



**Realising Farmers' Rights
Under the International Treaty
on Plant Genetic Resources for
Food and Agriculture**

**Summary of Findings from
the Farmers' Rights Project, Phase 1**

By Regine Andersen

The Farmers' Rights Project



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Realising Farmers' Rights Under the International Treaty on Plant Genetic Resources for Food and Agriculture: Summary of Findings from The Farmers' Rights Project, Phase 1

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Abstract

The Farmers' Rights Project is an international project set up at the Fridtjof Nansen Institute in Norway with support from the Norwegian Ministry of Agriculture and Food, the Norwegian Ministry of Foreign Affairs and the German GTZ, with affiliated experts in Peru, India and Ethiopia. It aims to facilitate a common understanding on how Farmers' Rights can be realised under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and develop a basis for proposals to the Governing Body of the ITPGRFA on specific measures to be taken. This summary of the findings from Phase 1 of the project is designed as a guide to delegations and stakeholders concerned with Farmers' Rights. It presents the components of the Farmers' Rights Project and identifies two approaches to the understanding of Farmers' Rights in the current debate: the ownership approach and the stewardship approach. There is a latent conflict between these two, and the report argues that the stewardship approach must prevail if Farmers' Rights are to be realised within the framework of the ITPGRFA. A working definition is presented and reasons why these rights are so important are highlighted. Most importantly, the realisation of Farmers' Rights are a precondition for the maintenance of agrobiodiversity and a central means in the fight against poverty in the world. The report summarises the state of realisation of Farmers' Rights and shows that achievements are already being made with regard to all measures addressed in the ITPGRFA. It pinpoints the central barriers to further progress in this area and indicates what steps are required to overcome these barriers and to implement the ITPGRFA with regard to Farmers' Rights. Finally, the report recommends measures to be taken by the Governing Body of the ITPGRFA, and highlights issues of importance for further discussion.

Key Words: farmers' rights, ITPGRFA, FAO, agrobiodiversity, plant genetic resources, biological diversity, food security

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Introduction

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) recognises the enormous contributions – past, present, future – of the world’s farmers in conserving, improving and making available plant genetic resources for food and agriculture as the basis of Farmers’ Rights. It explicitly states that the responsibility for implementing its provisions on Farmers’ Rights rests with the national governments, which are free to choose the measures they deem appropriate, according to their needs and priorities. Certain measures to protect and promote Farmers’ Rights are suggested. The ITPGRFA preamble highlights the necessity of promoting these rights at the national as well as international levels. There is, however, as yet no common understanding of how this can be done. Such an understanding is crucial for making progress in the realisation of Farmers’ Rights.

The Farmers’ Rights Project is an international project set up at the Fridtjof Nansen Institute in Norway with support from the Norwegian Ministry of Agriculture and Food, the Royal Norwegian Ministry of Foreign Affairs and the German GTZ, with affiliated experts in Peru, India and Ethiopia, to facilitate such a common understanding and develop a basis for proposals to the Governing Body of the ITPGRFA on specific measures to be taken. The aim is to move beyond earlier controversies, and – based on the consensus formulations in the Treaty – build bridges to a joint understanding of needed action, while respecting the freedom of countries to choose measures according to their needs and priorities. Our intention is to:

- contribute to the understanding of what Farmers’ Rights are about and how they are important for continued maintenance of plant genetic resources for food and agriculture in the world, and for the fight against poverty in the South
- inform delegations about opportunities to propose specific measures to the Governing Body to promote the realisation of Farmers’ Rights, while respecting the freedom of countries to choose ways and means according to their needs and priorities
- inspire and encourage stakeholders to take action in their own countries to implement the provisions of the ITPGRFA on Farmers’ Rights.

This summary of the findings from Phase 1 of the Farmers’ Rights Project is designed as a guide to delegations and stakeholders concerned with Farmers’ Rights.

Components of the Farmers' Rights Project – Phase 1

A document and literature survey on the history of the concept and the state of knowledge regarding Farmers' Rights (Andersen 2005a): The survey provides important points of departure for understanding the subject matter of Farmers' Rights, types of rights, rights-holders, and appropriate measures for protecting and promoting these rights. It also draws lessons from initial efforts at realising these rights, and warns against certain tendencies which might prove counterproductive.

An international stakeholder questionnaire survey on the state of Farmers' Rights in 31 countries in Asia, Africa, the Americas and Europe with regard to legislation, policies and implementation as well as perceptions pertaining to the concept, barriers and options for implementation, and tasks for the Governing Body (Andersen 2005b): The survey shows that, despite the huge challenges ahead, efforts are underway with regard to all measures mentioned in Article 9 on Farmers' Rights in the International Treaty. This indicates that there is already an opportunity for learning and for deriving models.

In-depth case studies on Farmers' Rights to deepen our understanding of the relevance of the concept, the state of realisation, barriers and options to further realisation – and not least stakeholder perceptions in dissimilar contexts. Four countries from four continents were selected: Peru (Ruiz Muller, 2006), India (Ramanna, 2006), Ethiopia (Feyissa, 2006) and Norway (Andersen, forthcoming). The case studies show that, despite the immense differences among these four countries in terms of political and economic conditions and agricultural systems, key challenges for the realisation of farmers' rights remain similar.

Synthesis report from the first phase of the project (Andersen, forthcoming), of which the key findings are presented in this summary.

Reports from the Farmers' Rights Project:

Andersen, Regine (2005a): *The History of Farmers' Rights – A Guide to Central Documents and Literature*, Background Study 1, FNI Report 8/2005 (Lysaker, Norway: The Fridtjof Nansen Institute)

Andersen, Regine (2005b): *Results from an International Stakeholder Survey on Farmers' Rights*, Background Study 2, FNI Report 9/2005 (Lysaker, Norway: The Fridtjof Nansen Institute)

Ruiz Muller, Manuel (2006): *Farmers' Rights in Peru – A Case Study*, Background Study 3, FNI Report 5/2006 (Lysaker, Norway: The Fridtjof Nansen Institute)

Ramanna, Anitha (2006): *Farmers' Rights in India – A Case Study*, Background Study 4, FNI Report 6/2006 (Lysaker, Norway: The Fridtjof Nansen Institute)

Feyissa, Regassa (2006): *Farmers' Rights in Ethiopia – A Case Study*, Background Study 5, FNI Report 7/2006 (Lysaker, Norway: The Fridtjof Nansen Institute)

Andersen, Regine (forthcoming): *Farmers' Rights in Norway*, Background Study 6.

Andersen, Regine (forthcoming): *Realising Farmers' Rights under the International Treaty on Plant Genetic Resources for Food and Agriculture: Synthesis Report from the Farmers' Rights Project, Phase 1.*

All reports are available free of charge at:

www.fni.no/farmers/main.html

What are Farmers' Rights?

The ITPGRFA explains the basis of Farmers' Rights and measures to protect and promote them, without defining the concept. FAO Conference Resolution 5/89 provides some more input to the understanding the concept, when it states that:

Farmers' Rights mean rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centres of origin/diversity. 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 (...)

Nevertheless, also this is no definition of the concept as such. The findings from the Farmers' Rights Project indicate that implementing measures pertaining to farmers' rights without a consistent understanding of the concept may create more problems for farmers than it solves. It is thus vital to define the core of these rights. From the findings of the Farmers' Rights Project, two approaches to the understanding farmers' rights can be distinguished:

- ***The ownership approach*** refers to the right of farmers to be rewarded for genetic material obtained from their fields which is used in commercial varieties and/or protected with intellectual property rights. The idea is that such a reward system is necessary to enable equitable sharing of benefits arising from the use of agrobiodiversity and to establish an incentive structure for continued maintenance of this diversity. Access and benefit-sharing legislation and farmers' intellectual property rights are suggested as central instruments.
- ***The stewardship approach*** refers to the rights that farmers must be granted in order to enable them to continue as stewards of agrobiodiversity. The idea is that the legal space required for farmers to continue this role must be upheld and that farmers involved in the maintenance of agro-biodiversity – on behalf of our generation, for the benefit of all mankind – should be rewarded and supported for their contributions.

Most respondents advocate the stewardship approach, noting that agricultural plant varieties are normally shared among many farming communities: it would be difficult to identify exactly who should be rewarded. Moreover, the demand for farmers' varieties among commercial breeders is limited, so relatively few farmers would benefit. Moreover, ownership rights could lead to a 'tragedy of the anti-commons': that farmers are excluded from the free use of a common good – agro-biodiversity – not only by breeders (through plant breeders' rights), but also by each other (due to the disincentive to share because of benefit expectations, and/or because of exclusive intellectual property rights for farmers' varieties).

It is important to determine the overall objective of Farmers' Rights as there is a latent conflict between these two approaches. Based on the

negotiation history within the FAO, the stewardship of agro-biodiversity represents an overarching objective. The ownership approach should thus be subordinate to this, so that measures in the latter direction do not conflict with the overall objective of stewardship. The following working definition is suggested as a lowest common denominator:

A working definition of Farmers' Rights

Farmers' Rights consist of the customary rights that farmers have had as stewards of agro-biodiversity since the dawn of agriculture to save, grow, share, develop and maintain plant varieties, of their legitimate right to be rewarded and supported for their contribution to the global pool of genetic resources as well as to the development of commercial varieties of plants, and to participate in decision making on issues that may affect these rights.

Why Farmers' Rights?

The demand for Farmers' Rights was voiced in the FAO negotiations on plant genetic resources for the first time in 1986, as an attempt to counterbalance the demand for the recognition of plant breeders' rights. Intensive negotiations ensued, leading to the understanding of Farmers' Rights as a precondition for the maintenance of agro-biodiversity (FAO Conference Resolution 5/89). As such, the realisation of Farmers' Rights must be seen as a precondition for the implementation of the ITPGRFA. Not least, the findings from the Farmers' Rights Project reveal that Farmers' Rights are regarded among the majority of the respondents as a central means in the fight against poverty.

Farmers' Rights as precondition for the maintenance of agro-biodiversity: There are basically two forms of maintaining plant genetic diversity in agriculture: *ex situ* conservation (normally in gene banks) and *in situ* on-farm management (normally in farmers' fields). They are mutually supportive, and both are vital for the further maintenance of these resources.

The active use of diverse plant genetic resources in agriculture (*in situ* on-farm management) is currently at risk in more and more countries. Various forms of legislation (like certification rules, intellectual property rights, access legislation) increasingly restrict the possibilities to continue these customary agricultural practices. Farmers' Rights represent a strategic instrument to create legal space within the legislative contexts in

the various countries – to ensure that farmers’ practices of maintaining agro-biodiversity can continue.

With the rapid genetic erosion in agriculture, distinct incentive structures are needed to ensure further maintenance of plant genetic diversity. Farmers’ Rights represent a strategic instrument also in this regard, as they involve rewarding farmers for their contributions to the global pool of genetic resources.

Whereas Farmers’ Rights have been seen to be most relevant in the South, the findings from the Farmers’ Rights Project indicate that they are highly relevant in the North as well. Diversity-based agriculture involves only a tiny segment of the populations of the North today, as compared to the South. From a maintenance perspective Farmers’ Rights are thus even more important, to ensure that there will be farmers left who engage in such tasks.

Farmers’ Rights as a central means in the fight against poverty:

Today 75 per cent of the world’s poorest 1.2 billion people live in rural areas and depend on farming for their livelihoods. Traditional small-scale farmers maintain the yields and quality of their crop varieties by saving and exchanging seeds and seedlings. Without genetic renewal, yields will decrease and quality deteriorate. Plant genetic diversity is vital in marginal environments in order to have plants that can adapt to difficult conditions. Diversity between and among crops is a means to spread the risk of crop failure due to pests and diseases or adverse climatic conditions, such as drought. Farmers’ Rights are vital to ensure that these agricultural practices can continue. They also address the traditional knowledge of farmers, which is crucial for making optimal use of available resources; and they call for rewards to these poorest of the stewards of plant genetic diversity. For all these reasons, the realisation of Farmers’ Rights can be seen as a central means in the fight against poverty, and thus for achieving UN Millennium Development Goal 1 on eradicating extreme hunger and poverty.

If the global community does not face up to the challenge of unambiguously articulating Farmers’ Rights, what has been achieved so far in the battle to establish these rights may be lost. Such a loss would be heavy for farmers in India and other developing countries who need Farmers’ Rights to protect their livelihoods, secure their access to resources, protect their rights to seed, and above all, lift them out of poverty.

Anitha Ramanna (2006)

What is the State of Realisation of Farmers' Rights?

The realisation of farmers' rights has begun. Achievements are already being made with regard to all measures mentioned in Article 9 on Farmers' Rights in the ITPGRFA:

Protecting farmers' traditional knowledge – against misappropriation or extinction: There are two main approaches to protecting farmers' traditional knowledge: the focus of the first is against misappropriation, and of the second against the extinction of this valuable knowledge. Many countries have legislation pertaining to the protection of farmers' traditional knowledge against misappropriation, but relatively little is being done when it comes to implementation. Various projects are underway to protect farmers' traditional knowledge against extinction. In the North, such projects are normally carried out by state institutions as part of broader programmes, whereas projects in the South are often carried out by NGOs.

Benefit sharing – direct or indirect: There are also two main approaches to the sharing of benefits derived from the utilisation of plant genetic resources for food and agriculture: the first is direct between purported 'owners' and 'buyers' of plant genetic resources; the second is between the stewards of agro-biodiversity and society at large. Several countries in the South have enacted legislation to provide for direct benefit sharing. However, no instances of such benefit sharing regarding plant genetic resources for food and agriculture have been reported so far, although a few contracts providing for benefit sharing do exist. By contrast, there are many examples of indirect benefit sharing, normally non-monetary. This indicates that the indirect benefit-sharing approach may be more promising. Frequently mentioned benefits are:

- access to seeds and propagating material, and related information
- participation in the definition of breeding goals
- participatory plant breeding in collaboration between farmers and breeders
- strengthening of farmers' seed systems
- conservation activities, including local gene banks
- enhanced utilisation of farmers' varieties, including market access

Participation in decision making pertaining to plant genetics – formal or 'real': There are generally few examples of legislation in this regard, but some countries in the South have extensive legislation. That notwithstanding, actual participation in decision-making processes seems to be marginal, according to our respondents, and is often confined to large-scale farmers who are normally not engaged in the maintenance of plant

genetic diversity. In the North, farmers' participation in decision-making processes is more common, but without reference to specific laws or policies. Farmers in the North claim, however, that their influence is decreasing due to their countries' commitments to international agreements.

Legal space for customary agricultural practices: The practice whereby farmers save, use, exchange and/or sell seeds and propagating material from their own harvest is increasingly affected by regulations on plant breeders' rights and on the certification of seeds for sale. Whereas such legislation is most restrictive in the North, it has recently been introduced in many countries in Asia and Latin America – often with some exemptions for farmers – but not yet in most African countries. There are interesting examples of how such legislation can be formulated with a view to farmers' rights, the most central is India's Protection of Plant Varieties and Farmers' Rights Act, 2001.

Most frequently mentioned *barriers* to the realisation of Farmers' Rights

- lack of awareness among farmers and authorities due to the lack of concise definition
- political and economic barriers due to the single focus on large-scale agriculture
- poor, weak or contradictory legislation, partly combined with pressures from abroad
- lack of sufficient attention by civil society organizations to farmers' rights

How Can Farmers' Rights be Further Realised?

Experiences from the initial realisation of farmers' rights provide certain lessons. The first lesson is that it is important to agree on what the goals are. The following table provides an overview over existing and suggested goals from the findings of the Farmers' Rights Project:

Goals for the realisation of farmers' rights: TWO APPROACHES		
ITPGRFA measures:	STEWARDSHIP APPROACH	OWNERSHIP APPROACH
Protection of farmers' traditional knowledge	The goals are to protect this knowledge against extinction and thus to encourage its further use.	The goals are to protect this knowledge against misappropriation and to enable its holders to decide over its use.
Equitable sharing of the benefits arising from the use of genetic resources	Benefits are to be shared between stewards of plant genetic resources and society at large – partly through the Multilateral System.	Benefits are to be shared between 'owners' and 'buyers' of genetic resources upon prior informed consent on mutually agreed terms.
Participation in relevant decisions at the national level	Participation is important to ensure legal space and rewards for farmers' contributions to the genetic pool.	Participation is important to ensure adequate legislation on access and intellectual property rights.
Farmers' customary use of propagation material (saving, sharing, selling)	The goal is to uphold the legal space to ensure farmers' continued main-tenance of plant genetic resources.	The goal is to introduce farmers' intellectual property rights along with breeders' rights – in balance.

If the overall objective of Farmers' Rights is to ensure continued maintenance of plant genetic resources for food and agriculture – partly as a means in the fight against poverty – it is vital to have the stewardship approach as the leading principle, also when seeking to combine the two approaches. In Peru, legislation on protection of traditional knowledge has proven a barrier to conservation, as official approval is required for asking farmers about their knowledge, and it provides disincentives to the sharing of seeds among farmers. However, the emphasis on traditional knowledge may pave the way for a recognition of farmers' rights more in line with farmers' needs and the stewardship approach. India's new act represents an advanced attempt to combine the two. Its success will depend on implementation, and some stakeholders warn that the introduction of farmers' intellectual property rights could lead to an 'anti-commons tragedy' if the law is not implemented along with stewardship principles. Ethiopia has recently adopted legislation that seeks to combine the two, whereas Norway follows solely the stewardship approach.

Realising Farmers' Rights at the national level: STEP BY STEP

1. Create awareness of the importance of Farmers' Rights, and its contents
2. Pool resources and define objectives for the realisation of Farmers' Rights
3. Establish an institutional framework for implementing these objectives
4. Review legislation affecting farmers' rights with a view to creating legal space
5. Review agricultural incentive structures with a view to rewarding stewardship
6. Create a separate reward mechanism, e.g. a national fund, to support farmers' maintenance of plant genetic resources – to be supported by *inter alia* the Multilateral System and/or development co-operation in developing countries.
7. With these funds, establish farmers' programmes on means such as access to plant diversity, conservation measures, participatory plant breeding, strengthening of farmers' seed systems, enhanced utilisation of plant varieties and market access.

What Can the Governing Body of the ITPGRFA Do?

All stakeholders consulted in the Farmers' Rights Project proposed that the Governing Body should take action to promote the realisation of farmers' rights. However, they differed with regard to types of measures and the level of engagement they expect from the Governing Body. The following list provides an overview over suggestions according to the number of respondents supporting or suggesting them:

Actions proposed to be taken by the Governing Body:

1. Organize regular sharing of experiences from the realisation of farmers' rights among the Parties
2. Encourage Parties to develop national plans for the realisation of farmers' rights, and monitor and support the implementation of such plans
3. Develop minimum standards for farmers' rights from national and regional experiences to a level of international harmonization
4. Highlight positive examples of implementation of Article 9 as models
5. Provide legislative and institutional assistance to countries in their efforts to realise farmers' rights
6. Produce and disseminate public information, and assist countries in communicating the importance of farmers' rights
7. Ensure representation of farmers in the sessions of the ITPGRFA Governing Body

Whereas the Parties are free to define Farmers' Rights according to their needs and priorities, it is important to reach to a joint understanding of the key challenges with regard to the realisation of these rights. Such an understanding can be supported by initiatives like the Farmers' Rights Project, but it must be addressed in the Governing Body itself. Approaching a joint understanding based on the formulations in Article 9 will require a genuinely new and constructive approach that can take into account the freedom of countries to choose means according to their needs and priorities. The following issues are formulated in this light:

Issues proposed to be addressed by the Governing Body:

- **Guiding principles for the realisation of Farmers' Rights:** What should be the overall guiding principles for the implementation of Article 9, taking the initial experiences of realisation into account (ownership and stewardship approaches)?
- **Creating legal space for Farmers' Rights:** How can Parties in different legislative situations ensure or create legal space to enable the continuation of farmers' practices as stewards of plant genetic resources for food and agriculture (e.g. with regard to intellectual property laws, certification rules and access legislation)?
- **Supporting Farmers' Rights:** How can Parties ensure that farmers have adequate access to seeds and propagating material covering a genetic diversity according to their needs? How can they provide incentive structures, other forms of support, and help in documenting and maintaining traditional knowledge?
- **International co-operation:** How can Parties support each other in the realisation of Farmers' Rights, particularly with a view to rewards from industrial countries to farmers in development countries who maintain agro-biodiversity for present and future generations (e.g. in the form of development co-operation)?

Recommendations

1. **Include Farmers' Rights on the agenda of the next session of the Governing Body:** Delegations to the Governing Body are recommended to ensure that the issue of Farmers' Rights is put on the agenda for the next session of the Governing Body of the ITPGRFA, with the objective of deciding how the Governing Body will follow up Article 9 in light of the formulations of the Preamble.
2. **Establishing a working group on Farmers' Rights:** The Governing Body is recommended to establish a working group to facilitate a participatory process towards a shared understanding of key challenges for the implementation of Article 9, as a basis for negotiations in the Governing Body. The findings from the Farmers' Rights Project may provide a foundation for this work.
3. **National implementation:** Delegations to the Governing Body are recommended to take steps in their own countries to ensure implementation of Article 9 of the ITPGRFA, as suggested in this publication (page 10). Other stakeholders are recommended to support such initiatives and to ensure that national implementation is brought forward.
4. **Development co-operation:** Donor agencies are recommended to consider the realisation of Farmers' Rights as a strategic means in the fight against poverty and to support their realisation. Support is particularly required for measures to:
 - create awareness about Farmers' Rights
 - shape legal space and incentive structures for Farmers' Rights
 - ensure farmers' participation in processes towards the realisation of Farmers' Rights
 - support farmers engaged in the maintenance of plant genetic diversity.

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