



Farmers' Rights: Evolution of the International Policy Debate and National Implementation

Presentation at the Global Consultation on Farmers' Rights
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Dr. Regine Andersen,
Executive Director, Oikos – Organic Norway
www.farmersrights.org

The Plant Treaty

- Most important international instrument for the management of crop genetic resources.
- Adopted in 2001, entered into force in 2004
- Objectives:
 - Conservation
 - Sustainable use
 - Fair and equitable benefit-sharing
- Cornerstone: Farmers' Rights

A GLOBAL TREATY FOR FOOD SECURITY
AND SUSTAINABLE AGRICULTURE

THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



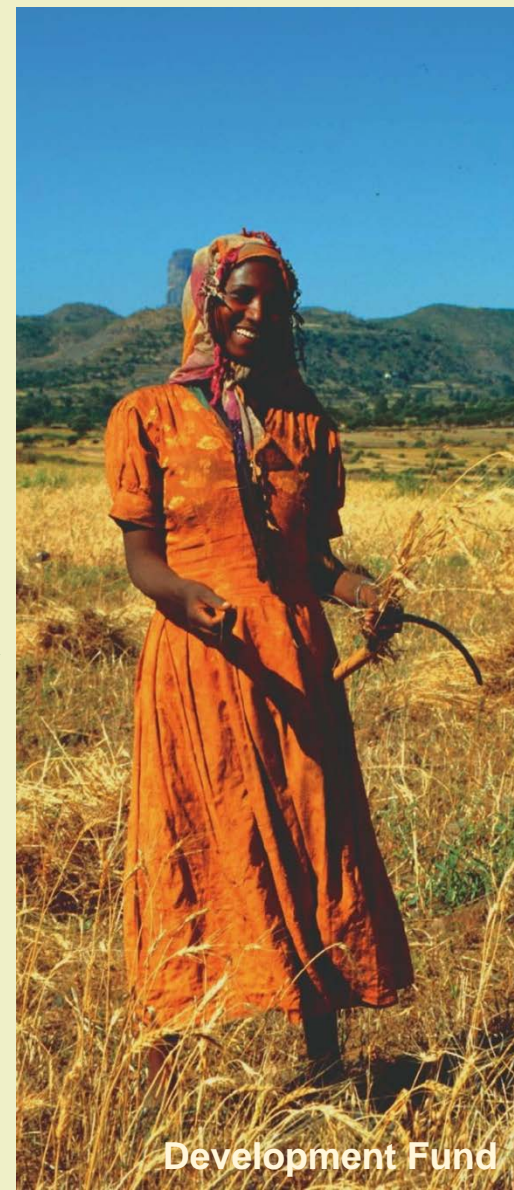
The Habsburg Emperor Rudolf II as Vertumnus,
by Giuseppe Arcimboldo, 1591.
Skokloster Castle, Sweden



The important role of farmers

The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world (...) have made and will continue to make for conservation and development of plant genetic resources, which constitute the basis of food and agriculture production throughout the world. (Plant Treaty, Art. 9)

Affirming that (this contribution) is the basis of Farmers' Rights. (Preamble)



The importance of Farmers' Rights



... to enable farmers
to continue as stewards
and innovators of crop
diversity and reward them
for their contribution
to the global
genetic pool and
food security



Article 9: Farmers' Rights

- Responsibility for realizing Farmers' Rights rests with the governments
- Possible measures:
 - Protection of traditional knowledge
 - The right to equitably participate in benefit sharing
 - The right to participate in decision making
- Addresses rights to save use, exchange and sell farm-saved seeds

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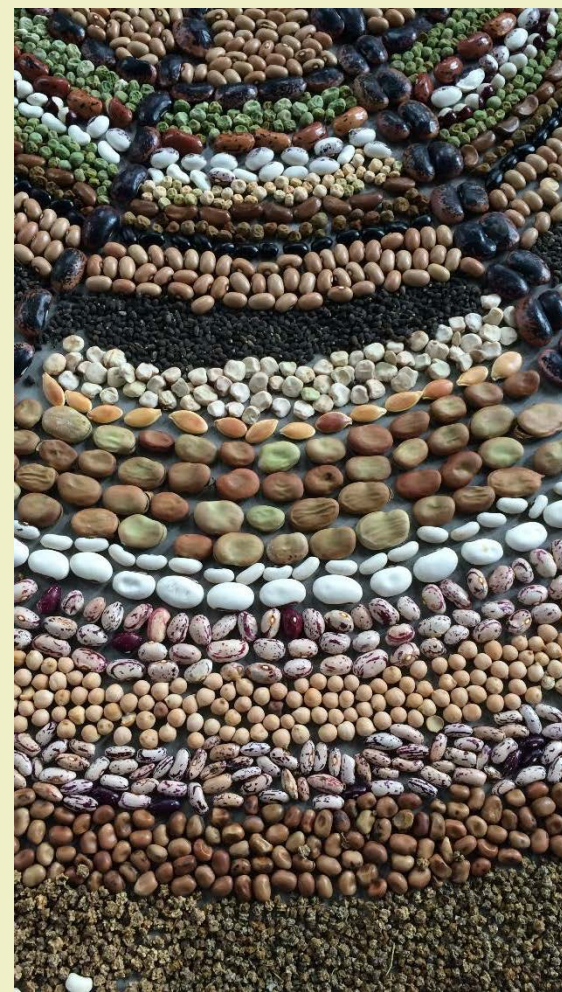


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Supportive provisions

- Preamble:
 - Addressing the importance of Farmers' Rights and the importance of promoting them at national and international levels;
- Article 5: Conservation
 - Providing for Contracting Parties to promote/support farmers and local communities' efforts to manage and conserve on-farm their crop genetics;
- Article 6: Sustainable use
 - Providing for Contracting Parties to enhance sustainable use, promote participatory plant breeding, the use of local varieties, on-farm diversity; and to review and adjust regulations on variety release and seed distribution



Supportive provisions

- **Article 13: Benefit sharing**
 - Benefits shared to flow primarily, directly and indirectly, to farmers in all countries who conserve and sustainably utilize crop genetic resources.
- **Article 18: Funding strategy**
 - Emphasis on the implementation of agreed plans and programmes for farmers in developing countries and in countries with economies in transition, who conserve and sustainably utilize crop genetic resources.
- **Article 19, Governing Body & 21, Compliance:**
 - The Governing Body shall promote the full implementation of the treaty and compliance with the provisions of the treaty, i.e. including the provisions on Farmers' Rights



The challenge:

- The Treaty does not define Farmers' Rights or oblige countries to specific measures of implementation
- As an international regime, the Treaty provides an arena to develop international norms
- The Global Consultation at Bali can contribute towards that end

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Roots of Farmers' Rights in FAO

- The idea of farmers' rights came up in the early 1980s
- A countermove to the increased demand for plant breeders' rights.
- Purpose to draw attention to the unremunerated innovations of farmers that were seen as the foundation of all modern plant breeding



Prof. M.S. Swaminathan



Roots of Farmers' Rights in FAO

- In 1987, considerations were suggested in a working group under the FAO that formed a foundation for all further negotiations on farmers' rights:
 - Recognition of farmers' contribution
 - The need to reward farmers for their contribution
 - The rights holders were not to be single farmers or communities, but entire peoples
 - Farmers' and plant breeders' rights to be developed simultaneously, seeking a balance
- Keystone dialogues – an effective means



Roots of Farmers' Rights in FAO

- 1989: First formal recognition of farmers' rights by the FAO Conference (Res. 5/89):
 - Endorses the concept of Farmers' Rights, 'defined' as **rights arising from the past, present and future contributions of farmers** in conserving, improving, and making available plant genetic resources
 - Stating that these rights are vested 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 to the genetic pool



Roots of Farmers' Rights in FAO

- 1992: The Convention on Biological Diversity adopted
- Together with it a resolution urging the FAO to commence negotiations for a legally binding international regime on the management of plant genetic resources for food and agriculture, and include the question of farmers' rights.
- 2001: Adoption of the Plant Treaty



What are Farmers' Rights?

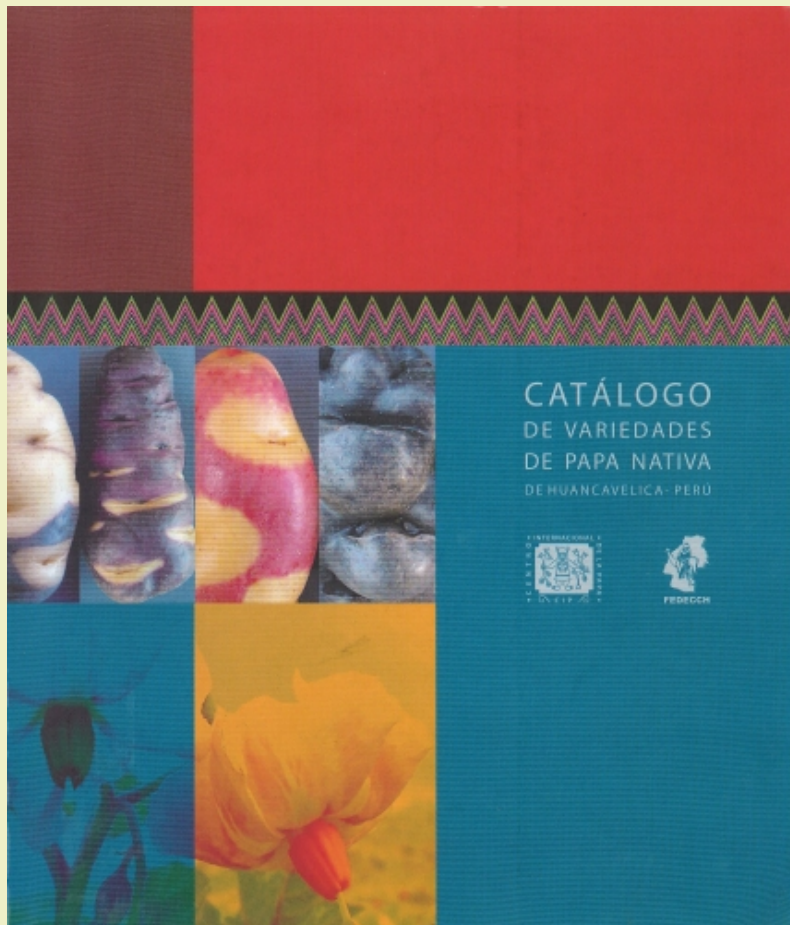


Protection of traditional knowledge

- Protection by sharing in order to avoid loss of traditional knowledge – combined with measures against misappropriation
- Examples:
 - A community registry in the Philippines
 - Cataloguing potato varieties and traditional knowledge in the Andes



Cataloguing potato varieties and traditional knowledge in Peru



Farmers' rights to participate in benefit sharing

- Sharing of benefits between the society at large and farmers who are contributing
- Incentives, support and reward to farmers
- Examples:
 - Participatory breeding in Syria
 - Benefits from diversity in Nepal
 - Seed fairs in Zimbabwe
 - Farmer innovation in Ethiopia
 - Capacity building in Mali
 - Reintroducing traditional varieties in Japan



Benefitting from diversity in Nepal



Farmers rights to participate in decision making at the national level

- Awareness rising, capacity building and actual participation in decision making
- Examples
 - Advocacy for Farmers' Rights in Nepal
 - Dialogue leading to new legislation on variety release and seed distribution in Norway



Dialogue enhancing legal space in Norway



Farmers' Rights to save, use, exchange and sell farm saved seed

- Maintain or enhance legal space that farmers have with regard to intellectual property rights and seed laws
- Awareness, capacity building, legislation
- Examples:
 - Enhancing legal space in Norway
 - Circumventing laws and regulations in Spain
 - Pioneering legal space in India



Pioneering legal space in India

THE GAZETTE OF INDIA EXTRAORDINARY

1

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The Gazette of India

**EXTRAORDINARY
PART II - Section 1**

PUBLISHED BY AUTHORITY

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Separate paging is given to this Part in order that it may be filed as a separate compilation

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)**

New Delhi, the 30th October, 2001/Kartika 8, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 30th October, 2001, and is hereby published for general information :-

**THE PROTECTION OF PLANT VARIETIES AND FARMERS'
RIGHTS ACT, 2001**

No. 53 OF 2001

[30th October, 2001]

An Act to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

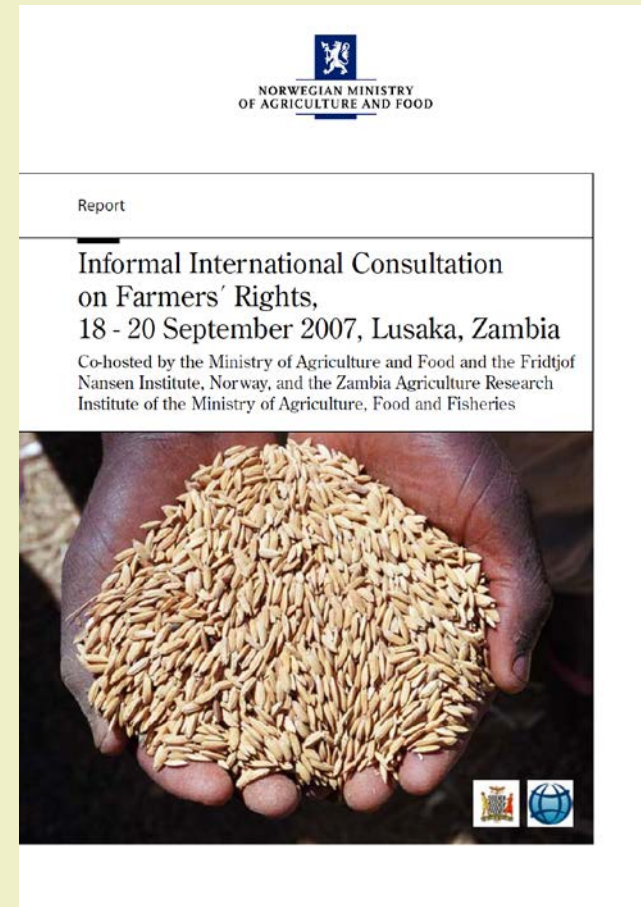


How to develop international norms to protect and promote Farmers Rights?



Brief FR-consultation history

- 2006, GB1: Farmers' Rights on the working agenda of the Governing Body
- Followed up with an informal consultation on Farmers' Rights in Lusaka, Zambia, September 2007, co-organized by the governments of Zambia and Norway together with the Fridtjof Nansen Institute



The 2007 Lusaka informal consultation



Brief FR-consultation history

- 2007, GB2 with resolution: the ITPGRFA Secretariat to collect views and experiences from countries/organizations
- Centre for Genetic Resources, the Netherlands, and The Community Development Trust, Zimbabwe, carried out an on-line conference: 'Options for Farmers' Rights'

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IT/GB-3/09/Inf. 6 Add.2

Results of an Online conference on 'Options for Farmers' Rights'

May 2009

1. Introduction

In 1989 for the first time, Farmers' Rights were formally recognized by the FAO Conference. In May 1992 the Convention on Biological Diversity was agreed in Nairobi, and with it a resolution stating by which approach the CBD would deal with the promotion of sustainable agriculture. In this resolution, the FAO was requested to explore ways and means to develop complementarity and cooperation between the CBD and the work of the FAO on plant genetic resources for food and agriculture. In addition, the FAO was invited to seek solutions to some outstanding matters in particular, including the question of implementation of Farmers' Rights. Agenda 21 also featured this request. This request to the FAO to address the specific requirements of plant genetic resources for food and agriculture marked the start of lengthy negotiations which finally led to the International Treaty on Plant Genetic Resources for Food and Agriculture (here referred to as "the Treaty").

In 1996 the Global Plan for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture was adopted by the International Technical Conference on Plant Genetic Resources in Leipzig. It, too, addressed the issue of Farmers' Rights. With the adoption of the Treaty in 2001, a legally binding international agreement for the management of plant genetic resources for food and agriculture was established. Article 9 of the Treaty specifies that the Contracting Parties to the Treaty are obliged to protect and promote Farmers' Rights, but at the same time are free to choose the measures they deem appropriate. Article 9 was the result of long and complex negotiations. The text of the Treaty does not offer a definition of Farmers' Rights, but simply describes the measures that are needed to promote and protect them (see box, p 3).

Initiated by the Centre for Genetic Resources, The Netherlands (CGN) and the Community Technology Development Trust (CTDT, Zimbabwe).

Jointly funded by the Directorate General of Development Cooperation (DGIS) of the Netherlands Ministry of Foreign Affairs and by OxfamNovib, the Netherlands.

Farmers' Rights are about recognition and compensation

Recognition in the context of Farmers' Rights refers to the notion that farmers who maintain and develop their own farmers' varieties have been and continue to be major stewards of plant genetic diversity. Recognition is strongly reflected in Articles 9 of the Treaty.

Compensation in the context of Farmers' Rights refers to the idea that tangible benefits should be generated in order to facilitate continuing conservation and development of plant genetic resources by farmers.

Farmers need 'freedom to operate'

For farmers to maintain and develop their plant genetic resources, the legal environment needs to be optimally conducive. Adoption of seed legislation and of laws on intellectual property rights often served to regulate commercial agricultural production, but may also affect practices and livelihoods of small-scale farmers. The 'freedom to operate' has thus become a major issue in the context of Farmers' Rights.

Farmers as breeders

The notion of farmers as breeders, which was broadly recognized in the online conference is based on the idea that farmers as well as professional plant breeders have important knowledge and skills that can complement one another. In line with this idea, Participatory Plant Breeding (PPB) can be defined as a range of approaches that involve a collaboration of different actors (including scientists, breeders, farmers and other stakeholders) that can effectively complement each other.



GB3, Tunis: Resolution 6/2009

- CPs invited to review/adjust national measures affecting the realization of FR
- CPs and other organizations encouraged to continue submitting views and experiences
- The Secretariat requested to convene regional workshops on Farmers' Rights, subject to availability of funds
- The Secretariat requested to collect views and experiences, & reports of the regional workshops as basis for agenda item at GB4
- Appreciation of involvement of farmers org.



The 2010 Global Consultations

- To phases – organized by the F. Nansen Institute:
 - Phase 1: E-mail survey (July – September 2010)
 - Phase 2: Conference in Addis Abeba hosted by the Institute of Biodiversity Conservation, Ethiopia, 23–25 November 2010
- All together 171 participants from 46 countries
 - Covering Africa, Asia, Near East, Latin America and the Caribbean, North America and Europe
 - Farmer organizations, government institutions, the seed industry, NGOs, IGOs, research and others
- Regional and global consultations in one conference



Global Consultation on Farmers' Rights in Addis Abeba, Ethiopia, 2010



Farmer consultation – field trip



JOINT recommendations – selected:

- Farmers' Rights is a cornerstone of the Treaty and the Governing Body should prioritize and request assistance of FAO and other organizations to support national governments in the realization of these rights.
- The Governing Body is requested to study options for provisions in national seed legislation to allow for balanced regulation for all types of seeds.
- Formal and local seed systems should be recognized as complementary: there is a need to ensure legal space for each to contribute to the conservation and sustainable use of PGRFA.



JOINT recommendations - selected

- The Governing Body should establish an *ad hoc* working group to develop voluntary guidelines on the national implementation of Article 9 and related provisions, in a transparent and inclusive manner
- The voluntary guidelines should assist and support national governments in implementing Farmers' Rights (specified recommendations)



Since then...

- GB5 in Oman, 2013 and GB6 in Rome, 2015
- Resolution 5/15, some of the topics:
 - Information gathering and knowledge exchange
 - National action plans
 - Reviewing and adjusting national measures
 - Identify interrelations with UPOV/WIPO
 - Engaging farmers' organizations
 - Regional workshops and consultations
 - Prepare a study on lesson learned to GB7
 - Consider success stories and how to promote FR



Bali Global Consultation on Farmers' Rights:

- How to move forwards?
- What can be recommended to the Governing Body in terms of e.g.:
 - Shaping international norms on the national implementation of Farmers' Rights
 - Making governments responsible
 - Safeguarding legal space for Farmers' Rights
 - Building capacity world-wide
 - Ensuring sufficient funding and emphasis





Thank you for your attention!

