adopted through Resolution 8/83. And then, the concept of Farmers' Right was first introduced to the International Undertaking as an "Agreed Interpretation" by FAO Conference Resolution 4/89, and was further defined by FAO Conference Resolution 5/89. Under these resolutions, Farmers' Rights were seen as a means to reward farmers and their communities for their contributions in the past, to encourage them to continue their efforts to conserve and improve Plant Genetic Resources for Food and Agriculture and to allow them to participate in the benefits derived, at present and in the future, from the improved use of plant genetic resources, through plant breeding and other scientific methods. At

¹Pat Roy Mooney and Cary Fowler of the Rural Advancement Foundation International (RAFI, now known as ETC Group)

²Mooney, P.R. (1983, *The Law of the Seed: Another Development and Plant Genetic Resources* [citation])

³The Chair at the time was William Brown. See, Cary Fowler (1994): *Unnatural selection. Technology, politics and plant evolution*. p. 197. Yverdon, Switzerland, Gordon and Breach

⁴Chaired by Prof. M.S. Swaminathan, gathered a total of 92 stakeholders from 30 countries in the course of the three sessions

⁵Keystone Center. 1990. Madras Plenary Session. Final Consensus Report of the Keystone International Dialogue Series on Plant Genetic Resources, Second Plenary Session, 29 January – 2 February, 1990. pp. 25–26. Madras, India

the same time, Plant Breeders' Rights as provided for under UPOV (International Union for the Protection of New Varieties of Plant), were recognised as not incompatible with the International Undertaking;

9. Three “Agreed Interpretations” of the International Undertaking were negotiated over the years and incorporated into the text of the Undertaking as *Annexes 1, 2 and 3*:

- Resolution 4/89, entitled Agreed Interpretation of the International Undertaking, which recognized Farmers’ Rights, being Annex 1 to the International Undertaking;⁶
- Resolution 5/89, entitled *Farmers’ Rights*, which conceptualized the notion of Farmers’ Rights being *Annex II* to the *International Undertaking*;
- Resolution 3/91, which stated that Farmers’ Rights should be implemented through an international fund for plant genetic resources, being *Annex III* to the *International Undertaking*.

10. As an *annex* to the International Undertaking on Plant Genetic Resources, Resolution 5/89 endorses the concept of Farmers’ Rights, as meaning “*rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the International Community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers, and supporting the continuation of their contributions, as well as the attainment of the overall purposes of the International Undertaking.*”

11. The aim of endorsing the concept of Farmers’ Rights was to:

- ensure that the need for conservation is globally recognized and that sufficient funds for these purposes will be available;
- assist farmers and farming communities, in all regions of the world, but especially in the areas of origin/diversity of plant genetic resources, in the protection and conservation of their plant genetic resources, and of the natural biosphere;
- allow farmers, their communities, and countries in all regions, to participate fully in the benefits derived, at present and in the future, from the improved use of plant genetic resources, through plant breeding and other scientific methods.

12. During the 26th Session of the FAO Conference, Resolution 3/91 endorsed that:

- Farmers’ Rights would be implemented through an international fund on Plant Genetic Resources which would support PGR conservation and utilization, particularly, but not exclusively, in the developing countries;
- In view of the pressing and permanent need for effective conservation and sustainable use of PGR, the resources for the international fund and other funding mechanisms should be substantial, sustainable and based on principles of equity and transparency.

13. The idea of recognizing Farmers’ Rights transcended FAO and the International Undertaking, and was also supported in other international processes. Farmers’ Rights was reaffirmed in various contexts, such as:

- Chapter 14.59(a) of the Agenda 21, approved at the UN Conference on Environment and Development held in Rio de Janeiro in 1991, stated that appropriate United Nations agencies and regional organizations should “strengthen the Global Systems on the Conservation and

⁶ Adopted on 29 November 1989. Available at: <http://www.fao.org/docrep/x5588E/x5588e06.htm#e>. Commission on plant genetic resources and the international undertaking: progress report

Sustainable Use of Plant Genetic Resources for Food and Agriculture by ... taking further steps to realize Farmers' Rights".⁷

- Resolution 3 of the Nairobi Conference for the Adoption of the Agreed Text of the Convention on Biological Diversity, which identified the realization of Farmers' Rights as one of the outstanding matters for further negotiation.⁸
- The Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture.⁹

14. One of the principal objectives of the renegotiation of the International Undertaking, which underpinned the negotiations for the International Treaty, as indicated in FAO Conference Resolution 7/93, was to provide for the realization of Farmers' Rights.

15. In 2001, at the Thirty-first Session of the FAO Conference, the International Treaty on Plant Genetic Resources for Food and Agriculture was finally adopted through Resolution 3/200,¹⁰ and it entered into force in June 2004.

III. Direct Provisions on Farmers' Rights in the International Treaty

16. The Preamble of the International Treaty referred to Farmers' Rights, that Contracting Parties are:

“Affirming that the past, present and future contributions of farmers in all regions of the world, particularly those in centres of origin and diversity, in conserving, improving and making available these resources, is the basis of Farmers' Rights;

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

17. Article 9 of the International Treaty provides that:

9.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

9.2 The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national

⁷ United Nations Sustainable Development Agenda, <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

⁸ Nairobi Final Act of the Conference for the adoption of the Conference on Biological Diversity, <https://www.cbd.int/doc/handbook/cbd-hb-09-en.pdf>

⁹ Published by FAO in 1998. A second version of the State of the World's Plant Genetic Resources for Food and Agriculture was published by FAO in 2010

¹⁰ Thirty-first Session of the Conference, Rome, 2-13 November 2001, <http://www.fao.org/docrep/meeting/004/Y2650e/Y2650e01.htm#Resolution3>

governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:

- (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;*
- (b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and*
- (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.*

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

IV. Other relevant Articles of the International Treaty

18. The International Treaty specifies that the responsibility for implementing Farmers' Rights lies with the various national governments. Each country is free to choose the measures it deems necessary and appropriate, in accordance with its own needs and priorities. Other provisions of the International Treaty besides Article 9 are also of relevance to the implementation of Farmers' Rights.

19. Article 5 contains provisions on conservation and sustainable use of plant genetic resources for food and agriculture, which are crucial for the overall implementation of the International Treaty. Article 5 covers "*Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of plant genetic resources for food and agriculture*". By Article 5.1, each Contracting Party agrees to promote an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture, subject to national legislation, and in cooperation with other Contracting Parties where appropriate. This is further elaborated in Articles 5.1(a), (b), (c), (d), (e), and (f). In particular, by Article 5(c) Contracting Parties agree to "*promote or support, as appropriate, farmers and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture*", while Article 5.1(d) refers to the promotion of "*in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, inter alia, the efforts of indigenous and local communities*".

20. Article 6 addresses "*Sustainable Use of Plant Genetic Resources*" and provides for a number of concrete measures that are of relevance to Farmers' Rights, such as:

- Article 6.2(c), promoting participatory plant breeding and developing varieties "specifically adapted to social, economic and ecological conditions, including in marginal areas";
- Article 6.2(d), "broadening the genetic base of crops and increasing the range of genetic diversity available to farmers";
- Article 6.2(e), promoting "the expanded use of local and locally adapted crops, varieties and underutilized species"
- Article 6.2(f), supporting "the wider use of diversity of varieties and species in on farm management, conservation and sustainable use of crops" and "creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion"

21. Articles 13.2 refers to the Benefit-sharing in the Multilateral system and states that “the Contracting Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body.”

22. Article 19 provides that the Governing Body shall promote the full implementation of, and compliance with, the provisions of the International Treaty.

The decisions adopted by the GB on the implementations of Article 9

First Session of the Governing Body

23. During the First Session of the Governing Body in 2006,¹¹ a Ministerial Meeting of Contracting Parties and Contracting States was held on 13 June and resulted in a Ministerial Declaration which included the following references to the work of farmers and Farmers’ Rights:

xiii) Recognizing the enormous contribution that the local and indigenous communities and farmers of all regions of the World, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world;

xiv) Recognizing the importance of implementing Farmers’ Rights, in accordance with Article 9 of the Treaty.

24. Beside this reference to the work of farmers and the importance of implementing Farmers’ Rights, and the request to the Secretary to find practical ways to further enhance the participation of farmer organizations in the next session of the Governing Body, there was no decisions or resolution related to Farmers’ Rights adopted at that time. Nevertheless, it was proposed that follow-up to Article 9 to be considered by the Bureau for possible inclusion in the agenda of the Governing Body's second session.

The Succeeding Sessions of the Governing Body

25. At its Second Session, the Governing Body expressed its appreciation to the Governments of Norway and Zambia for convening an informal international consultation on Farmers’ Rights in Lusaka, Zambia, in September 2007, and for sharing the outcomes with the Governing Body,¹² and adopted Resolution 2/2007 on Farmers’ Rights.¹³

26. Among the main decisions under Resolution 2/2007, the Governing Body:

- *Acknowledge[d]* that there was uncertainty in many countries as to how Farmers’ Rights can be implemented and that the challenges related to the realization of Farmers’ Rights are likely to vary from country to country;

¹¹ IT/GB-1/06/Report, <http://www.fao.org/3/a-be210e.pdf>

¹² IT/GB-2/07/Report, <http://www.fao.org/3/a-be160e.pdf>

¹³ <http://www.fao.org/3/a-be008e.pdf>

- *recognize[d]* that exchange of experiences and mutual assistance between Contracting Parties can significantly contribute to making progress in the implementation of the provisions of Farmers' Rights;
- *Encourage[d]* Contracting Parties and other relevant organizations to submit views and experiences on the implementation of Farmers' Rights as set out in Article 9 of the International Treaty, involving, as appropriate, farmers' organizations and other stakeholders;
- *Request[ed]* the Secretary to collect these views and experiences as a basis for an agenda item for consideration by the Governing Body as its Third Session to promote the realization of Farmers' Rights at the national level, and to disseminate relevant information through the website of the International Treaty, where appropriate;
- *Appreciate[d]* the involvement of farmers' organizations at this Second Session and affirms its commitment to continue to involve farmers' organizations in its further work, as appropriate, according to the rules of the Governing Body; and
- *Recognize[d]* that exchange of experiences and mutual assistance between Contracting Parties can significantly contribute to making progress in the implementation of the provisions on Farmers' Rights of the International Treaty".

27. The Governing Body, at its Third Session, adopted Resolution 6/2009, *Implementation of Article 9, Farmers' Rights*,¹⁴ which recalled Resolution 2/2007 and noted the limited number of contributions received by the Secretariat with regard to views and experiences on the implementation of Farmers' Rights. Hence, the Governing Body:

- *Invite[d]* each Contracting Party to consider reviewing and, if necessary, adjusting its national measures affecting the realization of Farmers' Rights as set out in Article 9 of the International Treaty, to protect and promote Farmers' Rights;
- *Encourage[d]* Contracting Parties and other relevant organizations to continue to submit views and experiences on the implementation of Farmers' Rights as set out in Article 9 of the International Treaty, involving, as appropriate, farmers' organizations and organizations;
- *Request[ed]* the Secretariat to convene regional workshops on Farmers' Rights, subject to the agreed priorities of the Work Programme and Budget and to the availability of financial resources, aiming at discussing national experiences on the implementation of Farmers' Rights, as set out in Article 9 of the International Treaty, involving as appropriate, farmers' organizations and other stakeholders;
- *Request[ed]* the Secretariat to collect views and experiences submitted by Contracting Parties and other relevant organizations, and the reports of the regional workshops as a basis for an agenda item for consideration by the Governing Body as its Fourth Session, and to disseminate relevant information through the website of the International Treaty, where appropriate, and
- *Appreciate[d]* the involvement of farmers' organizations in its further work, as appropriate, according to the Rules of Procedure of the Governing Body.

28. From the Third to the Seventh Session, the Governing Body adopted Resolutions on Farmers' Rights: Fourth Session, Resolution 6/2011,¹⁵ Fifth Session, Resolution 8/2013,¹⁶ Sixth Session, Resolution 5/2015,¹⁷ and the Seventh Session, Resolution 7/2017.¹⁸ These decisions are in the form of

¹⁴ <http://www.fao.org/3/a-be080e.pdf>

¹⁵ <http://www.fao.org/3/a-be456e.pdf>

¹⁶ <http://www.fao.org/3/a-be600e.pdf>

¹⁷ <http://www.fao.org/3/a-bl144e.pdf>

¹⁸ <http://www.fao.org/3/a-mv102e.pdf>

suggestions to the Contracting Parties and other stakeholders, for consideration in a stepwise process of implementing Farmers' Rights. These can be summarized, as follows:

- Collect (knowledge), views and experiences (and best practices) on the implementation of Farmers' Rights, involving, as appropriate, farmers' organizations and other stakeholders (Resolutions 2/2007, 6/2009, 6/2011, 8/2013, 5/2015, 7/2017);
- Consider reviewing and, if necessary, adjusting national measures affecting the realization of Farmers' Rights (including regulations concerning variety release and seed distribution), (Resolutions 6/2009, 6/2011, 8/2013, 5/2015, 7/2017);
- Convene regional (and/or local, national, international) consultations on Farmers' Rights (Resolutions 6/2009, 6/2011, 8/2013, 5/2015, 7/2017);
- Engage farmer organizations and relevant stakeholders in matters related to the conservation and sustainable use of PGRFA (Resolutions 8/2013, 5/2015, 7/2017);
- Consider developing national action plans for implementation of Article 9 in line with implementation of Articles 5 and 6 of the International Treaty (Resolutions 8/2013, 5/2015, 7/2017);
- Enhance coordination among relevant institutions (Resolution 5/2015);
- Invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments and to continue engaging, in a mutually supportive manner, including through participatory and inclusive process) (Resolutions 8/2013, 5/2015, 7/2017);
- Engage in capacity building, dissemination, networking (Resolutions 8/2013, 5/2015, 7/2017);
- Consider success stories and best practices to promote Farmers' Rights (5/2015, 7/2017)
- Derive options for national implementation of Article 9 (Resolutions 8/2013, 5/2015, 7/2017);
- Calls upon Contracting Parties and development cooperation organizations to consider providing financial and technical support for the implementation of Farmers' Rights, as set out in Article 9 of the International Treaty (Resolutions 6/2011, 8/2013, 5/2015, 7/2017).

29. The Governing Body also adopted some decisions that are content-related recommendations or practical tools supportive of the implementation of Article 9, such as:

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

30. The Governing Body has also considered the results of global consultations on Farmers' Rights. The fourth session of the Governing Body took note of the results of the consultations on Farmers' Rights presented in the document IT/GB-4/11/ Circ 1,¹⁹ submitted to the Secretariat by Ethiopia. The submission included the results of the e-mail survey among stakeholders from July-September 2010 in addition to regional and joint recommendations from the consultation in Addis Abeba in November 2010. The Seventh Session of the Governing Body noted with appreciation the Proceedings of the Global Consultation on Farmers' Rights held in Bali, Indonesia, in 2016.²⁰

¹⁹ <http://www.fao.org/3/a-be078e.pdf>

²⁰ http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/AHTEG-FR-1/GlobalConsultation.pdf

The establishment of the Ad Hoc Technical Expert Group (AHTEG) on Farmers' Rights

31. The Governing Body at its Seventh Session decided to establish the Ad Hoc Technical Expert Group on Farmers' Rights (AHTEG). The AHTEG is expected to “*produce an inventory of national measures that may be adopted, best practices and lessons learned from the realization of Farmers' Rights*”, and “*based on the inventory, develop options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty*”, with the aim to report back to the Governing Body on its work for consideration in the following session (Resolution 7/2017).
32. The establishment of the AHTEG represents a milestone in the discussion on Farmers' Rights in the Governing Body sessions, underlining the importance the Governing Body is giving to support and facilitate the implementation of Article 9, and to provide advice to Contracting Parties with regard to the process and practical options for implementation.
33. The AHTEG is invited to note the developments outlined above and, as appropriate, take them into account in its deliberations.