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 Norway on 28 June 2018.

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

ROYAL NORWEGIAN
MINISTRY OF AGRICULTURE AND FOOD

International Treaty on Plant Genetic Resources
for Food and Agriculture

Rome,
ITALY

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Farmers' Rights - submission from Norway

In response to the invitation to submit views, experiences and best practices as examples of possible options for national implementation of Article 9 sent to national focal points 9th May 2018, Norway would like to refer to its previous submissions on this subject matter[1]. In addition, we would like to share some further views and experiences regarding the promotion of Farmers' Rights at the international level as well as some national experiences on the implementation of Farmers' Rights (please see attachment).

Yours sincerely

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This document is signed electronically and has therefore no handwritten signature

[1] In 2012: http://www.fao.org/3/a-bb908e.pdf; in 2014: http://www.fao.org/3/a-bb921e.pdf

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Attachment:

Farmers' Rights – Submission from Norway June 2018

In response to the invitation to submit views, experiences and best practices as examples of possible options for national implementation of Article 9 sent to national focal points 9th May 2018, Norway would like to refer to its previous submissions on this subject matter[2]. In addition, we would like to share the following:

1. Experiences

1.1. Promoting Farmers' Rights at the international level

Global consultation on Farmers' Rights
At the international level, Norway has been involved in promoting Farmers' Rights by co-organising the global consultation on Farmers' Rights in Bali in 2016 together with Indonesia.[3]

Norway considers it useful to bring together participants from different regions, different stakeholder groups and thus with different perspectives. In our view, the consultation enhanced the general understanding of Farmers' Rights, identified several obstacles for the further realisation of Farmers' Rights, as well as possible solutions on how to overcome those.[4] The presentations made at the consultation documented several experiences regarding the realisation of Farmers' Rights and could thus serve as examples of options for encouraging, guiding and promoting the realization of Farmers' Rights. Among these are:

- Strengthening of local seed systems, including supporting farmers as seed suppliers (e.g. through seed clubs)
- Strengthening farmers' and their organisations' participation in decision making at national and regional levels on policy and regulation regarding seed registration and plant variety protection
- Promoting participatory approaches such as community seed banks and participatory plant breeding
- Integration of Farmers' Rights in development cooperation programmes

Interrelations with Plant Breeders' Rights
Norway has also presented its policy and legislation on plant breeders' rights and how these are balanced towards Farmers' Rights, at the symposium on possible interrelations between the International Treaty and the different Acts of the UPOV Convention.[5]

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[2] In 2012: http://www.fao.org/3/a-bb908e.pdf; in 2014: http://www.fao.org/3/a-bb921e.pdf
[3] Norway also co-organized an informal international consultation on Farmers' Rights with Zambia and the Norwegian research institute Fridtjof Nansen Institute in 2007 (the report is available here: https://www.regjeringen.no/globalassets/upload/lmd/vedlegg/brosjyrer_veiledere_rapporter/lusakarapporten.pdf) and participated in the global consultation on Farmers' Rights in Ethiopia in 2010, which was co-organized by the Fridtjof Nansen Institute and the government of Ethiopia.
[4] The report is available here: http://www.fao.org/3/a-bs767e.pdf.
[5] This presentation is available here: http://www.upov.int/edocs/mdocs/upov/en/upov_itpgrfa_sym_ge_16/upov_itpgrfa_sym_ge_16_2_proceedings.pdf (page 109-115).

Some key lessons learnt in Norway regarding PVP and Farmers' Rights are:

- A draft law proposing to strengthen plant breeders' rights that would have enabled Norway to adhere to the 1991 Act of the UPOV Convention was withdrawn in 2005 on the grounds that it limited Farmers' Rights. At the same time, the breeding industry was promised to receive stronger government support.[6]
- The possibility for PVP protection is a valuable tool to stimulate plant breeding, but is not sufficient to ensure crop development for small markets, e.g. fodder adapted to Northern Norway (cold, short summers with a lot of day light).
- Close collaboration between the national focal points for the International Treaty and the UPOV Convention facilitates mutually supportive implementation.

The role of the Benefit-sharing Fund

In March 2018, the state secretary in the Ministry of Agriculture and Food, Ms. Hanne Maren Blåfjelldal, went on a field trip to Malawi to visit projects that have got support from the Benefit-sharing Fund (BSF)[7]. This trip highlighted in several ways how the BSF supports the realisation of Farmers' Rights. Among the key issues discussed at the field trip:

- The importance of seed policy and legislation in order to give legal space for the improvement of local seed systems, e.g. the possibility for farming communities to sell seeds from community seed banks.
- The challenge of the formal seed system to meet the demand for certified seeds.
- The possible synergies between BSF-supported projects (relatively small amount of funding) and other agricultural development programmes.

Svalbard Global Seed Vault[8]

The Svalbard Global Seed Vault provides facilities for the safe deposit of seeds samples that have distinct genetic resources of importance to food security and sustainable agriculture. The Seed Vault offers storage for duplicates of all unique seed accessions conserved also by farming communities. For example, in 2015, potato farmers from Peru deposited seeds in the Vault.[9] During the 10 year anniversary of the Seed Vault in February 2018, also representatives of organisations working closely with farming communities, were invited to make presentations at the Svalbard Seed Summit.[10] One of the key messages from this summit was that governments should *facilitate improvement of community seed banks and the multiplication of the seeds they contain. This will conserve crop diversity that has been saved by the farming community. It will give local farmers easy and timely access to diverse and*

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[6] "*Rejecting the bill while ensuring sufficient funds for plant breeding: that was the Norwegian solution to balancing farmers' and breeders' rights."* Pp.27 in "Norway's path to ensuring Farmers' Rights in the European context" by Regine Andersen, chapter 3 in *Realising Farmers' Rights to Crop Genetic Resources. Success stories and best practices*.

[7] http://www.fao.org/plant-treaty/news/news-detail/en/c/1107421/

[8] http://www.seedvault.no/ The Government of Norway established and fully funded the Svalbard Global Seed Vault. The overall responsibility for the Seed Vault rests with the government, under the Norwegian Ministry of Agriculture and Food. Daily operations are overseen by the Nordic Genetic Resource Centre (NordGen) under an agreement between the Ministry, NordGen and the Crop Trust (formerly the Global Crop Diversity Trust) which partly provide funding for the Seed Vault's management.

[9] http://www.fao.org/news/story/en/item/326369/icode/

[10] https://www.nordgen.org/wp-content/uploads/2018/03/Seed_Vault_Summit.pdf

locally-adapted seeds. It will also give access to education and training, and possibly to seed-ownership and associated income opportunities.[11]

Bilateral capacity building collaboration
The Norwegian Centre for Genetic Resources at the Norwegian Institute for Bioeconomy Research (NIBIO) participated in a project on Farmers' Rights in Bulgaria that was implemented in 2015-2016.[12] The main purpose of the project was to ensure farmers' rights in access to plant genetic resources for agricultural activities and food industry in the context of the International Treaty for Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Nagoya Protocol, both signed and ratified by Bulgaria. Among the activities where the Norwegian partner was active, was a study tour to Norway for a group of 6 Bulgarian representatives of the target groups, who visited the Norwegian Ministry of Climate and Environment, Ministry of Agriculture and Food, NIBIO, farmers working with PGR, as well as other institutions that are part of the PGR value chain. Other activities were the development of a report on best practices for farmers' rights; capacity building workshops, development of a list of measures for implementation of farmers' rights; and development of a draft strategy for PGR for Bulgaria.

1.2. Realising Farmers' Rights at the national level

Recognition of the contribution of farmers and local communities
In order to recognise farmers' contribution to the conservation and development of plant genetic diversity, an annual Plant Heritage Award has been introduced. Also farmers have received this prize. E.g. in 2006, one of the recipients of the award was Erling Olsen, a farmer and formerly a breeder at a Norwegian research facility. He was given the award for his conservation of more than 170 older varieties of potato. In 2011, Johan Swärd got the price due to his comprehensive work of documenting the different properties of old cereal varieties, and to ensure that they are cultivated.[13]

The government provides funding for projects run by farmers, gardeners, extension services and others, who contribute in conserving and sustainably use conservation varieties. Such funding is done in recognition of the valuable contributions of farmers in ensuring the continued conservation of these varieties.

Several of the PGRFA activities in Norway benefits largely from the competence and knowledge of retired professionals – farmers and gardeners. This could also be considered as a kind of recognition of farmers' contribution by the authorities. At the same time, the wealth of experiences held by elderly farmers and other agronomists, is a true treasure for the authorities to ensure the quality and amount of work needed at different project sites.

Protection of traditional knowledge
There are broadly speaking two main approaches to the protection of traditional knowledge in the context of Farmers' Rights, namely protection against extinction and protection against misappropriation. In a modern agricultural sector such as the Norwegian, the key challenge is

[11] http://www.seedvault.no/news/the-seed-vault-summit-calls-for-action-to-save-crop-diversity/
[12] https://eeagrants.org/project-portal/project/BG03-0008
[13] Overview of all recipients of the Prize (In Norwegian): https://www.nibio.no/nyheter/plantearven-prisen-tildelt-innsats-for-ny-paeresort-og-gamle-roser

to ensure that traditional knowledge is kept alive and can be further developed among farmers. The documentation of properties, possible use and relevant history of PGRFA is part of the tasks of NordGen and the Norwegian Genetic Resource Centre. One possible measure that has been identified in national discussions in order to strengthen this work, is to improve ways of collecting and storing knowledge and traditions (e.g. database).[14]

Participation in benefit sharing
Norway supports the Benefit-sharing Fund with an annual contribution equal to 0,1% of annual seed sales in Norway. Norway has done so in ten years in a row. In addition, Norway has also supported the BSF with major grants (40 Mill NOK in 2013 and 3 Mill NOK in 2017).

Graminor AS, the only breeding company in Norway is partly owned by the farmers´ co-operative *Felleskjøpet Agri*. In Norway, commercial agriculture is carried out farther north than in any other country. A short growing season with low temperatures, great variations in daylight and challenging winters give few other countries similar growing conditions to ours. Plant varieties adapted to our northern conditions are essential for efficient and profitable food production in all parts of the country. The main research and breeding programs are in barley, oats, rye and wheat. Graminor also delivers breeding services in forage grasses, potatoes, fruits and berries as set out in the Annual Agricultural Agreement between the Government and the farmers' unions. The purpose is to increase cost-efficiency and profitability in these productions. The license fees are insufficient to cover the development costs of these crops, which are essential to farming and food production in all parts of the country. Therefore, Graminor is dependent on financial support from the government to breed varieties for which there is demand, but that are not commercially viable.

In addition to developing propagating material to meet the needs of farmers, more participatory methods for crop improvement could be considered a form of benefit sharing. Support and development of appropriate methods of "micro-breeding" of underutilized/minor crops may be a way forward. Today we have little overview of such activities or their contribution, but we are aware of a growing interest, mainly amongst hobby growers. If established under the right circumstances and with access to science and markets, such initiatives may become innovative points of development for Norwegian food production.

The work on "Plant Heritage" of the Norwegian Genetic Resource Centre is a system of reintroducing traditional/historic varieties with a commercial potential. Organic and biodynamic farmers interested in old varieties, have established a company, *Økologisk Spesialkorn*[15], which is also formally recognised as a seed shop for conservation varieties. Another company, *Solhatt*[16], is specialised in organic garden seeds, and also sells seeds of traditional varieties. Norway is also working on formalising the work of a community seed bank. Also, Norwegian Seed Savers[17] is now formally organised, as an organisation for private hobby gardeners and are providing access to PGR diversity.

[14] https://brage.bibsys.no/xmlui/bitstream/handle/11250/2453858/SoL-Rapport-2013-04.pdf?sequence=2&isAllowed=y
[15] https://spesialkorn.no/
[16] https://solhatt.no/om-oss/
[17] http://www.norwegianseedsavers.no/

Access to genetic resources under the MLS could also be considered as benefit sharing. The Nordic Genetic Resource Centre (NordGen) is the gene bank maintaining germplasm of Nordic origin as well as material relevant for the Nordic region. NordGen is under common Nordic control and management. The seed material stored at NordGen is available upon request for plant breeders, plant researchers, museums and other bona fide users. Germplasm is available in small quantities for research, breeding, conservation or similar purposes. NordGen serves the scientific community, but does also honour reasonable requests from individuals such as farmers and gardeners when resources permit and the requester has a serious interest in seed saving and maintaining old or rare varieties. Individuals who are primarily looking for seeds in general for gardening instead of specific plant genetic resources, are kindly asked to use other sources, such as commercial seed suppliers.[18]

A report by the Norwegian Genetic Recourse Centre[19] considered several possible options on how to further strengthen farmers' participation in benefit sharing in a Norwegian context: the introduction of direct economic support to farmers who are cultivating conservation varieties; and possible changes in the rules for compensation of loss of harvest. In 2011, farmers growing conservation varieties experienced poor quality of their harvest (not suitable for baking) and thus economic loss. A challenge was that the rules for compensation are linked to the loss of quantity, not to the economic loss caused by loss of quality.

Participation in decision making
In general, farmers and their organisations have a multitude of channels for participation in and influence on policy processes in Norway. There are annual agricultural negotiations between the Government and the farmers' unions, resulting in the Annual Agreement on Agriculture. In the field of genetic resources, for example, *Felleskjøpet*, a farmer cooperative, is one of the owners of the only breeding company in Norway, Graminor AS, and is also the main distributor of seeds. There are also projects developing new varieties of forages with high level of farmers' participation. Farmers are also represented on the advisory board on plant genetic resources at the Norwegian Genetic Resource Centre. The Centre maintains close working relationships with both the major farmers' cooperatives and farmers' unions as well as with the smaller number of farmers who are more actively involved with issues directly related to seed diversity and cultivation of traditional varieties. During the last few years, farmers cultivating traditional varieties have become more organized, including loose networks and the establishment of cooperatives. Therefore, they have become more visible and it has become easier for the authorities to involve them in various processes.

Rights to save, use, exchange and sell farm-saved seeds
The laws and regulations regarding seed quality and seed safety, as well as intellectual property rights, are the most relevant regarding farmers' rights to save, use, exchange and sell farm-saved seeds.

In 2010, Norway adjusted its seed regulation to be more accommodative to the approval and use of traditional varieties. E.g. the general DUS-criteria are applied in a less restrictive way and the registration fees for such varieties are reduced. While the fee for value testing and registration of ordinary varieties are 12.790 NOK, the fees for registration of conservation

[18] http://www.nordgen.org/index.php/en/content/view/full/1777
[19] Rapport 04/2013 from Norwegian Genetic Resource Centre: "Bønders rettigheter og bidrag til bevaring og utvikling av plantegenetiske ressurser i Norge" (only in Norwegian)

varieties are currently 695 NOK.[20] Some remaining challenges are linked to the definition of ”region of origin”, the quantity limitation for marketing traditional varieties and the possibilities to further develop so-called conservation varieties for cereals and forages. Nevertheless, the changes in seed regulation widened the scope for farmers' possibility to save, use, exchange and sell farm-saved seeds in small quantity and on non-commercial basis.

Norwegian law on Plant Breeders' Rights is compatible with the 1978 Act of the UPOV Convention. Farmers are allowed to save and use farm-saved propagating material of protected varieties without any remuneration to the holder of the PVP.

2. Expectations to the AHTEG on Farmers' Rights

Norway welcomes the establishment of the AHTEG on Farmers' Rights. Our expectations to the work, is that the *inventory* should include a wide set of experiences, best practices and lessons learnt – not only linked to laws and regulations (legal measures), but also policy, financial and technical measures. It would also be good that the inventory describes concrete examples in more detail (case studies) in order to understand the preconditions to get good results, as well as include links to websites and publications, where it is possible to get further information.

In developing *options* for promoting Farmers' Rights, there will be no new obligations on Contracting Parties. Nevertheless, Norway hopes that the options could be a source of inspiration for Contracting Parties, who would like to implement measures to protect and promote Farmers' Rights. The options could be organized as a kind of knowledge hub, from which it is possible to select, according to national priorities, measures of relevance for implementation.

One possible way of organising the inventory and structuring the options, is to follow the different provisions of Article 9 of the Treaty. These provisions could be sought operationalized, so as to create a basis for identifying examples for the inventory, and subsequently to derive options from these examples. At the same time, the work of the AHTEG could bear in mind that the suggested list of measures in Article 9.2. is not an exhaustive list.

[20] http://www.mattilsynet.no/planter_og_dyrking/plantesorter/godkjenning/#gebyrer