6.2 Farmers’ rights in times of change
Illusion or reality?

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What are farmers’ rights all about?

Plant genetic resources (PGR) are probably more important for farming than any other factor, simply because they can adapt to changing environmental conditions. As farmers are custodians and developers of PGR, their rights in this regard are vital for enabling them to maintain this vital role for local and global food security. In order to implement farmers’ rights, we must recognize and reward them for their indispensable contribution to the global gene pool and associated traditional knowledge (ATK).

The implementation of farmers’ rights is a precondition for PGR conservation, which is the basis of food and agriculture. For this reason, farmers’ rights constitute a cornerstone of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA); their realization is a precondition for achieving its three objectives of conservation, sustainable use, and fair and equitable benefit-sharing.

Article 9 of ITPGRFA identifies four elements of farmers’ rights as being (i) the protection of traditional knowledge; (ii) the fair and equitable sharing of benefits; (iii) the right to participate in decision-making; and (iv) any rights that farmers have to save, use, exchange and sell farm-saved seed. In this chapter, I will describe in more detail each element, sharing, when available, experiences where those elements are put to practice.

The Fridtjof Nansen Institute in Norway has supported the ITPGRFA in its efforts to address farmers’ rights, through research-based guidance, by conducting a range of surveys and case studies, developing a collection of success stories, and carrying out dissemination activities and rounds of consultations. With our research work, we aim to establish a common understanding of the contents of these elements, associated rights and what it takes to implement them. A range of organizations in different countries have carried out local, national and regional consultations on farmers’ rights and are active in implementing these rights at local and national levels. Information about the project is available at www.farmersrights.org.

Farmers’ rights in relation to the protection of traditional knowledge

Traditional knowledge comprises the knowledge of how to select, store, use and manage seed. This knowledge is vital for understanding the properties of plants and
varieties, their uses, cultural significance, and how to cultivate them (Brush, 2004). Traditional knowledge can be approached in two ways, first, for protection against extinction, and second, for protection against misappropriation (Andersen, 2006).

Protection of traditional knowledge against extinction is all about ensuring that it is kept alive and can further develop. Traditional knowledge is disappearing alongside genetic erosion at an alarming pace. Measures for its protection are considered crucial by farmers who are engaged in farming practices in which the use of PGR, or agrobiodiversity in general, is promoted through community biodiversity management (CBM). The best way of protecting traditional knowledge against extinction is to use it and share it. Thus, the motto here is: ‘protection by sharing’. Measures for sharing traditional knowledge can include the organization of seminars, conferences and gatherings among farmers, to share knowledge associated with diversity. In Norway, a number of activities have been initiated to help disseminate traditional knowledge (Andersen, 2011). In Nepal, ATK and PGR are shared through diversity or seed fairs as discussed by Shrestha et al. in Chapter 2.2. Another way of sharing knowledge is to document it in seed catalogues and registries, for example through community biodiversity registers in Nepal (described by Subedi et al. in Chapter 2.4).

Community seed banks are vital for sharing not only seed and varieties, but also the associated knowledge. A good example of this is shown by Dias (Chapter 2.7), who describes an extensive network of more than 200 community seed banks in the state of Paraíba in north-eastern Brazil. There are many examples of documentation of knowledge in catalogues, books, magazines, videos and websites, including the potato catalogue from Huancavelica, Peru (CIP and FEDECH, 2006). Finally, gene banks facilitate sharing when they make accessions and related knowledge available to farmers and communities, as can be seen in the case of the national gene bank in Ethiopia, described by Feyissa et al. (Chapter 1.4); and in the work of the national gene bank in Ecuador, highlighted by Tapia and Carrera (Chapter 2.3).

A different approach is required for the protection of traditional knowledge against misappropriation, which is based on the fear that local varieties, together with ATK, could be discovered and further developed by commercial actors. Such actors, in reward for their discovery and exploitation, ‘appropriate’ the knowledge, and may use intellectual property rights (IPR) without benefit-sharing mechanisms. In order to protect traditional knowledge from such misappropriation, its sharing should only be facilitated following recognition of and agreement on benefit-sharing. Methods to protect against misappropriation first include the regulation of access to PGR and ATK, with measures on prior informed consent and mutually agreed terms. The inclusion of legal clauses in catalogues of PGR and ATK also ensure against misappropriation, and could be used, for example, with the aforementioned community biodiversity registers (Nepal). Another way to protect knowledge is through the application of ‘user country measures’, like conditions for IPR, such as certificates of origin of genetic resources, which follow the legal procedures for access to genetic resources in provider countries when providing access internationally.

On a more local level, the application of geographic indications or regional branding protects products of specific varieties produced in specific locations. Examples of this can be seen with the case of a special flour and bread that is produced with a particular variety of wheat in one specific region in France, as detailed by Kastler and
Moÿ (Chapter 4.6), and with the case of Kalajeera rice produced by tribal farmers in Jeypore, India, described by Chaudhury and Swain (Chapter 4.4).

The regulation of access, where some communities limit access to and use of a particular set of plants for a particular group as part of a cultural practice, is a more endogenous way of protecting knowledge and biological resources. Examples of this can be seen with the cultivation of coffee in the Afromontane forests of Ethiopia, as outlined by Feyissa et al. (Chapter 3.6), and with the collective management of the natural resources from sacred groves and forests found across Africa, Asia and the Pacific, as described in more detail by Borrini-Feyerabend et al. (2007).

In some countries, measures taken against the misappropriation of traditional knowledge make the sharing of such knowledge difficult, and contribute to distrust among farmers. This has made *ex situ* conservation of crop varieties difficult, for example, in Peru (Andersen, 2005b). In addition to this, such measures mean that even biological scientists who take a fair and ethical approach, within a context of CBM, must first prove that they are not ‘biopirates’, an unfavourable issue that communities of traditional people are now being faced with. An important question to address is how great the risk of misappropriation of farmers’ PGR and ATK is, and whether this risk is worth the measures taken to avoid misappropriation. So far, there are very few known examples of misappropriation of farmers’ knowledge. The challenge is to balance these concerns in such a way that traditional knowledge can still be shared to the greatest extent possible.

An impressive number of examples concerning documentation and sharing are provided above. Together they constitute good practices for the implementation of farmers’ rights related to the ATK. Much more is required to keep such knowledge alive and to promote its further development. In many countries, there is a need to raise awareness of the importance of traditional knowledge related to PGR, and to develop strategies on how to maintain and disseminate traditional knowledge in a systematic way, in order to halt the loss of such knowledge. In our global consultation on farmers’ rights, we found that many stakeholders stressed the vital importance of documenting remaining traditional knowledge, and spreading awareness about its importance (Andersen and Winge, 2011).

**Farmers’ right to participate equitably in the sharing of benefits**

In the South, policies on benefit-sharing, if any, are provided in laws and regulations on access to biological resources, sometimes in legislation on the protection of biodiversity, as described in more detail by Ruiz and Vernooy (Chapter 6.4). In India, benefit-sharing is addressed by its Protection of Plant Varieties and Farmers’ Rights Act of 2001, which is further detailed by Bala Ravi (Chapter 6.3). Countries with legislation on indigenous or traditional peoples’ rights often include provisions on benefit-sharing in these laws, which then also cover indigenous farmers, or, as in the case of Brazil, traditional farmers, as discussed by Assis et al. (Chapter 3.2).

Most of these regulations foresee forms of direct benefit-sharing between the ‘owners’ and ‘buyers’ of genetic resources, often upon prior informed consent on mutually agreed terms, as set out in the Convention on Biological Diversity (CBD, 1992a).
Despite all these efforts, today, 20 years since the CBD was agreed upon, no examples of direct benefit-sharing between providers and recipients of plant genetic resources for food and agriculture (PGRFA) have resulted from such legislation (Andersen, 2008).

Other ways of sharing benefits, often referred to as indirect ways, are feasible and have been elaborated over the past two decades, recalling the early days of the negotiations on farmers’ rights in the Commission on Plant Genetic Resources for Food and Agriculture. Benefits should be shared between the custodians of PGR and society at large. This is based on the idea that it is the legitimate right of those custodians to be rewarded for their contributions to the global gene pool, from which we all benefit. Furthermore, it is seen as an obligation of the international community, and individual nations, to ensure such recognition and reward. The most important forms of sharing include the following:

- conservation activities, including local gene banks and community seed banks in all their variations, as elaborated on in Parts I and II of this volume;
- access to seed and propagating material, and related information, and the strengthening of farmers’ or informal seed systems, as further detailed by De Boef et al. (2010) and Lipper et al. (2010);
- enhanced utilization of farmers’ varieties, including value adding and market access, as described in Part IV;
- participatory crop improvement, and its variations in methods that facilitate the collaboration between farmers and scientists, as discussed in Part V;
- CBM practices that aim to contribute to the empowerment of communities for assuming responsibilities in the conservation and use of PGR, which are in turn transformed into actions that guide the communities towards asserting their farmers’ rights.

The benefit-sharing fund of the ITPGRFA has disbursed around US$10 million for the biennium 2010–2011, after an initial disbursement of US$543 000 in 2009. The fund is relevant for the provisions on farmers’ rights, as its financial resources are to be distributed directly and indirectly to farmers who are conserving and sustainably using PGR. Many of the organizations that share experiences in this volume are engaged, in one way or another, in projects that will be implemented under the second disbursement of the fund. Despite this progress concerning a relatively small international funding mechanism, there is still a long way to go before the fund reaches a size that will enable the third objective of the ITPGRFA to be truly achieved.

Bilateral and non-governmental development cooperation represents another source of benefit-sharing, and it supports many promising projects at local level in developing countries. Many of the success stories as shared in this book have been financed through such mechanisms. Also in the North, as highlighted in several chapters concerning the seed network of small-scale farmers in France, a number of projects have been made possible with support from regional governments.

The major challenge today is to find ways and means to scale up, or rather institutionalize such practices in such a way that they become independent from specific project or development funding, and are embedded in government or other
more sustainable programme structures. Nevertheless, it is important to remain aware of incentive structures that are in fact counterproductive to benefit-sharing, such as agricultural policies which hamper the production and marketing of farmer-produced seed and the products of local crops and varieties. Louwaars et al. (Chapter 6.1) address these constraints and opportunities for the whole of genetic resources and agricultural development policies.

Farmers’ right to participate in decision-making

The participation of farmers in the development of laws, regulations, policies and programmes related to PGR management is important for the simple reason that farmers are key actors. Ideally, policies and programmes that target farmers should take their situation and perspectives as points of departure. Legislation for regulating mainstream agriculture is relevant, as such legislation tends to produce incentive structures that may be detrimental to farmers’ rights or to CBM in general, and that may lack any measures of compensation, as discussed in more detail by Louwaars et al. (Chapter 6.1).

Mechanisms for participation include extensive use of public hearings at various stages in the process of policy development. Farmers’ participation is also relevant in the implementation of laws and regulations, or in what can be referred to as PGRFA governance. In normal situations, boards and institutions are established through such acts and regulations, to oversee and/or administer implementation and appoint line ministries. In assuming farmers’ rights, farmers’ representation and participation in such bodies becomes central. The process by which farmer members are selected is of crucial importance for ensuring that farmers take proper responsibility for assuming their rights.

There are five important preconditions for achieving the increased participation of farmers in decision-making and governance. First, decision-makers need to be aware of the important role played by farmers in conserving and developing PGRFA, in order to understand why their participation is required. Second, many farmers are not in a position to participate effectively in complicated decision-making processes without prior capacity-building. Third, central measures to be taken are awareness-raising among decision-makers on the role of farmers in PGR management and governance, and capacity-building in farmers’ organizations. Fourth, the capability and skills of policy- and decision-makers need to be strengthened, in order to create more transparent and democratic bodies for PGR management, where farmers can express their rights. Fifth, for new governance in plant genetic resources management, De Boef et al. (Chapter 7.1) argue that a process of institutional learning is required to facilitate such a change in professionalism, structures and processes in PGR management, for accommodating CBM and farmers’ rights. While there are several examples of the awareness raising and capacity-building of farmers and their representative groups, for participating in the decision-making processes (first and second precondition), there are only a few examples of the latter preconditions, which focus on decision-makers and governance (third, fourth and fifth).

In general, we find few examples of legislation on farmers’ participation. Even so, the actual participation of farmers in decision-making processes seems marginal
and is often limited to large-scale farmers who are normally not engaged in PGR conservation and use. In the North, the participation of farmers in decision-making processes is more common, even if those farmers that are engaged in PGR conservation and use are rarely represented in PGR governance and management structures. It should be noted that where there is farmer participation, it usually does not promote the development of specific policies or laws relevant to PGR. Farmers in the North claim that their influence is decreasing, due to their countries’ commitments to regional and international organizations and agreements, such as the World Trade Organization (WTO) and the European Union (EU) (Andersen, 2005a). While the process of implementing participation has been slow, there have been a few success stories, such as various capacity-building measures to prepare farmers for participating in decision-making in Malawi, Zimbabwe, the Philippines and Peru, and several successful advocacy campaigns regarding the implementation of elements of farmers’ rights, where farmers have been directly involved, for example, in India, Norway and Nepal (Andersen and Winge, 2008).

Farmers’ rights to save, use, exchange and sell farm-saved seed

Article 9.3 of the ITPGRFA states that nothing in the relevant article ‘shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed, subject to national law and as appropriate’, which is vague, except for labelling these farming practices as ‘rights’. The preamble notes that ‘the rights . . . to save, use, exchange and sell farm-saved seed and other propagating material . . . are fundamental to the realization of farmers’ rights’. This indicates the importance of those practices, but does not give much guidance. Despite the lack of precision, the general line of thought is clear. Farmers are granted rights in this direction, although the individual countries are free to define the legal space they deem sufficient for farmers regarding their rights to save, use, exchange and sell farm-saved seed.

The question of farmers’ rights to save, use, exchange and sell farm-saved seed is the most contentious in the whole ITPGRFA, as it directly enters the domain of interest of the seed industry and their prospects of remuneration for their investments. This element of farmers’ rights also has important ramifications for farmers and their ability to conserve and sustainably use PGR, moreover to produce food, and sustain their family and livelihood. Typical issues concern how farmers’ rights can be protected and promoted in IPRs, such as through patents and plant breeders’ rights, and regulations concerned with variety release, registration and the marketing of seed. Louwaars et al. (Chapter 6.1) describe in more detail this confusing interface between PGR, variety and seed policies, with CBM and farmers’ rights. A basic question is how to strike the best balance between farmers’ and breeders’ rights. What is needed is the application of measures to ensure that farmers can continue their vital contribution to the conservation and sustainable use of PGR to the greatest possible extent, and also that the seed industry has the income required to continue its pivotal work in providing agriculture with the best possible varieties. Both are crucial to food security.

In general, legislation on IPR, variety release and seed certification is most restrictive in the North and least restrictive in Africa, while countries in Asia and Latin
America can be placed somewhere in the middle. In the EU, for example, farmers are not allowed to use farm-saved seed from protected varieties on their own holdings, or they must pay a licence fee to do so. With respect to non-protected varieties, they are not allowed to exchange seed or even give it away, due to variety release and seed marketing regulations. Kendall and Gras (Chapter 1.7) provide more practical insights into how a seed network in France manages to avoid restrictions that limit the farmers’ dynamic management of local varieties; and Kastler (Chapter 6.8) addresses more policy and legal aspects related to the farmers’ dynamic use of PGR. The EU is currently in the process of reviewing this legislation with a view to its compatibility with the ITPGRFA. Several regulations have been issued to remove some of the barriers to the conservation and sustainable use of PGR, but much remains to be done before the EU policy, in this regard, can be said to be conducive to CBM. Nevertheless, farmers in Europe continue to exchange seed and propagating material informally, or through experimental mechanisms, as can be seen in the case of the aforementioned seed network in France. Furthermore, several EU member countries, like Italy and Austria, still tolerate the farmers’ exchange of local varieties. In other parts of the world, variety release and seed distribution policies are less restrictive, but trends are developing in the direction of stricter regulations.

On a positive note, informal seed exchange networks, seed fairs and a broad range of other practices are found in many countries, in the South as well as in the North. Many of these only cover local areas or communities, but some seed exchange networks and practices have a broader coverage, such as the nationally operating network in France, and also Seeds of Diversity in Canada. These activities seem to be carried out mainly by non-governmental or civil society organizations (Shrestha et al., Chapter 2.8).

A major concern is the lack of awareness among both farmers and decision-makers with regard to this incompatibility between farmers’ rights to save, use, exchange and sell farm-saved seed, and other PGR policies and laws. The more restrictive the legislation, the more it limits the ability of farmers to further contribute to the on-farm management of PGR, and to commit to and sustain CBM. This situation calls for the need to support, promote and, above all, recognize informal seed systems.

Farmers’ rights: illusion or reality?

Farmers’ rights are being implemented in various forms, and awareness regarding the need to put those rights into practice is increasing among many stakeholders. There are many examples at national and local levels that can be regarded as models for the further up-scaling and implementation of farmers’ rights. Much has also been achieved internationally, with regard to developing a joint understanding of farmers’ rights, their importance, and the steps required for recognizing them and putting them into practice.

Nevertheless, major incentive structures and regulations, for example in seed and variety laws, are often detrimental to the conservation and sustainable use through CBM, and thereby represent serious hurdles to the full implementation of farmers’ rights. Consensus-finding is also developing slowly under the ITPGRFA. Does this mean that that the full implementation of farmers’ rights is an illusion?
Based on the knowledge of what it takes to ensure on-farm management of PGR or community biodiversity management, it is not possible to see the implementation of farmers’ rights as an illusion: it is a necessity. Without the implementation of these rights, we will not be in a position to maintain and further develop our plant genetic heritage and ensure that future generations will enjoy the benefits of this treasure, which is so vital for food security and survival.

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