

# What are Farmers' Rights

Farmers' rights were developed primarily to secure recognition of the farmers' role in the conservation and continuing development of plant varieties and to protect their rights to these varieties, including the right to save, use, exchange, and sell seeds from their harvest (farmers' privilege). They are legally recognised in a number of international legal instruments and are the subject of specific legislation in a growing number of countries, especially those with large farming communities such as India, Malaysia, and Thailand.

Originally conceived in the 1980s as a means to counterbalance the impact of plant breeder's rights on farmers' ability to save, use, exchange and sell seeds and other propagating material, farmers' rights are enshrined in a variety of national legal instruments that regulate access to and use of genetic resources and traditional knowledge, and that protect plant varieties as intellectual property. The term 'farmers' rights' has been primarily linked with international regulation of plant genetic resources for food and agriculture.

Recognition of the rights of farmers not only to their local seed varieties but also to their lands, resources, traditional knowledge and self-determination is found in international human rights and environmental treaties, national constitutions and laws as well as in the customary laws and practices of Indigenous peoples and local communities.

## Legal recognition of farmers' rights

The first legal recognition of farmers' rights was in the 1983 International Undertaking of Plant Genetic Resources of the Food and Agriculture Organization (FAO). FAO Conference Resolution 5/89 to the International Undertaking defined Farmers' Rights as "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". The 2001 preamble to the International Treaty on Plant Genetic Resources for Food and Agriculture (the Plant Treaty) describes the right "to save, use, exchange and sell farm-saved seed, and other propagating material" as fundamental for the realisation of Farmers' Rights (*see* Fact Sheet 12: International Treaty on Plant Genetic Resources for Food and Agriculture).

## Scope of farmers' rights

The Plant Treaty recognises the contribution that the local and Indigenous communities and farmers of all regions of the world, particularly those in centres of origin and of 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 agricultural production throughout the world.

Under the Plant Treaty, the responsibility for realising farmers' rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. Article 9 of the Treaty, sets out the obligations of Contracting Parties to take measures to protect and promote these rights, including measures to secure:

- the protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- farmers' right to equitably participate in sharing benefits from the utilisation of plant genetic resources for food and agriculture; and
- farmers' rights 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 Plant Treaty states that the content of farmers' rights is not to be interpreted as limiting any rights that farmers have to save, use, exchange, and sell farm-saved seed and propagating material. The exercise of rights relating to farm-saved seeds depends, however, on national legislation and the Plant Treaty gives States complete freedom to decide whether or not to recognise such rights or farmers' privilege.

Legislation specifically addressing farmers' rights has been adopted at the regional level by the African Union. Countries such as Costa Rica, Ethiopia, India, Malaysia, Pakistan, the Philippines, Thailand, and Sri Lanka as well have either adopted or are in the process of adopting national legislation that protect various rights of farmers, such as the rights to save, use, exchange, and sell seeds and to participate in sharing of the benefits derived from the use of their plant varieties.

Farmers' rights include both rights to share in economic benefits and rights to State support for farmers' traditional knowledge and farming practices necessary for the conservation and sustainable use of their plant genetic resources. Under the Plant Treaty, Contracting Parties are required to:

- promote the collection of plant genetic resources for food and agriculture and relevant associated information on those plant genetic resources that are under threat or are of potential use;
- promote or support, as appropriate, farmers' and local communities' efforts to manage and conserve their plant genetic resources for food and agriculture; and
- promote *in situ* conservation of wild crop relatives and wild plants for food production, including in protected areas.

The rights of farmers over their traditional knowledge and traditional farming practices, as well as over their traditional lands and resources, are found in a variety of national, regional and international laws and policies. These include: the United Nations Declaration on the Rights of Indigenous Peoples; the Convention on Biological Diversity (CBD); and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.

The CBD and the Nagoya Protocol exclude from their remit a small range of plant varieties, which fall within Annex 1 of the Plant Treaty, to the extent that these are utilised for research, breeding and training for food and agriculture (*see* Fact Sheet 14: Access to Genetic Resources under the Convention on Biological Diversity; Fact Sheet 15: Nagoya Protocol; and Fact Sheet 12: International Treaty on Plant Genetic Resources for Food and Agriculture).

## **Responsibility of the users of the seeds of farmers' varieties**

Responsibility for ensuring prior informed consent for access to and use of farmers' varieties lies with the user. All those involved in the collection, documentation, storage, and transfer of the seeds and other propagating material of farmers' varieties and associated traditional knowledge are obliged to ensure that they have been obtained in accordance with the Plant Treaty (for varieties falling within Annex 1 of the Treaty and for uses falling exclusively within the coverage of the Treaty). In all other cases, users will need to secure prior informed consent and enter into mutually agreed terms for collection and use of farmers' varieties and traditional knowledge as required by international law, including the CBD, the Nagoya Protocol, and relevant national or regional laws.

## **Farmers' rights and national seed laws**

National seed laws have impeded the continuing development and use of farmers' local varieties in favour of protecting and promoting the sale of certified seed, usually from commercial companies. This practice is now widely seen as inimical to the protection of agrobiodiversity. As a result, new legislation increasingly provides certification of local varieties and recognition of their role in promotion of local livelihoods, biological diversity, and Farmers' Rights.

## **Farmers' rights and plant breeder's rights**

Plant breeder's rights are protected internationally by the Convention of the International Union for the Protection of New Varieties of Plants (UPOV) 1961. UPOV 1978 recognised a 'farmer's privilege' allowing farmers to reuse propagating material from the previous year's harvest. Under UPOV 1991, the farmers' privilege is no longer automatic and all unlicensed multiplication of protected seed and propagating material is an infringement. UPOV 1991 provides a limited right to States to permit farmers to use farm-saved seed for sowing on their own lands, but not for sale or exchange with others (*see* Fact Sheet 2: Plant Breeder's Rights).

## **Participatory plant breeding programs**

Farmers' Rights may be enhanced by participatory plant breeding and variety selection programmes. These programmes establish

partnerships between a range of stakeholders, including local farmers and agricultural scientists. Such partnerships lead to the selection or breeding of plant varieties that adapt to local growing conditions and that address the needs of local farmers.

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

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