
FARMERS' RIGHTS IN THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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ABSTRACT

This research paper delves into the significance of the International Treaty on Plant Genetic Resources for Food and Agriculture as the pioneering legally binding instrument that recognizes the profound contributions made by farmers and indigenous communities in the cultivation and preservation of plant diversity. This acknowledgment remains pivotal as plant diversity continues to be the bedrock supporting the majority of contemporary food crops. The study not only underscores the crucial role of crop diversity in bolstering agro-ecosystem resilience and ensuring food security but also emphasizes the necessity of upholding traditional agricultural practices to ensure the continual development of crop genetic resources.

The research delves into the intricate ways in which the International Treaty addresses the rights of farmers, known as "Farmers' Rights." Specifically, the paper examines Article 9 of the International Treaty, elucidating its measures designed to protect the traditional knowledge held by local communities, indigenous groups, and farmers, which is directly pertinent to Plant Genetic Resources for Food and Agriculture (PGRFA). Moreover, Article 9 ensures their equitable participation in benefit sharing and asserts their rightful involvement in decision-making processes related to these crucial resources.

This research paper sheds light on the groundbreaking recognition extended by Article 9 of the International Treaty to the invaluable contributions of local communities, indigenous populations, and farmers in conserving and advancing Plant Genetic Resources for Food and Agriculture. This recognition is operationalized through comprehensive measures that safeguard traditional knowledge, guarantee fair benefits sharing, and empower these stakeholders in decisions crucial to the management of these vital resources.

Introduction

The International Treaty stands as the inaugural legally binding instrument to formally recognize the substantial contributions rendered by farmers and indigenous communities in the advancement and preservation of plant diversity. This diversity continues to form the foundational bedrock for the majority of present-day food crops. This document delves into an analysis of the significance of crop diversity in bolstering the resilience of agro-ecosystems and ensuring food security. It emphatically emphasizes the imperative to uphold traditional agricultural practices, thus guaranteeing the uninterrupted progression of genetic resources for crops into the future.

Delving into a comprehensive examination of how the International Treaty addresses the Rights of Farmers, this discourse elucidates that Article 9 encompasses provisions aimed at safeguarding the traditional knowledge of local and indigenous communities as well as farmers with pertinence to Plant Genetic Resources for Food and Agriculture (PGRFA). It substantiates their entitlement to equitable sharing of benefits and their involvement in decision-making processes concerning these resources.

The International Treaty advocates a harmonized approach to strategies aimed at the preservation and sustainable utilization of Plant Genetic Resources for Food and Agriculture (PGRFA), encompassing both in situ and ex situ conservation methods. Over the past five decades, there has been an increasing recognition of the vital role played by farmers, indigenous peoples, and local communities in the cultivation and safeguarding of crop genetic diversity. This diversity holds significant importance in fortifying the resilience of agro-ecosystems and ensuring food security¹.

Farmers are regarded as the primary custodians of plant genetic resources, and any effective strategy must encompass the retention and promotion of traditional agricultural systems, as well as the continuous preservation of plant genetic diversity within agricultural landscapes. The perpetuation of traditional agricultural practices stands as an acknowledged tactic to secure the uninterrupted advancement of crop genetic resources. These practices have evolved over millennia, influenced by geographical limitations, diverse terrains, challenging climates, cultural values, and collective social structures, including customary institutions for agro-

¹ Moore and Tymowski, 2005. Explanatory guide to the International Treaty of Plant Genetic Resources for Food and Agriculture. IUCN Environmental Policy and Law Paper No. 57. Pp. 66-78

ecological management, celebrations, and associated knowledge frameworks. Through this process, these agricultural systems have simultaneously upheld and contributed to the evolution of crop genetic diversity. The cornerstone food crops of today have been cultivated within these time-honored farming systems².

Traditional agriculture flourished due to its embrace of diversity. It has furnished communities with varied diets and stability in production, thereby mitigating risks and diminishing crop losses stemming from pests and diseases, particularly in fluctuating environments. Farmers have historically attributed significance not only to crop yields but also to various attributes such as taste, adaptability to field conditions, cultivation requisites, and cultural values associated with specific crops. These innovative farming communities are accountable for the extensive array of crops and food varieties that we presently relish.

Farmers' Rights under the International Treaty

The International Treaty represents the inaugural internationally binding accord that acknowledges the involvement of local communities, indigenous groups, and farmers in the conservation and advancement of Plant Genetic Resources for Food and Agriculture (PGRFA). Grounded in this recognition, the treaty underscores Farmers' Rights pertaining to PGRFA. Article 9 of the International Treaty articulates the subsequent provisions:

Article 9- Farmers' Rights 9.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and 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 agriculture production throughout the world.

9.2 The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including: (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture; (b) the right to equitably participate in sharing benefits arising from the

² See the generic scope of human rights at United Nations Human Rights website: <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>; [http://undocs.org/A/RES/217\(III\)](http://undocs.org/A/RES/217(III))

utilization of plant genetic resources for food and agriculture; and (c) the right 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.

9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

Apart from farmers, Article 9.1 of the International Treaty acknowledges the significance of local and indigenous communities in the preservation and advancement of Plant Genetic Resources for Food and Agriculture (PGRFA). This explicitly indicates the increasing recognition of the role indigenous community's play in creating and safeguarding knowledge that holds value for society as a whole. This distinction also offers states the discretion to treat local and indigenous communities as a distinct category from farmers, even though in many instances, indigenous individuals and farmers may overlap.

Numerous pieces of literature emphasize the pivotal role and contribution of family and small-scale farming in upholding global food security, particularly through their contribution to a well-rounded diet, conservation, development, and management of the world's agrobiodiversity.

Article 9.1 does not impose any obligatory requirements on the Contracting Parties to the International Treaty. Instead, it provides the rationale for subsequent substantial clauses concerning Farmers' Rights and empowers them to select measures aligned with their needs and priorities for the realization of these rights.

The measures outlined in Article 9.2 (a) to (c) are considered fundamental for the implementation of Farmers' Rights at the national level, although they are neither legally binding nor exhaustive. Contracting Parties are urged to assess their specific requirements and determine measures that provide incentives to farmers to continue conserving and further developing PGRFA, in accordance with their national legal frameworks and prevalent agricultural practices. The achievement of Farmers' Rights can also encompass other suitable measures beyond those enumerated.

Protection of traditional knowledge

Paragraph (a) of Article 9.2 encourages the implementation of measures for the "protection of traditional knowledge relevant to plant genetic resources for food and agriculture." Given the scope and objectives of the International Treaty, the traditional knowledge intended for protection is limited specifically to that which holds relevance to plant genetic resources for food and agriculture. In this regard, this provision is narrower in scope compared to Article 8(j) of the Convention on Biological Diversity (CBD), which addresses a broader range of biological resources. However, the provision's scope might be broader than that of the CBD, as it isn't restricted solely to "traditional knowledge of indigenous and local communities embodies traditional lifestyles" as outlined in Article 8(j) of the CBD. Under the International Treaty, traditional knowledge appears to encompass the knowledge of farmers, particularly the knowledge utilized in the development and incorporation of farmers' varieties (landraces) and certain traditional agricultural knowledge that play a vital role in conserving genetic resources within local farming communities.

The amalgamation of traditional knowledge and plant genetic resources has substantially contributed to societal technological progress and improved livelihoods. The wealth of traditional knowledge accumulated over centuries of agricultural development has proven invaluable to farmers in conserving and judiciously selecting genetic resources from diverse natural habitats such as fields, meadows, and forests within their immediate environment.³

The creation and sustainable utilization of plant varieties and crop diversity tailored to the specific requirements of farmers within local conditions, under the framework of traditional farming systems, encompasses a wide array of traditional knowledge forms. Additionally, the recognition and acknowledgment of the role of women farmers in plant genetic resources conservation have grown. Women have been internationally acknowledged for their contributions in safeguarding environmental and agricultural biodiversity as custodians of traditional knowledge and proponents of in-situ conservation⁴.

Most forms of traditional knowledge are context-specific, evolving over time within particular habitats and cultures. Nevertheless, many of these knowledge systems share common attributes such as crop diversity, structural variation, optimal utilization of microclimates, and reliance on local resources and indigenous cultivars. Extensive research and literature underscore the

³ Fowler, C. 1997. "By policy or law?" The challenge of determining the status and future of agrobiodiversity. *Journal of Technology Law & Policy* 3, no. 1.

⁴ FAO 2013: Gender Equality and Food Security: Women's empowerment as a Tool against Hunger.

significance of traditional knowledge in the realm of PGRFA conservation and sustainable use. The dynamic reservoir of traditional knowledge held by farmers, indigenous communities, and local groups is perceived as a resource for developing new varieties and transmitting desirable genetic traits.

Family farmers have historically engaged with a diverse array of crop species to ensure successful harvests, often collecting and domesticating locally known wild varieties for seed production. Modern agricultural practices depend on crop varieties that promote productivity and disease resistance, necessitating a continuous influx of new germplasm. The wealth of landraces and associated information on their specific attributes plays a pivotal role in formal breeding processes. It's worth noting that the decline in biological diversity is paralleled by the erosion of traditional knowledge.⁵

Equitable participation in the sharing of benefits

Paragraph (b) of Article 9.2 within the International Treaty outlines the measures that Contracting Parties should undertake, in accordance with their national legislation, to ensure the right of farmers "to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture." In this context, Contracting Parties are expected to establish mechanisms that allow farmers and indigenous local communities to reap benefits from the utilization of Plant Genetic Resources for Food and Agriculture (PGRFA) that they have developed and conserved.

The International Treaty, however, doesn't provide specific details about how Article 9.2(b) should be practically implemented. Article 18, which addresses the Multilateral System on Access and Benefit Sharing, offers additional clarification and enumerates the key benefits involved. The Multilateral System creates opportunities for developed countries with technical expertise to build upon the accomplishments of farmers in developing countries using their laboratories.

Access

Genetic materials are accessible through collections housed in global gene banks. These collections can range from local seed repositories in research labs to national seed collections

⁵ FAO. 1997. Report of the Council of FAO, Hundred-and-eleventh Session. Rome.

within government ministries or research centers containing various varieties of a crop from around the world.

Under the Treaty and its Multilateral System, collections of gene banks—whether local, national, or international—in the public domain and under the direct control of Contracting Parties follow a set of facilitated access rules. This encompasses the extensive collections of the Consultative Group for International Agricultural Research (CGIAR), a consortium of 15 international research centers.

Benefit-sharing

Those who access genetic materials through the Multilateral System commit to openly sharing any new discoveries with others for further research. Alternatively, if they choose to retain their discoveries for themselves, they agree to contribute a percentage of any commercial benefits resulting from their research to a collective fund. This fund supports the conservation and continued development of agriculture in the developing world. The Benefit-Sharing Fund (BSF) was established in 2008 to serve this purpose⁶.

Monetary Benefits:

Following the stipulations outlined in the Standard Material Transfer Agreement (SMTA)⁷, recipients of genetic materials pay an equitable share of financial benefits into the Benefit-sharing Fund of the Treaty whenever a commercialized product derived from material acquired from the Multilateral System is not available for further research and breeding without restrictions. These funds are supplemented by voluntary contributions from countries, international foundations, and the private sector. The accrued funds within the Benefit-sharing Fund are primarily directed towards farmers in developing countries who engage in the utilization and conservation of crop diversity.

Non-monetary Benefits:

The Treaty also envisions the sharing of non-monetary benefits from the Multilateral System

⁶ For more information on BSF, see ITPGRFA webpage: <http://www.fao.org/plant-treaty/areas-of-work/benefit-sharingfund/overview/en/>

⁷ For more information on BSF, see ITPGRFA webpage: <http://www.fao.org/plant-treaty/areas-of-work/benefit-sharingfund/overview/en/>.

in the following formats:

1. Exchange of Information: This involves providing access to information such as catalogues, inventories of crop diversity, and outcomes of technical, scientific, and socio-economic research. For instance, research outcomes related to the characterization, evaluation, and utilization of agricultural crops are made available.

2. Technology Transfer: The Treaty facilitates access by developing countries to technologies concerning the preservation, characterization, assessment, and utilization of crop diversity under the Multilateral System. The Treaty encourages diverse forms of partnerships in research and development, including collaborations in commercial joint ventures, particularly related to the genetic material received human resource development, and effective access to research facilities.

3. Capacity Building: The Treaty supports capacity-building efforts through:

- Programs for Scientific and Technical Education and Training: Initiatives designed to enhance scientific and technical education and training are promoted.

- Research Facilities in Developing Countries: Assistance is provided to establish research facilities in developing countries.

- Scientific Research in Developing Countries: Scientific research in developing nations is fostered through cooperation with national institutions.

These mechanisms collectively aim to ensure that both monetary and non-monetary benefits generated from the utilization of genetic resources are shared in an equitable manner, particularly to support farmers in developing countries and facilitate their active participation in conservation and sustainable utilization of crop diversity.

Participation in decision-making

Another fundamental aspect of safeguarding and advancing Farmers' Rights, as outlined in Article 9.2 of the International Treaty, is expounded in paragraph (c): "the right 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." This encapsulates a suggestion for

Contracting Parties to the International Treaty to enhance the involvement of farmers or farming communities within decision-making bodies, in alignment with each country's existing institutions.

Given the substantial reliance of agriculture on high-quality seeds and propagating materials, it's only logical that farmers or farming communities should play a role in the decision-making processes. This is particularly pertinent in the context of regulations governing crop production management, seed standards, and regulations. Farmer participation, in a broader sense than stipulated in the International Treaty, can encompass the representation of farmers and farming communities across a spectrum of decision-making bodies. They are recognized as pertinent stakeholders in all dialogues that impact their farming systems and livelihoods. Therefore, farmers possess a distinct interest in shaping agricultural policies, encompassing areas such as food security, nutrition, sustainable agriculture, and rural development.

Another vital facet to consider while promoting the right to participate in decision-making, even though not explicitly mentioned in the International Treaty, is achieving gender balance in participation. The vital role of women in agriculture is often overlooked, despite their substantial contribution to various tasks, including the management of seeds and planting materials⁸. The significant role of women in the conservation and sustainable use of Plant Genetic Resources for Food and Agriculture (PGRFA) has been underscored by the Governing Body, and the significance of women in agriculture and rural regions is highlighted in numerous meetings and pivotal documents⁹.

Conclusion

In an unprecedented occurrence, the commendable endeavors and substantial contributions of local and indigenous communities, as well as farmers from diverse global regions, particularly those situated in centers of origin and crop diversity, towards the conservation and advancement of plant genetic resources, which form the fundamental basis for worldwide food and agriculture production, have been duly acknowledged through Article 9 of the International Treaty—a binding international instrument. This International Treaty outlines measures that

⁸ For more information on SMTA, see ITPGRFA webpage: <http://www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/the-smta/en/>

⁹ IT/GB-3/09/Report available at: <http://www.fao.org/3/a-be112e.pdf>

can collectively serve as a foundational framework for comprehending and upholding the rights of farmers ("Farmers' Rights"), notably including:

- Safeguarding traditional knowledge.
- Ensuring equitable involvement in benefit sharing.
- Active participation at the national level in affairs pertaining to the conservation and utilization of Plant Genetic Resources for Food and Agriculture (PGRFA).
- The utilization and exchange of farm-saved seeds and propagating materials.

The International Treaty duly counsels Contracting Parties to adopt measures that safeguard and promote Farmers' Rights in alignment with their respective national legal frameworks. This treaty also provides farmers with a legitimate basis upon which they can assert and advocate for their rights.

Before the adoption of the International Treaty, in the absence of universally accepted principles, the concept of Farmers' Rights held divergent interpretations across different regions globally. While some associated it with the pursuit of novel forms of intellectual property rights for materials developed by farmers, others perceived it more as a political slogan, aimed at gaining recognition for farmers' contributions to the conservation and sustainable utilization of PGRFA, alongside support for their efforts in this realm. To many, it conveyed the crucial need to protect farmers' capacity to continue conserving PGRFA and utilizing them sustainably, as well as empowering farmers to play an active role in decisions related to crop diversity. It is evident that Farmers' Rights are not equivalent to intellectual property rights but rather serve as the bedrock for acknowledging the collective innovation that underpins agriculture.

The precise course by which Contracting Parties can actualize Farmers' Rights and promote farming systems that uphold the conservation of PGRFA and their sustainable utilization substantially hinges upon several factors, including their economic landscape and internal market structures. Encouragement is given to Contracting Parties to achieve a harmonious equilibrium between Intellectual Property Rights (IPRs) within their regulatory systems. The challenge lies in effectively balancing private rights concerning seeds with the vested interests of farmers. It is crucial to recognize that both facets can harmoniously coexist and it essentially

pertains to facilitating their symbiotic coexistence in accordance with the economic and agricultural development strategies of the Contracting Party.

In conclusion, the International Treaty explicitly designates the onus of implementing Farmers' Rights as stipulated in Article 9 upon the diverse national governments. Each sovereign nation is granted the autonomy to discern and implement measures that they deem requisite and suitable, guided by their distinct necessities and priorities. Additionally, other clauses within the International Treaty, notably Articles 5 and 6 concerning conservation and sustainable use, and Article 13 addressing benefit-sharing within the Multilateral System, significantly contribute to the actualization of Farmers' Rights. The Preamble of the Treaty underscores that "the right to save, use, exchange, and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers' Rights, as well as the promotion of Farmers' Rights at national and international levels.