



Food and Agriculture
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 France on 26 July 2018.

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

Paris, Juillet 2018

NOTE DES AUTORITÉS FRANÇAISES

Objet : Contribution de la France à l'invitation à présenter des avis, des données d'expérience et des pratiques optimales comme exemples d'options possibles pour l'application nationale de l'article 9 du Traité international (TIRPAA), et des informations concernant les dispositions relatives au Groupe spécial d'experts techniques sur les droits des agriculteurs

Réf. : mail du mercredi 9 mai 2018 17:26

Article 9 - Farmers' Rights

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 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:

According to Article 9, the responsibility of the realization of farmers' rights rests with national governments. National seed systems, issues of food security/food safety, and involvement of farmers in decision making process differs due to the fact that agricultural and economic developments, especially for local communities and farmers in rural areas which depend directly or indirectly on agriculture for their livelihoods, are not equal in each individual countries. Therefore it is appropriate that the implementation of farmers' rights clearly depends on the needs and priorities of each individual countries. Article 18.4.b) of the Treaty indicates that it is important for developing countries to accord due priority in their own plans and programmes to building capacities in plant genetic resources for food and agriculture.

Nevertheless it is interesting to share these national measures for further consideration by countries in order for them to adopt or adapt good practices from lessons learned and experiences shared on the realization of Farmers' Rights at national level.

In European Union and in France, the various seed Marketing Directives and their national transpositions at Member State level create good conditions for farmers to access to high quality seed regarding germination, purity, and some phytosanitary criteria. It may be consider by some as a limitation to secure farmer's expectation regarding seeds qualities to the exchange/trade of farmers'

seed; nevertheless this seed quality schemes are of major importance to sustain agricultural production and incomes to farmers, as well as plant breeding and consequently improve both innovation and conservation and utilization of plant genetic resources.

a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;

On the first point, the French approach related to the history of plant breeding and using plant genetic resources has always been valuing its traditional knowledge. The IPR system “plant breeder’s rights” is the adapted type of legal protection for traditional agricultural knowledge leading to crop improvement/plant breeding. In practice, any natural or legal person can be recognized as a breeder of a plant variety. This fact that, a breeder is anybody who breeds, was reflected in the constitution of first official catalogue of wheat in the 1930s. The Paris convention on the Protection of New Varieties of Plants in 1961 has the same definition.

Moreover, geographical indications have been implemented to protect traditional knowledge relevant to specific plant genetic resources associated with a geographic localisation such as “Coco de Paimpol” for a dry bean, “lentille verte du Puy” for green lentils or “moquette de vendée” for another type of dry bean.

<https://www.interfel.com/wp-content/uploads/2018/01/infographie-etude-siqo-web.pdf>

Thirdly, copyright is also a way to strengthen the position of traditional holders or healers, by viewing them as providers of knowledge just like scientists, rather than simply as informants. Including traditional holders or healers who have provided information for research as co-authors will allow the protection and recognition of their knowledge.

<https://umr-agap.cirad.fr/animations-scientifiques/animagap-pierre-riviere-rsp-et-isabelle-goldringer-inra>

In addition to intellectual protection tools, France implemented the directive on conservation varieties threatened by genetic erosion, which correspond mainly to landraces/farmers’ varieties. These “varieties” have a facilitated process to be registered and this registration is a form of recognition of farmers’ work.

In 2014, the EU Regulation n°511/2014 establishes rules governing compliance with access and benefit-sharing for genetic resources and traditional knowledge associated with genetic resources in accordance with the provisions of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the ‘Nagoya Protocol’). ‘Traditional knowledge associated with genetic resources’ means traditional knowledge held by an indigenous or local community that is relevant for the utilisation of genetic resources and that is as such described in the mutually agreed terms applying to the utilisation of genetic resources.

b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture;

The right to participate in benefit sharing arising from the use of PGRFA is ensured through the particular system of Intellectual Property Rights (IPR) adopted by France and in European Union on plant varieties. Firstly, by ensuring an effective plant variety rights’ system and thus an increased added value for plant genetic resources through breeding, French farmers took advantage of a steady, cumulative genetic progress. For example, the yield of soft wheat which was steady at 1 ton/ha until the 1950s has risen by 700% in 40 years, half of this increase is, at least, due to genetic progress. Another study of INRA shows that over the past 25 years the progress due to breeding is of 1.23q/ha per year in untreated conditions. Secondly the benefit sharing is also ensured by the

breeders' exemption in plant varieties' protection, which means that any progress obtained by breeding is immediately available for anyone for further breeding. Of course, this breeders' exemption may be used by anybody, and specially farmers-breeders who are organized through some networks to perform some "traditional" breeding. Thirdly, the optional exception provided under plant variety protection for farmers in order to reuse, on their own farm, the result of their harvest obtained from protected variety of certain species (agricultural derogation under the EU regulation n°2100/94) is also benefit sharing, even if the farmers have to provide an equitable remuneration to the breeders, taking into account that the amount is lower than a normal royalty.

France has explicitly maintained this exemption for breeding for all plant varieties including those carrying biotechnological patented inventions; this is also reflected in the unified patent court agreement (Article 27.c) in relation to the EU Regulation n°1257/2012 on the Unitary patent.

Secondly, public and private breeding institutions and companies created 27 collections of plant genetic resources in the 70's, which were partly opened to other stakeholders' groups. They were used by farmers and farmers-breeders who wanted to implement non-conventional agriculture.

Thirdly, the EU Regulation n° 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development establishes in article 28.9 that "*Support may be provided*" to farmers "*for the conservation and for the sustainable use and development of genetic resources in agriculture (...)*." In France it is implemented regionally according to each specificities.

Finally, in France regarding public and external private funding or farmers' organizations, it can be noted that the farmers' network "réseau semences paysannes" indicates that, in 2017 to conduct activities on participatory plant breeding, such fundings represented 88% of its total budget (400.000€), 31% from public support. In addition, in 2003, they started their activities with genetic resources (traditional varieties and landraces) obtained from other public-private networks, gathering research institutions and plant breeding companies.

It can be noted that GNIS, the French agricultural interprofessional organization for seed - gathering farmers' organizations, breeders' organizations, seed companies' organizations - provided , as a common decision and common contribution of the various stakeholders' organizations which are GNIS members, an annual voluntary contribution of 175.000€, to the benefit sharing found of the ITPGRFA to implement in developing countries agreed plans and programs for farmers who conserve and sustainably utilize plant genetic resources. In addition a similar contribution is done at national level to support national collections of plant genetic resources.

The French law n°2011-1843, chapter II on conservation of French plant genetic resources for food and agriculture, indicates that "*the conservation of heritage/patrimonial plant genetic resources shall be organized, in the general interest, under conditions that facilitate the access of citizens, any natural or legal person and the international community to samples of these resources in the light of their global interest in agriculture and food.*" The decree n° 2015-1731 implementing this law n° 2011/1843 establishes that the persons involved in the conservation of plant genetic resources for food and agriculture can be recognised as "collection manager". Such official recognition is delivered by the ministry of agriculture according to certain conditions. A farmer or a farmers' network can apply for such recognition.

<https://www.geves.fr/actualites/ressources-phytogenetiques/reconnaissance-officielle-des-gestionnaires-de-collections-de-ressources-phytogenetiques-pour-lagriculture-et-lalimentation/>

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.

The creation in 1974 of the Bureau for Genetic Resources (BGR) bringing together all voluntary stakeholders including amateurs' associations or in 2008 the establishment of a stakeholders advisory board for the research foundation on biodiversity (FRB) including farmers' organization,

amateurs' associations, breeders reflects the participation of farmers' in decision making process, from the level of research or plant genetic resources management.

<http://www.fondationbiodiversite.fr/en/society/presentation.html>

For more than 70 years and more recently in accordance with Decree n°2009-676, the Technical Committee for Plant Breeding (CTPS) plays an advisory role, providing analysis and guidance to the ministry of Agriculture. This aims to ensure the best possible match between the objectives of variety users (farmers, gardeners), civil society, public authorities, and breeders. It is composed of 14 Sections organised by species. In each section, farmers' are represented.

More recently, in 2016, a new body "section CTPS of plant genetic resources" was created in France by the Ministry of agriculture in order to ensure the involvement of various stakeholders, farmers, breeders, NGOs, users, ... The Technical Committee for Plant Breeding (CTPS) plays an advisory role, providing analysis and guidance to the Ministry of agriculture with this new cross-sectional committee for the conservation of Plant Genetic Resources for cultivated species and their crop wild relatives. Within its members, farmers' are well represented.

<https://www.geves.fr/plant-genetic-resources/national-coordination/ctps-section-for-the-conservation-of-plant-genetic-resources-pqr/>

It is also true for the French interprofessional organization of seeds (GNIS) has an official role according to the modified regulation (EU) N°1308/2013 of the European parliament and of the council of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) N°922/72, (EEC) N°234/79, (EC) N°1037/2001 and (EC) N°1234/2007 EU and French law (according to articles L.632-3 to L.632-9 of Code rural et de la pêche maritime and modified Décret n°62-585 du 18 mai 1962 relatif au groupement national interprofessionnel des semences, graines et plants (G.N.I.S.)). The purpose of GNIS is to represent the various occupations and professional categories interested in the selection, multiplication, production, trade and use of seed and seedlings and to study and to propose any measures tending to organize the production and marketing of the said seeds and seedlings. Farmers' representative organizations are members of the administrative council and of the various sections per crop groups. Two colleges of each section gathers farmers' representatives, one dealing with seed growing and the other with seed utilization.

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.

Obviously, as set out in paragraph 9.3, the ratification by France of the Treaty did not lead in any way to limit the rights that could have the farmers in matter of farm-saved seeds.

At the opposite, regarding protected varieties, since the French law n° 2011-1843, the use of farm saved seeds of protected varieties - which was forbidden since 1970 - is allowed under certain conditions. In addition, based on the EU Regulation n°2100/94 and the French law, three agreements between plant varieties breeders and farmers allow the use of farm-saved seeds of protected varieties in cereals and potatoes, as well as forage crops.

In addition, the French biodiversity law n° 2016-1087 allows the exchange of seed between farmers, for non-protected varieties and outside seed production contracts. The exchange is within the framework of mutual support between farmers.

Regarding non protected varieties, France implements the European Directive on conservation varieties, which extend to old varieties threatened by genetic erosion conditions of marketing which are less stringent than the current obligations for certified seeds.

The recently adopted EU Regulation on organic farming establishes new rules for heterogeneous material and varieties adapted to organic farming. This new Regulation will answer, in particular, to specific needs of farmers and other stakeholders involved in organic production, when the implementing Regulation will be in place.