

# The Farmers' Rights Project



Background Study 2

## Results from an International Stakeholder Survey on Farmers' Rights

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**Abstract**

*The Farmers' Rights Project* has been set up to facilitate a common understanding and develop an empirical basis for proposals to the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture on concrete measures to be taken to implement its provisions on farmers' rights. This background study presents the findings of an international stakeholder survey on the topic. It gathers the perceptions and opinions of various stakeholders from all parts of the world, as expressed in 60 questionnaires from 31 countries. The survey gives an overview of the state of realization of farmers' rights which shows that, despite the huge challenges ahead, efforts are already underway with regard to all issues addressed as farmers' rights in the International Treaty. This indicates that there is already an opportunity for learning and for deriving models and success stories. The survey highlights the most important barriers to the realization of farmers' rights, as perceived by the respondents, and pinpoints at the same time options for overcoming them. One of the barriers is the diffuse understanding of the concept of farmers' rights. The survey compiles different interpretations and develops a common ground for the understanding and communication of farmers' rights. It further identifies institutions and experts working for the realization of these rights, and indicates the potentials for pooling resources towards this goal. The survey indicates a potential path for the Governing Body to promote the realization of farmers' rights while respecting the freedom of countries to choose ways and means according to their needs and priorities. This path has broad support among the respondents. The findings will be further deepened in the other background studies of *The Farmers' Rights Project*. On this basis, conclusions will be derived in the final report from the project.

**Key Words:** farmers' rights, plant genetic resources for food and agriculture, ITPGRFA, agrobiodiversity, biodiversity, access to genetic resources, traditional knowledge, benefit sharing, intellectual property rights

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‘Burundi is a poor country. More than 90 percent of the population is rural and their livelihoods are based on farming. Under these conditions, it can be stated that declaring the rights of farmers would secure all Burundis.’

**Salvator Ndabirorere, Burundi**

‘Increasingly, farmers in the North are deprived of the economic and legal framework conditions, which ensured their stewardship role in agriculture.’

**Erik Evenrud, Norway**

## **Preface**

This background study is part of the Farmers’ Rights Project. The project addresses farmers’ rights related to plant genetic resources, as they are recognised in the International Treaty on Plant Genetic Resources for Food and Agriculture. The Farmers’ Rights Project aims to provide an empirical basis for proposals to the Governing Body on the realization of farmers’ rights as they are formulated in the International Treaty. Starting in March 2005, the project is being carried out by The Fridtjof Nansen Institute and is supported by the Norwegian Ministry of Agriculture and Food and the Norwegian Ministry of Foreign Affairs. Other components of the project are a literature survey, case studies in Peru, Ethiopia, India and Norway, a study of the legal aspects of the farmers’ rights concept, an analysis of the potentials for the Governing Body to promote farmers’ rights, and a final synthesis report. The GTZ Sector Project *People and Biodiversity in Rural Areas*, which is commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ), is contributing to the Farmers’ Rights Project with two of the four country case studies, and is an important discussion partner in all phases of the project.

I would like to extend my warmest thanks to all the respondents to the stakeholder questionnaire on which this report is based for their valuable contributions to the survey. In the process of identifying potential respondents and sending out questionnaires, I received helpful assistance from Ida Bjørkum, for which I am most grateful. Warm thanks also to Kristin Rosendal for her support throughout the project and to Ivar Liseter, Claes Lykke Ragner and Maryanne Rygg for technical assistance.

Lysaker, November 2005

Regine Andersen





## **Executive Summary**

In 2001 the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) was adopted, and it entered into force on 29 June 2004. The Treaty includes provisions on farmers' rights, and explicitly states that the responsibility for implementing these provisions rests with the national governments. The governments 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 preamble of the ITGRFA highlights the necessity of promoting farmers' rights at the national as well as international levels. There is as yet no common understanding of how this can be done. Such an understanding is of great importance for making progress in the realization of farmers' rights.

*The Farmers' Rights Project* has been set up to facilitate such a common understanding and develop a basis for proposals to the Governing Body of the Treaty on concrete measures to be taken. The intention is to move beyond earlier controversies, and – based on the consensus formulations in the Treaty – build bridges to a joint perception of needed action, while respecting the freedom of countries to choose measures according to their needs and priorities.

This report presents the findings of an international stakeholder survey on farmers' rights. Considered a central part of *The Farmers' Rights Project*, it gathers the perceptions and opinions of stakeholders from all parts of the world, covering state delegates to the FAO, representatives from international governmental as well as non governmental organizations, and of experts. Altogether 60 questionnaires have been received from 31 countries.

### **Response pertaining to the concept of farmers' rights**

The International Treaty recognises the enormous past, present and future contributions of farmers in all regions of the world in conserving, improving and making available plant genetic resources for food and agriculture, and it states that this forms the basis of farmers' rights. However, it does not define the concept. In order to assess the feedback from the respondents, we therefore needed to know how they interpret the concept of farmers' rights. A range of respondents expressed their concern about the difficulty in communicating what farmers' rights are about as long as there is no internationally accepted understanding of the concept. Therefore, we also used this opportunity to assess the prospects for a common understanding of the concept of farmers' rights.

A number of respondents maintained that farmers' rights emanate from the practices and customs of farmers, and therefore must be viewed as customary rights. Most of the respondents emphasized that farmers' rights first and foremost comprise the rights to conserve, utilize, exchange, sell, and develop seeds and propagating material according to the needs and priorities of farmers.

The sharing of benefits derived from the utilisation of plant genetic resources for food and agriculture was the second most important aspect

of these rights. However, opinions differed significantly here regarding contents as well as importance. The majority of respondents maintained that the most important benefits are non-monetary, covering access to seeds and propagating material and to technologies. For a few respondents, benefit sharing had to do with rewards to farmers whose genetic material is used in commercial varieties or with farmers' intellectual property rights. This ownership perspective was opposed by several other respondents, who maintained that it would be most difficult to reward farmers for their specific contribution to commercial varieties, since agricultural plant varieties are normally shared among many farmers and farming communities and it would be difficult to identify those who should be rewarded. Furthermore, farmers' property rights could lead to a tragedy of the 'anti-commons', i.e. that farmers are excluded from the free use of a common good – agrobiodiversity – not only by breeders (through plant variety protection), but also by each other. This would be contradictory to the most important right of all: That of sharing seeds and propagating material among farmers.

Since there are few experiences with bilateral benefit sharing arrangements pertaining to agrobiodiversity, many respondents were hesitant to link incentives and support to bilateral benefit sharing mechanisms, and regarded it as more promising to identify a mechanism to generate funds that flow back to countries, areas and communities that actually and consciously contribute to the creation and maintenance of such genetic resources.

Finally, farmers' participation in decision making pertaining to agrobiodiversity was considered an important aspect of farmers' rights by many respondents.

Based on the survey, a formulation was developed as a lowest common denominator in an effort to facilitate a shared understanding and communication of farmers' rights:

*Farmers' rights consist of the customary rights that farmers have had as stewards of agrobiodiversity since the dawn of agriculture to save, grow, share, develop and maintain plant varieties, of their legitimate right to be rewarded 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.*

### **Response on the state of farmers' rights**

Farmers' rights, as they pertain to plant genetic resources for food and agriculture, are an issue of central importance in countries where the majority of the population lives in rural areas and base their livelihoods on farming – and particularly so when farming systems are based on traditional varieties. This is the case in many developing countries, as the survey shows. In Northern countries, farmers' rights concern a much smaller segment of the population. Whereas most farmers in the North rely on commercial plant varieties, saving and re-use of propagating material is still practiced to some extent, and there is increasing interest

among eco-farmers to develop plant breeding based on traditional varieties. Thus, farmers' rights are also important in the North, though to a more limited extent than in the South.

Protection of farmers' traditional knowledge is one of the possible measures for the implementation of farmers' rights, as addressed in the ITPGRFA. Whereas a number of countries reported about legislation and policies pertaining to the protection of farmers' traditional knowledge, comparably little is being done to implement these. However, a number of projects are being carried out in different countries in the North as well as the South. In the North, the projects are normally carried out by public institutions as part of broader programmes, whereas the projects in the South are often carried out by NGOs and are normally not embedded in Government programmes. The projects provide examples of how farmers' traditional knowledge can be protected.

Farmers' participation in the sharing of benefits derived from the utilization of plant genetic resources for food and agriculture is another measure for the implementation of farmers' rights suggested in the ITPGRFA. A number of Southern countries have enacted legislation to provide for such benefit sharing. In the North, benefit sharing is not as relevant a topic, since most farmers use improved varieties and buy seeds and propagating material from breeding companies, and there is no legislation for this purpose.

Farmers generally participate more or less in the sharing of *non-monetary* benefits. The most often mentioned non-monetary benefits were access to seeds and propagating material, influence on breeding activities, and in some cases participatory plant breeding. The survey shows that – for many reasons – benefit sharing is more promising when the farming communities which actually contribute to the maintenance of plant genetic diversity are the points of departure, rather than when seeking to identify farming communities who have developed particular varieties of plants which are used in commercial breeding. The latter is often impossible due to the nature of the development of farmers' varieties and their traditions of sharing seeds and propagating material, and could therefore result in a dead end for benefit sharing in many cases. Also, there are far more examples of non-monetary than monetary benefit sharing, which indicates that the prospects for the former are most promising.

Whereas this is the general picture, two examples of monetary benefit sharing from the North show that there are prospects also for other forms of benefit sharing. Solutions may therefore be sought along both tracks of benefit-sharing arrangements – based on the framework conditions in the respective countries. The survey shows that the non-monetary track is by far the most promising in the South, and that there is little interest in benefit sharing in the North, except for a few cases where the monetary track was followed.

A third measure for the implementation of farmers' rights, as suggested in the ITPGRFA, is the participation of farmers in decision-making pertaining to the management of plant genetic resources for food and agriculture. There are generally few examples of legislation in this regard, but

some countries in the South have extensive legislation on participation. 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, the participation of farmers in decision making processes is more commonly practiced, but without reference to specific laws or policies.

The practice by farmers of saving, using, exchanging and/or selling seeds and propagating material from their own harvest is also addressed in the ITPGRFA. This practice 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 has not yet been introduced in most African countries. There are interesting examples in several countries in the South as well as in the North of how such legislation can be formulated with a view to farmers' rights.

The data material shows instances of legislation as well as of achievements in all areas addressed as farmers' rights in the ITPGRFA. Analysing and documenting these examples and achievements would be pivotal to any monitoring of the implementation of the ITPGRFA with regard to its provisions on farmers' rights and for sharing experiences between countries.

### **Evaluation of performance and success stories**

The vast majority of the respondents are not satisfied with the performance of their countries regarding farmers' rights. There is dissatisfaction in the South as well as in the North. A few respondents marked the performance of their countries as 'fairly good', 'good' or 'very good'.

Nevertheless, altogether 28 respondents reported success stories regarding farmers' rights, and several reported more than one such story. The stories covered topics such as:

- Improvements to farmers' seed systems, including conservation
- Registration of farmers' varieties and related knowledge
- Enhanced utilization of farmers' varieties
- Participatory plant breeding and the strengthening of farmers' seed systems
- Access to genetic resources and related information
- Monetary benefit sharing
- Advocacy and participatory processes for the formulation of farmers' rights legislation
- Farmers' participation in national level decisions pertaining to agrobiodiversity management
- Farmers' use of their judicial rights

- Farmers' advocacy for participation in decisions pertaining to genetically modified organisms.
- Legislation ensuring the rights that farmers have to save, use, exchange and sell farm saved seeds and propagating material

The stories show that there is a potential to derive models for the implementation of the provisions of the ITPGRFA on farmers' rights from already existing efforts, which could also form the basis for exchange of experiences and for the development of strategies and plans towards the realization of farmers' rights.

### **Barriers, challenges and options for realizing farmers' rights**

Lack of awareness among farmers was the most frequently cited barrier to the realization of farmers' rights, with lack of awareness among authorities closely behind. The problem is rooted in the difficulties related to defining farmers' rights and the different interpretations – and lack of understanding – of the concept. There are problems particularly when it comes to private ownership and monetary benefits, and the survey reveals that many respondents feel that such an emphasis blurs the discussion, and some perceive it as a barrier to farmers' rights. To solve these problems, models of redistributive mechanisms for benefit sharing which are more in line with the main features of the farmers' rights concept are needed, as well as more information and education on farmers' rights among farmers and decision makers, according to a number of respondents.

Political and economic barriers were highlighted by many respondents, emphasizing that the current agricultural paradigm is contradictory to sustainable management of plant genetic resources for food and agriculture, and thereby to the realization of farmers' rights. Paradigms are not easily changed, but the respondents had several suggestions on how to approach them. Representation of farmers who are engaged in such management, in relevant decision processes is most important, but also creating space for sustainable management from below – with participatory plant breeding and the marketing of products resulting thereof.

Poor, weak or contradictory legislation was perceived as a central barrier in many countries. Several respondents highlighted the importance of developing adequate legislation and/or mainstreaming farmers' rights in existing legislation. However, the prevalent lack of implementation capacity in many countries represents an additional barrier. Capacity building is needed to approach this problem, and a funding structure to support such activities was highlighted as a necessary instrument for this purpose.

Several respondents felt that external pressures made it difficult for politicians to choose politics in accordance with the needs of farmers, and that also seed companies would have substantial influence over politics. The ITPGRFA could be used to counterbalance external influence, it was suggested, and seed companies should be invited to support and promote the realization of farmers' rights.

Civil society organizations are often crucial actors in the initiation of efforts for realization of farmers' rights. However, several respondents felt that the organizations in their countries were not attentive enough to farmers' rights, or not creative or active enough. More advocacy and information work would be needed from their side. Capacity building among NGOs was suggested as a measure to approach this problem, and also for this purpose funds were needed.

### **Stakeholder contributions to the realization of farmers' rights**

The most usual activities of the responding NGOs are information and networking activities together with advocacy at the national level – and in a few cases at the international level. It follows that some organizations seek to organize and assist farmers in their efforts to gain political influence. Some organizations are also engaged in the conservation of plant varieties and participatory plant breeding, and/or supporting farmers by establishing registries of farmers' varieties. A few organizations support farmers in their efforts to get market access for products based on traditional varieties. One responding organization is a donor organization, supporting NGOs in the South in their efforts towards these ends, but also seeking to influence politicians in its own country and at the international level directly through advocacy.

The Future Harvest Centres is a comprehensive network of international agricultural research institutions in all parts of the world, of which 85 percent involve farmers directly in participatory plant breeding and variety selection, in farmers' field schools, field plots and other participatory processes. A number of centres also support the involvement of farmers and their associations in national and regional decision-making processes as well as their efforts to register their knowledge. They also support culturally appropriate means of promoting access to an exchange of technologies between farmers, through support for biodiversity fairs, field visits, information sharing and informal seed systems.

Ten of the experts reported that they had written publications directly on the topic of farmers' rights. Fourteen experts had written on topics relevant for farmers' rights.

State delegates were asked to identify actual or potential allies for the realization of farmers' rights. They mentioned a range of authorities as important stakeholders with regard to farmers' rights, and in addition a number of them mentioned farmers' unions, NGOs and/or experts as allies in this work.

The findings indicate that there are resources for the realization of farmers' rights in a number of countries. Analyzing actual and potential networks for the realization of farmers' rights more systematically may provide ideas and models on how to pool resources towards this goal.

### **Needed action by the Governing Body of the ITPGRFA**

The survey shows that the respondents are quite unison in their analysis of what the Governing Body should do to promote the realization of farmers' rights and of the issues that should primarily be addressed in this regard.

First and foremost, it is important to note that all respondents suggest that the Governing Body should take action to promote the realization of farmers' rights. The absolute minimum version is that the Governing Body organizes the sharing of experiences regarding the realization of farmers' rights between the Parties. Based on the response to the questionnaire, this suggestion is likely to have the best prospects for being accepted in the Governing Body.

In addition, most respondents found that the Governing Body should encourage parties to develop national plans for the realization of farmers' rights, and that it should monitor and support the implementation of such plans.

A range of further suggestions were made by the respondents, such as developing minimum standards for farmers' rights from national and regional experiences to a level of international harmonization; the highlighting of models as positive examples of implementation; legislative and institutional assistance to countries in their efforts to realize farmers' rights; public information and assistance in communicating the importance of farmers' rights; and efforts to ensure the representation of farmers in the Governing Body.

*Farmers' rights* is a wide concept without any stringent definition. Whereas the Parties are free to define farmers' rights according to their needs and priorities, it is important to be aware of the generally most pressing issues in this regard – in order to consider how these may be addressed at the international level.

According to the respondents, the most important issue to address at the international level is the question of how to secure farmers' access to seeds and propagating material covering a genetic diversity according to their needs. This is crucial to current and future agriculture and thereby to the current and future livelihoods of farmers. It is also vital for food security. To address this issue adequately, it is necessary to take into account the different needs and framework conditions in the various countries.

Along with this priority, a central issue to promote at the international level is the documentation and maintenance of farmers' traditional knowledge pertaining to agricultural varieties. Whereas the most important issue is to secure farmers' access to seeds and propagating material covering a genetic diversity according to their needs, such access would be of considerably less value without the knowledge related to these resources. Therefore the two issues can be seen as two sides of the same coin.

The third issue, which is considered important among the respondents, is the representation of farmers in decision-making bodies at the national level pertaining to plant genetic resources for food and agriculture. Many respondents express that a central reason why the legislation and policies on these issues are weak or even lacking, is that farmers are not adequately represented in relevant decision-making bodies.

The issue of farmers' continued practice in saving, using, developing, exchanging and selling seeds and propagation material, also when protected with intellectual property rights, received high scores with regard to importance among the respondents. It is closely related to the first issue on access to propagating material, since a restriction of farmers' practice in this regard would affect their access to such material. This is therefore a question which needs attention at the international level. However, it is the issue that caused the hottest controversies in the negotiations under the International Undertaking on Plant Genetic Resources as well as in the negotiations leading to the ITPGFA, without any substantial solutions. Raising the question in the context of farmers' rights – and with reference to the provisions in Article 9 of the ITPGRFA – would necessitate a genuinely new and constructive approach, taking the freedom of countries to choose means according to their needs and priorities into account.

The most important issue raised by the respondents in addition to the listed ones, was farmers' rights pertaining to biosafety and genetically modified organisms (GMOs). This issue is pressing in a range of countries, and will probably receive more attention in the years to come. Several respondents hold that farmers must have the right to choose whether they will grow GMOs or not, and that it is difficult to uphold this right if they are not informed about the GMO-content in the seeds they buy, or if their harvests are infested from neighbouring fields. Also food aid containing GMOs is perceived a danger to this right, and donors are requested to respect government decisions against the introduction of GMOs in a country.

### **Concluding remarks**

The survey indicates a potential path for the Governing Body to promote the realization of farmers' rights while respecting the freedom of countries to choose ways and means according to their needs and priorities. The path has broad support among the respondents from all parts of the world, and across different categories of stakeholders.

The survey has further given an overview of the state of realization of farmers' rights which shows that, despite the huge challenges ahead, efforts are already underway with regard to all issues addressed as farmers' rights in the ITPGRFA. This indicates that there is already an opportunity for learning and for deriving models and success stories. Documentation and analyses are pivotal means to reveal this potential for the realization of farmers' rights.

There are many and comprehensive barriers to the realization of farmers' rights. This survey highlights the most important ones, as perceived by the respondents, and pinpoints at the same time options to overcome them. One of the barriers is the diffuse understanding of the concept of farmers' rights. This survey has sought to compile different interpretations and develop a common ground for the understanding and communication of farmers' rights – a lowest common denominator.

There are already many people and institutions working for the realization of farmers' rights around in the world. This survey has identified



some typical networks as seen from the authorities, as well as NGOs and experts engaged in the issue. More work is needed to uncover existing resources. The survey represents a beginning, and indicates the potentials for pooling resources towards the realization of farmers' rights.

The findings from this survey will be further deepened in the other background studies of *The Farmers' Rights Project*. On this basis, we will derive conclusions in the final report from the project.



## 1. Introduction

The issue of farmers' rights, as they pertain to plant genetic resources for food and agriculture, has been a hot topic in United Nation's Food and Agriculture Organization (FAO) for years.<sup>1</sup> In 2001, the International Treaty on Plant Genetic Resources for Food and Agriculture was adopted, and it entered into force 29 June 2004. The Treaty includes provisions on farmers' rights,<sup>2</sup> and explicitly states that the responsibility for implementing these provisions rests with the national governments. The governments 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. These encompass the protection of relevant traditional knowledge, equitable benefit sharing, participation in decision making, and the rights to save, use, exchange, and sell farm saved seeds and propagating material. The preamble of the International Treaty highlights the necessity of promoting farmers' rights at the national as well as international levels. There is as yet no common understanding of how this can be done. Such an understanding is of great importance for making progress in the realization of farmers' rights.

This set the stage for *The Farmers' Rights Project*, a project set up to facilitate such a common understanding, and developing a basis for proposals to the Governing Body of the Treaty on concrete measures to be taken. The intention is to move ahead from earlier controversies, and – based on the consensus formulations in the Treaty – build bridges to a joint perception of needed action, in respect of the countries' freedom to choose measures according to their needs and priorities.

This report presents the findings of an international stakeholder survey on farmers' rights. Considered a central part of *The Farmers' Rights Project*, it gathers the perceptions and opinions of stakeholders from all parts of the world. As a follow up of the survey, four case studies (Background Studies 3–6) are currently being carried out to enlarge on initial insights and explore options for the realization of farmers' rights under different framework conditions. The case studies are being carried out in Peru, Ethiopia, India and Norway by researchers from these countries.

In addition to these studies, an analysis will be carried out to identify the options for the Governing Body to promote the realization of farmers' rights (Background Study 7). Further, a literature survey is under development (Background Study 1), which presents the state of scientific knowledge on farmers' rights, and a study on the legal aspects of the concept of farmers' rights will be prepared (Background Study 8). The key findings from the project will be presented in a final report in March/

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<sup>1</sup> Please see the home page of The Farmers' Rights Project for an introduction to the history on the concept of farmers' rights at [www.fni.no/farmers/main.html](http://www.fni.no/farmers/main.html), or – for a more thorough presentation – the literature review (Report 1) of the Farmers' Rights Project (forthcoming).

<sup>2</sup> Please see attachment 1 to this background study for an overview of the provisions on farmers' rights in the International Treaty. For further information, please see the home page of *The Farmers' Rights Project*.

April 2006, and presented in connection with the first meeting of the Governing Body of the International Treaty in 2006.

*The Farmers' Rights Project* is carried out by the Fridtjof Nansen Institute, with support from the Norwegian Ministry of Agriculture and Food and the Norwegian Ministry of Foreign Affairs. Two of the case studies will be conducted with support from the German Gesellschaft für Technische Zusammenarbeit (GTZ), commissioned by the German Federal Ministry of Economic Cooperation and Development (BMZ).

We would like to take this opportunity to extend our warmest thanks to all the respondents to this survey for their valuable contributions and for all the interest in and support for the project, which have been expressed in many of the accompanying mails.

## 2. Questionnaires and method

Three target groups of stakeholders were selected for the survey:

- State delegates to the FAO, who have been involved in ITPGRFA negotiations
- Representatives of non-governmental institutions, such as civil society organizations, farmers' unions and to some extent breeding institutions, who have been engaged in the issue of farmers' rights
- Experts, who have worked on the issue of farmers' rights or on related issues

For each group a questionnaire was developed in three languages: English, French and Spanish (the three languages used for documents during the ITPGRFA negotiations). The questions were basically similar across all respondent categories, but some were formulated slightly differently to make them relevant for the target groups. The questionnaires for non-governmental institutions and experts both had a national and an international section. Respondents were free to choose whether to fill out the national, the international, or both sections, according to their competence. The two sections covered more or less the same issues, but the questions were posed differently to take account of scope. The questionnaires are attached to this working paper in the English versions. The following is a list of topics covered by the questionnaires (for more details, please see the attachments):

- The *concept* of farmers' rights (delegates were asked about the official position of their countries, NGOs about the position of their organizations, experts about their understanding of the concept)
- The structure of the *agricultural system* (asked to state-delegates to the FAO as a basis to understanding the following answers)
- The *policies and legislation* on Farmers' Rights in the countries
- The *state of realization* of Farmers' Rights
- Suggestion of *success stories*
- Evaluation of *performance* of the country with regard to farmers' rights (not for the international parts of the questionnaires to NGOs and experts)

- Assessment of greatest *barriers, challenges and options*
- The *work of the own organisation* with regard to the realization of farmers' rights (for NGOs)
- Important *stakeholders or allies*
- *Articles, reports or books* on farmers' rights produced or recommended by the respondent (for experts)
- Consideration of *issues to promote* at the *international level*
- Suggestions on what the *Governing Body* could do to promote the realization of farmers' rights
- Other *comments or information*

Some of the questions came with alternative responses – requiring respondents only to place a tick in the relevant boxes – to enable quantification. Other questions were open-ended in order to capture the range and details of the respondents' opinions. Responses were partly divided into categories and quantified, and partly compared and/or structured on a qualitative basis. Often a combined approach was applied. The chosen methods are presented in the respective chapters.

A stakeholder survey like this gives an important indication of perceptions and opinions with regard to the questions addressed. However, it is not a representative study in statistical terms since the number of respondents is limited, and its findings can not form the sole basis for conclusions in *The Farmers' Rights Project*. That is why a literature survey and four case studies are carried out in addition to this survey. By comparing the results from the stakeholder survey with the findings of these other studies we will have a solid basis for conclusions – and those conclusions will be presented in the Final Report from the project.

### **3. Respondents and response**

Prior to the distribution of the questionnaire an extensive work was done to compile names and e-mail addresses of relevant respondents. We decided it was better to send too many than too few questionnaires in order to reach as many stakeholders as possible, and hopefully also people who had not participated in the international discussion so far. Since we did not know all these people, some of the names on the list were probably not relevant. We still decided to take the chance. In addition, we asked some stakeholders to share with us their lists of addresses with regard to farmers' rights. On this basis, the first questionnaires were sent out 25 April 2005. Among all the positive responses to this initiative, we received a number of new names, and some respondents offered to distribute the questionnaires in their networks. We are grateful for all the help in this regard.

As a result of all this engagement, we do not know the exact number of recipients of the questionnaire. For our own part, we sent the questionnaire to 285 people, well knowing that some of these – maybe many – were not relevant to the survey. It was a risk we were prepared to take, not least because answering the questionnaire would require a basic knowledge on the issue of farmers' rights. Indeed, there seems to have

been a natural selection of respondents: All the returned questionnaires reflect sufficient awareness of the issue and are useful to the survey.

Particularly with regard to state delegates, it was difficult to find functioning e-mail addresses, and many mails did not get through. Nevertheless, we reached respondents in most countries which had been engaged in the international discussion on farmers' rights – and in a few countries which had not.

The following table shows the total number of questionnaires sent and responses received by respondent category:

**Table 1: Breakdown of questionnaires sent and replies received by respondent category**

<b>Sent and received mails:</b>	States	NGOs*	Experts	TOTAL
Number of successfully e-mailed questionnaires:	77	106	102	285
Number of replies with completed questionnaires:	14	18	28	60
Number of ineligible responses (not qualified/willing):		2	1	3
Other replies without questionnaire:		4	2	6
Total number of respondents:	14	24	31	69

\* One organization counted under NGOs is an IGO (please see below).

One of the received questionnaires was a joint response from the International Agricultural Research Centres under the CGIAR, also known as the Future Harvest Centres, compiled by Michael Halewood and Jane Toll from the International Plant Genetic Resources Institute. This is an international governmental organization (IGO). Whereas it is counted to the NGO category, its particular status as an IGO is explicitly stated in the relevant contexts.<sup>3</sup> As a joint response from the Future Harvest Centres, it represents a number of responses, but is counted as one in this survey, since there is one completed questionnaire. We are most grateful for this particular contribution to *The Farmers' Rights Project*.

The next table shows respondents to the questionnaire by continent and category (for details on countries, names and affiliations, please see attachment 5).

<sup>3</sup> Since this questionnaire came from the only International Governmental Organisation (IGO) responding to the survey, we decided to count it to the NGO category, under the condition that we highlight its IGO status whenever relevant. There were several reasons for this choice: (1) The respondents had filled out an NGO questionnaire, (2) the expert questionnaire was designed for individual experts and not for organizations and this category was therefore not applicable, and (3) the state questionnaire was targeted for state delegates to the FAO only, and was therefore also not applicable (4) the NGO category was closest because it enabled the response of organizations.

**Table 2: Respondents by continent and category**

	States	NGOs	Experts	TOTAL
<b>Africa:</b>	6	3	7	16
<b>Asia:</b>	3	7	9	19
<b>Latin-America:</b>	1	1	4	6
<b>North America:</b>	0	2	1	3
<b>Europe:</b>	4	5*	7	16
<b>SUM</b>				
<b>WORLD</b>	14	18	28	60

\* One of these organizations is an IGO.

The respondents were initially categorised according to the countries from which the response was received. In several cases the respondents were international institutions, and the countries therefore solely indicated their headquarters. Also experts may not be nationals of the countries from which they sent the questionnaires. As establishing the nationality of the respondents would be difficult, and have little bearing on the analysis, the continents listed above, and the countries listed in attachment 5 (where all respondents are listed) indicate solely from where we received the responses. Please see attachment 5 for further details.

As for state officials, we sent questionnaires to only one FAO delegate in each country in order to avoid duplication and overburden the institutions. In two cases (Zambia and Nepal) we nevertheless received two responses from state officials from each country, which were then analyzed together.

The questionnaires sent to NGOs and experts contained two sections: a national section dealing with the situation in their country or in other countries of their expertise (respondents could choose to fill out the questionnaire several times for different countries), and an international section dealing with the global situation. Thereby 11 respondents filled out both sections, 6 respondents the international section solely, and the remaining respondents filled out the national section solely. Please see attachment 5 for a detailed breakdown.

One regional NGO, Southeast Asia Regional Initiatives for Community Empowerment (SEARICE) sent three questionnaires, one each for Bhutan, Vietnam and the Philippines. The information pertaining to the situation in the three countries has been fed into the study were relevant, whereas the information pertaining to the views and work of SEARICE has been worked together as one response. We are most grateful for this comprehensive contribution.

The responses provide valuable input from central countries in Africa, Asia, South-America and Europe. For these continents the coverage is considered good. There is no coverage of Australia and the Pacific, and low coverage of North-America, Eastern Europe and the Arabian world. Despite this, we have had a broad coverage of countries engaged in the

debate on farmers' rights, and where steps have been taken to formulate or implement policies in this regard.

Coverage is generally good on the categories of target groups chosen for the survey. Central, internationally known experts and NGOs in the field have responded, including the Future Harvest Centres, in addition to a number of other well qualified and interesting respondents from both categories. A particular challenge for a survey like this is to reach out to organizations directly representing farmers and to experts whose work brings them in direct contact with farmers. A number of NGOs and a few experts belong to this category, offering views from the farmers' stand-points. As for the state delegates, the coverage could have been better: Whereas Western, Eastern and Southern Africa are well represented, China and Nepal are the only countries from Asia, and Equador the only country from Latin-America. North America is not represented among the delegates. Europe is somewhat better represented: With the German response, a central member of the European Union took part in the survey. Sweden and Denmark belong both to the European Union and the Nordic group of countries, all of which have been active in the ITPGRFA negotiations. The response of Serbia Montenegro gives a voice to the South-East of Europe. Therefore the response from state delegates of African and European countries is regarded as satisfactory, whereas it could have been better from the other continents. We will seek to compensate lack of information from these countries during the literature review and in the Final Report from the project.

All respondents have been asked for permission to cite their contributions and have had the opportunity to correct the presentation of their input.

The information gathered in this survey is quite pointed and does not comprise deep elaborations. It is not the intention with this report to interpret or analyse the contents of the response in depth. Rather we seek to set out the views of the respondents, and synthesize the main features of this response. As the survey is not representative in statistical terms, the findings will form a basis for further work in *The Farmers' Rights Project*.

#### **4. Response pertaining to the concept of farmers' rights**

In order to assess the feedback from the respondents, we needed to know how they understood the concept of farmers' rights. This was also expected to provide insights in the respondents' perceptions on options for the realization of farmers' rights as well as challenges ahead.

The response provided the most interesting insights into respondents' conception of farmers' rights. Some controversies became evident, but also options to develop a common ground for the understanding of this complex concept. Such a common ground is developed in the final section of this chapter (section 4.5).

##### **4.1 Methodological considerations**

We asked all categories of respondents to state their views about the concept of farmers' rights. However, the question was posed differently for the different categories. State delegates were asked to set out the official



position of their governments with regard to the contents of farmers' rights – as they pertain to plant genetic resources for food and agriculture (PGRFA) – as specifically as possible. NGO representatives were asked to do the same for their organizations. Experts received two questions. Those who filled out the national part were asked about what, according to their opinion, farmers' rights – as they pertain to PGRFA – are about in their countries. Those who filled out the international part were asked about what, according to their opinion, farmers' rights – as they pertain to PGRFA – are about in general. This approach elicited a broad range of answers bearing certain common features.

The response from the state delegates on the concept of farmers' rights was limited, and as such did not necessitate special methodological considerations (see section 4.2 below). The responses from the NGOs (and one IGO) tended to be more detailed. To analyse their responses, we used the data to develop categories pertaining to components of farmers' rights, and then distributed the information in the responses according to these categories. Most of the responses covered more than one, often several categories (i.e. several items were considered to make out the contents of the farmers' rights concept), and were sorted accordingly. This way we could break down the received responses according to components of farmers' rights, and number of respondents. It is, however, important to study the responses in their entirety and contextually, not simply as unconnected snippets of data. Therefore we will also look into some of the formulations in their contexts. By using this combined quantitative and qualitative approach, we obtained information which would have gone by the wayside had the respondents been given response alternatives. In section 4.3, we will first present the breakdown according to categories of items and respondents, before we delve into some of the responses in their contexts.

A similar methodological approach was applied to the answers from the experts, but with slight differences, as presented in section 4.4.

## **4.2 Response of state delegates on the concept of farmers' rights**

Four state delegates referred to the ITPGRFA when responding to our question. Since their Governments had signed or ratified the ITPGRFA, the formulations in the Treaty represented their official position on the concept of farmers' rights. This was the response from Denmark, Germany, Senegal and Sweden.

Delegates from three countries reported that a process is underway to develop legislation on farmers' rights in their countries. These countries are Nepal, Senegal and Zambia.

Two countries maintained that their countries had not yet adopted any official position, since they had no explicit legislation on the issue. These were Serbia and Montenegro and Sierra Leone.

Delegates from five countries highlighted their Governments' focus on one or more components of farmers' rights:

- Farmers' participation in the *sharing of benefits* from the use of PGRFA: Congo, Kenya, Ecuador and Zambia

- **Participation in decision making** pertaining to the management of PGRFA: Congo, Zambia
- Farmers' **intellectual property rights** to PGRFA: China
- More specifically, farmers' rights to **save seeds and propagating material and to use, exchange and sell** such material: Zambia

In addition, the delegate from Congo maintained that farmers' rights pertaining to PGRFA are perceived as customary rights.

The response from Zambia is particularly interesting with a view to options for the realisation of farmers' rights. Zambia has drafted a Plant Genetic Resources, Farmers and Community Rights Bill. The Bill is currently at the Cabinet Memorandum level, i.e. is due to be submitted to the Cabinet, before being presented to the Parliament. The Act comprises access to PGRFA, benefit sharing, farmers' rights and community rights. According to the Zambian delegate, Albert Chalabesa, there is political will to protect small scale farmers who are custodians of the available crop genetic diversity: The Cabinet required a reformulation of the first draft of the Bill to include farmers' and community rights. Despite the good will of the Cabinet, a high level of advocacy is necessary to get the bill through the legislature and adopted, according to Chalabesa.

#### **4.3 Response of NGO representatives on the concept of farmers' rights**

The core of farmers' rights, in the view of most NGOs in the survey, is the **right to save seeds, and to use, exchange and sell farm saved seeds** disregarded of whether they are protected by intellectual property rights or not. Eleven of the NGOs, from the North as well as the South, emphasised this right. For some, it was their only answer to the question, whereas others included it in a longer response. Some added that it was particularly important for small scale farmers. Several respondents focused on the customary rights that traditional farmers have to maintain their seeds and propagating material according to their own needs and priorities.

The next component of farmers' rights highlighted by NGOs was the right of farmers to **conserve and develop PGRFA**, including the support for such activities. Seven NGOs emphasised this component, some stressing that this component of farmers' rights would be crucial to farmers' continued contribution to the maintenance of PGRFA. Three organizations also focused on the importance of participatory plant breeding in this regard.

The next nexus which received attention in the responses was the **sharing of benefits** derived from the use of PGRFA, including **access to PGRFA** as an emphasised benefit from the use of PGRFA. In fact, six of the respondents highlighted access to PGRFA as a particularly important benefit, whereas 'only' five emphasised benefits more in general. Given the small number of responses and the marginal difference between them, it is not possible to draw any firm conclusions with regard to these two interlinked components of farmers' rights. However, in light of the ongoing international discussion concerning the likely benefits ensuing from the use of PGRFA, and the potential conflicts between benefit

sharing and access to PGRFA if regulation does not account adequately for both, it is interesting to note that access is considered important by several NGOs engaged in the debate on benefit sharing. Likewise it is interesting to note that several of the NGOs highlight access as important without mentioning benefit sharing in more general or other terms.

Farmers' *participation in decision making* is considered equally important for the realization of farmers' rights. Six organizations focused on this. Two of these organizations and two other organizations mentioned explicitly that farmers' rights include the right to be protected from infestation of crops by genetically modified organisms (GMOs).

Last, but not least, five respondents took the opportunity to express their deep recognition of the ongoing contributions of farmers to the conservation and development of PGRFA and related knowledge, and three to express their support to the ITPGRA, despite its weaknesses and ambiguities with regard to farmers' rights, as they see it.

After this breakdown to components of the NGO responses concerning farmers' rights, we will now focus on some examples of formulations from the respondents with regard to contextualisation.

From Nigeria, M. O. Arigbede of the Union of Small & Medium Scale Farmers of Nigeria explains why the Union considers farmers' rights important:

We believe that farmers are the primary Right Holders of plant genetic resources in their communities in particular, and country in general. Indeed, farmers are not only the principal custodians but also the guarantors of the integrity of these resources. They hold in trust the resources for present and unborn generations of citizens of the communities and countries (...). (...) Farmers who guarantee the food sovereignty and security of nations must have the right to have their perspectives respected and upheld by their governments, always placing the interests, rights and perspectives of farmers above those of profit maximisation – especially when farmers are convinced that profit maximisation now would mean resources degradation later.

Several of the respondents sought to formulate the contents of farmers' rights in their entirety. The response of the Southeast Asia Regional Initiatives for Community Empowerment (SEARICE) is a representative example of these:

SEARICE upholds farmers' rights. In the context of seeds, these rights should involve not only the right to save, select, use, store and exchange genetic resources, but the right to fair and equal access to resources, and also the benefits that come with the use of such resources. There should be due recognition to farmers' contribution to the diversity of plant genetic resources, and their participation in community processes and decision-making should be more than enhanced, especially in matters that affect them. These rights should be leaning more towards smallholder farmers, and local and indigenous farming communities.

Finally, we turn to the North, where the issue of farmers' rights pertaining to PGRFA is a relatively new topic, to which stakeholders often have difficulties relating themselves. This is particularly so because commer-

cial agriculture is widespread and the traditional technologies and varieties are marginal. The following response from a little organization of ecological farmers in Norway, the Biological-Dynamic Association, seeks to address the content of farmers' rights under such conditions. On their behalf, Erik Evenrud writes:

Our organization wishes to work for an increased popular engagement in caring for the diversity of crop species and varieties. First and foremost the economic framework conditions are limiting the possibilities of Norwegian farmers to maintain an agriculture which takes care of genetic diversity. If we manage to identify a market and it is economically viable for the individual farmer, we do have the freedom to do plant breeding and sell breeding material. However, it is the position of our organization that the *in situ* management of PGRFA is a societal responsibility and that its regulation should not be left to the market forces.

#### 4.4 Response of experts on the concept of farmers' rights

Some of the experts started out by discussing what kind of rights farmers' rights are. Based on his experience in Cameroon, Samuel Assembe Mvondo explains that farmers' rights emanate from the practices and customs of various populations groups, and therefore are viewed as customary rights. Miguel Angel Silva Ramos (Bolivia) sees farmers' rights as socio-economic rights recognizing and rewarding small scale farmers for their contributions to PGRFA. Jeremy de Beer (Canada) emphasises that they are individualist rights, which can be formulated either as contractual, property, or human rights. As contractual rights, they would be subject to normal principles of contracts. As 'classic' private property rights, they could bestow upon farmers the ordinary privileges of ownership of tangible products including seeds and land, for instance. As human rights, they would be based upon the right to life, liberty or security of the person (e.g. food sovereignty). De Beer maintains that such rights should not be understood as exceptions from intellectual property rights, nor as socially justified, 'public interest' or 'common property' rights. Manuel Ruiz Muller (Peru) sums up, that farmers' rights are a bundle of rights to compensation, control, recognition and maintenance. They are not defined with precision, but most people recognize these as just and legitimate rights, he holds. The question of the legal basis of farmers' rights will be further dealt with in the literature review and in a separate report from *The Farmers' Rights Project* by Morten Walløe Tvedt from the Fridtjof Nansen Institute (Background Study 8).

All except two of the experts (they are referred to above), dealt with components of farmers' rights in their answers. These responses were broken down into categories according to components of farmers' rights, and afterwards the data was sorted according to these categories, following the same procedure as for the NGOs. In addition, it was possible to identify patterns of regional difference between the expert answers. As the categorization would not pay justice to all the very interesting answers we received on this question, we will also cite some of these along the way.

The experts responding to the national part of the questionnaire were asked to relate their answer to the situation in the country, whereas those responding to the international part were asked to relate their answer to the contents of farmers' rights in general. Many of the experts responding

to both parts responded similarly to both questions, but some differentiated. We will deal with national and international responses together, while noting differences where relevant.<sup>4</sup>

The recognition of, and farmers' right to, *conserve, sustainably utilize and develop PGRFA* is the most often highlighted component of farmers' rights among the expert responses (19 out of 25 answers). All the African respondents, most of the Asian and European and half of the Latin-American respondents highlighted this in their answers.

Almost the same frequency of responses was found with regard to the right of farmers to save their seeds and propagating material and to *re-use, exchange and sell it* – also if the plant varieties are protected by intellectual property rights (17 out of 25 answers), i.e. that the legislation in the countries should entitle farmers to do so. Some of the respondents qualify this by referring to small, or small and medium, scale farmers. All but one of the African respondents, and most of the European respondents emphasised this component of farmers' rights, whereas half of the Asian and the Latin-American respondents highlighted it. Two of the respondents maintain that the right should not entitle farmers to sell branded seeds of a protected variety.

Martin Girsberger (Switzerland) considers *farmers' rights* as understood in the context of PGRFA conservation, and the '*farmers' privilege*'<sup>5</sup> as used in legislation on intellectual property rights, to be important legal concepts, but maintains that they should be clearly distinguished. This is because the latter is an exemption from plant variety and patent protection, which is – at the international level – within the competence of the UPOV, and of the WTO through the TRIPS Agreement, whereas farmers' rights are under the competence of the FAO. The FAO would therefore not have the competence to deal with questions relating to the intellectual property rights issue of the '*farmers' privilege*', he holds. Nevertheless, the majority of the respondents seem to be of a different opinion, several referring to farmers' rights to use, exchange and sell farm saved seeds – also if they are protected by intellectual property rights – as a core component of farmers' rights. Others consider it important, but warn against letting it detract from other components of farmers' rights, most of all the rights pertaining to conservation, utilization and development of these resources. Tewolde Berhan Gebre Egziabher (Ethiopia) expressed it this way:

They are about the right to continue growing whatever variety the farmer wishes, without any legal or administrative impediment. They are also about selling in the market whatever agricultural produce that can get a buyer, without any legal or administrative restriction based on the specification of varieties that can and cannot be sold.

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<sup>4</sup> Some answers contained parts which were more about the current situation in the country pertaining to farmers' rights. These parts will be dealt with in the next chapter on the state of the realization of farmers' rights in the countries.

<sup>5</sup> In this report, the term *farmers privilege* is consciously not used, since it is considered to have a political connotation, which would require a discussion. The main report from the project will contain such a discussion.

A component that received much attention among several of the respondents was the right of farmers to *participation in the benefits* derived from the use of PGRFA (12 out of 25 respondents). However, here there is a significant difference between continents. Only one of the African respondents mentioned this component, whereas all but one Asians did. Two of four Latin-American respondents, and only two of six Northern experts, emphasized this component. The Asian respondents were therefore decisive to the high number of answers with this component.

A question arising out of these findings is why this component is so important to some experts, and not at all to others. The responses do not shed much light into this question. However, what most of the respondents who do not mention benefit sharing have in common, is that they emphasise the right of farmers to conservation, utilization and development of PGRFA, and some respondents highlight co-operation with professional breeders as a part of this right. Conservation is then not made dependent on benefit sharing as an incentive, but requires other incentives and support mechanisms. Also co-operation with professional breeders is seen independently from any benefit sharing arrangements. A reason for this de-linking of conservation and development of PGRFA from benefits might be that there are few experiences with benefit sharing arrangements pertaining to PGRFA, and that the respondents are hesitant to link incentives and support to mechanisms, which are not very promising at the moment. The response from Jan Engels underscores such an interpretation: Engels argues that it is difficult to regulate the compensation of farmers for their contribution to PGRFA, and that, consequently, it seems to be more logical to identify a mechanism to generate funds that flow back to countries, areas and communities that actually and consciously contribute to the creation and maintenance of such genetic resources.

In addition, most of the respondents, who did not mention benefit sharing arrangements, emphasised the rights of farmers to use, exchange and sell farm saved seeds, whether protected by intellectual property rights or not. A possible interpretation for this phenomenon could be that it represents a kind of balance: breeders use breeding material originally stemming from farmers' varieties without sharing the benefits with the farmers and the farmers are then in turn entitled to utilise plant varieties, which are protected by intellectual property rights according to their needs and priorities.

Several other components of farmers' rights were mentioned but with far less frequency. Eight respondents highlighted the need for *additional support* to farmers for the conservation, sustainable use and development of PGRFA. Six of these were from Asia, in other words among those, who also favoured benefit sharing as an important component of farmers' rights. This indicates that they do not regard benefit sharing alone as a sufficient incentive or support mechanism, and therefore emphasise support in addition. The idea of a fund for the realization of farmers' rights was revived by several experts, as also indicated above.

*Participation in decision making* was given far less priority than one could expect, considered its central position in the wording of the provisions on farmer' rights in the ITPGRFA. Only seven experts highlighted this as a component. Most of those who did not mention this component highlighted the right to conservation, sustainable utilization and develop-

ment of PGRFA and to use, exchange and sell farm saved seeds – whether or not they are protected by intellectual property rights. If these rights are met, a possible explanation for the lack of expert interest in farmers' participation in decision making pertaining to PGRFA can be that the most important decisions are then already vested with the farmers.

*Access to PGRFA* is more or less covered by the categories on benefit sharing (access is often referred to as the most important benefit in the literature), and on the right to freely exchange and sell farm saved seeds. However, it is explicitly mentioned by some of the respondents (six out of 25 respondents), as one of the components of farmers' rights, and should therefore also be mentioned separately. Finally, four respondents mentioned the *registration* of farmers' varieties and the establishment of *property rights* over such varieties for farmers as a component of farmers' rights. Two of these come from India, where farmers' property rights to PGRFA is included in the legislation (see below), whereas the other two live in Peru and Chile respectively. It is interesting to note that the issue of farmers' property rights over PGRFA has not received more attention among the experts, despite the considerable legislative work already carried out on this issue. One explanation can be that farmers' property rights can – if not carefully developed – lead to a tragedy of the 'anti-commons', i.e. that farmers are excluded from the free use of a common good – PGRFA – not only by breeders (through plant variety protection acts), but then also by each other.<sup>6</sup> Such a situation would hinder the realization of other components of farmers' rights considered important by the respondents. Bert Visser (the Netherlands) underscores this argument, when he writes that farmers' rights should not be an alternative intellectual property rights system, but recognize farmers' contributions and protect continued farmers' breeding practices – including the use of formal public and private varieties. Obviously the experts have different opinions on this issue. The country case study on India will discuss this question further in-depth.

*Empowerment of farmers* is highlighted as an important effect of farmers' rights in two of the contributions. Niels Louwaars (the Netherlands) puts it this way:

Farmers' rights contribute to the empowerment of farmers to manage their PGRFA through absence of obstructing rules and presence of support mechanisms.

Anitha Ramanna specifies what the empowerment of farmers may entail, and thereby summarizes most of the topics dealt with above:

Farmers' rights are a very powerful political tool. Considering the capability of farmers' rights as an issue on which many actors can mobilize, it would be important to promote farmers' rights in a broad and inclusive manner. Farmers' rights should provide:

- 1) The platform for farmers' voices to be heard.

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<sup>6</sup> This problem is thoroughly analysed in Anitha Ramanna and Melinda Smale: 'Rights and access to plant genetic resources under India's new law' in *Development Policy Review*, Vol. 22, No. 4, July 2004.

- 2) The mobilization of funds and political will to promote the development of farmers. This development should be defined in their own terms and not reduced to ownership rights or compensation.
- 3) The sharing of resources with and among farmers rather than rights that exclude.

#### **4.5 A common ground for the understanding of farmers' rights?**

The discussions on what exactly *farmers' rights* are supposed to embrace have rolled for years without coming to a conclusion. Doubtless, different conditions produce different views, and it may not be a good idea to seek to fix a definition once and for all. Farmers' rights is a political concept rather than an intellectual one, and it is probably more useful to leave its definition flexible so that it can be adapted to different situations, something Article 9 of the ITPGRFA also urges.

However, there is obviously a need for more consistency in our understanding of basic elements of the concept, precisely because of the continuing confusion to which it gives rise. Without some clarity about its basic elements, it will be most difficult to communicate what farmers' rights are about, and subsequently to get implementation processes started. Is it possible to develop a common ground for the conception of farmers' rights based on the many valuable contributions to this survey? An attempt will be made here, and will be further discussed in the final report from *The Farmers' Rights Project* in light of the findings from the other background studies.

The following formulation is based on the response to the questionnaire, as presented above and below in this report. It is suggested as a basic point of departure – perhaps a lowest common denominator – to facilitate a shared understanding and communication of farmers' rights:

*Farmers' rights consist of the customary rights that farmers have had as stewards of agrobiodiversity since the dawn of agriculture to save, grow, share, develop and maintain plant varieties, of their legitimate right to be rewarded 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.*

Upholding customary rights of farmers to save, grow, share, develop and maintain plant varieties is the best and – probably – the only feasible way of maintaining the diversity of plant varieties in a long term perspective. Whereas gene banks are important in the short and medium term – and as such an indispensable factor in the management of PGRFA – *in situ* maintenance of PGRFA is probably the only way to conserve and further develop these resources in the long run. If the customary rights of farmers to continue their role as stewards or custodians for plant genetic diversity in agriculture are limited (for example by too restrictive regulations on seed certification and/or intellectual property rights, as alluded to in Section 9.3 of the ITPGRFA), the options for farmers to maintain PGRFA for the future will be correspondingly curtailed. Upholding the customary rights of farmers in this context requires a conscious policy from governments with regard to the conservation and sustainable use of PGRFA and



the protection of related traditional knowledge (the latter being particularly addressed in Section 9.2(a) of the ITPGRFA). The best guarantee for such policies is the participation of farmers engaged in the management of PGRFA in relevant decision making, as indicated in Section 9.2(c) of the ITPGRFA.

Rewarding farmers for their contribution to the global pool of genetic resources and the development of commercial varieties of plants is a way to address the right to equitably participate in the sharing of the benefits arising from the utilisation of PGRFA, as expressed in Section 9.2(b) of the ITPGRFA. Whereas the discourse on farmers' rights seemed to focus mostly on ownership issues and benefit sharing between companies and communities in the beginning, time has shown – as has also many responses to this stakeholder survey – that such an approach was not realistic because the demand for farmers' varieties in professional plant breeding is low, the transaction costs would be too high, and it could blur the discussion about other steps needed to reward farmers for their contribution. Moreover, the Multilateral System of the ITPGRFA represents a new, and probably more promising, approach to benefit sharing. Therefore, *rewarding farmers* means rewarding the farmers that still contribute to genetic diversity by supporting their work in a manner which sustains these activities. For example technical cooperation, such as participatory plant breeding; facilitated access to needed genetic material; support for post-harvest and marketing efforts, support to develop school curricula for the management of PGRFA and plant breeding in the actual areas, and/or support to farming communities to improve living conditions can all be useful support measures.

## **5. Response on the state of farmers' rights**

In order to identify action required for the realization of farmers' rights it is necessary to compile an account of the current status of the realization of these rights. Since the realization of farmers' rights can mean quite different things in different parts of the world, dependent on the various structures of agricultural systems, it is necessary to start out with an overview over these structures. In this chapter, we will therefore review key properties of the agricultural structures in selected countries, before examining legislation and policies affecting farmers' rights. The final part is devoted to establishing the actual state of the realization of such rights. The chapter covers three questions posed in the questionnaire, on the structure of the agricultural systems, the state of legislation and policies and of the realization of farmers' rights respectively.

### **5.1 Basic information on the structure of agriculture in the countries**

As a basis for analyzing the state of farmers' rights in the various countries, we started out by asking one category of respondents, State delegates, about relevant aspects of the structure of their agricultural system. They were asked to respond to seven pointed sub-questions, and to tick response alternatives were applicable. In addition, the respondents were invited to add information they deemed relevant. They were asked to answer according to their knowledge.

### *5.1.1 Methodological considerations*

This question could have been posed to all respondents. However, we were afraid of making the questionnaires too long, and felt that many respondents might find it difficult to answer. Since State delegates to the FAO are supposed to have the best overview over these issues, we selected this category of respondents for this issue.

As a result, we received only a limited number of responses on this question, since only a limited number of delegates responded to the questionnaire (14). Therefore the response provides insights in agricultural structures in different parts of the world, but can not be used in statistical terms. When analysing the response, our main purpose was to group countries according to information provided, in order to identify different patterns of framework conditions which are relevant for the identification of farmers' rights as well as for their realization within these groups of countries.

### *5.1.2 Farming population and traditional farming*

First of all, we asked about how much of the population depends on farming as its main source of income/livelihood in the country. The question was deemed relevant because it would give an indication of the political importance of farmers' issues. The answers were not surprising. In the industrialized countries (Denmark, Germany, Serbia and Montenegro and Sweden) 20 percent or less of the population rely on agriculture as the main source of income. In most of the developing countries (China, Congo, Kenya, Nepal, Senegal and Sierra Leone) the figures lay somewhere between 60 and 80 percent. Zambia estimated the share to be between 40 and 60 percent, whereas Ecuador estimated it to be between 20 and 40 percent. These findings indicate that questions pertaining to farmers' rights may be considered more relevant in developing than in industrialized countries, and particularly in those where the vast majority of the population lives in rural areas based on farming.

The management of traditional varieties and related knowledge is central to the realisation of farmers' rights. We therefore wanted to know the proportion of farmers depending on traditional varieties as their main source of seeds and propagating material. The answers from the industrialised countries were as expected: less than 20 percent of the farmers depend on such material. Among the developing countries, the picture was more differentiated. In China and Ecuador the estimations were that 20 to 40 percent of the farmers depended on traditional varieties, whereas the estimated shares for Kenya and Senegal were between 40 and 60 percent. Between 60 and 80 percent of the farmers in Congo, Sierra Leone and Zambia reportedly depend on traditional varieties as their main source of seeds and propagating material. The estimate for Nepal was uncertain. On this basis we assume that traditional varieties still play an important role in many developing countries.

### *5.1.3 The use of commercial varieties of plants in agriculture*

The opposite of using traditional varieties for agriculture is to use modern commercial varieties. However, in many countries farmers use a combination of traditional and modern varieties, and the new varieties emanating

from this mix have been called *modern farmers' varieties*<sup>7</sup> or Creole varieties (a term used in Latin America). It is difficult to estimate the degree to which farmers are using such varieties, since the phenomenon is relatively new, and there has been little research on it so far. We therefore asked respondents to put a figure on the percentage of farmers using modern commercial varieties as their main source of seeds and propagating material. Such figures are also relevant with regard to rights that farmers in these countries have to save, use, exchange and sell seeds and propagating material, which is protected with intellectual property rights.

Again the industrialized countries offered estimates ranging between 80 and 100 percent of farmers using commercial propagating material as their main source. The estimate for China was close to that, with 60 to 80 percent. The other developing countries ranged from 0 and 40 percent: Kenya, Zambia, Nepal and Senegal estimated 20 to 40 percent, and Congo, Sierra Leone and Ecuador below 20 percent. These data show that commercial varieties are most widespread in the industrial world, but that their share in many developing countries is substantial. To the extent that these countries have introduced legislation on intellectual property rights, the rights of farmers' to save, use, exchange and sell protected propagating material may be or become an issue also in these countries.

#### 5.1.4 *Private and public plant breeding institutions*

We wanted to flesh out this picture, and asked about the average market share of public plant breeding institutions, as compared to private plant breeding institutions. It turned out that the public plant breeding institutions have a marginal market share in most countries. The respondents from China, Denmark, Ecuador, Germany, Nepal, Senegal, Sierra Leone and Sweden indicated that the share of public plant breeding institutions in the market of seeds and propagating material was below 20 percent. In Congo and Zambia, the share was between 20 and 40 percent. Kenya put it at 60 to 80 percent, and Serbia and Montenegro at 80 to 100 percent.

In other words, the private plant breeding institutions dominate the market for commercial seeds and propagating material. We also asked respondents to assess the relative presence of foreign and domestic private plant breeding institutions. However, several of them found this difficult, because ownership structures are not always so transparent. Several respondents chose therefore not to answer this question. The eight answers we did receive suggest a mix of domestic and foreign owned private breeding companies: The respective market shares of domestic and foreign companies in Denmark were estimated between 40 and 60 percent each, and this is about the same as reported for Zambia. Germany rates domestic institutions in a higher bracket (60–80 percent), far above foreign owned facilities (20–40 percent). In Senegal it is the other way around. Kenya, Serbia and Montenegro and Ecuador report low, but largely similar market shares in both categories (0–20 percent). One

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<sup>7</sup> The concept is used in Rene Salazaar, Bert Visser and Niels Louwaars (forthcoming 2006): 'Protecting Farmers' New Varieties: New Approaches to Rights on Collective Innovations in Plant Genetic resources', *World Development*, accepted for publication.

country stands out: In China, private domestic breeding companies dominate, and there are few, if any, foreign companies.

#### 5.1.5 *Gene bank conservation of traditional varieties*

Finally, we asked respondents to estimate the share of traditional varieties presently grown in their countries, which they assumed to be conserved in public and/or international gene banks. The answers showed great variation, and it seems that some of the respondents found the question difficult. Generally, the respondents from most countries assumed that most of their crop varieties were conserved in gene banks, developing and industrial countries alike. It was probably a question requiring some investigation to find a precise and reliable answer.

#### 5.1.6 *Country groups with different framework conditions*

Based on the response presented above, we divided countries into three categories:

- A. Countries with ***large farming populations and mainly traditional agriculture***, such as Congo, Senegal, Sierra Leone, Zambia, Nepal
- B. Countries with ***small farming populations and mainly commercial agriculture*** based on propagating material from private plant breeding institutions, such countries as Denmark, Germany, Serbia-Montenegro, and Sweden
- C. Countries with ***other combinations***, such as medium to large farming populations combined with medium to large shares of commercial agriculture with or without a large share of public plant breeding, such as China, Ecuador and Kenya.

Clearly we should expect farmers' rights to be perceived differently in the three categories of countries, whereby the last category most likely embraces a diversity of perceptions.

## 5.2 **Legislation, policies and programmes pertaining to farmers' rights**

As a first step to identify the efforts towards the realization of farmers' rights, we wished to compile an account of all relevant acts, policies and programmes, whether they affected farmers' rights positively, negatively or if the direction was difficult to assess. This was a question all respondents were asked to answer. Those answering the national section of the questionnaire were asked to report on the acts, policies and programmes in that country, and those answering the international section of the questionnaire were asked to report on every piece of legislation of which they were aware.

### 5.2.1 *Methodological considerations*

The question was formulated slightly differently for the different categories of respondents. The State delegates were asked whether their countries *had* specific acts or policies, whereas the NGO representatives and experts were asked whether they were *aware* of specific acts. The experts and NGOs responding to the international section of the questionnaire were asked whether they were *aware* of any acts, policies or programmes

in any country, which could serve as models for other countries with regard to farmers' rights. When respondents answered 'no' it could mean one or both of two things: Either the countries had not passed legislation, or adopted policies or programmes or the respondents were not aware of whether that had been done. In the following presentation, we will therefore solely present the answers, which specified legislation, policies and programmes pertaining to farmers' rights and not seek to bring an account of the countries without that.

Not all respondents could give input on policies pertaining to farmers' rights or they could only provide it partly.<sup>8</sup> The following breakdown is therefore not exhaustive, but it does provide a basis for further investigations.

We asked specifically for information on legislation, policies and programmes pertaining to five issues which are addressed in the context of farmers' rights in the ITPGRFA:

1. Protection of farmers' traditional knowledge relevant to PGRFA (re. Sec. 9.2[a])
2. Participation of farmers in the sharing of benefits arising from the utilisation of PGRFA (re. Sec. 9.2[b])
3. Farmers' participation in decision making processes on matters related to the conservation and sustainable use of PGRFA (re. Sec. 9.2[c])
4. Farmers' practice of saving, using, exchanging and/or selling farm saved seeds and propagating material (re. Sec. 9.3)
5. Support to farmers who conserve PGRFA (re. Articles 13 and 18)

In the following sections, we organize responses according to these five points. For each category we discuss continents and countries. As we only asked for details of relevant legislation, policies and programmes, we will not attempt here to provide fuller descriptions or analyses or take the discussion further. In section 5.3, we address the realization of farmers' rights in practice. Thus, the two sections should be seen together: Section 5.2 deals with the intentions, section 5.3 with the practice, i.e. the realization of these intentions. As we know, there is often a discrepancy between the two.

#### *5.2.2 Legislation, policies and programmes pertaining to the protection of farmers' traditional knowledge relevant to PGRFA*

Most of the countries in the South, which have accounted for the protection of farmers' traditional knowledge relevant to PGRFA in their legislation, have done so in laws pertaining to the protection of biological diversity in general. Bangladesh, Bhutan, India, Vietnam and Chile are examples in this regard. Several countries have provisions pertaining to the protection of farmers' traditional knowledge in their regulations on

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<sup>8</sup> For example, we got no response with regard to legislation, policies and programmes pertaining to farmers' rights in North America, and that is the reason why North America is not covered in this presentation.

access to genetic resources, of which the Philippines is an example. Some countries have accounted for such protection in the legislation pertaining to indigenous peoples, like in Peru. A few countries have relevant provisions in their legislation on plant variety protection. India, has issued far reaching legislation explicitly on farmers' rights in such a context. Several countries are in the process of issuing legislation on farmers' rights, including the protection of farmers' traditional knowledge. The processes in Zambia and Bolivia are particularly interesting in this regard.

In the North, the picture is somewhat different: According to the respondents, the protection of farmers' traditional knowledge relevant to PGRFA is usually not subject to legislation but is dealt with in Government programmes. Such programmes are normally coordinated by the authorities, but there are also examples of private initiatives in this regard, as in, for instance, Switzerland.

Also in the South, a range of projects and programmes are being carried out, often by NGOs, and often supported by NGOs in the North. The Development Fund, Norway, gave us an interesting list in this regard, which will be integrated in the presentation below.

### *Africa*

Tewolde Berhan Gebre Egziabher, among many others, highlights that the African Model Law on the Rights of Local Communities, Farmers, Breeders and on Access to Biological Resources<sup>9</sup> addresses the protection of farmers' traditional knowledge relevant to PGRFA. As such, the model law has not been adopted in any country, but it is – as its name indicates – intended as a model for the countries for the formulation of their own laws regulating these matters. Bell Batta Torheim reports about the African Convention on the Conservation of Nature and Natural Resources, which is an update of the Algiers Convention of 1968, and was adopted by the African Union in 2003. Article XVII provides for the traditional rights of 'local communities and indigenous knowledge', stating that the Parties shall take legislative and other measures to ensure that traditional rights and intellectual property rights of local communities including farmers' rights are respected in accordance with the provisions of this Convention. However, the Convention has not yet entered into force, due to lacking ratifications, she reports.

Salvator Ndabirorere writes that the *Burundi* Environmental Code and the Decree-law on plant protection (no. 1/033 of 30 June 1993) address the protection of farmers' traditional knowledge relevant for PGRFA. From *Ethiopia*, Yemane Tsehaye reports that legislation is underway to provide for 'access to genetic resources and community knowledge and right'. It is not yet adopted. Severin Polreich tells about the project Farmer-Based On-Farm In-Situ Conservation of Crop Diversity in Ethiopia, which utilizes traditional knowledge for in-situ conservation. It is co-ordinated by the Institute of Biodiversity Conservation, Addis Ababa.

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<sup>9</sup> [www.grain.org/brl\\_files/oau-model-law-en.pdf](http://www.grain.org/brl_files/oau-model-law-en.pdf)

From **Zambia**, Albert Chalabesa, Catherine Mungoma and Godfrey P. Mwila report about a draft bill on Plant Genetic Resources, Farmers and Community Rights,<sup>10</sup> which was developed in a national process and finalised in 2004. It is yet to be brought to the Cabinet Meeting in Zambia. The draft addresses the protection of farmers' traditional knowledge relevant to PGRFA in Zambia. According to the Development Fund, the Community Technology Development Trust (CTDT) backstopped this process as part of a sub-regional policy program on farmers' rights. Clement Chipokolo refers to a programme under the government-owned Mount Makulu Research Institution in cooperation with the SADC Gene Bank, which provides for the protection of farmers' traditional knowledge pertaining to PGRFA.

#### *Asia*

Anitha Ramanna highlights the Biodiversity and Community Knowledge Protection Act of **Bangladesh** (29 September 1998)<sup>11</sup> which is particularly relevant with regard to the protection of farmers' traditional knowledge pertaining to PGRFA. The legal status of the Act is however uncertain, and it is probably too early to assess its outcome or impact. SEARICE informs about the Biodiversity Act of **Bhutan** of 2003, which is – among other objectives – aimed at recognizing and protecting traditional knowledge, innovation and practices of local communities and indigenous peoples associated with biological diversity (Section 1.1.e).

S. Bala Ravi, Anitha Ramanna, and Vanaja Ramprasad, among others, list two acts pertaining to the protection of farmers' traditional knowledge relevant to PGRFA in **India**: Biological Diversity Act of 2002<sup>12</sup> and the Protection of Plant Varieties and Farmers' Rights Act of 2001.<sup>13</sup> Maryam Rahmanian reports that the provisions of any international treaty signed according to the Constitution of **Iran** between Iran and other governments are binding in Iran, according to Article 9 of the Civic Code. Iran has ratified the Convention on Biological Diversity and signed the ITPGRFA, and these agreements are therefore binding. Both of them provide for the protection of traditional knowledge pertaining to biological diversity, whereby the ITPGRFA particularly addresses the protection of farmers' traditional knowledge pertaining to PGRFA. However, it remains to be seen how these agreements will be implemented. Ganesh K. K. C. and K. K. Lal write that three pieces of legislation are relevant with regard to the protection of farmers' traditional knowledge in **Nepal**: The Seed Act, the Plant Protection Act, and the Pesticide Act.

From the **Philippines** SEARICE informs about the Indigenous Peoples Rights Act (Republic Act 8371 of 1997), which *inter alia* provides for the protection of indigenous farmers' traditional knowledge relevant to PGRFA and provides them with extensive rights with regard to the control over their resources (see e.g. sections 34 and 35). They also refer to

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<sup>10</sup> [www.ctdt.co.zw/publications/Biodiversity%20and%20Community%20Knowledge%20Protection%20Bill.doc](http://www.ctdt.co.zw/publications/Biodiversity%20and%20Community%20Knowledge%20Protection%20Bill.doc)

<sup>11</sup> [www.grain.org/brl\\_files/bangladesh-comrights-1998-en.pdf](http://www.grain.org/brl_files/bangladesh-comrights-1998-en.pdf)

<sup>12</sup> [www.nbaindia.org/act.htm](http://www.nbaindia.org/act.htm)

<sup>13</sup> <http://agricoop.nic.in/seeds/farmersact2001.htm>

the Executive Order 247 on bioprospecting of 1995, the Wildlife Act (Republic Act 9147 of 2001) and the Joint Administrative Order 1 in the Philippine Series of 2005 (of the Department of Environment and Natural Resources, Department of Agriculture, the Philippine Commission on Sustainable Development, and the National Commission on Indigenous Peoples) which prescribes Guidelines for Bioprospecting Activities in the Philippines. These sets of legislation are aimed at ensuring that prior informed consent is obtained from resource providers before allowing any bioprospecting activities. Elenita C. Dano reports that the Philippine Plant Variety Protection Act of 2002 establishes a framework for community registration of farmers' varieties. However, she writes, such registries are only aimed at the plant genetic resources and not at the traditional knowledge attached to them. The purpose is to establish prior art with regard to new varieties of plants, which can be protected under the new act, i.e. to hinder that farmers' varieties can be protected as new inventions by plant breeders.

The Development Fund reports about one national programme in the Philippines and one regional programme in Asia, coordinated from the Philippines: 'Promoting Farmers' Rights Through Strengthening Community Plant Genetic Resources and Use' in the Philippines, and 'Biodiversity, Use and Conservation in Asia Programme (BUCAP)' regionally in Asia. Both are carried out by SEARICE (see section 6.2.2 on success stories).

Nguyen Van Dinh and Nguyen Thi Kim Oanh report from *Vietnam* that the 1995 Decision by the Prime Minister on the Approval of the 'Action Plan on Biodiversity in Vietnam' (Decision No. 845/TTg, of 22 December 1995) also comprises the protection of farmers' traditional knowledge relevant to PGRFA. In addition, they highlight the 2002 Decision by the Prime Minister on the international exchange of plant genetic resources (Decision No. 10/2002/QD, of 17 January 2002). Nguen Thi Ngoc Hue mentions the Plant Variety Ordinance of 2004 in this regard.

#### *Latin America*

According to Miguel Angel Silva Ramos, *Bolivia's* Supreme Decree 21676 on Access to Genetic Resources comprises *inter alia* the protection of farmers' traditional knowledge relevant to PGRFA. It is derived from the Andean Community Decision 391 on access to genetic resources, and is currently under revision. After the adoption of the ITPGRFA, Bolivian authorities initiated meetings with civil society representatives, peasants, small farmers and indigenous peoples to establish a basis for the elaboration of a national law on farmers' rights. The work on this legislation is currently in process.

Sergio R. Pena-Neira reports from *Chile* that a new strategy and action plan on biodiversity contains a chapter on the protection of farmers' traditional knowledge pertaining to PGRFA. From *Ecuador*, Cesar Tapia B. reports that the Andean Community Decision 391 governing access to genetic resources is in effect in the country, and that it addresses the protection of farmers' traditional knowledge pertaining to PGRFA. Orlando Carlos Vigo Velásquez, Manuel Ruiz Muller and Maria Mayer de Scurrah from *Peru* refer to the Law for the Protection of Indigenous



Peoples' Collective Knowledge Related to Biodiversity (Law 27811 of 2002), which comprises farmers' traditional knowledge.

In addition to these policy and legislative measures, the Development Fund reports a programme on Participatory Plant Breeding in Meso America (PPB-MA),<sup>14</sup> which seeks to utilize traditional knowledge and genetic resources in the development of new and plant varieties adapted to the needs and priorities of farmers – and in cooperation with them.

### *Europe*

Antonio Onorati, President of Centro Internazionale Crocevia in *Italy* reports that legislation on the protection of farmers' traditional knowledge pertaining to PGRFA is confined to regional governments in Italy, and that several regulations have been adopted regionally.<sup>15</sup> Niels Louwaars reports tells about several programmes in the *Netherlands* for the maintenance of crop and animal genetic resources – and the associated knowledge – in which farmers are actively involved. Bell Batta Torheim writes about similar programmes in *Norway*, which are co-ordinated through the establishment of a council on genetic resources. The council was established as a follow-up of the Global Plan of Action on Genetic Resources, which is also addressed in the ITPGRFA. From another angle, Pia Borg refers to the new draft law on biological diversity, which is currently under consideration. When adopted, the Act will affect the protection of farmers' traditional knowledge relevant to PGRFA. Martin Girsberger informs about ProSpecieRara<sup>16</sup> in *Switzerland*, a non-profit foundation devoted to the maintenance of threatened domestic plant varieties and animal races in Switzerland. It co-ordinates and supports the conservation work of approximately 2000 private persons and institutions who maintain domestic animals, fruit trees and vegetables.

### *Global*

In addition to the above, one of the programmes listed by the Development Fund has a global outreach: The Community Biodiversity Development and Conservation Programme (CBDC) covers countries in Asia, Africa and Latin America with activities contributing to the conservation and sustainable management of PGRFA.<sup>17</sup>

#### *5.2.3 Legislation, policies and programmes pertaining to the participation of farmers in the sharing of benefits arising from the utilisation of PGRFA*

In the South policies on benefit sharing – if any – are provided for in various forms of legislation, most notably laws and regulations on access to biological resources, of which the Philippines provides an example.

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<sup>14</sup> [www.utviklingsfondet.no/sw203.asp](http://www.utviklingsfondet.no/sw203.asp)

<sup>15</sup> See: [www.ambientediritto.it](http://www.ambientediritto.it); [www.sementi.it](http://www.sementi.it); and [www.croceviaterra.it](http://www.croceviaterra.it) (all in Italian)

<sup>16</sup> [www.psrara.org/index2.htm](http://www.psrara.org/index2.htm)

<sup>17</sup> [www.cbdcprogram.org](http://www.cbdcprogram.org)

Also in legislation on the protection of biological diversity, provisions on benefit sharing are sometimes incorporated, as in Burundi, Bhutan and Bangladesh. Legislation in Bangladesh is extraordinary in this regard. Some countries also provide for benefit sharing arrangements in their plant varieties protection laws, like in India, which is an outstanding example in this regard. Countries with legislation on indigenous peoples' rights often have provisions on benefit sharing in these laws, which then also cover indigenous farmers, like in Peru. Some countries are in the process of developing legislation pertaining to benefit sharing, like Ethiopia, Uganda, Zambia and Bolivia.

In the North, benefit sharing is not that much of a topic, since most farmers use improved varieties and buy their seeds and propagating material from breeding companies. However, there are examples of collaboration between farmer-breeders and commercial breeding companies, which have resulted in royalties for the farmers in the Netherlands. Also, there are examples of breeding companies, which are co-operatives owned by farmers, and where the royalties flow back to the companies, from which the farmers earn the surplus, like in Denmark.

#### *Africa*

Tewelde Berhan Gebre Egziabher informs that the African Model Law on the Rights of Local Communities, Farmers, Breeders and on Access to Biological Resources<sup>18</sup> addresses the participation of farmers in the sharing of benefits arising from the utilisation of PGRFA. From **Burundi**, Salvator Ndabirorere writes that a national strategy on biological diversity with an action plan addresses the participation of farmers in benefit sharing. Also the National Policy on Sustainable Food Safety in Burundi highlights this issue. Yemane Tsehaye explains that in **Ethiopia** the draft legislation on 'access to genetic resources and community knowledge and right', which was referred to in section 5.2.2, recognizes indigenous and local knowledge as a source of practices relevant to conservation and farmers' participation in equitable benefit sharing, but it is not yet adopted. Niels Louwaars reports that legislation is underway in **Uganda** on plant breeders' rights, and that the draft law is strict on access and benefit sharing.

From **Zambia**, Godfrey P. Mwila, Catherine Mungoma and Albert Chalabesa all explain that a *sui generis* system for the protection of plant varieties is being developed under the new draft legislation referred to in section 5.2.2, and that this incorporates the sharing of benefits arising from the utilisation of these plant varieties.

#### *Asia*

Anitha Ramanna reports that a clause in the **Bangladeshi** Biodiversity and Community Knowledge Protection Act (29 September 1998)<sup>19</sup> provides that any person from a country that has not signed the Convention on Biological Diversity cannot acquire plant breeders' rights in Bangladesh. Such cross cutting provisions may improve the likelihood for bene-

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<sup>18</sup> [www.grain.org/brl\\_files/oau-model-law-en.pdf](http://www.grain.org/brl_files/oau-model-law-en.pdf)

<sup>19</sup> [www.grain.org/brl\\_files/bangladesh-comrights-1998-en.pdf](http://www.grain.org/brl_files/bangladesh-comrights-1998-en.pdf)

fit sharing on the basis of the CBD. SEARICE informs that the Biodiversity Act of *Bhutan* of 2003 provides for prior informed consent and benefit sharing arrangements as condition for access to genetic resources. The two pieces of legislation in *India*, referred to by S. Bala Ravi and Anitha Ramanna, which were mentioned in section 5.2.2, do also address the participation of farmers in the sharing of benefits from the utilization of PGRFA: The Biological Diversity Act of 2002<sup>20</sup> and the Protection of Plant Varieties and Farmers' Rights Act of 2001.<sup>21</sup> Anitha Ramanna reports that the latter act has clauses to ensure that companies must provide information to farmers about what they are selling, and must compensate for crop failures due to their lack of communication. With regard to *Iran*, as explained in section 5.2.2, and according to Maryam Rahmanian, the CBD and the ITPGRFA are binding for Iran, and both address benefit sharing between providers and receivers of genetic resources.

In addition to these policy and legislation related measures in South and West Asia, the Development Fund notes a programme called 'Enhancing Benefits to Rural Poor by Linking Biodiversity to Markets in *Nepal*'.<sup>22</sup>

From the *Philippines*, SEARICE informs about the Magna Carta for Small Farmers (Republic Act 7607 of 1992). The Magna Carta affirms the Governments resolution to give the highest priority to the development of agriculture such that equitable distribution of benefits and opportunities is realized through the empowerment of small scale farmers (Section 2). Whereas this Act provides for the broader regulatory framework, the Guidelines for Bioprospecting Activities in the Philippines Series of 2005, referred to above (Administrative Order 1), addresses benefit sharing pertaining to PGRFA directly: The state is to ensure the fair and equitable sharing with the resources providers of the benefits derived from the utilization of biological resources (Section 1). The Guidelines set out detailed rules on how the sharing of benefits shall be organised.

Nguyen Van Dinh reports from *Vietnam* on the 1999 approval of the Programme for agricultural plant varieties, forest plant varieties and animal breeds, which is relevant in the context of benefit sharing (Decision No. 225/1999/QD-TTG, dated 10 December 1999). Nguen Thi Ngoc Hue informs about the Forest protection law, which is also relevant in this regard.

#### *Latin America*

Manuel Ruiz Muller in *Peru* refers to the Law for the Protection of Indigenous Peoples' Collective Knowledge Related to Biodiversity (Law 27811 of 2002), which also addresses the participation of farmers in the sharing of benefits derived from the utilisation of PGRFA. According to Miguel Angel Silva Ramos, *Bolivia*'s Supreme Decree 21676 on Access to Genetic Resources also comprises the benefit sharing pertaining to the utilization of PGRFA. It is derived from the Andean Community Decision 391, and is currently under revision. He also refers to the draft na-

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<sup>20</sup> [www.nbaindia.org/act.htm](http://www.nbaindia.org/act.htm)

<sup>21</sup> <http://agricoop.nic.in/seeds/farmersact2001.htm>

<sup>22</sup> [www.utviklingsfondet.no/sw283.asp](http://www.utviklingsfondet.no/sw283.asp)

tional law on farmers' rights (see 5.2.2), which is currently under development, and which also comprises benefit sharing arrangements. Sergio R. Pena-Neira reports from *Chile* that the new strategy and action plan on biodiversity (see 5.2.2) is also relevant with regard to the issue of benefit sharing.

#### *Europe*

Lars Landbo reports from *Denmark* that some breeding companies are cooperatives, which are owned by farmers. In this respect, farmers get a share of the benefits generated by the companies' varieties. Antonio Onorati explains that legislation in *Italy* on the participation of farmers in benefit sharing pertaining to PGRFA is confined to regional governments in Italy.

Niels Louwaars writes from the *Netherlands* about the collaboration between farmer-members of breeding cooperatives and the professional breeders in these co-operatives, where the farmers are responsible for field selection, whereas the breeders concentrate on disease testing and other laboratory work. The royalties are shared, based on a contract between them. He refers to one example where such a co-operation resulted in royalties to the farmers for jointly bred varieties of potato. Bell Batta Torheim reports about the draft legislation on biological diversity, which is under consideration in *Norway*. It sets out conditions for access to PGRFA, but does not provide for benefit sharing in this respect.

#### *5.2.4 Legislation, policies and programmes pertaining to farmers' participation in the decision making processes related to the management of PGRFA*

There are not many examples of legislation or policies pertaining to farmers' participation in decision making processes pertaining to the management of PGRFA in the material we received from our respondents. None came from Africa. In some countries, however, participation is taking place in practice at various levels. India, the Philippines and Bolivia provide examples of extensive legislation in this regard. In the North, farmers' participation in decision making processes is more commonly practiced, but without reference to any particular laws or policies.

#### *Africa*

Again, Tewelde Berhan Gebre Egziabher refers to the African Model Law on the Rights of Local Communities, Farmers, Breeders and on Access to Biological Resources,<sup>23</sup> and highlights that it addresses farmer' participation in decision making processes pertaining to the management of PGRFA. Modeste Mamingi Mfundu reports that the authorities of *Congo* organise regional agricultural conferences in which representatives of farmers organisations participate. Yemane Tsehaye explains that the draft legislation in *Ethiopia* on 'access to genetic resources and community knowledge and right' referred to in the previous sections, also recognizes the importance of community involvement in decision making

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<sup>23</sup> [www.grain.org/brl\\_files/oau-model-law-en.pdf](http://www.grain.org/brl_files/oau-model-law-en.pdf)

concerning the sustainable use of PGRFA. Sahr N. Fomba tells that **Sierra Leone** has a very active national association of farmers, which is partially supported by the Ministry of Agriculture in the country. From **Zambia**, Godfrey P. Mwila and Catherine Mungoma report that the draft legislation referred to in the sections above also addresses farmers' participation in decision making processes on matters related to the management of PGRFA.

The Development Fund reports that the Community Technology Development Trust (CTDT) in **Zimbabwe** has had a lead function in the development of the Biological Diversity and Community Knowledge Bill in the country, which addresses Farmers' Rights.<sup>24</sup> They further explain that the process is being replicated in Zambia (as reported above) and Malawi.<sup>25</sup> Whereas such legislation promotes the participation of farmers, the process is also an example of such participation in itself, since the initiative comes from farmers' organizations.

#### *Asia*

According to S. Bala Ravi, farmers' participation in decision making processes pertaining to PGRFA in **India** is accounted for in the Biological Diversity Act of 2002.<sup>26</sup> As for **Iran**, as explained in section 5.2.2, and according to Maryam Rahmanian, the ITPGRFA is binding for Iran. Nevertheless Iran is free to choose whether and how to involve farmers in decision making, since the Treaty leaves such decisions to the governments, as appropriate and according to their priorities. SEARICE informs that **Bhutan** has no policy on participation, since plant genetic resources are the property of the King. However, there is a practice that one can approach the King in questions of land or genetic resources, and he may provide land or seeds/propagating material upon request.

From the **Philippines**, SEARICE reports about the Indigenous Peoples Rights Act (Republic Act 8371 of 1997). It has specific provisions on the participation of indigenous peoples, including indigenous farmers, in decision making. They have the right to participate fully at all levels of decision-making in matters which affect their rights, lives and destinies, to maintain and develop their own indigenous political structures, and to be represented in relevant policy making bodies and other local legislative councils (Section 16). SEARICE also informs about the Magna Carta for Small Farmers (Republic Act 7607 of 1992), which provides for farmers' representation in government bodies. It prescribes how representatives are to be elected and the bodies in which they shall be represented (Section 6), and does also provide for the representation in planning and implementing units of local governments. A condition for representation is that farmers are organised in farmers' unions, co-operatives or other organisations from which representatives can be elected.

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<sup>24</sup> [www.ctdt.co.zw/publications/Biodiversity%20and%20Community%20Knowledge%20Protection%20Bill.doc](http://www.ctdt.co.zw/publications/Biodiversity%20and%20Community%20Knowledge%20Protection%20Bill.doc)

<sup>25</sup> See information on the project 'Biodiversity, modern biotechnology policy networking and lobbying at the homepage' of the Development Fund: [www.utviklingsfondet.no](http://www.utviklingsfondet.no)

<sup>26</sup> [www.nbaindia.org/act.htm](http://www.nbaindia.org/act.htm)

### *Latin America*

According to Miguel Angel Silva Ramos, **Bolivia's** Supreme Decree 21676 on Access to Genetic Resources also comprises the participation of farmers in decision making processes. It is derived from the Andean Community Decision 391, and is currently under revision. Also, the draft national law on farmers' rights, which is currently in development, comprises farmer' participation in decision making processes. Sergio R. Pena-Neira reports that groups of farmers in specific regions of **Chile** have initiated the commercialisation and conservation of particular traditional crops. From **Peru**, Orlando Carlos Vigo Velásques highlights that the Decision 391 of the Andean Community on access to PGRFA also comprises the participation of farmers' in decisions pertaining to PGRFA.

### *Europe*

Lars Landbo reports from **Denmark** that farmers' organizations are represented in for example the national plant genetic resources board. Antonio Onorati writes that farmers are involved in various programmes on research and development pertaining to PGRFA in **Italy**. Niels Louwaars tells that farmers' organizations are commonly involved in different stages of policy development by the Ministry of Agriculture in the **Netherlands**. Bell Batta Torheim reports about the same experiences from **Norway**, where the Norwegian Farmers' Union also participates in the central council on plant genetic resources.

#### *5.2.5 Legislation, policies and programmes pertaining to farmers' practice of saving, using, exchanging and/or selling farm saved seeds and propagating material*

Farmers practice of saving, using, exchanging and/or selling seeds and propagating material from the own harvest is increasingly affected by regulations on plant breeders rights and on the certification of seeds for sale. However, there are different ways to design such regulations, and in this section we have sought to compile an overview over different approaches in this regard. Generally, farmers' rights with regard to such practices are most restricted in the North, and least restricted in Africa. Most respondents from Africa replied that there were no regulations in this area, but some referred to seed registration and certification laws and others to laws under development, which would account for farmers' rights. In Asia and Latin America, there are more examples of regulations in this context, which, however, generally have wider exemptions for farmers than in the North. Brazil and Thailand stand out in this regard. The Philippines and Peru have relatively far reaching exemptions for farmers. The recognition of farmers' rights in India's regulation has received much attention of late. The legislation in Bangladesh has received less attention, but is highly interesting in that it promotes plant breeding for the public domain, i.e. for the free use of farmers, according to our respondents.

In the North, plant breeders' rights have a longer history and the practice to save, use, exchange and sell harvested seeds and propagating material is not by far as widespread as in the South. Nevertheless, the saving of seeds and propagating material for the next season is still practiced to some extent. A problem with strict legislation on plant breeders' rights

and seed certification is that it reduces accessibility to other plant varieties and thereby the possibilities for *in situ* conservation and utilization of traditional varieties, as well as the breeding of new varieties, which are desired, but do not fulfil the criteria for certification. Also the incentives for such activities lack when there is no possibility to sell farmer bred varieties which are not certified. In the European Union, interesting measures have been undertaken to solve this problem by allowing the marketing and sale of specified categories of plant varieties for such purposes. Whereas these measures are still to be implemented at the national level in the European Union, the Netherlands has already introduced legislation in this direction.

### *Africa*

Tewelde Berhan Gebre Egziabher emphasises that the African Model Law on the Rights of Local Communities, Farmers, Breeders and on Access to Biological Resources<sup>27</sup> addresses farmers' practices of saving, using, exchanging and/or selling farm saved seeds and propagating material. Anitha Ramanna remarks that the model law provides for the restricting of breeders' rights for the protection of food security, health, and biological diversity. From *Ethiopia*, Yemane Tsehaye reports that there are no private breeding companies so far and that the government owned Ethiopian Agricultural Research Organization (EARO) has the lead in the improvement of genetic resources. Hence, farmers are free to save and exchange varieties, and there are no restrictions on their use of varieties for any purpose. However, the draft legislation, referred to in the sections above, would also strengthen the use of, and free access to, biological resources for farmers and communities, according to Tsehaye.

Cheikh Alassane Fall reports about a law and two decrees which regulate farmers' practice of saving, using, exchanging and selling seeds in *Senegal*: The Law 94-81, Decree 97-602 and Decree 97-616, all covering the regulation of the production, certification and marketing of seeds and plants. He also explains that Senegal and all countries comprised by the Bangui Agreement in Western Africa, are going to implement Article 27.3.b of the WTO Agreement on Trade Related Intellectual Property Rights from 1 January 2006. The way in which the implementation is to take place is specified in Attachment X to the Bangui Agreement.

Emma Sitambuli explains that the legislation in *Zambia* currently allows such practices and that the organization Harvest Help works in collaboration with the government to implement rural seed supply systems. Godfrey P. Mwila and Catherine Mungoma report that the new draft legislation in Zambia, referred to in the previous sections, comprises a *sui generis* system for the protection of plant varieties, which incorporates farmers' practice of saving, using, exchanging and/or selling farm saved seeds or propagating material.

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<sup>27</sup> [www.grain.org/brl\\_files/oau-model-law-en.pdf](http://www.grain.org/brl_files/oau-model-law-en.pdf)

*Asia*

Anitha Ramanna reports that the Biodiversity and Community Knowledge Protection Act of **Bangladesh** (29 September 1998)<sup>28</sup> has a unique provision enabling recognition for an innovator who is entitled but does not seek reward and is willing to put his innovation in the public domain. SEARICE informs that **Bhutan** has an act on plant breeders' rights, which permits small scale farmers to propagate seeds they have harvested from protected varieties, and to exchange them with others on a non-commercial basis. From **China**, Wang Shumin highlights that the Seed Law<sup>29</sup> is relevant with regard to farmers' practice of saving, using, exchanging and selling seeds and propagating material. According to S. Bala Ravi and Anitha Ramanna in **India**, the Protection of Plant Varieties and Farmers' Rights Act<sup>30</sup> is particularly addressing farmers' practice of saving, using, exchanging and/or selling farm saved seeds or propagating material. Anitha Ramanna also highlights the Indian Patent Act of 1970, with amendments of 1999, 2002 and 2005.<sup>31</sup> In addition, she mentions the Indian Seed Bill of 2004 and the Draft Biotechnology Policy, 2005.

From **Iran**, Maryam Rahmanian reports about the Act on Plant Varieties Registration, Control and Certification of Seeds and Seedlings of 30 July 2003.<sup>32</sup> The Act establishes the Seed and Seedling Registration and Certification Research Institute, which shall supervise and regulate the identification of new plant varieties and breeders' rights and shall issue intellectual property rights to breeders for the newly certified and registered plant varieties. There is a specific reference to non improved and wild plant genetic resources, for which the procedures pertaining to intellectual property rights shall be restricted to the State (Article 3).

Ganesh K. K. C. and K. K. Lal list two acts from **Nepal**, which are relevant in this context: The Seed Act and the Plant Protection Act. They also state that Nepal is currently in the process of strengthening plant breeders' rights. From **Korea**, Seong Hee Lee reports that Seed Industry Law also comprises regulations pertaining to farmers' practices of saving, using, exchanging and/or selling farm saved seeds. However, he states, Korean farmers are not much involved in the conservation and development of seeds. All of them are using the varieties developed by the public and private breeding institutions. Private commercial farms partly involved in the conservation of indigenous material are mainly cropping for green tourism purposes, he reports.

From the **Philippines**, Elenita C. Dano and SEARICE inform about the Philippine Plant Variety Protection Act of 2002, which addresses the traditional right of small farmers to save, use, exchange, share or sell their farm produce of plant varieties and allows such practices under particular conditions (Section 43). Small scale farmers are exempted from plant

<sup>28</sup> [www.grain.org/brl\\_files/bangladesh-comrights-1998-en.pdf](http://www.grain.org/brl_files/bangladesh-comrights-1998-en.pdf)

<sup>29</sup> [www.agri.gov.cn](http://www.agri.gov.cn)

<sup>30</sup> <http://agricoop.nic.in/seeds/farmersact2001.htm>

<sup>31</sup> <http://patentoffice.nic.in/ipr/patent/patents.htm> and [http://patentoffice.nic.in/ipr/patent/patent\\_2005.pdf](http://patentoffice.nic.in/ipr/patent/patent_2005.pdf)

<sup>32</sup> [www.cenesta.org/bazr.htm](http://www.cenesta.org/bazr.htm)



breeders' rights for these traditional practices as long as they do not sell seeds or propagating material for the purpose of reproduction under a commercial marketing agreement. Also the Act prescribes that the sales and exchange of seeds and propagating material between small scale farmers is only allowed for the reproduction and replanting on their own land, which is a problematic formulation in a country where a large share of the farmers do not possess the lands on which they grow their crops.

Michael Halewood and Jane Toll from the Future Harvest Centres report that the plant variety protection of **Thailand** stands out – along with that of Brazil and a few other countries – in that it allows a wider range of exemptions from plant breeders' rights for farmers. From **Vietnam**, Nguyen Van Dinh and Nguyen Thi Kim Oanh report that the 2002 Decision by the Prime Minister on the international exchange of plant genetic resources (Decision No. 10/2002/QĐ, of 17 January 2002) is particularly relevant in this regard. Nguen Thi Ngoc Hue and Hoang My Lan highlight the Plant Variety Ordinance of 2004 in this context. It provides that farmers can sell their seeds if these are certified for good quality.

#### *Latin America*

Michael Halewood and Jane Toll from the Future Harvest Centres report that the plant variety protection of **Brazil** stands out – along with a few other countries – in that it allows a wider range of exemptions from plant breeders' rights for farmers (Law No. 9,456 of 28 April 1997, Article 10). According to Miguel Angel Silva Ramos, **Bolivia's** Supreme Decree 21676 on Access to Genetic Resources also the rights of farmers to save, use, exchange and sell seeds. It is derived from the Andean Community Decision 391, and is currently under revision. He also refers to the draft national law on farmers' rights, mentioned in the previous sections, which also addresses this topic.

Sergio R. Pena-Neira writes that in **Chile** there are some basic rules regarding the rights of indigenous peoples in this regard. Cesar Tapia B. reports that the Andean Community Decision 391 governing access to PGRFA applies in **Ecuador**, and that it addresses farmers' practice of saving, using, exchanging and selling PGRFA. From **Peru**, Orlando Carlos Vigo Velásquez and Manuel Ruiz Muller highlight Decision 345 of the Andean Community, which regulates plant breeders' rights, and states that it – together with national regulations – enables traditional exchange and saving of seeds. Michael Halewood and Jane Toll from the Future Harvest Centres report that the 'repatriation' agreement between the CIP and a group of indigenous communities that are part of the Potato Park in Peru represents a novel approach to reintroducing 'lost' varieties into the local landscape and farming systems and to support the practice of farmers to save, use, and exchange farm saved seeds and propagating material.

#### *Europe*

Lars Landbo explains that **Denmark** has ratified the UPOV 1991 Convention and complies with EU legislation on the marketing of seeds and propagating material. In addition Denmark has a ministerial order, which deals specifically with farm saved seeds: Ministerial Order no. 701 of 22 July 1996 on the propagation of protected plant varieties for commercial use on farmers' own farms. On behalf of **Germany**, Wilbert Himmig-

hofen reports that the country has two relevant acts pertaining to farmers' practices of saving, using, exchanging and selling seeds: A plant variety protection act and a seed trade act. He further explains that a number of EU directives<sup>33</sup> have been introduced to provide a legal basis for the conservation of genetic variability which is threatened by genetic erosion. Thereby the marketing of such seeds and propagating material has been permitted. On this basis a process is underway for implementing rules and regulations in the EU and at the national level, to provide for the marketing of 'conservation varieties', 'amateur varieties' (vegetables), 'preservation seeds and preservation seed mixtures' (fodder plants). Under the current regulation, such marketing is not allowed. Riccardo Bocci writes that in *Italy* the legislation on plant breeders' rights does not allow farmers to practice any of the traditional customs, such as saving, exchanging, and selling seeds from protected varieties. Antonio Onorati lists two documents in this regard: Law 212 of 2001 and DDL 3.11.1998 on Italian membership in UPOV.<sup>34</sup>

Niels Louwaars reports that the legislation on plant breeders' rights in the *Netherlands* does allow farmers to save seeds, but that they have to pay royalties to the owners of the plant varieties for that. He also reports that exchange of seeds is common among hobby farmers and gardeners, and that this is tolerated although it is forbidden. The selling of seeds from non-registered varieties is prohibited, but this has been relaxed through the introduction of a 'green' list of varieties, which are primarily meant for eco-farming. From *Sweden*, Lennart Petterson reports about the Act on Plant Breeders' Rights (Växtförädlarrättslagen 1997:306) and the Swedish Patent Act (Patentlagen 1967:837). The legislation provides for exemptions for farmers with regard to their practice of saving, using and exchanging PGRFA. Thereby, both acts refer to the European Community Plant Variety Rights Regulation (94/2100/EC), Article 14.

Bell Batta Torheim reports that the current plant breeders' rights legislation in *Norway* accounts for farmers' rights to save and exchange seeds and propagating material, but that a new act is under consideration, which would limit these rights considerably. Later this law proposal was however turned down by a newly elected government in order to maintain farmers' rights. Norway continues following UPOV 1978, and will not ratify UPOV 1991 under the current government. Nevertheless, Erik Evenrud explains that phytosanitary guidelines affect farmers' practice of saving, using and exchanging seeds and propagating material from the own harvest to some extent and Pia Borg refers to the Patent Law, which is also relevant in this context.

Srdjan Stojanovic writes that *Serbia and Montenegro* has a seed law which is relevant in this context. In addition, the country is currently in the process of developing a plant variety protection law.

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<sup>33</sup> The EU directive 98/95/EC, amended through Council Directives 2002/54/EC, 66/401/EEC, 66/402/EEC, 2002/56/EC, 2002/57EC, 2002/53/EC and 2002/55/EC.

<sup>34</sup> See [www.sementi.it](http://www.sementi.it) (in Italian)

### 5.2.6 Support to farmers who conserve PGRFA

This section explores support to farmers in the own country and in the case of industrialised countries' support for farmers in developing countries who conserve PGRFA. Legislation and policies supporting farmers who conserve PGRFA appear to be scant, but some countries are pursuing a number of smaller or larger programmes. In the North, such efforts seem to be better organized, and some Northern countries provide substantial support to programmes in the South for farmers' conservation of PGRFA, often through NGOs. Some inter-governmental organizations are also active in this regard, such as IPGRI,<sup>35</sup> which receives support from a broad range of donor countries.

#### *Africa*

From **Ethiopia**, and referring to the draft legislation presented in the previous sections, Yemane Tsehaye highlights that such a law indirectly would address funds to communities conserving plant varieties, in the form of the sharing of benefits from the utilization of PGRFA. Eshetayehu Tefera and Severin Polreich report on in-situ conservation practices in Ethiopia, supported through the GEF/UNDP.

From **Zambia**, Albert Chalabesa reports that the draft bill on Plant Genetic Resources, Farmers and Community Rights, referred to above, also addresses the support to farmers who conserve PGRFA. Emma Sitambuli writes that the some of the activities in Zambia on seed preservation and conservation is supported through Canadian funds.

#### *Asia*

Wang Shumin reports that there is an *in situ* conservation programme in **China**. According to S. Bala Ravi, in **India** the Plant Varieties and Farmers' Rights Act<sup>36</sup> provides for reward and recognition to conservers. Anitha Ramanna writes that there are domestic mechanisms to support farmers in India who conserve PGRFA. Ganesh K. K. C. and K. K. Lal write that **Nepal** has particular programmes supporting farmers who conserve PGRFA. SEARICE explains that the **Philippines** has several institutional structures of relevance to the support to farmers for conservation activities, most notably the National Network on the Conservation and Sustainable Use of PGRFA. From **Vietnam**, Nguyen Van Dinh maintains that the 2002 Decision by the Prime Minister on issuing regulations on the international exchange of plant genetic resources (Decision No. 10/2002/QD, of 17 January 2002), mentioned in previous sections, is relevant also in this context.

#### *Latin America*

Miguel Angel Silva Ramos reports that in **Bolivia** the act on farmers' rights, which is under development, also will deal with the issue of funds to farmers who conserve PGRFA. In addition, he refers to the so-called Technological Innovation Program and Funds (BID-MACA), which is

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<sup>35</sup> <http://ipgri.cgiar.org/>

<sup>36</sup> <http://agricoop.nic.in/seeds/farmersact2001.htm>

relevant in this context. From *Peru*, Manuel Ruiz Muller states that law 27811 establishes a fund for the development for indigenous peoples, which would include support to farmers who conserve PGRFA.

### *Europe*

Lars Landbo reports about the efforts to compile an overview over the extent of on-farm conservation in *Denmark*. A project, which provides for economic support for conservation of PGRFA is being implemented. He also refers to measures in the European Union to establish national legislation for the marketing of particular varieties (see section 5.2.5). Antonio Onorati reports that *Italy* rarely supports projects in the South pertaining to farmers' conservation of PGRFA, but that there are some examples, mainly through NGOs, such as CROCEVIA.

On behalf of *Germany*, Wilbert Himmighofen reports about several measures for the support of conservation efforts in Germany as well as in the South. EU regulation 1257/99 includes support measures for the conservation of plant genetic resources. In Germany, the federal states are in charge of implementing such measures. So far the federal state of Brandenburg is running such a programme. Himmighofen also highlights the new policy from the EU, referred to in section 5.2.5, to permit the marketing and sales of 'conservation varieties', 'amateur varieties' (vegetables), 'preservation seeds and preservation seed mixtures' (fodder plants), which could then provide an incentive structure for farmers to maintain such varieties. Furthermore, he informs about bilateral and multilateral support to developing countries, particularly through the CGIAR and through the BMZ/GTZ sectoral projects on agrobiodiversity. In addition, Germany supports projects on farmers' conservation of PGRFA in developing countries through NGOs.

Niels Louwaars reports that the *Netherlands* supports a range of programmes in the South, primarily through NGOs in developing countries to strengthen local seed systems, and manage PGRFA. Such programmes are taking place in Bhutan, Indonesia, the Philippines, Cambodia, Chile, Sierra Leone, Zambia, among others.

From *Norway*, Bell Batta Torheim explains that the Patent Act encourages the disclosure of origin of utilised PGRFA for the purpose of benefit sharing with farmers who are providers of PGRFA. However, this is no condition for the approval of a patent. Norway supports a few programmes in the South via NORAD and through NGOs, which are aimed at strengthening farmers' management of seeds and propagating material. Lennart Petterson refers to one of several examples of support from *Sweden* to developing countries for farmers' conservation of PGRFA, support to SADC.

Srdjan Stojanovic reports that in *Serbia and Montenegro* the Ministry of Agriculture, Forestry and Water Management has allocated one budget line for supporting conservation and sustainable use of PGRFA, but for the time being, only agricultural faculties and some public breeding institutes have been supported, to motivate them to keep on preserving their collections. No farmers were supported directly by these funds so far.

### 5.2.7 *Learning potentials from policy processes and achievements*

The information shows that a number of interesting laws, policies and programmes have been adopted and are under development pertaining to all aspects of farmers' rights addressed in the ITPGRFA. In other words, efforts are under way and may provide lessons for other countries. More research is needed to get a precise account of how these relate to farmers' rights and how they might affect them. Systematic documentation and analyses of legislation, policies and programmes on implementing farmers' rights are pivotal to facilitate these activities and provide examples for others. As such, this account offers a starting point, and the findings will inform forthcoming case studies, the final report from *The Farmers' Rights Project*, and – we hope – follow-up research.

## 5.3 **State of the realization of farmers' rights in the countries**

One thing is to impose acts and policies, and another is to implement them. As we know, there is often a discrepancy between the two. We therefore wished to solicit information on the actual state of the realization of farmers' rights. Thorough investigations would be necessary for a precise and accurate account of the state of farmers' rights in the world. As this was not possible within the framework of the Farmers' Rights Project, we decided to do two things: first to ask respondents about the state of farmers' rights in their own countries – according to their knowledge and experience – and, second, to use the case studies to investigate the issue in greater depth. As for the survey, we derived statements concerning farmers' rights from the ITPGRFA. Respondents were asked to agree or disagree or to indicate if they were 'not sure'. The question was included in the national section of the questionnaire and not in the international section. Therefore those who answered solely the international section did not respond to this question.

### 5.3.1 *Methodological considerations*

Altogether 14 statements were derived from the ITPGRFA, formulated as current situations in the country with regard to farmers' rights – to which the respondents could agree or not agree. A few respondents said they would have liked scaled response alternatives rather than the yes/no alternatives we gave them, since they felt the situation to be somewhere between 'yes' and 'no' in several instances. A number of respondents solved this problem by adding comments, qualifying or specifying their replies in different ways. This information enabled us to check whether the right categories had been chosen and also helped us evaluating the answers. The information will also be valuable for the case studies, and for a potential follow-up of the farmers' rights project.

The response to the different statements gives a good indication on the state of farmers' rights in the countries covered by the survey. However, it is important to remember that the answers represent the opinions of the respondents, based on their knowledge and experience. In some cases, these opinions diverge – because respondents in the same country perceive the situation differently, as will be explained in more detail below. It has therefore been a demanding job to analyse the response and to present the results as accurately as possible.

The structure of the next sections follows the four main components of farmers' rights addressed in Article 9 in the ITPGRFA:

- The protection of traditional knowledge relevant to PGRFA (section 5.3.2)
- The right to equitably participate in benefit sharing arising from the use of PGRFA (section 5.3.3)
- The right to participate in making decisions, at the national level pertaining to the management of PGRFA (section 5.3.4)
- The rights that farmers have to save, use, exchange and sell farm-saved seeds and propagating material (section 5.3.5)

### *5.3.2 The state of the protection of traditional knowledge relevant to PGRFA*

The first of the rights addressed in Article 9 of the ITPGRFA is the protection of traditional knowledge relevant to PGRFA. We asked whether central aspects of farmers' traditional knowledge pertaining to agricultural plant varieties are documented and maintained in their countries. We have also asked whether the farmers in the respective countries, who conserve plant varieties in the fields, generally have access to funds compensating for their contribution to the maintenance of PGRFA, since such funds often are seen as an important incentive mechanism in this regard.

With regard to the first of these two questions, a large proportion of all three respondent categories answered no (27) or not sure (11). Only 14 answered yes. However, there were different opinions among the respondents from some countries. There are two likely reasons: First, there may be different perceptions on how many and how central the aspects must be to qualify for the answer 'yes'. Second, some respondents refer to efforts undertaken by NGOs to document and maintain farmers' traditional knowledge pertaining to PGRFA. When taking these considerations into account, i.e. having a flexible understanding of the size of the efforts and the institutions carrying out such activities, the following countries are relevant in this regard, according to the respondents: Kenya, Zambia, Burundi, India, Vietnam, Korea, Peru, Bolivia, United States, and Sweden. However, the respondents differed as to whether Zambia, India and Peru should be included in such a list. It is likely therefore that efforts to conserve and maintain traditional knowledge pertaining to PGRFA are minimal and more or less marginal in most countries covered by our survey, and that only a few more extensive programmes are in place.

When it comes to the second question, i.e. compensating farmers for the conservation and maintenance of PGRFA, the picture is less divided. All but one State delegates answered that no such funds were available. All but one NGOs answered the same. Of the experts, two reported funds for farmers: Miguel Angel Silva Ramos referred to ongoing work in Bolivia to establish such a fund as part of a new legislation on farmers' rights, and Niels Louwaars from the Netherlands explained that the farmers have access to own funds for such purposes. Apart from these two examples, conservation funding is not reported to have materialized in the countries covered by this survey.

All in all, the response shows that in the vast majority of countries covered by this survey little is done to protect traditional knowledge pertaining to PGRFA. However, a few countries have made experiences with such efforts, which may provide lessons for other countries.

*5.3.3 The state of the right to equitably participate in benefit sharing arising from the use of PGRFA*

The right to equitably participate in benefit sharing is multifaceted. The most important benefit with regard to PGRFA is access to these vital resources for agriculture. We therefore asked whether farmers in the respective countries have access to seeds and propagating material covering a genetic diversity according to their needs. We have also asked whether they can access seeds and propagating material in public gene banks. Another important component of benefit sharing pertains to technology. One way of sharing technology is through participatory plant breeding. We formulated a slightly more general question about whether farmers in most of the key farming areas in the country have the possibility of influencing breeding goals and evaluating new varieties offered to them. Finally, we sought to address the question of monetary benefit sharing. We first asked whether private breeding companies had used traditional varieties from farmers in the respective countries in the breeding of new plant varieties for the commercial market, and then if at least one such breeding company had shared the monetary benefits from the sales of a plant variety with farmers in the country from whom they had received the breeding material.

Responses from all categories varied most on the issue of access to PGRFA covering a genetic diversity according farmers' needs. All but three delegates answered in the affirmative. One delegate (Ecuador) answered 'no', and two were 'not sure'. Also the majority of the experts (16) answered in the affirmative, four responded with 'no' and four were 'not sure'. The NGO picture was different. For nine countries the answer was 'no', for four countries it was 'yes' and for three countries it was 'not sure'. There were internal country differences too, doubtless due to different perceptions of farmers' needs: how much and what kind of diversity is necessary to meet farmers' needs – and who defines their needs? In Norway, for example, there is good access to seeds and propagating material. However, some ecological and biological dynamic farmers feel that the offered varieties do not meet their requirements with regard to the share of dry substance in several crops. Based on the response, we can conclude that farmers have access to relevant seeds and propagating material in most countries covered in the survey, but that it is difficult to know whether this material meets the needs of the farmers with regard to genetic diversity. In-depth studies are probably required to answer this question with more precision.

Practices seem to vary widely from country to country with regard to direct access to seeds and propagating material in public gene banks. However, also here there is room for interpretations. Most respondents refer to statutory access to public gene banks. Some respondents base their response, however, on actual access, i.e. whether farmers actively approach public gene banks to access seeds. These different interpretations probably explain why respondents from the same countries answer differently. The following countries, it appears, provide for statutory ac-

cess for farmers to seeds and propagating material in public gene banks: Ethiopia, Senegal, Burundi, India, the Philippines, Peru, Bolivia, Chile, Ecuador, the United States, Germany, the Netherlands, Denmark, Sweden, and Norway. There are, however, different opinions concerning how this right functions in practice in for example Zambia, India, the Philippines, and Peru.

We asked whether farmers in most of the key farming areas could influence breeding goals and participate in the evaluation of new varieties offered to them. Different categories of respondents offered quite different answers, and again we received diverging answers from several respondents from the same countries. Whereas most of the State delegates (9) answered 'yes' (two were uncertain and one answered 'no'), most of the NGOs answered 'no' (nine respondents covering 11 countries) (three answered 'yes', and two were uncertain). Among the experts, 13 answered 'no', whereas seven answered 'yes' and four were uncertain. One respondent, Elenita C. Dano from the Philippines, remarked that there was a difference between influencing breeding goals and evaluating new varieties. Whereas farmers' could be involved in evaluating new varieties in the Philippines, they would not be in the position to influencing breeding goals. Probably this distinction is valid for more countries, particularly for those, where there were different opinions among the stakeholders. On this basis we can hold that farmers have – according to the respondents – some sort of influence on breeding activities in the following countries: Kenya, Congo, Zambia, Nepal, India, Philippines, Vietnam, China, Korea, Ecuador, Bolivia, Peru, Canada, Serbia & Montenegro, the Netherlands, Sweden, Denmark, and Norway.

Six of the delegates could report that private breeding companies had used traditional farmers' varieties in the breeding of new varieties for the commercial market, whereas five were uncertain and one answered 'no'. Among the NGOs, the respondents reported the same for 11 countries, whereas no cases were known in three countries, and there was uncertainty with regard to two countries. Among the experts, seventeen could report about such use, whereas four were uncertain and three answered 'no'. In other words, according to the respondents, it seems to be a common experience that private breeding companies sometimes have used traditional varieties from farmers for the breeding of new varieties for the commercial market.

When it comes to the sharing of monetary benefits from the utilization of these resources, the answers were virtually identical: no State delegates and no NGO reported benefit sharing. Five of the State delegates answered no, seven were uncertain. Twelve NGO respondents answered 'no', two were uncertain (with regard to four countries). One expert reported a positive instance in this regard: As referred to above (section 5.2.3), Niels Louwaars highlighted how farmer-breeders working with a commercial breeding firm got a share of the royalties of jointly bred varieties of potato.

Yemane Tsehaye explained that in Ethiopia an access agreement has recently been signed, which envisages benefit sharing by farmers. However, no benefit sharing has taken place so far, according to Tewolde Berhan Gebre Egziabher. Except for the two experts (Louwaars and Tsehaye), the others answered 'no' (18) or were uncertain (4).



The large picture is thus that traditional farmers' varieties are sometimes used in the breeding of new varieties for the commercial market, but that monetary benefit sharing almost never takes place. However, we know next to nothing about how often traditional varieties are used in commercial plant breeding, about the share of genetic traits from these varieties in the new plants, or about profits from the sales of these new varieties. We are therefore unable to say whether farmers are losing out. We would have liked to have seen some positive cases of benefit sharing, but the Netherlands arrangement is the only one.

*5.3.4 The state of the right to participate in making decisions, at the national level pertaining to the management of PGRFA*

To get an impression of the state of farmers' rights to participate in decision making at the national level pertaining to the management of PGRFA, we simply asked whether farmers actually participated in relevant decision making bodies. Whereas participation in decision making bodies is no guarantee of influence over decision making, it does give an indication of the extent of participation. We wanted to see whether there were differences in participation of large scale and small scale farmers, and divided the question into two parts, i.e., whether large scale and small scale farmers were represented in most decision making bodies pertaining to agricultural plant genetic resources at the national level. A few respondents found it difficult to distinguish between large and small scale farmers, but most seemed familiar with these categories.

The State delegates from Denmark, Zambia and Nepal reported that both categories of farmers were represented in the relevant decision making bodies. According to the delegate from Senegal, only large scale farmers were represented, whereas those from China and Sierra Leone wrote that only small scale farmers were represented. The delegates from Kenya, Congo, Serbia and Montenegro, China, Ecuador and Sweden wrote that no large scale farmers are represented in the relevant decision making bodies (and two were uncertain), whereas the delegates from Kenya, Senegal, Ecuador, Serbia and Montenegro, and Sweden wrote that no small scale farmers were represented (and one was uncertain).

The NGOs painted a different picture. Nine respondents from seven countries wrote that large scale farmers were represented in decision making bodies, whereas the answer was no 'no' for six countries and one was uncertain. The respondents from India were divided in this question. According to the respondents, large scale farmers are represented in the relevant decision making bodies in Zambia, the Philippines, Peru, Canada, Italy and Norway – and possibly in India. The same respondents reported that small scale farmers were only represented in the relevant decision making bodies in Zambia, Canada and Norway, whereby the Zambian and the Norwegian respondents offered diverging answer with regard to their respective countries. In Norway's case, the confusion may derive from the fact that whereas the Norwegian Farmers' Union and the association of small scale farmers are represented in important decision making bodies and processes, other and more specified organizations of small scale farmers (for example the association of biological dynamic farmers) are not. The NGO respondents from all the other countries answered 'no' to the two questions of representation, except for one, who was uncertain with regard to large scale farmers. This means that –

according to the respondents – no farmers are represented in decisions bodies in Bhutan, Iran, Nigeria and Vietnam, and that no small scale farmers are represented in the relevant bodies in the Philippines, India, Peru, Italy, and the US.

This picture is largely confirmed by the experts. According to them, large scale farmers are represented in the most relevant decision making bodies in Zambia, Nepal, the Philippines, Peru, Bolivia, Chile, Canada, the Netherlands and Norway. Large scale farmers are not represented in Ethiopia, Burundi, Cameroon, India, Vietnam and Korea, according to the respondents. There is no disagreement between them in this regard (five were uncertain). When it comes to the representation of small scale farmers, there are some uncertainties and some slight differences between the respondents. The respondents from Ethiopia and India were divided on this issue, but the experts from Chile and the Netherlands could report that small scale farmers are represented in relevant decision making bodies. The respondents from Burundi, Cameroon, Nepal, the Philippines, Vietnam, Korea, Peru, Bolivia and Canada reported that small scale farmers were not represented in relevant decision making bodies, and six experts were uncertain in this regard.

When seen together, the emerging picture of farmers' representation in decision making bodies – at the national level – pertaining to the management of PGRFA is depicted in Table 3.

In other words, the representation of farmers is best in the European countries covered in the survey, and is marginal in the African and Asian countries. In the Americas, large scale farmers tend to be represented. Among the responding countries in the developing world, only Zambia and Chile seem to have representation for both large and small scale farmers, whereas this is more common in Europe.

#### *5.3.5 The state of the rights that farmers have to save, use, exchange and sell farm-saved seeds and propagating material*

In order to ascertain the state of farmers' rights to save, use, exchange and sell farm-saved seeds and propagating material, a range of questions were posed. First of all, we wished to know whether farmers are free to sell seeds and propagating material from their own production as long as they are not protected by intellectual property rights. Following from this, we wanted to find out whether they are also free to save, use and exchange all kinds of seeds and propagating material from their own harvests, even if it stems from crops which are protected by intellectual property rights. We then asked whether small scale farmers are allowed to freely save, use, and exchange such seeds and propagating material, since we know that some countries have sought for exemptions for small scale farmers with regard to plant breeders rights. We further narrowed down the issue, by asking whether such permissions for small scale farmers were limited to specific crops. Finally, we wished to know whether farmers in the country were *not* entitled to save and use any seeds or propagating material from their harvests, if the crops were initially protected by intellectual property rights. It seems however, that several respondents misunderstood this last question, since their response does not correspond with their other answers. We will therefore leave this question out.

**Table 3: Representation of farmers in PGRFA-related decision bodies**

Countries	Representation of large scale farmers		Representation of small scale farmers		Not sure about:
	YES	NO	YES	NO	
<b>AFRICA</b>	2	6	2	5	
Burundi		X		X	
Cameroon		X		X	
Congo, Dem. Republic		X			Small scale
Ethiopia		X			Small scale
Kenya		X		X	
Nigeria		X		X	
Senegal	X			X	
Sierra Leone			X		Large scale
Zambia	X		X		
<b>ASIA</b>	2	6	1	4	
Bhutan		X		X	
China		X	X		
Nepal	X				Small scale
Iran		X			
India		X			Small scale
Philippines	X			X	
Republic of Korea		X		X	
Vietnam		X		X	
<b>LATIN AMERICA</b>	3	1	1	3	
Bolivia	X			X	
Chile	X		X		
Ecuador		X		X	
Peru	X			X	
<b>NORTH AMERICA</b>	1	0	0	2	
Canada	X			X	
USA				X	Large scale
<b>EUROPE</b>	4	2	3	3	
Denmark	X		X		
Germany				X	Large scale
Italy	X				Small scale
Netherlands	X		X		
Norway	X		X		
Serbia- Montenegro		X		X	
Sweden		X		X	
<b>TOTAL</b>	12	15	7	17	LS: 3; SS: 5

Almost all the respondents answered that farmers are free to sell not-protected seeds and propagating material from their own production. Some qualified their answers by adding that it was allowed as long as it complied with the seed certification laws of the country. A few respondents answered that farmers were not allowed to freely sell seeds and propagating material and some of them explained that this is because of certification laws. The large picture is thus that farmers are generally free to sell seeds and propagating material from their own production, as long as they are not protected by intellectual property rights and doing so does not conflict with certification laws.

Some respondents remarked that certification laws may sometimes pose serious barriers to the free exchange of seeds and propagating material between farmers. There were no question in the questionnaire specifically addressing this issue, and the remarks point to a need for further investigations with regard to the relation between seeds certification regulations, access to PGRFA and farmers' rights.

The table below shows the responses to the question on whether farmers are free to save, use, and exchange all kinds of seeds and propagating material, including protected varieties. There are only marginal disagreements (India, Vietnam and Zambia), possibly due to recent but not enacted legislation, i.e. that some of the respondents took such legislations into account when answering the question and others did not. Few respondents were uncertain about the answer to this question (three respondents).

**Table 4: State of the rights that farmers have to save, use and exchange protected seeds**

	<b>Africa</b>	<b>Asia</b>	<b>Latin America</b>	<b>North America and Europe</b>
<b>YES, farmers are free to save, use and exchange seeds, even if plants are protected with intellectual property rights</b>	Burundi Cameron Congo Ethiopia Nigeria Senegal Sierra Leone Zambia	Bhutan China India Nepal	Chile	Norway Serbia & Montenegro
<b>NO, farmers are not free to save, use and exchange seeds of plants protected with intellectual property rights</b>	Kenya	Iran Korea Nepal Philippines Vietnam	Bolivia Ecuador Peru	Canada Denmark Germany Italy Netherlands Sweden United States

The main tendency in this picture is that African countries have largely not yet adopted or implemented legislation on intellectual property rights pertaining to plant varieties, whereas more of the Asian and Latin American countries have done so. In North America and Europe, most of the

countries have imposed limitations to the freedom of farmers to save, use and exchange seeds from protected plant varieties through legislation on intellectual property rights, particularly plant breeders' rights. For several of the countries in the 'yes' category, processes are underway to introduce or strengthen plant breeders' rights. Such changes may affect the freedom of farmers to save, use and exchange seeds, as it has already done in a number of countries.

Concerning countries with restrictions on farmers' freedom to save, use and exchange intellectual property protected seeds we inquired after exceptions for small scale farmers. According to the respondents, eight of the listed countries do not make exceptions: Kenya, Korea, Vietnam, Bolivia, Ecuador, Canada, the Netherlands and the United States. Five countries do for small scale farmers: Nepal, the Philippines, Denmark, Sweden and Germany. The wording of these exceptions vary widely, both with regard to the size of land and other criteria, such as the payment of royalties for reuse of seeds or the requirement only to grow such seeds on own landholdings. The latter requirement is imposed in the Philippines, where a large share of farmers do not own the landholdings they till, and the interpretation of 'own landholding' is not yet clarified. For Iran, Peru and Italy the respondents were either unsure or had diverging answers with regard to exceptions for small scale farmers. All in all, while exemptions for small scale farmers seem relatively common, the examples from the survey vary in terms of criteria.

Two countries with exemptions for small scale farmers limit these to specific crops: Nepal and Germany. Two countries impose no such restrictions with regard to their exemptions for small scale farmers: Denmark and the Philippines.

#### **5.4 General features with regard to the state of farmers' rights**

Farmers' rights, as they pertain to PGRFA, are an issue of central importance in countries where the majority of the population lives in rural areas and base their livelihoods on farming – and particularly so when farming systems are based on traditional varieties. This is the case in many developing countries, as our survey has shown. In Northern countries farmers' rights concern a much smaller proportion of the population. Whereas most farmers in the North rely on commercial plant varieties, in some countries saving and re-use of propagating material is still practiced to some extent, and there is increasing interest among eco-farmers to develop plant breeding based on traditional varieties. Thus, farmers' rights are also important in the North, though to a more limited extent than in the South.

The survey shows that that farmers' right are only marginally recognized in the South, whereas the situation in the North is better, but still with substantial scope for improvements. On the other hand, the survey shows that efforts are underway in all areas addressed in the context of farmers' rights in the ITPGRFA, as we will briefly summarize here.

Protection of farmers' traditional knowledge is one of the components of farmers' rights addressed by the ITPGRFA. Whereas a number of countries could report about legislation and policies pertaining to the protection of farmers' traditional knowledge, comparably little is being done to

implement these. However, a number of projects are carried out in different countries in the North as well as the South. In the North, the projects are normally carried out by public institutions as part of broader programmes, whereas the projects in the South are often carried out by NGOs and normally not embedded in Government programmes. The projects provide examples of how farmers' traditional knowledge can be protected, and we will have a closer look on some of these examples in the next chapter on success stories.

Farmers' participation in the sharing of benefits derived from the utilization of PGRFA is an other component of farmers' rights addressed by the ITPGRFA. A number of Southern countries have enacted legislation to provide for such benefit sharing. In the North, benefit sharing is not that much of a topic, since most farmers use improved varieties and buy seeds and propagating material from breeding companies, and there is no legislation for this purpose. Generally farmers participate more or less in the sharing of *non-monetary* benefits, but there are no examples of *monetary* benefit sharing, except for a few from the North. The non-monetary benefits have to do with access to seeds and propagating material, influence on breeding activities, and in some cases participatory plant breeding. The survey shows that – for many reasons – benefit sharing is more promising if taking the farming communities which actually contribute to the maintenance of PGRFA as points of departure, than if seeking farming communities who have developed particular varieties of plants for such sharing. The latter is often impossible due to the nature of the development of farmers' varieties and their traditions of sharing seeds and propagating material, and could therefore result in a blind track to benefit sharing in many cases. Also, there are far more examples of non-monetary than monetary benefit sharing, which indicates that the prospects for the former are best. Whereas this is the general picture, the two examples of monetary benefit sharing from the North show that there are prospects also for other forms of benefit sharing. Therefore solutions may be sought along both tracks of benefit sharing arrangements – based on the framework conditions in the respective countries: (1) The non-monetary track aimed at rewarding farming communities engaged in the maintenance of PGRFA, and (2) the monetary track aimed at sharing profits from the sales of seeds between farmer-breeders and breeding companies. Our survey shows that the first track is the by far most promising in the South, and that there is little interest in benefit sharing in the North, except for in few cases where the second track was followed.

A third component of farmers' rights, as laid out in the ITPGRFA, is farmers' participation in decision making pertaining to the management of PGRFA. There are generally few examples of legislation in this regard, but some countries in the South have extensive legislation on participation. That notwithstanding, actual participation in decision making processes seems to be marginal, according to our respondents, and often confined to large scale farmers, who are normally not engaged in the maintenance of PGRFA. In the North, farmers' participation in decision making processes is more commonly practiced, but without reference to any particular laws or policies.

Farmers practice of saving, using, exchanging and/or selling seeds and propagating material from own harvest is also addressed in the

ITPGRFA. This practice is increasingly affected by regulations on plant breeders' rights and on the certification of seeds for sale. A problem with strict legislation on plant breeders' rights and seed certification is that it reduces the accessibility of plant varieties and thereby the possibilities for *in situ* conservation and utilization of traditional varieties, as well as the breeding of new varieties, which are desired, but do not fulfil the criteria for certification. Nor are there incentives for such activities when non-certified farmer bred varieties can not be sold. Whereas such legislation is most restrictive in the North, they have just been introduced in many countries in Asia and Latin America – often with some exemptions for farmers – and they have not yet been introduced in most African countries. There are interesting examples in several countries in the South as well as in the North of how such legislation can be formulated with a view to farmers' rights.

The data material provided from the respondents to this survey is substantial and provides a solid basis for further investigations, documentation activity and analyses of the state of farmers' rights in the world. It shows instances of legislation as well as of achievements in all areas addressed in the context of farmers' rights in the ITPGRFA. Analysing and documenting these examples and achievements is pivotal to any monitoring of the implementation of the ITPGRFA with regard to its provisions on farmers' rights, and would provide inspiration for other countries to follow after. Not least, it would be a way to show concrete results related to the ITPGRFA and the long negotiation process leading to its adoption.<sup>37</sup>

## **6. Evaluation of performance and success stories**

After having described the efforts and achievements pertaining to farmers' rights in the countries covered by the survey, we wanted the respondents to assess performance levels. Such an assessment would be important for the consideration of what the Governing Body should do to promote the realization of farmers' rights. 'If it isn't broke, don't mend it', is the advice from an English saying, in other words: if the respondents are satisfied with the performance, there might not be any need for action. We therefore asked the respondents to evaluate the performance of the countries which they covered in their questionnaires. This question included in the national sections of the questionnaire, and thus not answered by those who solely responded to the international section.

As part of the evaluation of the performance, we were particularly interested in success stories, since they are well suited to provide examples as well as inspiration to others. As this survey has shown, there is a great need for models for the realization of farmers' rights. We wanted to identify such models, by asking all respondents whether they knew of any success stories in their countries (national part of the questionnaires) or in the world (international part of the questionnaires) on the realization of

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<sup>37</sup> Congruence with the ITPGRFA does not necessarily mean compliance with it. It may result from other processes in the countries, at regional or international levels – or a combination of these. Identifying the particular impact of the ITPGRFA and its negotiations on certain achievements, if desired, would necessitate thorough investigations e.g. following the method of process tracing.

farmers' rights. We asked them to explain briefly the topic, approach and results of these success stories.

The answers revealed that the respondents largely considered the performance of their countries pertaining to the realization of farmers' rights to be in a poor state, but that there are many success stories though.

### **6.1 Methodological considerations**

The respondents were asked to rate the performance of their countries on a scale from 1 to 6 with one mark. The note 6 was defined as excellent, 5 as very good, 4 as good, 3 as fairly good, 2 as tolerable, and 1 as insufficient. Although the response to questions of this kind will never be very precise or easily interpretable, the findings presented in section 6.2 provide an indication with of the need for action, as perceived by the respondents.

It is not easy to determine criteria for success stories. In real life most achievements come with downsides as well. Also, a success for some may seem a failure to others. Anitha Ramanna remarks that success stories in India can be identified if you have a narrow focus on counter positions or achievements with regard to intellectual property rights. To identify real success, she adds, one may need to move away from such a narrow interpretation. Well aware of the difficulties in defining criteria for success stories, we did not try to embark on such a definition, but left it to the respondents to consider what they viewed as success stories.

The responses presented in section 6.3 therefore refer to the achievements presented as success stories by the respondents. It appears that several of the achievements set out in section 5.3 could have been presented as success stories as well, compared to the success stories below. However, this would not be in line with the answers from the respondents and their way to determine success stories. Therefore, the reader may instead recall section 5.3 in order to get a broader overview over positive achievements with regard to the realization of farmers' rights.

### **6.2 Evaluation of the performance**

Most respondents rated the performance of their countries as insufficient (21 respondents, one of which covered three countries). The next largest group consisted of those rating the performance as tolerable (10 respondents). The notes 'fairly good', 'good' and 'very good' were marked by six, five and five respondents respectively. No respondent found the performance of their country excellent with regard to farmers' rights. The distribution of answers was as follows:



**Table 5: Performance of countries with regard to the realization of farmers' rights**

Performance with regard to farmers' rights					
1	2	3	4	5	6
Insufficient	Tolerable	Fairly good	Good	Very good	Excellent
Bhutan Canada (1) Congo Ecuador Ethiopia (2) India (1)* Iran Italy (2) Nigeria Norway (2)** Peru (2) Philippines (2) Senegal Serbia & Mon. Sierra Leone United States Vitenam (1) Zambia (1)	Burundi Cameroon China Nepal (3) Norway (1)** Philippines (1) R. of Korea Vietnam (2)	Canada (1) Kenya India(1) Netherlands Vietnam (2) Zambia (2)	Ethiopia (1) Denmark Germany Peru (1) Zambia (2)	Bolivia Chile Ethiopia (1) India (1) Sweden	

Numbers in brackets refer to the number of respondents who marked this rating. Countries without numbers in brackets did merely have one respondent.

\* Another questionnaire from India entailed no rating of the Indian performance with regard to the realization of farmers' rights and could therefore not be accounted for.

\*\* For one of the answers from Norway, the response was followed by the argument that Norway would most likely soon adopt stricter regulation on plant breeders' rights. A further response was as a whole also explicitly influenced by this probability. It is likely that also the third answer was influenced by the same prospect. The current Norwegian performance was therefore not evaluated – only the anticipated future situation. In the meanwhile, the Norwegian Government has turned the law proposal down, and Norway will continue to maintain a liberal regulation, following UPOV 1978, i.e. allowing farmers to save and use self-harvested protected seeds.

As we can see, respondents from the same countries were remarkably consistent in their views. Differences seldom exceeded two notes. State delegates and experts tended to give higher scores than NGOs. Only among the respondents from Ethiopia, India and Zambia there were substantial discrepancies, ranging from 'insufficient' to 'good' (Zambia) and 'very good' (Ethiopia and India).

What these figures suggest, is that the vast majority of the respondents are not satisfied the performance of their countries with regard to farmers' rights, and that there is dissatisfaction in the South as well as in the North.

### 6.3 Success stories

All together 28 respondents reported about success stories with regard to farmers' rights, which are systematized below. A total of 26 respondents knew of no success stories. In addition, 4 answers were either not relevant with regard to farmers' rights pertaining to PGRFA, were not found to be a success story by the respondents after all, or they lacked specifications. We base our presentation of these stories on the ITPGRFA's itemization of farmers' rights. The presentation provides a broad overview over success stories, but does not delve into details – since details were not covered in the questionnaires. However, it provides a solid account of stories, which can be investigated further and presented in more length as success stories pertaining to the realization of farmers' rights.

#### 6.3.1 *Success stories pertaining to the protection of farmers' traditional knowledge relevant to PGRFA*

We divided the success stories pertaining to the protection of farmers' traditional knowledge into three categories:

- Stories on improvements to farmers' seed systems, including conservation
- Stories concerning registration of farmers' varieties and the attached knowledge
- Stories about enhanced utilization of farmers' varieties

There are many stories about the strengthening of farmers' seed systems, including the conservation and developing of crop varieties by farmers – often in co-operation with scientists. Since these examples, however, tend to be the result of farmer-scientist co-operation, and often related to external support or other benefit sharing arrangements, they are referred to under section 6.3.2 on benefit sharing.

Whereas the strengthening of farmers' seed systems is a basis for the protection of farmers' traditional knowledge relevant to PGRFA, the registration of farmers' varieties is an effort to ensure that farmers' varieties are not misappropriated for intellectual property rights, while at the same time providing an overview over available farmers' varieties, and – to some extent – the attached knowledge. Three respondents (SEARICE, Elenita C. Dano and Bert Visser) told us about the work of SEARICE to establish community registries. As part of SEARICE's campaign on farmers' rights, the organization developed a concept on community registry as a response to what they perceived as negative effects of the new Philippine legislation on plant variety protection. The idea was to protect farmer-developed varieties from misappropriation. The establishment of the community registries on the islands of Bohol and Mindanao has been supported by relevant regional government units. From India, Anitha Ramanna reported about the database on farmers' knowledge pertaining to PGRFA, which has been established to compile prior art with regard to the considerations of applications for plant breeders' rights.

The best guarantee for the maintenance of farmers' traditional knowledge pertaining to PGRFA is the continued utilization of this knowledge. The

introduction of local products based on traditional varieties in the market is one way to approach this. Michael Halewood and Jane Toll from the Future Harvest Centres report that there are several instances where farmers have been successful in introducing local 'biodiversity products' into larger markets, for example the marketing of highland black chickens in Hanoi. With regard to PGRFA, Antonio Onorati provides good examples from Italy, where a significant – and increasing – part of the quality food production involves local crop varieties. Several forms of protection of these products are in force either with the acknowledgement of the EU (DOC and IGP) or through local acknowledgements by regional governments or municipalities. These efforts are based on regional agrobiodiversity conservation laws, the support of rural development plans and the action of local organizations. There are long lists of traditional Italian products originating from the conservation of traditional varieties.<sup>38</sup>

### *6.3.2 Success stories pertaining to the right to equitably participate in benefit sharing arising from the use of PGRFA*

Also when it comes to equitable benefit sharing, there are three categories of success stories:

- Participatory plant breeding and the strengthening of farmers' seed systems
- Access to genetic resources and related information
- Monetary benefit sharing

A number of respondents have told us about participatory plant breeding and efforts to strengthen of farmers' seed systems as success stories. Michael Halewood and Jane Toll of the Future Harvest Centres reported that there are thousands of hectares of products of participatory plant breeding and participatory variety selection planted around the world – improved according to the preferences expressed by farmers, in accordance with their needs. Niels Louwaars explains that there are many success stories on local seed systems, which strengthen farmers' capacities to manage their seeds and genetic diversity.

Srdjan Stojanovic reports good cooperation between breeders and farmers in Serbia and Montenegro regarding exchange of seed, experience and technologies, even if this cooperation may not be always supported from the state.

Cheikh Alassane Fall explains that there is a longstanding tradition in Senegal to involve farmers in the conservation and breeding of plant varieties. Plant breeding in Senegal is mainly public, and in matters of the selection, collection and conservation of PGRFA, as well as in decision pertaining to access to selected varieties, farmers are involved. Also they are increasingly involved in the development of community seed banks.

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<sup>38</sup> Onorati refers to a list of these products recognized by the EU. He also refers to the web site [www.arsial.it](http://www.arsial.it) and the web pages of the regions Tuscany, Marche, Friuli and Umbria. Probably the Slow Food movement in Italy has contributed to the marketing of local products, see [www.slowfood.it](http://www.slowfood.it)

Much remains to be done, completed or improved, he writes, but these processes are now under way.

Nguyen Van Dinh and Nguyen Thi Kim Oanh write about efforts in Vietnam to develop trade marks for some crops with particularly good features, which have been developed in cooperation between farmers and scientists.

From the Philippines, SEARICE informs about the organization's efforts to strengthen farmers' local seed systems – like enhancing farmers breeding skills, setting up community based and centre based seed banks, seed multiplication and marketing, *inter alia* carried out in the context of the programme 'Promoting Farmers' Rights Through Strengthening Community Plant Genetic Resources and Use'.<sup>39</sup> Also Tor Skudal from the Development Fund, refers to the same activities, which are among the most well-known local efforts for participatory breeding, and have been referred to in a number of reports and documents pertaining to the management of plant genetic resources for food and agriculture. SEARICE is also coordinating the Biodiversity Use and Conservation in Asia Programme (BUCAP),<sup>40</sup> a programme, mentioned by the Development Fund as an example on effective collaboration between farmers, researchers and government institutions in the management of PGRFA, gradually increasing spaces for farmers' participation in plant breeding, as well as in policy processes in Bhutan, Vietnam and Laos PDR. The program will in 2006 merge with the Community Biodiversity Conservation Programme (CBDC) in Asia and thus also cover Thailand and the Philippines. Finally from the Philippines, Pamela G. Fernandez tells about other initiatives for local seed development and exchange, which are taking place in the country.

Tewelde Berhan Gebre Egziabher reminds us of an important aspect of farmers' rights with regard to gene banks. In times of war, drought, flood and other types of disaster, farming communities risk loosing their seeds and propagating material, and, indeed, crop varieties. In such situations farmers must be able to get hold of local seed stocks collected and stored in gene banks. This implies that samples of local seeds, which have been collected from these areas in earlier times, are sent back to the affected farmers. Egziabher reports that the main gene bank in Ethiopia – with financial support from the GEF – has helped farmers to get farmers' varieties back, which they had lost.

Also the more general access to PGRFA is an important element of farmers' rights in terms of benefit sharing. This is dealt with in section 6.3.4 below. However, we should also mention that respondents from several Northern countries, most notably Niels Louwaars from the Netherlands, wrote that their farmers generally have access to information, technologies and capacity building, which is an important aspect of benefit sharing. It can also be regarded as success stories (in addition to the monetary benefit sharing story referred to in section 5.2.3.).

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<sup>39</sup> See: [www.searice.org.ph](http://www.searice.org.ph)

<sup>40</sup> See: [www.searice.org.ph/bucap.htm](http://www.searice.org.ph/bucap.htm) and [www.utviklingsfondet.no/sw157.asp?](http://www.utviklingsfondet.no/sw157.asp?)

### 6.3.3 *Success stories on farmers' participation in decision making processes pertaining to the management of PGRFA*

The success stories we have received pertaining to farmers' participation in PGRFA related decision making can be grouped in five categories:

- Advocacy and participatory processes for the formulation of farmers' rights legislation
- Farmers' participation in national level decisions pertaining to the management of PGRFA
- Farmers' use of their judicial rights
- Farmers' advocacy for participation in decisions pertaining to genetically modified organisms.

In several countries, the initiative to propose legislation on farmers' rights comes from below, from farmers' or development organizations. To get the process going, systematic advocacy is often needed. SEARICE has made several experiences in this regard, such as organizing series of farmer level consultations aimed at defining the concept and framing national legislation on farmers' rights in the Philippines. As a result, a declaration on farmers' rights and a draft bill on farmers' rights have been developed, in addition to a draft code on farmers' rights for the island of Bohol. In these efforts, SEARICE experienced the provisions on farmers' rights in the ITPGRFA as useful. SEARICE is also advocating for the ratification of the ITPGRFA by the Philippine Government. The organization has in addition provided for farmer dialogues with decision makers under the CBDC and BUCAP programs in Vietnam. Through these processes farmers have gained some recognition of propagating material they have themselves bred, and some financial support for their efforts. There is also an increasing awareness of the need to amend the certification laws in the country. Tor Skudal of the Development Fund reports that SEARICE has recently played an important role also at the regional level, in putting forward to the ASEAN a Framework Agreement for Access Regulation which once signed is legally binding. It is broader in scope than the Bonn Guidelines and has clarity on how to deal with *ex situ* material collected prior to the entry into force of the CBD in 1993. It allows for the traditional uses of biological and genetic resources by indigenous and local communities in accordance with their customary practices and traditions.

The Development Fund also refers to the activities LI-BIRD, a national NGO in Nepal, which is a lead agency in the efforts for the development of a *sui generis* system for the management of PGRFA in the country, in which options for farmers' rights and the equitable sharing of benefits arising from the utilization of PGRFA are central. LI-BIRD has in addition contributed to the development of a draft policy on farmers' rights led by the National Seed Board of Nepal.

The Community Development and Technology Trust (CTDT) in Zimbabwe has a record of successful advocacy, according to the Development Fund. After extensive consultation with all stakeholders, a biodiversity bill was drafted and put before the parliament of Zimbabwe. The bill addresses farmers' rights, access and benefit sharing and intellectual proper-

ty rights among other items. The success of Zimbabwe has had spin-offs in neighbouring countries. In Malawi, the NGO Centre for Environment Policy and Advocacy (CEPA), has been asked by the national government to assist in the drafting of a policy on access and benefit sharing in the country. Also in Zambia, a similar process is taking place. This process is also referred to by Godfrey P. Mwila as a promising national process, which incorporates the development of a *sui generis* system for the protection of plants, which incorporates aspects of FR.

There is progress in Bolivia, writes Miguel Angel Silva Ramos. Following the adoption of the ITPGRA, a national law on farmers' rights is being developed, following a participatory approach including civil society, small farmers, and indigenous peoples.

In countries in the North of Europe, farmers have quite far reaching possibilities of participating in decision making at the national level. Bell Batta Torheim gave an account about the Norwegian situation and Niels Louwaars of the Netherlands situation. In both countries, farmers are quite well organised and influence agricultural policies.

In countries, where farmers have just won judicial rights pertaining to the management of PGRFA, an important question is how they will use these rights. Anitha Ramanna reports from India on the use of the new farmers' rights legislation by NGOs to demand compensation for crop failure, which may also be considered a success.

Last but not least we should mention that farmers in many parts of the world seek to participate in decision making pertaining to the introduction of genetically modified organisms. The organisation Food First in the United States reports about communities declaring themselves GMO-free zones<sup>41</sup> and pending state-level legislation (e.g. in California) holding biotechnological seed firms liable for damages caused by contamination of crops with GE strains.

#### *6.3.4 Success stories pertaining to the rights that farmers have to save, use, exchange and sell farm-saved seeds and propagating material*

There are not many success stories pertaining to the rights that farmers have to save, use, exchange and sell farm-saved seeds and propagating material. However, Niels Louwaars reports that many countries currently relax their seed laws (except for India), which even though it is meant to give the private sector more opportunities, may also enable more exchange of seeds between farmers.

The most well-known success story in this regard is the adoption of the Indian Act on Plant Variety Protection and Farmers' Rights. While S. Bala Ravi and Anitha Ramanna from India refers to this legislation as a success story, Anitha Ramanna also remarks that the law gives the impression that farmers are on par with breeders. She indicates that this may not be the way the act materialises. Niels Louwaars (the Netherlands) remarks that India is about to tighten its seed laws, which is not in

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<sup>41</sup> See [www.foodfirst.org/media/display.php?id=390](http://www.foodfirst.org/media/display.php?id=390)

conformity with its policy on farmers' rights. S. Bala Ravi emphasises that the Indian Act on Plant Variety Protection and Farmers' Rights has not yet been implemented, and that support is needed to realize farmers' rights as embodied in the Act.

Orlando C.V. Velasquez (Peru) reports on the *sui generis* system on plant variety protection of the Andean Community as a success story, which is conducive to farmers' rights. The plant breeders' rights allow farmers to save and use PGRFA as they wish, as long as they do not market them commercially, he writes.

These stories are about countries where genuine *sui generis* systems are being introduced. It is, however, also interesting to look for success stories of practices in countries where there are stricter intellectual property rights. SEARICE reports about the community based projects the organization is carrying out in Vietnam, together with Plant Protection Department of the Ministry of Agriculture, Mekong Delta Farming Systems Research and the Development Institute of Cantho University. The projects are aimed at enabling farmers to assert their rights over their seeds in terms of storage, use, exchange and sales.

There are also other possibilities of influencing the scope for farmers' practices pertaining to the saving, using, exchanging and sale of farm saved seeds. Michael Halewood and Jane Toll from the Future Harvest Centres report that there have been several instances where farming communities and their supporters have been able to influence parties to drop controversial intellectual property claims over material in which the communities had an interest.

#### **6.4 On the potentials of these success stories**

Summing up our findings, respondents are largely dissatisfied with the performance of their countries to advance the realization of farmers' rights, but nevertheless recount success stories from their own or other countries covering all issues addressed in the context of farmers' rights in the ITPGRFA. This indicates that there is an opportunity to derive models for the implementation of the provisions of the ITPGRFA on farmers' rights from already existing efforts, which could also form the basis for exchange of experiences and for the development of strategies or plans towards the realization of farmers' rights.

### **7. Barriers, challenges and options for realizing farmers' rights**

A crucial intention with the survey was to gain insight in the factors and processes, which hinder the realization of farmers' rights, as well as the options and windows of opportunities, which may enable it. For this purpose, we asked two questions. One was about the barriers and challenges for the realization of farmers' rights, and the other about the options for such a realization. The questions were posed to all respondents. For those answering the national sections of the questionnaires, we asked about barriers, challenges and options in these countries. For those answering the international section, we asked about barriers, challenges and options world wide.

## 7.1 Methodological considerations

The questions were open, and the respondents were free to include whatever factors and processes they deemed relevant. The strength of such an approach is that it opens up for a rich understanding of the perceptions of the respondents with regard to these questions. The challenge is to compile and present the response in a way, which reveals this richness in a structured and informative way.

It turned out that the factors and processes conceived as barriers, challenges and options for the realization of farmers' rights among the respondents had many similar features. We therefore grouped them in categories and structured these categories under the headlines of particular subjects, as they arose from the response. On this basis we counted the response for each category according to type of respondents and continent (and world wide, for those who answered the international section of the questionnaire). Most respondents addressed more than one factor, and some wrote long answers to the questions, with many factors. On the other hand, respondents' non-mentioning of factors, could not be interpreted as disagreement with such perceptions. If they had been given the explicit choice, they could also have marked other factors, as expressed by other respondents. In other words, our counting of responses according to item served as an indication of the attention paid to the factors, but could not be used for in depth statistical analyses. Our main focus will therefore be on the substance of the factors brought forward, following a qualitative approach, supported by the quantitative indications.

According to the respondents, the main barriers for the realization of farmers' rights around the world have to do with three dimensions: **awareness, societal structures and legislation**. External pressure is also given emphasis. Finally, the roles of seed companies and civil society organizations, in addition to processes under the ITPGRFA, are mentioned. Two European delegates saw no great barriers to the realization of farmers' rights in their countries (Germany and Sweden), but one of them noted the limited possibilities for the participation of farmers in decision making processes in particular in the pre-breeding and breeding activities (Germany). Three representatives of civil society organizations in Asia did not answer the questions pertaining to barriers, challenges and options. Except for these five, all respondents highlighted barriers, challenges and/or options for the realization of farmers' rights.

In the following, we will present these responses, keeping to the order mentioned above. Thereby we present the general findings and discuss differences between categories of respondents and between continents – when relevant. Barriers, challenges and options are presented together under each item, since they are closely interlinked.

## 7.2 The lack of awareness and knowledge pertaining to farmers' rights

The single most often mentioned barrier was lack of awareness among farmers. Particularly in Africa, Asia and Latin-America this was considered an important factor hindering the realization of farmers' rights, an opinion shared by the countries' FAO delegates, NGO representatives and experts alike (altogether 22 respondents). Several respondents, partic-



ularly experts, mentioned lack of awareness among authorities as barrier to the realization of farmers' rights (12 respondents).

Nine respondents found problems to understand the contents of farmers' rights to be a key barrier. However, they conceived the problems quite differently. Two were concerned with the difficulty of calculating and distributing economic returns to farmers in the context of farmers' rights. Their answers revealed that they conceived monetary benefits as a key component of farmers' rights. This response stood in contrast to that of two other respondents, who were concerned with the widespread pre-occupation with unrealistic monetary benefits in the context of farmers' rights. This would blur the discussion on farmers' rights and constitute a barrier towards the realization of these rights. They considered this perception of farmers' rights as a key barrier. Another two respondents found the focus on ownership to PGRFA – which is closely related to the discourse on monetary benefits – to be the key barrier. Maria Mayer de Scurrah from Grupo Yanapai in Peru puts it this way:

The local property rights on PGRFA and related knowledge (in Peru) have been developed by people who may not have worked with traditional farmers. Traditional knowledge is part of a very complex culture and registering it is equally complicated in addition to being a strange concept. We are going to try it out with a first catalogue of Huancavelica potato varieties. Nevertheless, the varieties are available in many other communities and we believe that these new concepts of 'owners of knowledge' go against their culture, in which seeds are to be shared and not to be 'owned'.

Anitha Ramanna from India supports this stand, writing that the tendency to interpret farmers' rights as only ownership rights, does at the same time negate the need for promoting the sharing of resources, which is crucial to farmers and their agricultural practice.

Two of the nine respondents addressing the understanding of farmers' rights were from the North, and emphasised the particular difficulties with understanding the relevance of farmers' rights in countries in the North. This would be a key barrier to their realization in this part of the world. Lars Landbo from Denmark put it this way:

There is a need to discussing in more detail how farmers' rights should be understood and realized in countries like Denmark, with an industrialized, modern type of agriculture, in which e.g. farmers are using modern varieties developed by professional plant breeders, rather than traditional varieties; traditional varieties are lost or stored in gene banks; subsistence farming does not occur; and for commercial reasons farm saved seeds are used to very limited extent.

Many answers on options pertaining to the barriers of awareness and knowledge were noted. Often they were quite general, such as 'awareness rising'. Some were however more specific. Eight respondents from all categories – all of them from Asia and Africa – saw education of farmers with regard to farmers' rights as an important measure. Several of them highlighted the need for funds in this regard. Five respondents from all categories and different parts of the world addressed the need for models to show what farmers' rights are and to demonstrate the benefits of the realization of these rights.

Relevant in this context, another four respondents stressed the importance of identifying redistributive mechanisms with regard to benefit sharing, which are conducive to the realization of farmers' rights. Seong Hee Lee wrote that in the Korean context, where farmers use improved varieties almost solely, it is difficult to identify the farmers who have contributed to the conservation and utilization of PGRFA, and thus, support should be provided to all the farmers in the country, together with the offer to actively participate in PGRFA-related programs and activities. Michael Halewood and Jane Toll from the Future Harvest Centres wrote from a more global perspective that there is very little commercial market for farmers' varieties *per se*, despite some highly politicized accounts which encourage policy makers to focus on the potential commercial value of PGRFA within their borders. Therefore, a focus on mechanisms for more general redistributions of benefits back to farming communities in recognition of their long-term, world-wide contribution to crop and variety improvements and agriculture, is probably more realistic, and with lower transaction costs, they write.

Two experts from the North stressed that awareness rising with regard to the ITPGRFA would help focus attention on farmers' rights in the North. Complementing this stand, Bert Visser from the Netherlands suggested that it would be good to identify governments or ministries, which are supporting the implementation of farmers' rights following a participatory approach, and to highlight these experiences as models.

Finally, Albert Chalabesa from Zambia highlighted that the farmers' rights system, as envisaged in Zambia, will encourage and promote the conservation of local PGRFA in environments in which they have been developed and will continue to evolve in those local environments. In other words, to expose these benefits of farmers' rights in practice would constitute an option for their wider promotion.

### **7.3 Economic and political structures hindering farmers' rights**

We mentioned societal structures above as one of the three most important categories of barriers, as perceived by the respondents. This is a comprehensive category comprising economic and political structures as well as institutional framework conditions. We will address the barriers pertaining to economic and political structures here, whereas institutional framework conditions will be dealt with in section 7.4 below, on implementation capacity.

The response with regard to economic and political structures hindering farmers' rights was quite evenly distributed between the continents. A special feature was, however, that almost all of the respondents were experts. There were no delegates, and only a few NGOs (including an IGO, which is – strictly speaking – not an NGO).

Six respondents discussed the current paradigm on which international as well as most national agricultural policies are based, and stressed that it would be in conflict with farmers' rights. From a Northern perspective, Erik Evenrud from the association of biological-dynamic farmers in Norway described a development, where farmers are increasingly deprived of the economic and legal framework conditions, which ensured their stewardship role in agriculture in general, and with regard to genetic resources

in particular. Michael Halewood and Jane Toll from the Future Harvest Centres pinpoint that the evolution of agriculture economies of scale is undermining small farmers' ability to earn a livelihood. Elenita C. Dano follows up on this stand, when she writes that the Philippine government focus on large scale cash crop farmers – rather than small scale protectors of PGRFA – and that this constitutes a key barrier to the realization of farmers' rights. SEARICE addresses similar issues, referring to Vietnam. Tewolde Berhan Gebre Egziabher highlights that the thinking behind the existing intellectual property rights system is based on an understanding of innovations as entirely private, while farming community innovations are of groups across areas and generations. As a consequence, individuals and companies take away what farmers innovate and have them recognized by national laws as their private properties, he maintains, and concludes that no system can survive such legal plundering. The citation above (sub-chapter 7.2) from Maria Mayer de Scurrah of Grupo Yanapai underscores this point.

Related to the discussion on agricultural paradigm above, three respondents emphasized that the current global development of the intellectual property rights systems must be regarded as a result of the trend towards the privatization of plant breeding in the North, and increasingly also in the South. Anitha Ramanna maintains that this involves a shift in attitudes of public sector institutions in the direction of intellectual property rights, rather than the sharing of resources which would be so pivotal for farmers.

Six respondents saw significant barriers in farmers' lacking influence on political decisions, and their inability to gain influence. This can also be seen as parts of an explanation for the spread of the agricultural paradigm, as described above. Furthermore, three experts from the South highlighted that the lack of documentation of farmers' knowledge is part of the problem. Weak networks between farmers, particularly on access to genetic resources, was another problem area. In this context, Yemane Tsehaye stated that the lack of networks for access to genetic resources stored *ex situ* represented one of the barriers to the realization of farmers' rights. Godfrey P. Mwila addressed the weak local research capacity for participatory plant breeding, which also constitutes a barrier. Two respondents stressed that market and trade regulations posed barriers to the marketing of products based on farmers' varieties, and that poor infrastructure added to this problem.

Some respondents, mainly from Africa addressed framework conditions of a broader scope.

Three experts stated that poverty was an important barrier to the realization of farmers' rights, insofar as it reduced farmers' adequate access to, and utilization of, PGRFA. Another expert highlighted war as a crucial barrier to the realization of farmers' rights in conflict areas. A further expert addressed the negative effects of humanitarian aid on local seed systems, and thereby on the realization of farmers' rights.

Four respondents suggested that increased emphasis on participatory plant breeding was one of the options to approach these problems with. Five other respondents highlighted the importance of involving farmers in relevant decision making as an important option. In this context, it is

interesting to note that in countries with strong state control, like in Vietnam, it may be possible to identify spaces for influence. SEARICE reports that there are such spaces at the local level in Vietnam, and that the challenge consists of maintaining and broadening these spaces. Another two respondents emphasised that small scale farmers are gaining political power due to different movements in the civil society. Finally, two respondents maintained that it is important to set on the promotion on products based on traditional farmers' varieties in order to create a better economic basis for the realization of farmers' rights. This also involves improved infrastructures, such as land tenure security, roads, telecommunications, and social services, as well as improved prices, according to the Future Harvest Centres.

Finally, Salvator Ndabirorere sums up the probably most important option with regard to farmers' rights, namely their potential to improve the livelihoods of the rural population in the south:

Burundi is a poor and overpopulated country. More than 90 percent of the population is rural and their livelihoods are based on farming. Under these conditions, it can be stated that declaring the rights of farmers would secure all Burundis.

#### **7.4 Inadequate legislation and policies**

Poor or weak legislation is considered the single most important barrier to the realization of farmers' rights in Africa by ten respondents, of which five were delegates and five were experts. In Asia, the picture is somewhat different. Four respondents claimed that counteracting policies constituted the main barriers, whereas one addressed poor or weak legislation. For example, SEARICE lists a range of acts and regulations in the Philippines and Vietnam which they deem inconsistent with the realization of farmers' rights.

Five respondents meant that there is a lack of political will to realize farmers' rights. One respondent explained that in her country, the lack of freedom to organize constituted the main hinder against the realization of farmers' rights.

With regard to options, most of these respondents suggested some form of change of the legislative situation, some of which were more general. We will concentrate on the more concrete suggestions. Five respondents from different parts of the world found that mainstreaming of farmers' rights in all relevant legislation and policies in the country would be an important means towards the realization of farmers' rights. It would involve the assessment of all policies related to farmers' practices and knowledge pertaining to PGRFA, and reformulating them accordingly. Two respondents meant that a separate law on farmers' rights would be necessary. This does not necessarily conflict with mainstreaming in the agricultural policies at large. One respondent, Tewolde Berhan Gebre Egziabher, suggested that the African Model Law for the Protection of the Right of Local Communities, Farmers and Breeders and on the Regulation of Access to Biological Resources would provide a good basis for the formulation of such acts. Other respondents mentioned the acts on farmers' rights, which were under development (Zambia, the Philippines and Bolivia) or to be implemented (India). Another respondent suggested

using the existing political windows of opportunity to promote farmers' rights, which might be an option in countries where there are already adequate political windows of opportunity. Three respondents emphasised the importance of embracing seed laws that allow farmers to save, use, exchange, and sell appropriate levels of harvested seeds, and highlight these as models. This would create a positive approach to legislative change. In this context, Niels Louwaars highlighted the move in the European Union to exempt conservation varieties from certain aspects of the seed law as a promising development. Thereby such varieties would be freely accessible for farmers to save, use, exchange and sell according to their own needs and priorities.

### **7.5 Weak implementation capacity**

Eleven respondents from the South saw weaknesses in institutional structures for the realization of farmers' rights as a crucial barrier. Seven of these were from Africa. Two additional respondents from Africa emphasised that poor general enforcement capacities of acts and policies constituted key barriers in many countries. A further African respondent highlighted corruption as a crucial problem in this regard. Two experts, one from Asia and one from Europe, pinpointed the lack of policy coherence between government entities as a central barrier to the realization of farmers' rights. Anitha Ramanna explains that in India three different strategies are pursued simultaneously in India: (1) Constructing farmers' rights so that farmers can save, sell and exchange seeds, (2) Ensure benefits sharing from the use of PGRFA in terms of compensation for farmers, (3) Enabling farmers to claim ownership rights over their varieties. She further writes that these three strategies leave out a more inclusive option of balancing the needs to both promoting innovation and to create incentives for the sharing of resources. In her view farmers' rights are about development rights, and should be based on a redefinition of the common heritage concept.

Two remedies seemed to garner widespread support. First of all, it is necessary to develop the institutional capacity through capacity building measures, according to four of the respondents. Vanaja Ramprasad of the GREEN Foundation in India put it this way:

The greatest challenge is to educate the politicians and administrators about legislations that undo the rights hitherto enjoyed by the farming community.

Also, a fund for farmers' rights would be an important measure, according to four other respondents. Some suggest that the international fund for farmers' rights, which was suggested and adopted in the FAO already in 1991 (Resolution 3/91 of the FAO Conference) should finally be implemented, others speak of national funds. Two delegates from Africa suggest that national coordination structures for the management of PGRFA – including for the related rights of farmers – should be established. An expert from Latin America maintains that the best way to promote farmers' rights in that part of the world would be to utilize the existing institutional structure for that purpose, which is an option in countries where adequate institutional structures are established.

## 7.6 External pressure

Several respondents addressed the pressure of external forces on the policies and developments affecting farmers and their rights as key barriers to the realization of farmers' rights. Five of these respondents from different categories and continents focused on pressures from industrialised countries and/or transnational corporations. Tor Skudal of the Development Fund in Norway expressed it this way:

The fact that the most powerful governments (mostly in the North) are pushing issues such as intellectual property rights on plant varieties, genetically modified organisms and genetic use restriction technologies, thus supporting the interests of private industries, while at the same time effectively denying the farmers in the South their basic rights to freely manage, use and develop PGRFA constitutes one of the greatest barriers.

Related to this issue, two further respondents emphasised that bilateral trade agreements (so-called *TRIPS plus agreements*) contributed to an unnecessary strengthening of intellectual property rights, which is not conducive to farmers' rights. Another five respondents highlighted the pressure from international organizations such as the WTO, the UPOV, the World Bank and the International Monetary Fund towards the introduction of intellectual property rights as a key barrier.

In addition to general formulations on how to resist external pressure, there was one more concrete suggestion: Samuel Assembe Mwondo explained, with reference to the policies pertaining to farmers' rights in Cameroon, that they are primarily driven by exogenous forces, and the option would be to use the ITPGRFA to counterbalance pressure from other international organizations.

## 7.7 The role of seed companies

Five respondents found that seed companies would often act in ways that are not conducive to the realization of farmers' rights. Some of these respondents believed that seed companies have too much say in policy making. Samuel Assembe Mwondo reported that seed companies in Cameroon were already courting national authorities, and that they could block the setup process of a legislation involving farmers' rights. Also S. Bala Ravi is worried about the situation in India, where the private plant breeding sector is gaining an increasing role and is pressuring for what he termed monopolistic intellectual property rights, and where supportive federal governments tend to weaken and push out farmers' rights.

On the option side, S. Bala Ravi emphasised the need for bringing public and private plant breeding institutions together to support and promote the realization of farmers' rights.

## 7.8 The role of civil society organizations

Respondents were widely concerned with the role of civil society organizations in the promotion of farmers' rights. Several respondents meant that advocacy from civil society organizations would be a prerequisite to get the required attention for this issue, and to get processes going. Four respondents, however, highlighted that inadequate advocacy from civil society organizations constituted a key barrier towards the realization of farmers' rights. M. O. Arigbede from the Union of Small and Medium

Scale Farmers of Nigeria stated that weakness and ideational poverty among civil society organisations constituted a serious hinder for adequate action with regard to farmers' rights. Several further respondents meant that lack of funds and human resources for this purpose was a basic problem.

The response with regard to options was more general, suggesting more advocacy and information activities. Five respondents, however, suggested capacity building among civil society organizations as a measure to increase their ability for advocacy as well as information work. Jeremy de Beer from Canada highlighted the option of addressing farmers' rights in courts, which is a possibility in countries where adequate legislation for the purpose is in place. However, it would require resources and organization from the actors taking such initiatives.

Kirsten Schwind from the Institute for Food and Development Policy/Food First remarked that there is growing power of national and international small-scale farmers' movements to influence governments and demand legislation, which protect farmers' rights.

### **7.9 Barriers and potentials with regard to the ITPGRFA**

Whereas the ITPGRFA was addressed later in the questionnaire, some respondents took the opportunity to consider the Treaty at this stage. Four respondents meant that leaving the responsibility for defining and implementing farmers' rights to the national governments, as set out in Article 9, constituted a barrier to the realization of these rights. One of these respondents also meant that the vague language in the Treaty with regard to intellectual property rights constituted an additional barrier.

On the positive side, four respondents highlighted the moral and legal commitment of the Governing Body to promote farmers' rights. Four others made different suggestions. On behalf of the Future Harvest Centres, Michael Halewood and Jane Toll suggested that minimum standards for farmers' rights be developed from national and regional experiences to a level of international harmonization. Niels Louwaars supported the suggestion posed in the questionnaire to develop country plans to be presented at the Governing Body, to monitor them and make them public. This suggestion is further dealt with in chapter 9. Tor Skudal from the Development Fund in Norway emphasised the importance of bringing farmers into the negotiations under the ITPGRFA, and finally S. Bala Ravi from India suggested that ways and means be found to ensure that farmers' rights in a country are respected by all actors interacting with that country.

Bell Batta Torheim from Norway writes that the active Norwegian role as a bridge builder in the negotiations pertaining to the ITPGRFA would be strengthened if Norway breaks the western trend of steadily stricter protection of intellectual property rights pertaining to PGRFA.<sup>42</sup>

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<sup>42</sup> After the questionnaire survey, a newly elected Norwegian government has decided to do that, by turning down a law proposal for the ratification of UPOV 1991.

## 7.10 Summing up barriers and options

Lack of awareness among farmers was the most frequently cited barrier, with lack of awareness among authorities closely behind. The problem is rooted in the difficulties of defining farmers' rights and the different understandings – and lack of understanding – of the concept. Particularly when it comes to private ownership and monetary benefits, there are problems, and the survey reveals that many respondents feel that such an emphasis blurs the discussion, and some perceive it directly as barriers to farmers' rights. To solve these problems, models of redistributive mechanisms for benefit sharing which are more in line with the broad lines of the farmers' rights concept are needed, as well as more information and education on farmers' rights among farmers and decision makers.

Political and economic barriers were highlighted by many respondents, emphasising that the current agricultural paradigm is contradictory to a sustainable management of PGRFA and thereby to the realization of farmers' rights in this regard. Paradigms are not easily changed, but the respondents had several suggestions on how to approach them. Representation of farmers, who are engaged in PGRFA management, in relevant decision processes is the most important, but also creating space for sustainable PGRFA management from below – with participatory plant breeding and the marketing of products resulting thereof.

Poor, weak or contradictory legislation was perceived a central barrier in many countries. Several respondents highlighted the importance of developing adequate legislation and/or mainstreaming farmers' rights in existing legislation. However, the prevalent lack of implementation capacity in many countries represents an additional barrier. Capacity building is necessary to approach this problem, and a funding structure to support such activities was highlighted as a necessary instrument for this purpose.

Several respondents felt that external pressures made it difficult for politicians to chose politics in accordance with the needs of farmers, and that also seed companies would have substantial influence over politics. The ITPGRFA could be used to counterbalance external influence, it was suggested, and seed companies should be invited to support and promote the realization of farmers' rights.

Civil society organizations are often crucial actors in the initiation of efforts towards realization of farmers' rights. However, several respondents felt that the organizations in their countries were not attentive enough to farmers' rights, or not creative or active enough. More advocacy and information work would be needed from their side. Capacity building among NGOs was suggested as a measure to approach this problem, and also for this purpose funds were needed.

Several views were expressed with regard to the role of the ITPGRFA and the Governing Body in the promotion of farmers' rights, which will be further highlighted in the next chapter. At this stage, we will emphasise the suggestion from Michael Halewood and Jane Toll, on behalf of the Future Harvest Centres, that minimum standards for farmers' rights be developed from national and regional experiences to a level of international harmonization.



## **8. Stakeholder contributions to the realization of farmers' rights**

We wished to gain insight in the potentials among the respondents of the survey to promote farmers' rights. Thus, we posed one question each to the three categories of respondents, whereby the question to state delegates was of a different character than the ones to NGO representatives and experts: As the potentials among government authorities had already been addressed in the questions on barriers, challenges and options for the realization of farmers' rights – as we anticipated they would be – we felt that it would be more interesting to ask FAO delegates about their perceptions with regard to other stakeholders. We therefore asked them which institutions and organizations they regarded as the most important stakeholders in their countries working for the realization of farmers' rights. This could provide an indication of potential allies with regard to the realization of farmers' rights, and give insights and ideas with regard to the potentials for pooling resources towards this end. The representatives of the NGOs (and one IGO) were asked about their work pertaining to the realization of farmers' rights, whereas the experts were asked about reports or publications on the issue. We have simply grouped and listed the answers below.

### **8.1 Stakeholders for the realization of farmers' rights**

We asked State delegates to the FAO which institutions and organizations they regarded as the most important stakeholders in their countries working for the realization of farmers' rights. Some respondents named institutions or organizations they identified as stakeholders. Others mentioned categories of stakeholders, such as NGOs, farmers' unions, etc.

The general feature is one of similarities and great discrepancies. All delegates mentioned specific State authorities as the most important stakeholders. Such authorities could be relevant ministries, government entities responsible for the management of PGRFA, including seed boards and registration offices, intellectual property rights offices, gene banks, national research institutes and/or national museums.

Half of the delegates listing State authorities as the most important stakeholders also listed categories of civil society organizations, such as farmers' unions and organizations, indigenous peoples organizations, environment organizations, human rights organizations and/or development organizations. These were the delegates from Zambia, Senegal, Sierra Leone, Ecuador, Germany, Sweden and Denmark. In this context, the Swedish delegate stressed that farmers' rights would not be an important issue in Sweden.

In addition to these two main categories of stakeholders, the delegate of one country – Germany – also suggested plant breeders, breeding researchers and -companies to be among the most important stakeholders working for farmers' rights, since they provide farmers with a core benefit: improved crop varieties.

## 8.2 NGO contributions to the realization of farmers' rights

In many countries NGOs are key actors in promoting farmers' rights. We therefore wished to get an overview over their ways of working, their activities. We asked NGO representatives who filled out the national part: How is your organization contributing to the realization of farmers' rights in your country? NGO representatives filling out the international part (including the representatives from the Future Harvest Centres) were asked: How is your organization contributing to the realization of farmers' rights? The questions were openly formulated, in order to capture all kinds of activities, which the respondents would report on. On this basis, a list of categories was developed, and the response sorted according to the list, as follows:

**Table 6: NGO contributions to the realization of farmers' rights**

Activities:	Participatory plant breeding & conserving	Information and networking activities	Organizing farmers for political influence	Support to establish registries on PGRFA	Support to get products to market	Advocacy at the national level	Advocacy at the international level
<b>Responding NGOs:</b>							
PELUM Zambia	X	X	X			X	
Harvest Help, Zambia	X	X	X		X	X	
USMEFAN, Nigeria		X				X	
Cenesta, Iran (just starting)		X					
GREEN Foundation, India		X				X	
Gene Campaign, India	-*	-	-	-	-	-	-
SEARICE; the Philippines	X	X	X	X	X	X	X
VECO Vietnam	-	-	-	-	-	-	-
Grupo Yanapai, Peru				X			
Christ. Farmers, Canada						X	
Food First, United States			X				X
Centro Int. Crocevia, Italy			X			X	
Norwegian Farmers Union		X				X	
Bio.-Dynamic As. Norway.		X				X	
Development Fund, Norw.	(X)**	(X)	(X)	(X)	(X)	X	X
Future Harvest Centres (IGO)	X	X	X	X			
<b>TOTAL (N= 16 – 2 = 14):</b>	<b>5</b>	<b>10</b>	<b>7</b>	<b>4</b>	<b>3</b>	<b>10</b>	<b>3</b>

\* Minus means that the respondent did not answer this question.

\*\* Cross in brackets means indirect contribution to such activities, through donor support

As our list shows, the most usual activities of the responding NGOs are information and networking activities together with advocacy at the national level – and in a few cases at the international level. It follows, quite logically that some organizations seek to organize and assist farmers in their efforts to seek political influence. Five of the organizations are – in addition to such activities – also engaged in PGRFA conservation activities and participatory plant breeding, and four are working to support farmers by establishing registries of farmers' varieties. In addition, three organizations support farmers in their efforts to get access to the market with products based on traditional varieties. One organization – the Development Fund in Norway – is a donor organization, supporting NGOs in the South in their efforts towards these ends, but also seeking to influence politicians in Norway and at the international level directly through advocacy.

The Future Harvest Centres is, as an IGO, a different kind of organisation. It is a comprehensive network of international agricultural research institutions in all parts of the world, and of which 85 percent involve farmers directly in participatory plant breeding and variety selection, in farmers' field schools, field plots and other participatory processes. Also a number of centres support the involvement of farmers and their associations in national and regional decision making processes as well as their efforts to register their knowledge. They also support culturally appropriate means of promoting access to an exchange of technologies between farmers, through support for biodiversity fairs, field visits, information sharing and informal seed systems, according to Michael Halewood and Jane Toll from IPGRI, and based on a recent survey which documents these contributions in more detail.

### **8.3 Expert contributions to the realization of farmers' rights**

Finally, we asked the experts to tell us about articles, books or reports they themselves or others had written on the issue of farmers' rights, which could be interesting for us. This question is particularly important because little has been written on the topic of farmers' rights, and The Farmers' Rights Project seeks to compile all existing literature on the topic in an own literature survey. The references listed in the responses on this topic will therefore be included in the literature survey and not here.<sup>43</sup>

Altogether 20 experts answered this question positively, six answered no, and two did not answer. We sorted the positive responses in four categories:

1. Own publications directly on the topic of farmers' rights;
2. own publications relevant for the topic of farmers' rights;
3. other publications directly on farmers' rights, and
4. other publications relevant for the topic of farmers' rights.

Ten of the respondents reported that they had written publications directly on the topic of farmers' rights. Six of these had published more

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<sup>43</sup> Please see: [www.fni.no/farmers/main.html](http://www.fni.no/farmers/main.html)

extensively (two to four published articles/reports or substantial academic works, or several conference papers or distributed discussion papers). The other four of the respondents had written one published article/report/thesis or conference paper directly on the topic of farmers' rights. Fourteen of the respondents had written on topics relevant for farmers' rights. Only four respondents listed literature from other sources, which will – together with the above indicated contributions be addressed in the literature review.

In addition to the experts, some NGOs do also produce publications relevant for farmers' rights. We did not ask about these in the questionnaire, because our primary interest was in academic works on the issue. However, a number of discussion papers, reports, declarations and other contributions exist in the NGO milieu, some of which are directly relevant for farmers' rights, and a few of which were sent to us attached to the questionnaires. We will compile the received material in the literature review.

#### **8.4 Pooling resources for the realization of farmers' rights**

This brief overview over actual or potential allies, the activities of NGOs and expert contributions indicate that resources are there for the realization of farmers' rights. Working out more systematically actual and potential networks for the realization of farmers' rights may provide ideas and models on how to pool resources towards this goal. Many of the NGOs responding to the questionnaire are doing pioneer work for the realization of farmers' rights. Analysing key features of their experiences may provide other NGOs with inspiration and ideas on how to contribute to the realization of farmers' rights. Finally, experts have published articles and reports which provide important insights for the realisation of farmers' rights, and which will be presented in the literature review for this project.

Probably there are more resources out there, which have not been covered by this survey, and compiling and presenting these more systematically and detailed would necessitate more work than we had capacity for during the stakeholder survey. However, it would probably be a promising point of departure for pooling resources towards the realization of farmers' rights.

### **9. Needed action by the Governing Body of the ITPGRFA**

As we have seen in this report, promising points of departure are there for the realization of farmers' rights, but lots remains to be done. A crucial question with regard to the ITPGRFA is therefore how the Governing Body can promote this work. Whereas the Treaty explicitly states that Governments are free to choose measures for the realization of farmers' rights as they deem appropriate (Article 9) – it also highlights the necessity of promoting farmers' rights at the national as well as international levels (Preamble). We therefore asked the respondents two sets of questions:

- The first set of questions was about what issues pertaining to farmers' rights, which the respondents meant was important to promote at the

international level. This question was posed to all state delegates, as well as to the NGO representatives and experts who answered the international parts of the questionnaires, since these were respondents with the insight in the international processes considered necessary to answer such a question.

- The second question was posed to all respondents. It was more general, asking what the respondents would suggest the Governing Body of the ITPGRFA to do to promote the realization of farmers' rights.

Both questions had a set of ready made response categories each, but they also opened for further issues or suggestions with open boxes to be filled in.

### **9.1 Proposed issues to be addressed by the Governing Body**

We asked State delegates, NGOs and experts with an international focus to rank the issues pertaining to farmers' rights, which are most important to promote at the international level. We provided a list of suggestions based on the issues addressed in the ITPGRFA as farmers' rights. Respondents were asked to indicate importance on a scale of four: 'very important', 'important', 'less important' or 'unimportant'. They could also add to the list, again suggesting level of importance.

#### *9.1.1 Methodological considerations*

When analyzing the data, we sorted them along three lines:

- the total number of marks under the different values for each item
- the distribution of these marks with regard to categories of respondents
- the distribution of the same marks with regard to continents

It turned out that 28 respondents had filled out the delegate questionnaire or the international part of the questionnaires distributed to NGOs and experts. Of these, 12 were delegates, 12 were experts and 4 were NGO representatives. All were accounted for in the total numbers, but only delegates and experts were accounted for in the analysis of the distribution of marks with regard to categories of respondents, due to the low number of NGO respondents with an international focus. In other words, there were 12 respondents each from the categories of delegates and experts respectively. Of the 12 experts, 6 came from countries in the South and in the North respectively. Of the 12 delegates, 8 came from countries in the South, whereas 4 came from countries in the North.<sup>44</sup>

Of the 28 respondents, seven came from Africa, four from Asia, three from Latin America, and 14 from Europe and North America. In other words there were 14 respondents each from the South and the North. It is not evident that the South can be merged to one group and the North to another. However, in our case, it turned out that the different respondents from the South were fairly in line with each other with regard to this question, and that such a categorization could be justified.

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<sup>44</sup> The four NGOs (including an IGO) came from the North, whereby the IGO had collected data for the questionnaire also from the South.

Since the values ‘very important’ and ‘important’ are relatively similar, likewise ‘less important’ and ‘unimportant’, we also are quite closely related, we also analysed the response with regard to these two main categories. There is quite a gap between these two categories of values, and we assumed that the distinction between the values in each category, i.e. between ‘very important’ and ‘important’ in the first category and ‘less important’ and ‘unimportant’ in the second category could have been perceived somewhat differently among the actors. Therefore we wished to control for the possibility of different perceptions by such a categorization. This control revealed that there was congruence between the response with regard to very important issues, and the response with regard to ‘very important’ and ‘important’ issues as seen together – for the three issues with the highest score. Also the issue with the fourth highest score was close in this regard.

The following table provides a summary of findings, ranking importance for each item according to the number of respondents marking them as ‘very important’ and ‘important’. Rank 1 indicates the highest number of respondents considering the issue ‘very important’. Ranks in brackets cover the combined marks for ‘very important’ and ‘important’.

**Table 7: Summary of findings ranking relevant issues according to considered importance**

Relevant issues:	Importance – in ranks – according to:				
	Total	South	North	Delegates	Experts*
A. Documentation and maintenance of farmers’ traditional knowledge pertaining to agricultural plant varieties	2 (2)	1 (3)	2 (2)	1	2
B. Farmers’ access to seeds and propagating material covering a genetic diversity according to their needs	1 (1)	2(1)	1 (1)	2	1
C. Participatory plant breeding	7 (4)	7 (7)	5 (4)	7	7
D. Farmers’ access to funds compensating for their contribution to conserving plant varieties in the fields	6 (6)	5 (2)	6 (6)	5	5
E. Farmers’ participation in monetary benefits from the sales of those commercial plant varieties, which are essentially derived from one or more farmers’ varieties	5 (7)	4 (5)	7 (7)	3	6
F. Representation of farmers in decision making bodies pertaining to plant genetic resources for food and agriculture at the national level	3 (3)	3 (4)	4 (3)	4	3
G. Farmers’ practice to save, use, exchange and/or sell seeds and propagating material from their harvests, also if the harvests stem from crops, which are protected with intellectual property rights	4 (5)	6 (6)	3 (5)	6	4

\* Since only four NGOs had replied to the international part of the questionnaire, they have not been included in the summary of values according to category of respondents. The number was too low. However, they are covered in the total number, as well as in the region-wise overview, all of them being from the North.

### *9.1.2 The top three issues to address in the Governing Body*

Three issues received the highest marks in total and more or less with regard to the analysed categories of respondents – whether from the South or the North, whether delegate or expert:

1. Farmers' access to seeds and propagating material covering a genetic diversity according to their needs
2. Documentation and maintenance of farmers' traditional knowledge pertaining to agricultural plant varieties
3. Representation of farmers in decision making bodies pertaining to plant genetic resources for food and agriculture at the national level

Farmers' access to seeds and propagating material covering a genetic diversity according to their needs is probably the most important benefit from the utilisation of PGRFA, as accounted for the Section 9.2(b) of the ITPGRFA. It is not only important for present agriculture and food security, but also a precondition for the maintenance of these resources for future generations. That is probably the reason why most respondents found this benefit to be the most important issue to address in the context of farmers' rights. Altogether 21 respondents deemed the first issue very important to promote at the international level, whereas 6 deemed it important. Only 1 respondent deemed it less important, an expert from the North. One respondent did not make any mark on this issue.

Documentation and maintenance of farmers' traditional knowledge is directly addressed in Section 9.2(a) of the ITPGRFA, and an important means for the maintenance of PGRFA – and for farmers' use of these vital resources. It was therefore the second most important issue for the respondents. It was deemed very important by 19 respondents, whereas 6 respondents marked it as important. The 3 last respondents found it to be less important. When distinguishing between respondents from the South and the North, it turned out that the Southern respondents deemed it more important than the Northern ones, and for them it was actually the number one issue. It turned out that it was also regarded as the number one issue by the delegates.

Farmers' participation in decision making bodies, as addressed in Section 9.2(c) of the ITPGRFA, is deemed important by many respondents, because it provides an important corrective to policy development, and could help design policies which are more conducive to farmers' practice related to the maintenance of PGRFA. It was rated as the third most important issue by the respondents. It was deemed very important by 15 respondents, whereas 9 respondents found it to be important. There was a quite equal distribution with regard to the North and the South as well as categories of respondents. Two Northern delegates found it less important, and one Southern delegate said it was 'unimportant'.

### *9.1.3 A fourth important issue*

A fourth issue, which many respondents deem important to address at the international level is farmers' practice to save, use, exchange and/or sell seeds and propagating material from their harvests, also if the harvests

stem from crops protected with intellectual property rights. This issue is also addressed in quite neutral terms in Section 9.3 of the ITPGRFA. Among the Northern respondents, it was the 3<sup>rd</sup> most important issue to address, whereas the Southern respondents deemed it the 6<sup>th</sup> most important issue.

Two Southern and two Northern respondents deemed it less important, and two Southern and two Northern respondents deemed it even unimportant. Three of these respondents were delegates, whereas one respondent, who marked 'less important', was an expert. The Southern respondents were both from Africa, where we have received several feedbacks that this question is not perceived as an issue in those countries where legislation on intellectual property rights has not yet been introduced.

On the other hand, seven experts coined this issue very important and three experts important. All four NGOs deemed it very important. Also one delegate marked 'very important', whereas seven marked 'important'. All in all 22 respondents deemed the issue 'important' or 'very important', whereas four respondents answered 'less important' or 'unimportant'. As we can see, the issue is therefore considered quite important, close to as important as the top three issues, and far more important than the rest of the issues.

#### *9.1.4 A controversial issue*

Monetary benefit sharing is one way of realizing Section 9.2(b) of the ITPGRFA on benefit sharing in the context of farmers' rights. There are at least two ways to realize monetary benefit sharing: One would be to seek to make farmers participate in the monetary benefits derived from the sales of commercial plant varieties, which are derived from one or more farmers' varieties; The other is to provide funds on a more general basis to farmers' who participate in the maintenance of PGRFA in the field. The first of these two options is addressed here, whereas the second is addressed under section 9.1.5 below.

It turned out that the respondents had highly different opinions on the importance of farmers' participation in monetary benefits from the sales of commercial plant varieties, which are derived from one or more farmers' varieties its importance. All in all, nine respondents deemed farmers' participation in monetary benefits from the sales of commercial plant varieties derived from one or more farmers' varieties as very important and nine deemed it important. On the other hand, six respondents found it less important and five said it was even unimportant. In other words there were 18 respondents on the positive side and 11 respondents on the more negative side.

It was clear that Southern respondents found this issue more important than Northern respondents. In fact, it was the fourth most important issue for them, whereby six Southern respondents found it very important, and another six found it important. It was also the issue, which was least important for the Northern respondents, in the form of scores for 'less important' and 'unimportant' (altogether nine scores, where by Southern respondents stood for two scores). Delegates make up the largest proportion of the proponents for this issue, whereas experts make up the largest proportion of those who deem the issue less or not important.



The reasons for the discrepancies can be found in this survey, where several respondents expressed that the ownership approach to farmers' rights and the focus on monetary benefits have blurred the discussion and posed barriers to the realization of farmers' rights (see sub-chapters 7.2 and 7.10).

When balancing out these discrepancies, the issue turns out to be regarded as the fifth most important issue, in terms of respondents marking 'very important', but the least important issue if counting all respondents marking 'very important' and 'important' together.

#### *9.1.5 Other issues as formulated in the questionnaire*

Farmers' access to funds compensating for their contribution to conserving plant varieties in the fields is another form of monetary benefit sharing. It is addressed in Articles 13 and 18 of the ITPGRFA. Among the respondents, it is ranked as the sixth most important issue. Nevertheless, Southern respondents regard it as more important than Northern respondents. On the combined scale ('very important' and 'important' together), it is actually the second most important issue for the respondents from the South. However, only five respondents from the South considered it 'very important', and nine 'important' (three northerners considered it 'very important' and five 'important'). As for categories of respondents, delegates were the most important proponents of the issue (two marked 'very important' and 11 marked 'important').

Participatory plant breeding was another listed issue. It is probably the most widespread way to share technologies between farmers and plant breeders. As such, it can be regarded as an important means for technological benefit sharing, i.e. one of the possible forms of benefits sharing as addressed in Section 9.2(b) of the ITPGRFA. Through participatory plant breeding farmers are enabled to breed seeds according to their needs, using the genetic diversity in traditional varieties as points of departure, whereby commercial varieties are also used as additional input in many areas. As such, this issue has parallels to the top-issue presented in section 9.1.1 above, and represents one input to the realization of farmers' access to seeds according to their needs and priorities. In addition, a side effect of participatory plant breeding is often that farmers improve their ability to organise and formulate their needs (empowerment), which is an important precondition for participation in decision making. Therefore, some respondents may have felt that these issues are taken well care of in the first and the third issue addressed in section 9.1.1 above on access to PGRFA and participation in decision making. Nevertheless, five respondents marked this issue as very important, whereas 18 deemed it important. Four found it to be less important and one to be unimportant. Surprisingly, Northerners found the issue to be more important than Southerners, but delegates and experts found it almost equally important. If counting all the marks for 'very important' and 'important', it jumps up to the fourth rank. When measured according to the respondents marking this as a very important issue, however, it is the one with the least scores.

#### *9.1.6 Further suggestions by the respondents*

We received 23 additional suggestions from 11 respondents. These suggestions can be divided in three categories: (1) other ways to formulate

the issues listed in the questionnaire, as described above; (2) more detailed suggestions on how to achieve the issues addressed above; and (3) new suggestions.

Other ways to formulate the issues addressed above may shed light to important aspects of these issues. The following suggestions were made:

- Eshetayehu Tefera and Niels Louwaars emphasised the importance of farmers' participation in non-monetary benefits. Above, several non-monetary benefits were listed, but not declared as non-monetary benefits in the questionnaire. This has been sought compensated in this report.
- Eshetayehu Tefera highlights that benefits should particularly be channelled to support utmost conservation practices and domestic exchange. This is a more direct way to address the issue of farmers' access to funds compensating for their contribution to conserving plant varieties in the field.
- Bert Visser suggests that an issue to address at the international level is creating capacity to carry out farmer breeding. Participatory plant breeding is the most common way to create such capacity. Visser's point is, however, that farmers' capacity for plant breeding is the ultimate goal and not participatory plant breeding *per se*, which is an important rectification.
- Tewolde Berhan Gebre Egziabher and Niels Louwaars make two suggestions with regard to farmers' practice to save, use, exchange and sell farm saved seeds, also when it is protected with intellectual property rights: Egziabher states that governments must refrain from passing laws that force farmers not to plant what they want, whereas Louwaars addresses farmers' practice to save and exchange seeds, but not to sell them. The two suggestions reflect the very different situation in which countries are in this respect. In Ethiopia there is still no legislation with regard to these issues, and therefore Egziabher emphasises that governments must refrain from passing laws, which affect farmers' rights negatively. In the Netherlands, the laws are already in place, and the question is how they realistically can be modified in order to meet the requirements for farmers' rights. It is important to be aware of these different ramifications when addressing this issue, which is presented in more general terms above.
- Antonio Onorati, President of Centro Internazionale Crocevia, raises the issue of farmers' collective rights to PGRFA. This is also contained above, but more indirectly, since most of the issues addressed above have to do with collective rights, i.e. rights that are to be realized for those groups of farmers which participate in the management of PGRFA – and not with individual ownership rights (please refer to the discussion in sub-chapter 7.2 and 7.10).

Three respondents made more detailed suggestions, with regard to the issues addressed above:

- On behalf of Germany, Wilbert Himmighofen focuses on the strengthening of agricultural research, breeding and seed sectors at national levels, in particular in developing countries as a very important issue.

It may be regarded as one of several possibilities to achieve farmers access to PGRFA according to their needs and priorities, as addressed in the top 1 issue presented above.

- Anitha Ramanna suggests that mechanisms be established to encourage sharing of resources between farmers, NGOs, and the public sector. This is an issue, which is related to the top 1 issue above as well as to participatory plant breeding. It highlights the possibility of creating particular mechanisms for the purpose, as a point of departure for operationalizing the tasks.
- S. Bala Ravi suggests that a system should be established to reward recognitions to countries/communities/ individual farmers for being role models for conservation and making available genetic resources. This would be a way to approach farmers' rights to conservation and maintenance of PGRFA, and a practical way to highlight success stories.

Six respondents addressed issues, which are more new in this context:

- Three respondents were concerned about GMOs and biosafety. Te-wolde Berhan Gebre Egziabher and Tor Skudal stated that genetically modified crops should be prevented from contaminating farmers' varieties in the fields. In addition, Skudal highlighted the right to be informed on the safety of agricultural products being imported into the country, and made clear that Genetic Use Restriction Technology should be banned, since it makes it impossible for farmers to manage their plant material according to their customary practices. The Zambian delegate, Albert Chalabesa, demanded guidelines on, and documentation of, biosafety mechanisms with regard to environment and health. Emma Sitambuli from Harvest Help (Zambia) stressed the need to lobby and campaign against forcing poor countries to accept GM food relief and to provide support to countries to develop bio-safety measures and policies.
- S. Bala Ravi suggested that there should be a third party to intervene if commercial actors seek intellectual property rights over farmers' varieties or their components in the form they receive it for plant breeding. This would be an institutional arrangement to account for in connection with the legislation on intellectual property rights.
- Tor Skudal from the Development Fund raised the issue of farmers' rights to market agricultural products. He highlighted the need for farmers to sell their products at reasonable and equitable prices, and to be involved in the determination of such prices. In addition, the Development Fund demanded that farmers' should have rights and access to land and that these rights must reflect local realities, culture and tradition.
- Sergio Pena Neira suggests that studies be encouraged on the topic of international law related to the rights and obligations of states *vis a vis* other states and farmers of their countries, to clarify more detailed what rights and duties there are. He also suggests that graduate and postgraduate studies be introduced on this and other issues in developing countries.

- Finally, Anitha Ramanna suggests international coordination between countries on the operationalization of farmers rights, which is further addressed in the next sub-chapter.

## 9.2 Proposed action to be undertaken by the Governing Body

Finally, we asked all respondents what they would suggest the Governing Body to do to promote the realization of farmers' rights, i.e. how it could work towards this end. Six alternatives were included, and space to add others. In addition, we included the option that the Governing Body should not undertake any action with regard to farmers' rights. The options looked as follows:

- A. Organise the sharing of experiences in the realization of farmers' rights between the Parties
- B. Ensure regular reports from the countries on the realization of farmers' rights, and monitor progress
- C. Mandate the secretariat to provide guidance to the Parties on the realization of farmers' rights
- D. Raise additional funds for the Governing Body to promote the realization of farmers' rights
- E. Encourage each Party to the ITPGRFA to develop a plan for the realization of farmers' rights in their country
- F. Monitor and support the implementation of such country plans
- G. Other suggestions? Please specify (use an attachment if needed)
- H. The Governing Body should do nothing, because (please specify reasons)

### 9.2.1 Methodological considerations

It was possible to tick more than one alternative, including own suggestions, but not to rank them. After this question, we asked whether the respondents had any other comments with regard to farmers' rights or the questionnaires. Several of the respondents used this opportunity to formulate options to promote farmers' rights for the Governing Body. We have therefore included these suggestions in the present overview.

All 56 respondents answered this question.<sup>45</sup> In the analysis of the data, we compared the total number of marks for each option with the total number of marks per category of respondents (delegates, NGOs, experts) and region. This way, it was possible to reveal whether the options had broad support or whether there were discrepancies with regard to categories of respondents or regions.

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<sup>45</sup> The total number of questionnaires is 60. However, two countries sent two questionnaires each from delegates. In the context of this last question these responses are worked together as the delegate responses from these two countries. Furthermore, one NGO answered for three countries. These questionnaires are also counted as one response. Subsequently, 56 responses are counted under this item of the questionnaire.

We received a number of new and interesting suggestions. The suggestions from the respondents were grouped according to joint themes and will be presented in groups below. The total number of respondents with suggestions was substantial lower than the total number of marks for any of the ready formulated options. This indicates that the ready formulated options were found to cover most of the ideas on this issue. Nevertheless, the options suggested by the respondents are highly interesting and should be taken into consideration.

### *9.2.2 The Governing Body should take action with regard to farmers' rights*

The first and probably most important finding is that absolutely all respondents meant that the Governing Body should undertake some sort of action with regard to the realization of farmers' rights. All respondents ticked at least one option for the Governing Body to act, and most of them marked several or many options. No one meant that the Governing Body should do nothing in this regard.

Niels Louwaars remarked that some Parties to the ITPGRFA could think that the Governing Body should do nothing, because farmers' rights are explicitly left to the governments. Also Martin Girsberger is of the view that it – for political reasons – could be difficult to find consensus on any more 'binding' tasks in the Governing Body on farmers' rights in the light of the solution found in Article 9.2 of the ITPGRFA.

Nevertheless, it seems that the approach addressed in The Farmers' Rights Project, that the members are not to commit themselves to particular 'binding' issues, but rather to find ways and means to promote the realization in each country according to their needs and priorities – and in respect for this freedom – has found broad support among the respondents. Only one respondent, the FAO delegate from Germany, expressed reservations with regard to the role of the Governing Body. He remarked that the responsibility for realizing farmers' rights, as they relate to PGRFA, rests with national governments, and that any activity at the international level should be restricted to a minimum. Nevertheless, he supported option A above.

The delegates from Africa represent the other extreme of this spectrum, with Zambia, Congo and Senegal in the lead. Whereas the Zambian and Congolese delegates proposed several options in addition to their support for the listed ones, the delegate from Senegal, Cheikh Alassane Fall used the opportunity to salute the progress of these bridge-building efforts towards common perceptions for required action, in the respect of each country's freedom to choose means according to their needs and priorities. He emphasised that this is about making the ITPGRFA functional – in a most practical and concrete way.

### *9.2.3 The top three propositions for action of the Governing Body*

Three options won the highest scores, with 50, 48 and 46 respondents respectively. The first was option A, to *organise the sharing of experiences in the realization of farmers' rights between the Parties*. The second was option E, to *encourage each Party to the ITPGRFA to develop a plan for the realization of farmers' rights in their country*. The third was option F,

*to monitor and support the implementation of such country plans.* Since the scores were almost similar, they can be regarded as the options with the highest support among the respondents, which indicates that they may be options with the highest probability of acceptance in the Governing Body.

Option A on the sharing of experience had close to top score along almost all lines of analysis. It was the options with the highest score among delegates and experts, and among the respondents from Latin-America. In addition, it was one of the top two options among the Asian and European respondents – which received an equal number of marks. It was the second most popular option among the respondents from Africa, whereas it was one of four options with an equal top number of marks among the respondents from North America. Only among the NGOs, this option received lesser attention. Their response ranks it as the number four issue among the NGO respondents.

Option E on the encouragement of parties to develop plans for the realization of farmers' rights received only two marks less than option A. Nevertheless, the marks were somewhat differently distributed. All delegates, except for two from the North, support this option. Among the experts it received 22 of 28 evenly distributed marks,<sup>46</sup> making it the second priority for this category – together with option F (equal number of marks). Among the NGOs, option E is the number one priority, with full score. From a regional perspective, this is the most important option to Africa, also with full score. It is one of two issues for the European respondents with equal top score, and among the North American respondents it received full score. Six of nine respondents from Asia, and four of six respondents from Latin America marked this as an option for the Governing Body.

Option F on the monitoring of, and support to such country plans received two less marks than option E, but followed the same distribution. Niels Louwaars remarked that a plan for the realization of farmers' rights would necessarily include the national interpretation of the content of farmers' rights. He emphasised that a plan would provide the opportunity to monitor implementation of farmers' rights, and it would therefore be important that it be as transparent as possible.

#### *9.2.4 Other options as formulated in the questionnaire*

Two issues received the fourth highest score together (40 marks). One was option B *to ensure regular reports from the countries on the realization of farmers' rights, and monitor progress.* And the other was option C *to mandate the secretariat to provide guidance to the Parties on the realization of farmers' rights.*

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<sup>46</sup> One expert remarked that it would not be fruitful to follow up the realization of farmers' rights on a country by country basis, due to the international character of the issue. This view was opposed by other experts. Please refer to the discussion of this issue in section 9.2.4.

Only half of the delegates and more or less two thirds of the respondents from each of the different regions supported option B. However, 14 of 16 NGOs and 20 of 28 experts marked this option. Probably regular reports on farmers' rights is difficult to propose in the Governing body because governments are already overburdened with regular reports for so many other issues (which may explain the response by the delegates), and because a reporting system is probably being proposed to monitor the implementation of the ITPGRFA. Probably the best option is therefore to seek to include relevant aspects for the reporting pertaining to farmers' rights in that system.

Only half of the European respondents supported option C, and only 18 of 28 experts. A reason why this option received a lower score may have to do with the understanding of the term 'guidance'. Guidance can be perceived as interference in a matter, which is explicitly left to the national level. Also guidance can be understood as assistance and therefore felt covered by option F. Probably guidance in this last sense could be subsumed in option F.

Finally, of the given alternatives, *raising additional funds for the Governing Body to promote the realization of farmers' rights*, option D, was indicated by 36 respondents. Only six of 16 European respondents supported this option, and seven of 12 delegates. However, it was an important option for Asian respondents, where 13 of 16 respondents answered positively. Option D received around two thirds of the possible marks in the other categories/regions. There can be different explanations for this slightly lower score, for example, that a decision on a fund for the realization of farmers' rights was adopted at the FAO way back in 1991 (Resolution 3/91 of the FAO Conferences), which has not materialized until yet. This might indicate that it would be difficult to make such a decision a reality also in the near future. However, some respondents stress that the ITPGRFA opens a new window of opportunities to revive the old decision and finally develop it into a reality. There is work underway to operationalize the funding structure envisaged in the ITPGRFA, and in this context new possibilities emerge to realize the old idea. However, option D indicates that additional funds may be required. Perhaps some respondents felt that we first need to get the ITPGRFA funding structure in place before additional funds can be put on the agenda.

#### *9.2.5 Suggestions from the respondents*

Twenty-one respondents had additional suggestions as to what the Governing Body should do to promote the realization of farmers' rights. The suggestions addressed ways and means for the Governing Body to assist the countries in their realization of farmers' rights, to monitor the implementation, to enhancing the negotiation capacity of delegations from the South in general, and with regard to the participation of farmers in particular.

***Assisting the countries in their realization of farmers' rights:*** S. Bala Ravi (India) emphasised that the Governing Body should assist countries in building capacity for the realization of farmers' rights in terms of legal frameworks, institutional structures and awareness raising. Several other respondents addressed different aspects of this item:

- Sahr. N. Fomba (Sierra Leone) and Modeste Mamingi Mfundu (D. R. Congo) both stressed the need for assistance to develop legislation on the management of PGRFA in general and on the realization of farmers' rights in particular.
- Mfundu furthermore addressed the need for institutional support, in particular for the establishment of focal points in developing countries for the management of PGRFA – and for developing national networks for such management. Also Salvator Ndabirorere highlights this point when he suggests that the Governing Body assists countries in developing their coordination and surveillance structure for the achievement of farmers' rights, where all parties involved are represented, namely: farmers, local NGOs, the civil society, research institutions, and the State representatives.
- In this context, Nguyen Van Dinh and Nguyen Thi Kim Oanh (Vietnam) explain the need for extension bodies and programs to develop and expand models for the realization of farmers' rights at the local level.
- Alber Chalabesa (Zambia) also highlights the need for support for in-country advocacy pertaining to farmers' rights.

***Monitoring the realization of farmers' rights and informing about it:***

S. Bala Ravi (India) highlights the need for popularizing the contents of farmers' rights and promoting their realization across countries. First and foremost, there is a need to identify models of legal frameworks and practices, he states, which advance farmers' rights, and to disseminate these. Albert Chalabesa (Zambia) and Eshetayehu Tefera (Ethiopia) both add that it is necessary to show how farmers' rights will benefit farmers and the management of genetic resources. Nguyen Van Dinh and Nguyen Thi Kim Oanh (Vietnam) address the need to provide information about farmers' rights in public media. Chalabesa also states that there is a need to establish yearly updates on the state of farmers' rights in the countries where realization is taking place, for example in the form of a yearly bulletin. To support the monitoring of farmers' rights realization, Devendra Gauchan (Nepal), states that there is a need to conduct case studies on farmers' rights in developing countries, which necessitates the allocation of resources for such purposes. Case studies could help identify models of legal framework and practices as addressed by Bala Ravi above, as well as drawing lessons of relevance to other countries with regard to the realization of farmers' rights.

***Enhancing the negotiation capacity of delegations from the South to the Governing Body:***

Maryam Rahmanian from Cenesta (Iran) stressed the need for broader representations in the meetings of the Governing Body than is often the case from developing countries. Often the delegation is only one person, and it is important to expand this representation for several reasons: (1) by exposing more government officials to these issues they will be more sensitized about their importance; (2) the issue of farmers' rights is related to so many different departments and ministries that it will not really work unless all are involved; (3) when attending these meetings, the delegations should be encouraged to attend side events, which are sometimes more interesting than the main meeting; (4) the delegates also need to hold or participate in meetings with other



stakeholders, such as civil society groups from other countries, which are further ahead on the path of securing farmers' rights.

Another approach to the issue of institutional capacity – which is not necessarily contradicting with Rahmanian's above – is the one addressed by Orlando C. V. Velásquez where he stresses the need for one lead agency in the implementation of farmers' rights. He notes that bureaucracy is sometimes a country's main obstacle to implementing a system of any kind. Therefore, it is indispensable that the government not involve more than one governmental institution in the execution of farmers' rights, which is coordinated with the Secretariat of the ITPGRFA. This way, the Secretariat can monitor the activities better. Moreover, any monitoring committee should have representation from involved peasant communities.

***How to involve farmers and other stakeholders at the international level***

A number of respondents were concerned about how farmers and other stakeholders could be involved in the processes towards the realization of farmers' rights at the national as well as international levels.

As a representative of a group working with farmers, Mariah Mayer de Scurrah from Grupo Yanapai (Peru) complains that new laws concerning PGRFA are almost never possible to comply with, and that they are developed by people who lack contact with farmers. For example, Grupo Yanapai has been instructed – when collecting seeds for conservation – not to talk with farmers because their knowledge is protected. That is unworkable, she claims. Scurrah further states that the idea of sharing profit is good, but impossible to put into practice. Rather one should start to listen to the peasants and find out what they think and what they want. The main problem is that farmers still do not have voice in many countries in the 21<sup>st</sup> century. She emphasises that the first thing that needs to happen in any country that is to realize farmers' rights, is that the stakeholders there need to agree on exactly what farmers' rights means. Only when farmers are given a voice in political and legislative processes, is there a chance that the laws and agreements pertaining to their practice will make more sense, she concludes.

Orlando C. V. Velásquez (Peru) states that farming communities must be represented in any decisions affecting them. Elenita C. Dano (Philippines) believes that farmers themselves, particularly small scale farmers, who are involved in the conservation and development of PGRFA, should be represented, and directly participate, in the discussions of the Governing Body. Thereby it is important to distinguish between NGOs, which are not directly working with farmers and organization which are. The FAO should allot adequate resources for the direct participation of farmers in the ITPGRFA discussions, she states. Anitha Ramanna (India) supports this view, and states that one should not assume that the voice of NGOs is always correct, although they are a very important source for understanding and implementing farmers' rights. It should also not be assumed that firms have no role to play. Only if we find a common ground between actors – and sharing of resources is important to all concerned – can there be real progress, she holds.

Maryam Rahmanian from Cenesta (Iran) suggests that the Secretariat of the ITPGRFA should have direct relations with civil society and farmers

in each country and get advice from them on how to implement farmers' rights. Such advice could then be fed to the governments with the added legitimacy of the Secretariat. Also, if there should be any regular reporting on the progress of the realization of farmers' rights, it would be good if a mechanism was developed at the international level, which ensured the participation of stakeholders in this process. Alternatively, there should be a system for shadow reports from these actors, she suggests.

Pamela G. Fernandez (Philippines) has the most radical suggestion in this respect: She proposes that the Governing Body deals directly with the non-formal sector, with the farmers in each country, addressing their constraints and supporting their initiatives directly. Since the Governing Body is made up by state representatives, this proposition is probably not very realistic, and was probably rather meant to be an expression of a desired structure. Arigbede from the Union of Small and Medium Scale Farmers of Nigeria follows some of the same argumentation, when he suggests that the Governing Body supports and strengthens farmers' institutions, especially small/medium scale ones, in the enhancement of their capacity to lead the struggle for their own rights, recognising that farmers that struggle for their rights are not likely to be regarded as 'friendly' by governments – and appropriately supporting such *bona fide* institutions.

***Suggestions pertaining to the international level:*** Bala Ravi (India) states that in consideration of the moral mandate that the Governing Body has for upholding and promoting farmers' rights, it should abstain from taking any decision against the interest of farmers' rights and do everything possible to promote farmers' right to the fullest extent. Furthermore, he highlights the need for enabling the Governing Body to assist countries which have no adequate legislation to respect farmers' rights, to establish national policies and legal framework as available in other countries.

Anitha Ramanna (India) supports the view that the interests of farmers can only be understood with their real inclusion in political processes as well as the view expressed by Bala Ravi above. She states that there is great variation from country to country whether and how farmers are included in such processes. Therefore, Ramanna stresses the need for an international body, such as the Governing Body, to outweigh these differences, keeping foremost in mind the interest of farmers.

Under the current consensus in the FAO pertaining to the contents of farmers' rights under the ITPGRFA, and the liberty given to each contracting party to realize farmers' rights according to their needs and priorities, it is difficult to see how the Governing Body can intervene in the policies of specific countries. Pena-Neira (Chile) holds that every country that signs and ratifies the ITPGRFA is under an international obligation to implement this international treaty at the national level. He holds that the countries are to comply with their obligations and that they can seek to protect their rights at the international level. As such there is a possibility to address issues pertaining to the implementation of farmers' rights at the international level, as emphasised by Bala Ravi and Ramanna. This is probably as far as it is possible to reach with regard to the problem addressed by Ramanna under the current formulations in the International Treaty.

Jan Engels (Italy) suggests that the Governing Body establishes a mechanism (i.e. by putting a levy on seeds) that would generate funds for the creation and maintenance of genetic diversity by farmers and farming communities through explicitly designed and implemented projects that will be OKed by the GB.

At a more general level, SEARICE (Philippines) highlights that the first step now is to get countries to ratify the ITPGRFA. The Governing Body should exercise more pressure towards this end, she suggests. Kirsten Schwindt from Food First (USA) wishes that the Governing Body could introduce trade sanctions for non-compliance.

### **9.3 Preliminary conclusions**

In this chapter, we have seen that the respondents are quite unison in their analysis of what the Governing Body should primarily do to promote the realization of farmers' rights and of the issues.

First and foremost, it is important to note that all respondents suggest that the Governing Body should take action to promote the realization of farmers' rights. The absolute minimum version is that the Governing Body organises the sharing of experiences in the realization of farmers' rights between the Parties. Based on the response to the questionnaire, this suggestion is likely to have the best prospects for being accepted in the Governing Body.

In addition most respondents found that the Governing Body should encourage parties to develop national plans for the realization of farmers' rights, and that it should monitor and support the implementation of such plans.

A range of further suggestions were made by the respondents such as the highlighting of models as positive examples of implementation, legislative and institutional assistance to countries in their efforts to realize farmers' rights, public information and assistance in communicating the importance of farmers' rights, efforts to ensure the representation of farmers in the Governing Body and further more. Many of these suggestions can be seen as practical points of departure to operationalize the broader proposals above, and working them out in more detail would probably be fruitful.

*Farmers' rights* is a wide concept without any stringent definition. Whereas the Parties are free to define farmers' rights according to their needs and priorities, it is important to be aware of the generally most pressing issues in this regard – in order to consider how these could be addressed at the international level.

The most important issue to address at the international level is the question of how to secure farmers' access to seeds and propagating material covering a genetic diversity according to their needs. This is crucial to current and future agriculture and thereby to the current and future livelihoods of farmers. It is also a vital means for food security. To address this issue adequately, it is necessary to take the different needs and framework conditions in the various countries into account.

Along with this priority, a central issue to promote at the international level is the documentation and maintenance of farmers' traditional knowledge pertaining to agricultural varieties. Whereby the most important issue is to secure farmers' access to seeds and propagating material covering a genetic diversity according to their needs, such access would be of considerably less value without the knowledge attached to these resources. Therefore the two issues can be seen as two sides of the same coin.

The third issue, which is considered important among the respondents, is the representation of farmers in decision making bodies pertaining to PGRFA at the national level. Many respondents express that the reason why there is so weak or even lacking legislation and policies on these issues, is that farmers are not represented in relevant decision making bodies.

Farmers practice to save, use, develop, exchange and sell seeds and propagation material, also when protected with intellectual property rights, received high scores with regard to importance among the respondents. It is closely related to the first issue on access to propagating material covering a genetic diversity according to their needs, since a restriction of farmers practice in this regard would affect the access to propagating material. Therefore this is a question which needs attention at the international level. However, it is the issue that caused the hottest controversies in the negotiations under the International Undertaking on Plant Genetic Resources as well as in the negotiations leading to the ITPGFA, whereby the negotiations could not bring any substantial solutions. Raising the question in the context of farmers' rights – and with reference to the provisions in Article 9 of the ITPGRFA – would necessitate a genuinely new and constructive approach, in respect of the countries freedom to choose means according to their needs and priorities.

The most important issue which was raised by the respondents in addition to the listed ones, was farmers' rights pertaining to biosafety and genetically modified organisms (GMOs). This issue is pressing in a range of countries, and will probably receive more attention in the years to come. Several respondents hold that farmers must have the right to choose whether they will grow GMOs or not, and that it is difficult to uphold this right if they are not informed about the GMO-content in the seeds they buy, or if their harvests are infested from neighbouring fields. Also food aid containing GMOs is perceived a danger to this right, and donors are requested to respect government decisions not to introduce GMOs in a country.

## **10. Concluding remarks**

As outlined in the preliminary conclusions above, this survey indicates a potential path for the Governing Body to promote the realization of farmers' rights in respect of the countries freedom to choose ways and means according to their needs and priorities. The path has broad support among the respondents from all parts of the world, and across different categories of stakeholders, and it could therefore have good prospects of being endorsed by the Parties to the ITPGRFA. These prospects will be further

investigated in another part of *The Farmers' Rights Project*, on the capacity of the Governing Body.

The survey has further brought an overview over the state of the realization of farmers' rights, which shows that, despite the huge challenges ahead, efforts are already underway with regard to all issues addressed as farmers' rights in the ITPGRFA. This indicates that there is already a scope for learning and for deriving models and success stories. Documentation and analyses are pivotal means to uncover this potential for the realization of farmers' rights.

There are many and comprehensive barriers to the realization of farmers' rights. This survey highlights the most important ones, as perceived by the respondents, and pinpoints at the same time options to overcome these barriers.

One of the barriers is the diffuse understanding of the concept of farmers' rights. This survey has sought to compile different interpretations and develop a common ground for the understanding and communication of farmers' rights – a smallest common denominator.

There are already many people and institutions working for the realization of farmers' rights around in the world. This survey has identified some typical networks as seen from the side of the authorities, as well as NGOs and experts engaged in the issue. More work is needed to uncover the resources, which are there for the realization of farmers' rights. This survey represents a beginning, and indicates the potentials of pooling resources towards the realization of farmers' rights.

The findings from this survey will be further deepened in the case studies of *The Farmers' Rights Project* and in the capacity analysis of the Governing Body. On this basis, and with the findings from the ongoing literature review, we will derive conclusions in the final report from the project.

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## ATTACHMENT 1

### THE PROVISIONS PERTAINING TO FARMERS' RIGHTS IN THE *INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE*

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#### **From the *Preamble***

*The Contracting Parties,*

(...) *Affirming* that the past, present and future contributions of farmers in all regions of the world, particularly those in centres of origin and diversity, in conserving, improving and making available these resources, is the basis of Farmers' Rights.

*Affirming also* that the rights recognised in this Treaty 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 realisation of Farmers' Rights, as well as the promotion of Farmers' Rights at national and international levels.

#### **Article 9 – *Farmers' Rights***

9.1 The Contracting Parties recognise 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 realising 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 the sharing of benefits arising from the utilisation 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 seeds/propagating material, subject to national law as appropriate.

#### **From Article 13 – *Benefit Sharing in the Multilateral System***

13.3 The Contracting Parties agree that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly and indirectly, to farmers in all countries, especially in developing countries, and countries with economies in transition, who conserve and sustainably utilise plant genetic resources for food and agriculture.

#### **From Article 18 – *Financial Resources***

18.5 The Contracting Parties agree that priority will be given to the implementation of agreed plans and programmes for farmers in developing countries, especially in the least developed countries, and in countries with economies in transition, who conserve and sustainably utilise plant genetic resources for food and agriculture.



**Attachment 2**  
Lysaker /Norway, 25 April 2005

## **SURVEY PERTAINING TO FARMERS' RIGHTS**

*With this letter, which is sent to one representative from each member state of the FAO-Commission on Genetic Resources for Food and Agriculture (CGRFA), we ask you to kindly participate in a survey on farmers' rights pertaining to plant genetic resources for food and agriculture. The results of the survey will be compiled in a report which will be presented in connection with the first meeting of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture. The purpose is to provide an empirical basis for constructive proposals to the Governing Body on the promotion of farmers' rights under the Treaty. We hope you will support us in this effort, and ask you to kindly fill out the attached questionnaire and send it back to us.*

The Treaty explicitly states that the responsibility for the implementation of farmers' rights, as they relate to the management of plant genetic resources for food and agriculture, rests with the governments. The governments are free to choose the measures they deem appropriate for this purpose. The preamble highlights the necessity of promoting farmers' rights at the national as well as international levels. There is as yet no common understanding of how this can be done. Such an understanding is of great importance for making progress in the realization of farmers' rights. Therefore, this initiative – *The Farmers' Rights Project* – is aimed at facilitating the development of such an understanding, and to developing the basis for proposals to the Governing Body on concrete measures to be taken. The intention is to move ahead from earlier controversies, and – based on the consensus formulations in the Treaty – build bridges to a joint perception of needed action, in respect of the countries' freedom to choose measures according to their needs and priorities.

The Farmers Rights Project is carried out by *The Fridtjof Nansen Institute* of Norway, with support from the Norwegian *Ministry of Agriculture and Food* and the Norwegian *Ministry of Foreign Affairs*. Different questionnaires are sent to the three categories of stakeholders: state officials, representatives of non-governmental organizations, and experts. We will follow up with telephone interviews among some of the respondents. There will also be case studies in a few selected countries, two of which will be conducted with support from the German *Gesellschaft für Technische Zusammenarbeit (GTZ)*, commissioned by the German *Federal Ministry of Economic Cooperation and Development (BMZ)*.

We ask you to kindly fill out the attached questionnaire and send it back to us as soon as possible, and latest **by 10 May 2005**, to one of the following addresses:

<b>E-mail:</b>	<a href="mailto:farmers.rights.project@fni.no">farmers.rights.project@fni.no</a>
<b>Post:</b>	The Fridtjof Nansen Institute, The Farmers' Rights Project, P.O. Box 326, N-1326 Lysaker, Norway
<b>Fax:</b>	The Fridtjof Nansen Institute, The Farmers' Rights Project: (+ 47) 67 11 19 10

We are most grateful for your help in this matter, and hope that you will also gain from our project in terms of improved promotion of farmers' rights under the Treaty. You can follow the developments in the project at <http://www.fni.no/farmers/main.html>, where we will also post the findings. If you have any questions regarding the questionnaire or the project, please contact the undersigned at one of the above addresses or at phone number (+47) 67 11 19 00.

Yours sincerely,  
Regine Andersen (sign.)  
Research Fellow  
The Fridtjof Nansen Institute

## QUESTIONNAIRE PERTAINING TO FARMERS' RIGHTS

Name of country:	
Your name:	
Your institution:	
Your position:	

1. General questions on the **structure of the agricultural system** in your country of relevance for the realization of farmers' rights under the International Treaty on Plant Genetic Resources for Food and Agriculture.

Please answer these questions as far as possible according to your knowledge:	Approximately (please make one mark per question)					I do not know
	0 – 20 %	20 – 40 %	40 – 60 %	60 – 80 %	80 – 100%	
A. About how large a share of the population depends on farming as a main source of income/livelihood in your country?						
B. About how large a share of the farmers depend on informal traditional varieties as their main source of seeds and propagating material?						
C. About how large a share of the farmers use modern commercial varieties as their main source of seeds and propagating material?						
D. About how large is the average market share of your <i>public</i> plant breeding institutions (if any) in the total sales of seeds and propagating material?						
E. About how large is the average market share of your <i>domestic private</i> breeding companies (if any) in the sales of seeds and propagating material?						
F. About how large is the average market share of <i>foreign owned</i> breeding companies in the sales of seeds and propagating material (if any)?						
G. About how large a share of the traditional plant varieties presently grown in your country do you assume is conserved in public and/or international gene banks?						
H. Is there anything else you would like us to know about the structure of your agricultural system of relevance to farmers' rights? Please write it here or use an attachment.						



2. Questions on the **policies of your country** pertaining to the issues addressed as farmers' rights in the International Treaty on Plant Genetic Resources for Food and Agriculture. Please mark 'yes' or 'no' for each issue, and *specify* relevant acts or policies.

<b>Questions:</b>	<b>YES</b>	<b>NO</b>	<b>If YES, please specify</b> (title, reference, website if available)
A. Does your country have any acts of legislation, other policies and/or programmes on the protection of farmers' traditional knowledge relevant to plant genetic resources for food and agriculture?			
B. Does your country have any acts or other policies ensuring the participation of farmers in the sharing of benefits arising from the utilisation of plant genetic resources for food and agriculture?			
C. Does your country have any acts or policies ensuring farmers' participation in decision making processes on matters related to the conservation and sustainable use of agricultural plant genetic resources?			
D. Does your country have any acts or policies affecting farmers' practice of saving, using, exchanging and/or selling farm saved seeds or propagating material? If you have legislation limiting such practices, please include it.			
E. Is your country currently developing legislation which will strengthen plant breeders' rights and limit farmers' practices of saving, using and exchanging seeds and propagating material from their harvests?			
F. Does your country have policies, plans and/or programmes supporting farmers who conserve plant genetic resources for food and agriculture?			
G. If your country provides aid to developing countries, do any of these programmes support farmers who conserve crop genetic resources?			
H. Are there any other acts or policies in your country of relevance to farmers' rights as they pertain to plant genetic resources for food and agriculture? Please note them here, or use an attachment.			

3. Questions pertaining to the **realization of farmers' rights** in your country. The following statements are derived from formulations in the International Treaty on farmers' rights. Please read them and decide whether you agree or not. Please mark either 'yes', 'no', or 'not sure':

Based on your knowledge and experience, do you agree with the following statements?	Yes	No	Not sure
A. In our country central aspects of farmers' traditional knowledge pertaining to agricultural plant varieties are documented and maintained.			
B. Our farmers have access to seeds and propagating material covering a genetic diversity according to their needs.			
C. Farmers in our country have direct access to seeds and propagating material from public gene banks.			
D. In most of the key farming areas of the country, farmers have the possibility of influencing breeding goals and evaluating new varieties offered to them.			
E. The farmers in our country, who conserve plant varieties in the fields, generally have access to funds compensating for their contribution.			
F. Farmers are free to sell seeds and propagating material from their own production, as long as it is not protected by intellectual property rights.			
G. Private breeding companies have sometimes used traditional varieties from farmers in our country in the breeding of new varieties for the commercial market.			
H. At least one such breeding company has shared the monetary benefits from the sales of a plant variety with the farmers in our country from whom they received the respective breeding material.			
I. Large scale farmers are represented in most decision making bodies pertaining to agricultural plant genetic resources at the national level.			
J. Small scale farmers are represented in most decision making bodies pertaining to agricultural plant genetic resources at the national level.			
K. All farmers are free to save, use and exchange all kinds of seeds and propagating material from their harvests, even if the harvest stems from crops, which are protected with intellectual property rights in our country.			
L. Small scale farmers are allowed to freely save, use, and exchange all kinds of seeds or propagating material from their harvests, if the harvest stems from crops, which are protected by intellectual property rights.			
M. The permission for small scale farmers to freely save, use, and exchange seeds or propagating material from their harvests if the harvest stems from crops which are protected with intellectual property rights, is limited to specified crops.			
N. Farmers in our country are not entitled to save and use any seeds or propagating material from their harvests, if the crops were initially protected by intellectual property rights.			

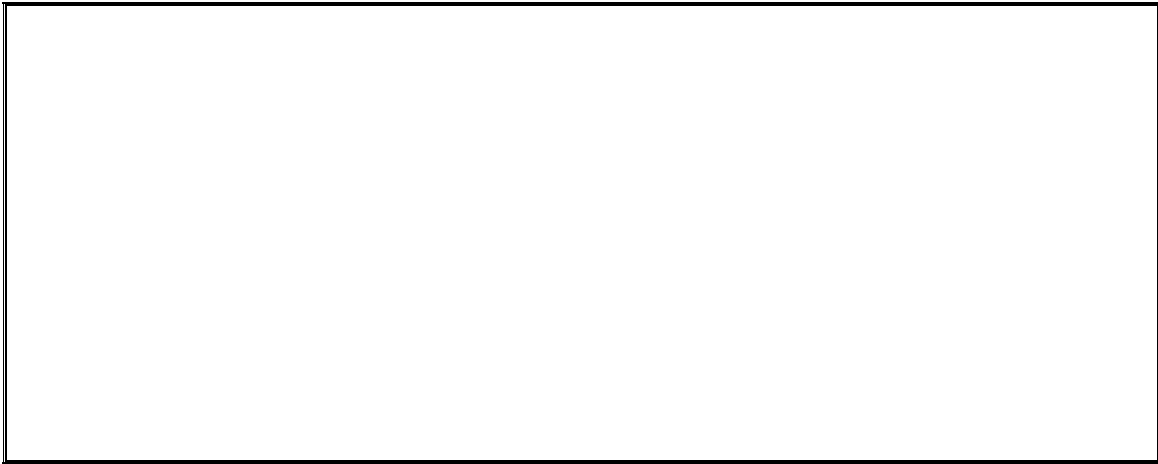
4. Do you have any **success stories** with regard to the realization of farmers' rights in your country? Please explain briefly the topic, approach and results (in addition, attachments with documentation/information are most welcome).

5. Please describe the **official position of your country** with regard to the contents of Farmers' Rights – as they pertain to plant genetic resources for food and agriculture – as specifically as possible:

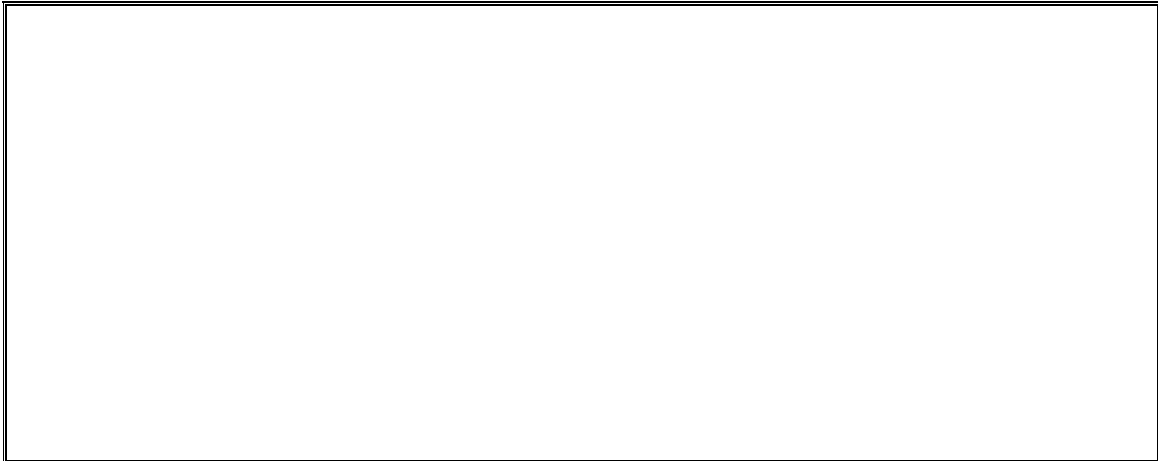
6. On a scale from 1 to 6, how would you **rate the performance** of your country with regard to farmers' rights? Please make one mark only.

Performance with regard to farmers' rights					
1	2	3	4	5	6
Insufficient	Tolerable	Fairly good	Good	Very good	Excellent

7. What are the **greatest barriers/challenges for your country** in realizing farmers' rights?



8. How would you describe the **options for your country** to realize farmers' rights?



9. Which institutions or organisations are the most important **stakeholders** in your country working for the realization of farmers' rights?



10. What are the issues pertaining to farmers' rights, which are most important to promote at the international level? Here is a list, which is based on the issues addressed in the International Treaty as farmers' rights. Please enter one mark per issue:

Relevant issues:	Very important	Important	Less important	Not important
A. Documentation and maintenance of farmers' traditional knowledge pertaining to agricultural plant varieties				
B. Farmers' access to seeds and propagating material covering a genetic diversity according to their needs				
C. Participatory plant breeding				
D. Farmers' access to funds compensating for their contribution to conserving plant varieties in the fields				
E. Farmers' participation in monetary benefits from the sales of those commercial plant varieties, which are essentially derived from one or more of the farmers' varieties				
F. Representation of farmers in decision making bodies pertaining to plant genetic resources for food and agriculture at the national level				
G. Farmers' practice to save, use, exchange and/or sell seeds and propagating material from their harvests, also if the harvests stem from crops, which are protected with intellectual property rights				
H. Other issue (please fill in if relevant):				
I. Other issue (please fill in if relevant):				
J. Other issue (please fill in if relevant):				

11. What would you suggest the **Governing Body of the ITPGRFA** to do to promote the realization of farmers' rights? Please mark as many items as you deem relevant.

Yes	What could the Governing Body of the ITPGRFA do to promote the realization of farmers' rights? (multiple marks are possible)
	A. Organise the sharing of experiences in the realization of farmers' rights between the Parties
	B. Ensure regular reports from the countries on the realization of farmers' rights, and monitor progress
	C. Mandate the secretariat to provide guidance to the Parties on the realization of farmers' rights
	D. Raise additional funds for the Governing Body to promote the realization of farmers' rights
	E. Encourage each Party to the ITPGRFA to develop a plan for the realization of farmers' rights in their country
	F. Monitor and support the implementation of such country plans
	G. Other suggestions? Please specify:
	H. The Governing Body should do nothing, because (please specify reasons):

12. Do you have any **other comments or information** relevant for the present survey? (You may also attach comments or information if you wish)

**Thank you very much for your co-operation!**

## **SURVEY PERTAINING TO FARMERS' RIGHTS**

*With this letter, which is sent to representatives of non-governmental organizations engaged in the rights of farmers pertaining to plant genetic resources, we ask you to kindly participate in a survey on farmers' rights pertaining to plant genetic resources for food and agriculture. The results of the survey will be compiled in a report which will be presented in connection with the first meeting of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture. The purpose is to provide an empirical basis for constructive proposals to the Governing Body on the promotion of farmers' rights under the Treaty. We hope you will support us in this effort, and ask you to kindly fill out the attached questionnaire and send it back to us.*

The Treaty explicitly states that the responsibility for the implementation of farmers' rights, as they relate to the management of plant genetic resources for food and agriculture, rests with the governments. The governments are free to choose the measures they deem appropriate for this purpose. The preamble highlights the necessity of promoting farmers' rights at the national as well as international levels. There is as yet no common understanding of how this can be done. Such an understanding is of great importance for making progress in the realization of farmers' rights. Therefore, this initiative – *The Farmers' Rights Project* – is aimed at facilitating the development of such an understanding, and to developing the basis for proposals to the Governing Body on concrete measures to be taken. The intention is to move ahead from earlier controversies, and – based on the consensus formulations in the Treaty – build bridges to a joint perception of needed action, in respect of the countries' freedom to choose measures according to their needs and priorities.

The Farmers Rights Project is carried out by *The Fridtjof Nansen Institute* of Norway, with support from the Norwegian *Ministry of Agriculture and Food* and the Norwegian *Ministry of Foreign Affairs*. Different questionnaires are sent to the three categories of stakeholders: state officials, representatives of non-governmental organizations, and experts. We will follow up with telephone interviews among some of the respondents. There will also be case studies in a few selected countries, two of which will be conducted with support from the German *Gesellschaft für Technische Zusammenarbeit* (GTZ), commissioned by the German *Federal Ministry of Economic Cooperation and Development* (BMZ).

We ask you to kindly fill out the attached questionnaire and send it back to us as soon as possible, and latest **by 10 May 2005**, to one of the following addresses:

<b>E-mail:</b>	farmers.rights.project@fni.no
<b>Post:</b>	The Fridtjof Nansen Institute, The Farmers' Rights Project, P.O. Box 326, N-1326 Lysaker, Norway
<b>Fax:</b>	The Fridtjof Nansen Institute, The Farmers' Rights Project: (+ 47) 67 11 19 10

We are most grateful for your help in this matter, and hope that you will also gain from our project in terms of improved promotion of farmers' rights under the Treaty. You can follow the developments in the project at <http://www.fni.no/farmers/main.html>, where we will also post the findings. If you have any questions regarding the questionnaire or the project, please contact the undersigned at one of the above addresses or at phone number (+47) 67 11 19 00.

Yours sincerely,  
Regine Andersen (sign.)  
Research Fellow  
The Fridtjof Nansen Institute

## QUESTIONNAIRE PERTAINING TO FARMERS' RIGHTS

Name of NGO:			
Headquarter in (country):			
Your name and position:			
Is your NGO working at the national level in your country?	Yes	No	If yes, please answer questions 1 – 10
Is your NGO working in another country or in other countries?	Yes	No	If yes, please answer questions 1 – 10 for each country (one set per country)
If yes, which country is this present set of questions 1 – 10 about?			Name of country:
Is your NGO working at the international level?	Yes	No	If yes, please answer questions 11 – 19

1. Questions on the **policies of your country** pertaining to the issues addressed as farmers' rights in the International Treaty on Plant Genetic Resources for Food and Agriculture. Please mark 'yes' or 'no' for each issue, and *specify* relevant acts or policies if possible.

Are you aware of any acts, policies, and/or programmes in your country pertaining to:	YES	NO	If YES, please specify (title, reference, website if available)
A. the protection of farmers' traditional knowledge relevant to plant genetic resources for food and agriculture?			
B. the participation of farmers in the sharing of benefits arising from the utilisation of plant genetic resources for food and agriculture?			
C. farmers' participation in decision making processes on matters related to the conservation and sustainable use of agricultural plant genetic resources?			
D. farmers' practice of saving, using, exchanging and/or selling farm saved seeds or propagating material? If your country has legislation limiting such practices, please include it as well.			
E. support to farmers in developing countries who conserve plant genetic resources for food and agriculture?			



2. Questions pertaining to the **realization of farmers' rights** in your country. The following statements are derived from formulations in the International Treaty. Please read them and decide whether you agree or not. Please mark either 'yes', 'no', or 'not sure':

Based on your knowledge and experience, do you agree with the following statements?	Yes	No	Not sure
A. In our country central aspects of farmers' traditional knowledge pertaining to agricultural plant varieties are documented and maintained.			
B. Our farmers have access to seeds and propagating material covering a genetic diversity according to their needs.			
C. Farmers in our country have direct access to seeds and propagating material from public gene banks.			
D. In most of the key farming areas of the country, farmers have the possibility of influencing breeding goals and evaluating new varieties offered to them.			
E. The farmers in our country, who conserve plant varieties in the fields, generally have access to funds compensating for their contribution.			
F. Farmers are free to sell seeds and propagating material from their own production, as long as it is not protected by intellectual property rights.			
G. Private breeding companies have sometimes used traditional varieties from farmers in our country in the breeding of new varieties for the commercial market.			
H. At least one such breeding company has shared the monetary benefits from the sales of a plant variety with the farmers in our country from whom they received the respective breeding material.			
I. Large scale farmers are represented in most decision making bodies pertaining to plant genetic resources at the national level.			
J. Small scale farmers are represented in most decision making bodies pertaining to plant genetic resources at the national level.			
K. All farmers are free to save, use and exchange all kinds of seeds and propagating material from their harvests, even if the harvest stems from crops, which are protected by intellectual property rights in our country.			
L. Only small scale farmers are allowed to freely save, use, and exchange all kinds of seeds or propagating material from their harvests, if the harvest stems from crops, which are protected with intellectual property rights.			
M. The permission for small scale farmers to freely save, use, and exchange seeds or propagating material from their harvests if the harvest stems from crops, which are protected with intellectual property rights, is limited to specified crops.			
N. Farmers in our country are not entitled to save and use seeds or propagating material from their harvests, if the crops were initially protected by intellectual property rights.			

3. Do you have any **success stories** with regard to the realization of farmers' rights in your country? Please explain briefly the topic, approach and results (in addition, attachments with documentation/information are most welcome).

4. Please describe the **position of your organization** with regard to the contents of Farmers' Rights as they pertain to plant genetic resources for food and agriculture (i.e. what are these farmers' rights about, according to the position of your organization). Please explain as specifically as possible:

5. On a scale from 1 to 6, how would you **rate the performance** of your country with regard to farmers' rights? Please make one mark only.

Performance with regard to farmers' rights					
1	2	3	4	5	6
Insufficient	Tolerable	Fairly good	Good	Very good	Excellent

6. What are the **greatest barriers/challenges for your country** in realizing farmers' rights?

7. How would you describe the **options of your country** to realize farmers' rights?

8. How is **your organization contributing** to the realization of farmers' rights in your country?

9. What would you suggest the **Governing Body of the ITPGRFA** to do to promote the realization of farmers' rights? Please mark as many items as you deem relevant.

Yes	What could the Governing Body of the ITPGRFA do to promote the realization of farmers' rights? (multiple marks are possible)
	A. Organise the sharing of experiences in the realization of farmers' rights between the Parties
	B. Ensure regular reports from the countries on the realization of farmers' rights, and monitor progress
	C. Mandate the secretariat to provide guidance to the Parties on the realization of farmers' rights
	D. Raise additional funds for the Governing Body to promote the realization of farmers' rights
	E. Encourage each Party to the ITPGRFA to develop a plan for the realization of farmers' rights in their country
	F. Monitor and support the implementation of such country plans
	G. Other suggestions? Please specify (use an attachment if needed):
	H. The Governing Body should do nothing, because (please specify reasons):

10. Do you have any **other comments or information** relevant for the present survey?  
(You may also attach comments or information if you wish)

**Thank you very much for your co-operation!**

## QUESTIONS FOR INTERNATIONAL NGOs:

11. Are you aware of any acts of legislation, policies or programmes in any country, which could serve as **models for other countries** with regard to the issues addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture as farmers' rights? Please write down the examples you are aware of pertaining to each of the issues below.

<b>Acts, policies, and/or programmes which could serve as models for other countries pertaining to:</b>	<b>Country:</b>	<b>Please specify:</b> (title, reference, website if available)
A. the protection of farmers' traditional knowledge relevant to plant genetic resources for food and agriculture		
B. the participation of farmers in the sharing of benefits arising from the utilisation of plant genetic resources for food and agriculture		
C. farmers' participation in decision making processes on matters related to the conservation and sustainable use of agricultural plant genetic resources		
D. farmers' practice of saving, using, exchanging and/or selling farm saved seeds or propagating material (with a view to legislation on intellectual property rights)		
E. support to farmers in developing countries in conserving plant genetic resources for food and agriculture		

12. Do you know of any **success stories** with regard to the realization of farmers' rights pertaining to plant genetic resources for food and agriculture? Please explain briefly the country, involved institutions, topic, approach and results (in addition, attachments with documentation/information are most welcome).

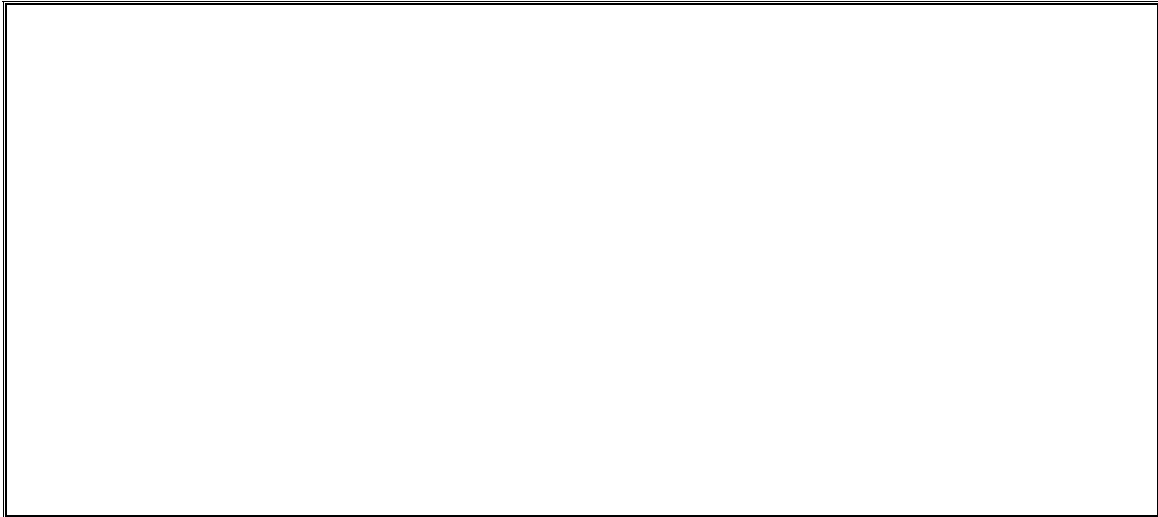
13. What are, according to your experience, the issues pertaining to farmers' rights, which are most important to promote at the international level? Here is a list, which is

based on the issues addressed as farmers' rights in the International Treaty. Please enter one mark per issue:

<b>Issues pertaining to farmers' rights, which our organization regards as important to promote internationally:</b>	Very important	Important	Less important	Not important
A. Documentation and maintenance of farmers' traditional knowledge pertaining to agricultural plant varieties				
B. Farmers' access to seeds and propagating material covering a genetic diversity according to their needs				
C. Participatory plant breeding				
D. Farmers' access to funds compensating for their contribution to conserving plant varieties in the fields				
E. Farmers' participation in monetary benefits from the sales of those commercial plant varieties, which are essentially derived from one or more farmers' varieties				
F. Representation of farmers in decision making bodies pertaining to plant genetic resources for food and agriculture at the national level				
G. Farmers' practice to save, use, exchange and/or sell seeds and propagating material from their harvests, also if the harvests stem from crops, which are protected with intellectual property rights				
H. Other issue:				
I. Other issue:				

14. What do you regard as the **greatest barriers/challenges** for the realization of farmers' rights world wide (write this in an attachment if necessary)?

15. How would you describe the **options** for realizing farmers' rights world wide?



16. Please describe the **position of your organization** with regard to Farmers' Rights – as they pertain to plant genetic resources for food and agriculture – as specifically as possible:



17. How is **your organization contributing** to the realization of farmers' rights?



18. What would you suggest the **Governing Body of the ITPGRFA** to do to promote the realization of farmers' rights? Please mark as many items as you deem relevant.

Yes	What could the Governing Body of the ITPGRFA do to promote the realization of farmers' rights? (multiple marks are possible)
	A. Organise the sharing of experiences in the realization of farmers' rights between the Parties
	B. Ensure regular reports from the countries on the realization of farmers' rights, and monitor progress
	C. Mandate the secretariat to provide guidance to the Parties on the realization of farmers' rights
	D. Raise additional funds for the Governing Body to promote the realization of farmers' rights
	E. Encourage each Party to the ITPGRFA to develop a plan for the realization of farmers' rights in their country
	F. Monitor and support the implementation of such country plans
	G. Other suggestions? Please specify (use an attachment if needed):
	H. The Governing Body should do nothing, because (please specify reasons):

19. Do you have any **other comments or information** relevant for the present survey?  
(You may also attach comments or information if you wish)

**Thank you very much for your co-operation!**





FRIDTJOF NANSENS INSTITUTT  
THE FRIDTJOF NANSEN INSTITUTE

#### Attachment 4

Lysaker /Norway, 25 April 2005

### SURVEY PERTAINING TO FARMERS' RIGHTS

*With this letter, which is sent to observers/experts on the rights of farmers pertaining to plant genetic resources, we ask you to kindly participate in a survey on farmers' rights pertaining to plant genetic resources for food and agriculture. The results of the survey will be compiled in a report which will be presented in connection with the first meeting of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture. The purpose is to provide an empirical basis for constructive proposals to the Governing Body on the promotion of farmers' rights under the Treaty. We hope you will support us in this effort, and ask you to kindly fill out the attached questionnaire and send it back to us.*

The Treaty explicitly states that the responsibility for the implementation of farmers' rights, as they relate to the management of plant genetic resources for food and agriculture, rests with the governments. The governments are free to choose the measures they deem appropriate for this purpose. The preamble highlights the necessity of promoting farmers' rights at the national as well as international levels. There is as yet no common understanding of how this can be done. Such an understanding is of great importance for making progress in the realization of farmers' rights. Therefore, this initiative – *The Farmers' Rights Project* – is aimed at facilitating the development of such an understanding, and to developing the basis for proposals to the Governing Body on concrete measures to be taken. The intention is to move ahead from earlier controversies, and – based on the consensus formulations in the Treaty – build bridges to a joint perception of needed action, in respect of the countries' freedom to choose measures according to their needs and priorities.

The Farmers Rights Project is carried out by *The Fridtjof Nansen Institute* of Norway, with support from the Norwegian *Ministry of Agriculture and Food* and the Norwegian *Ministry of Foreign Affairs*. Different questionnaires are sent to the three categories of stakeholders: state officials, representatives of non-governmental organizations, and experts. We will follow up with telephone interviews among some of the respondents. There will also be case studies in a few selected countries, two of which will be conducted with support from the German *Gesellschaft für Technische Zusammenarbeit (GTZ)*, commissioned by the German *Federal Ministry of Economic Cooperation and Development (BMZ)*.

We ask you to kindly fill out the attached questionnaire and send it back to us as soon as possible, and latest **by 10 May 2005**, to one of the following addresses:

<b>E-mail:</b>	farmers.rights.project@fni.no
<b>Post:</b>	The Fridtjof Nansen Institute, The Farmers' Rights Project, P.O. Box 326, N-1326 Lysaker, Norway
<b>Fax:</b>	The Fridtjof Nansen Institute, The Farmers' Rights Project: (+ 47) 67 11 19 10

We are most grateful for your help in this matter, and hope that you will also gain from our project in terms of the compiled information. You can follow the developments in the project at <http://www.fni.no/farmers/main.html>, where we will also post the findings. If you have any questions regarding the questionnaire or the project, please contact the undersigned at one of the above addresses or at phone number (+47) 67 11 19 00.

Yours sincerely,  
Regine Andersen (sign.)  
Research Fellow  
The Fridtjof Nansen Institute

## QUESTIONNAIRE PERTAINING TO FARMERS' RIGHTS

Name of observer/expert:			
Affiliation:			
Based in which country?			
Is your expertise focused on the national level in your country?	Yes	No	If yes, please answer questions 1 – 10
Is your expertise focused on another country or other countries?	Yes	No	If yes, please answer questions 1 – 10 for each country (one set per country)
If yes, which country is this present set of questions 1 – 10 about?	Name of country:		
Is your expertise focused on the international level?	Yes	No	If yes, please answer questions 11 – 19

20. Questions on the **policies of your country** pertaining to the issues addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture as farmers' rights. Please mark 'yes' or 'no' for each issue, and *specify* relevant acts or policies if possible.

Are you aware of any acts, policies, and/or programmes in the country pertaining to:	YES	NO	If YES, please specify (title, reference, website if available)
A. the protection of farmers' traditional knowledge relevant to plant genetic resources for food and agriculture?			
B. the participation of farmers in the sharing of benefits arising from the utilisation of plant genetic resources for food and agriculture?			
C. farmers' participation in decision making processes on matters related to the conservation and sustainable use of agricultural plant genetic resources?			
D. farmers' practice of saving, using, exchanging and/or selling farm saved seeds or propagating material? If you have legislation limiting such practices, please include it as well.			
E. support to farmers in developing countries who conserve plant genetic resources for food and agriculture?			

21. Questions pertaining to the **realization of farmers' rights** in the country. Please read the following statements and decide whether you agree or not. Please mark either 'yes', 'no', or 'not sure':

Based on your knowledge and experience, do you agree with the following statements?	Yes	No	Not sure
A. In this country central aspects of farmers' traditional knowledge pertaining to agricultural plant varieties are documented and maintained.			
B. The farmers in this country have access to seeds and propagating material covering a genetic diversity according to their needs.			
C. Farmers in this country have direct access to seeds and propagating material from public gene banks.			
D. In most of the key farming areas of the country, farmers have the possibility of influencing breeding goals and evaluating new varieties offered to them.			
E. The farmers in this country, who conserve plant varieties in the fields, generally have access to funds compensating for their contribution.			
F. Farmers are free to sell seeds and propagating material from their own production, as long as it is not protected by intellectual property rights.			
G. Private breeding companies have sometimes used traditional varieties from farmers in our country in the breeding of new varieties for the commercial market.			
H. At least one such breeding company has shared the monetary benefits from the sales of a plant variety with the farmers in this country from whom they received the respective breeding material.			
I. Large scale farmers are represented in most decision making bodies pertaining to plant genetic resources at the national level.			
J. Small scale farmers are represented in most decision making bodies pertaining to plant genetic resources at the national level.			
K. All farmers are free to save, use and exchange all kinds of seeds and propagating material from their harvests, even if the harvest stems from crops, which are protected with intellectual property rights in this country.			
L. Small scale farmers are allowed to freely save, use, and exchange all kinds of seeds or propagating material from their harvests, if the harvest stems from crops, which are protected by intellectual property rights.			
M. The permission for small scale farmers to freely save, use, and exchange seeds or propagating material from their harvests if the harvest stems from crops, which are protected with intellectual property rights, is limited to specified crops.			
N. Farmers in our country are not entitled to save and use seeds or propagating material from their harvests, if the crops were initially protected by intellectual property rights.			

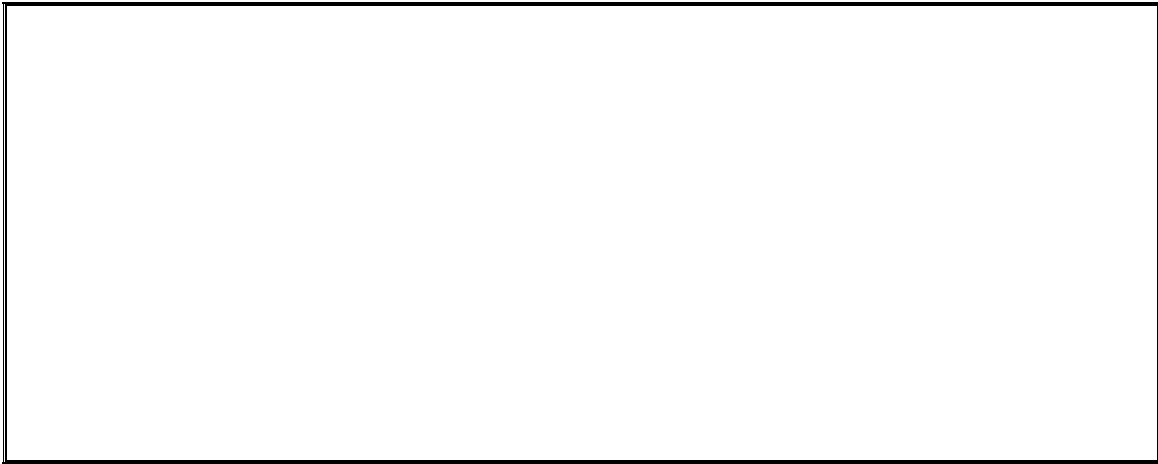
22. Are there any **success stories** with regard to the realization of farmers' rights in the country? Please explain briefly the topic, approach and results (in addition, attachments with documentation/information are most welcome).

23. What are, according to your opinion, **farmers' rights** – as they pertain to plant genetic resources for food and agriculture – about in this country:

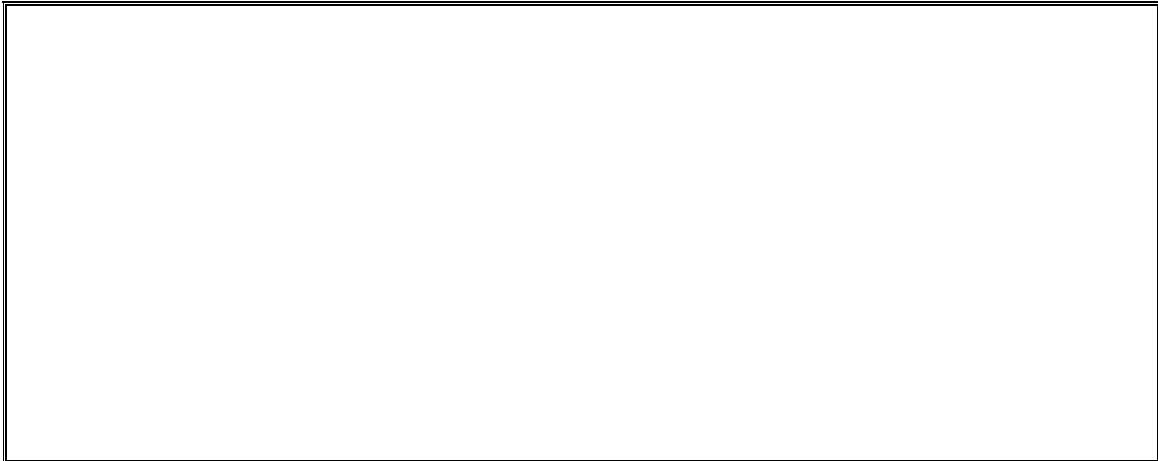
24. On a scale from 1 to 6, how would you **rate the performance** of your country with regard to farmers' rights? Please make one mark only.

Performance with regard to farmers' rights					
1	2	3	4	5	6
Insufficient	Tolerable	Fairly good	Good	Very good	Excellent

25. What are the **greatest barriers/challenge for the country** in realizing farmers' rights?



26. How would you describe the **options for the country** to realize farmers' rights?



27. Have you written any **articles, books or reports** on the issue of farmers' rights – as they pertain to plant genetic resources for food and agriculture – or are you aware of other contributions you would recommend for us? Please write the references as completely as possible.



28. What would you suggest the **Governing Body of the ITPGRFA** to do to promote the realization of farmers' rights? Please mark as many items as you deem relevant.

Yes	What could the Governing Body of the ITPGRFA do to promote the realization of farmers' rights? (multiple marks are possible)
	A. Organise the sharing of experiences in the realization of farmers' rights between the Parties
	B. Ensure regular reports from the countries on the realization of farmers' rights, and monitor progress
	C. Mandate the secretariat to provide guidance to the Parties on the realization of farmers' rights
	D. Raise additional funds for the Governing Body to promote the realization of farmers' rights
	E. Encourage each Party to the ITPGRFA to develop a plan for the realization of farmers' rights in their country
	F. Monitor and support the implementation of such country plans
	G. Other suggestions? Please specify (use an attachment if needed):
	H. The Governing Body should do nothing, because (please specify reasons):

29. Do you have any **other comments or information** relevant for the present survey? (You may also attach comments or information if you wish)

**Thank you very much for your co-operation!**

## QUESTIONS FOR EXPERTS WITH AN INTERNATIONAL FOCUS:

30. Are you aware of any acts of legislation, policies or programmes in any country, which could serve as **models for other countries** with regard to the issues addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture as farmers' rights? Please write down the examples you are aware of pertaining to each of the issues below.

Acts, policies, and/or programmes, which could serve as models for other countries pertaining to:	Country:	Please specify: (title, reference, website if available)
A. the protection of farmers' traditional knowledge relevant to plant genetic resources for food and agriculture?		
B. the participation of farmers in the sharing of benefits arising from the utilisation of plant genetic resources for food and agriculture?		
C. farmers' participation in decision making processes on matters related to the conservation and sustainable use of agricultural plant genetic resources?		
D. farmers' practice of saving, using, exchanging and/or selling farm saved seeds or propagating material? If you have legislation limiting such practices, please include it as well.		
E. support to farmers in developing countries in conserving plant genetic resources for food and agriculture?		

31. Do you know of any **success stories** with regard to the realization of farmers' rights pertaining to plant genetic resources for food and agriculture? Please explain briefly the country, involved institutions, topic, approach and results (in addition, attachments with documentation/information are most welcome).

32. What are, according to your experience, the issues pertaining to farmers' rights, which are most important to promote at the international level? Here is a list, which is

based on the issues addressed in the International Treaty as farmers' rights. Please enter one mark per issue:

Relevant issues:	Very important	Important	Less important	Not important
A. Documentation and maintenance of farmers' traditional knowledge pertaining to agricultural plant varieties				
B. Farmers' access to seeds and propagating material covering a genetic diversity according to their needs				
C. Participatory plant breeding				
D. Farmers' access to funds compensating for their contribution to conserving plant varieties in the fields				
E. Farmers' participation in monetary benefits from the sales of those commercial plant varieties, which are essentially derived from one or more farmers' varieties				
F. Representation of farmers in decision making bodies pertaining to plant genetic resources for food and agriculture at the national level				
G. Farmers' practice to save, use, exchange and/or sell seeds and propagating material from their harvests, also if the harvests stem from crops, which are protected with intellectual property rights				
H. Other issue:				
I. Other issue:				

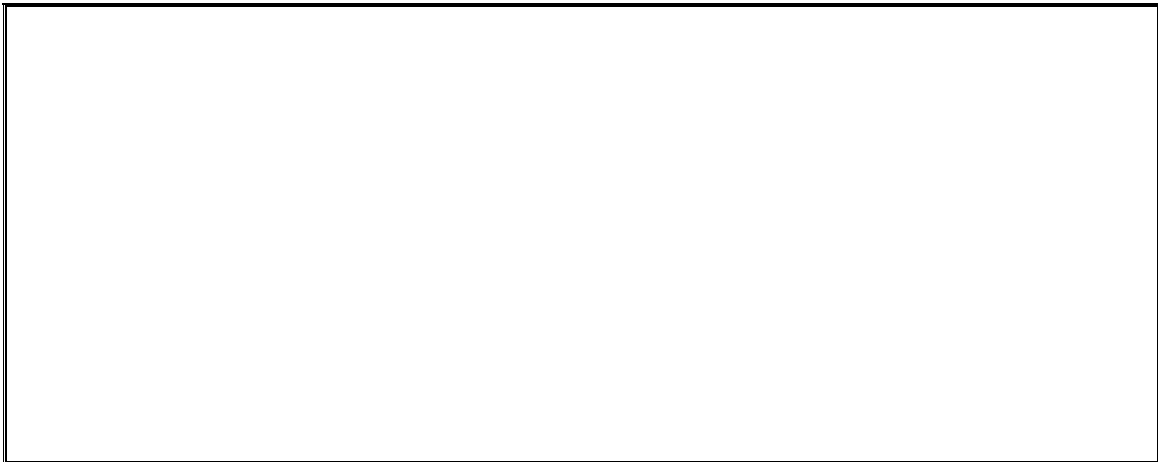
33. What do you regard as the **greatest barriers/challenges** for the realization of farmers' rights world wide (write this in an attachment if necessary)?

34. How would you describe the **options** for realizing farmers' rights world wide?

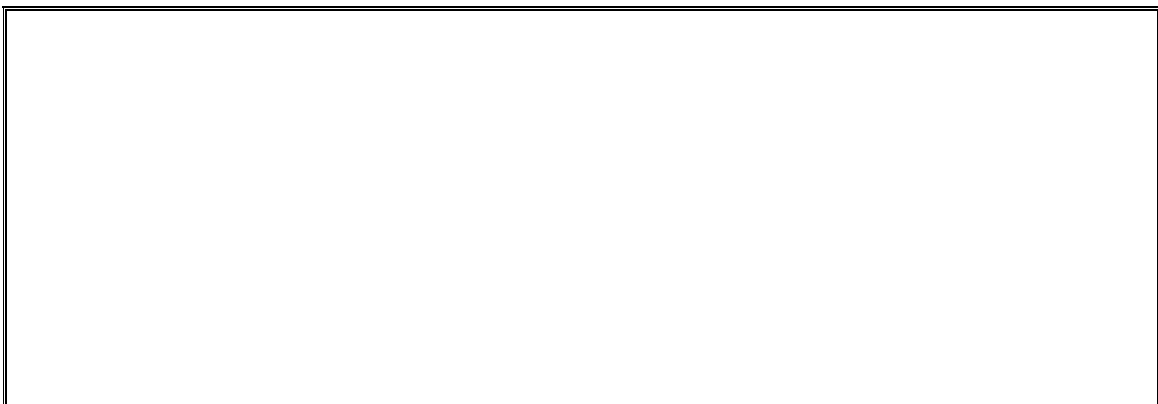




35. What are, according to your opinion, **farmers' rights** – as they pertain to plant genetic resources for food and agriculture – about?



36. Have you written any **articles, books or reports** on the issue of farmers' rights – as they pertain to plant genetic resources for food and agriculture – or are you aware of other contributions, which could be interesting for us? Please write the references as completely as possible.



37. What would you suggest the **Governing Body of the ITPGRFA** to do to promote the realization of farmers' rights? Please mark as many items as you deem relevant.

Yes	What could the Governing Body of the ITPGRFA do to promote the realization of farmers' rights? (multiple marks are possible)
	A. Organise the sharing of experiences in the realization of farmers' rights between the Parties
	B. Ensure regular reports from the countries on the realization of farmers' rights, and monitor progress
	C. Mandate the secretariat to provide guidance to the Parties on the realization of farmers' rights
	D. Raise additional funds for the Governing Body to promote the realization of farmers' rights
	E. Encourage each Party to the ITPGRFA to develop a plan for the realization of farmers' rights in their country
	F. Monitor and support the implementation of such country plans
	G. Other suggestions? Please specify (use an attachment if needed):
	H. The Governing Body should do nothing, because (please specify reasons):

38. Do you have any **other comments or information** relevant for the present survey?  
(You may also attach comments or information if you wish)

**Thank you very much for your co-operation!**

## OVERVIEW OVER COMPLETED QUESTIONNAIRES

	FAO Delegates	NGOs	Experts	Total
<b>AFRICA</b>				
<b>Burundi</b>			<b>Salvator Ndabirorere</b> , Ministry of Land Management Environment and Tourism, consultant – researcher in matters of biodiversity and sustainable food safety	1
<b>Cameroun</b>			<b>Samuel Assembe Mvondo</b> , Center for International Forestry Research (CIFOR), Central Africa Regional Office	1
<b>Congo, Democratic Republic</b>	Ministry of Agriculture, <b>Modeste Mamingi Mfundu</b> , Chef de Division et Pointfocal de RPGAA			1
<b>Ethiopia</b>			<b>Tewolde Berhan Gebre Egziabher</b> , Africa's Spokesperson on ITPGRFA ** <b>Eshetayehu Tefera</b> , Researcher & Project Coordinator of Genetic Resources Policy Initiative (GRPI) ** <b>Yemane Tsehaye</b> , Institute of Biodiversity Conservation, Crop Conservation Unit <b>Kebu Balemie</b> , Researcher	4
<b>Kenya</b>	Ministry of Agriculture, <b>J. K. Ngeno</b> , Senior Deputy Director			1
<b>Nigeria</b>		Union of Small and Medium Scale Farmers, <b>Dr. M. O. Arigbede</b> , National Coordinator		1
<b>Senegal</b>	Institut Sénégalais de Recherches Agricoles, <b>Cheikh Alassane Fall</b> , Coordinateur Programme Ressources Génétiques & Biotechnologies			1
<b>Sierra Leone</b>	Rice Research Station, Rokuar, <b>Sahr N. Fomba</b> , Chief Research Officer and Head Varietal Improvement & Plant Health Programme			1

<b>Zambia</b>	Zambia Agricultural Research Institute, <b>Albert Chalabesa</b> , Deputy Director	Participatory Ecological Land-Use Management (PELUM) Zambia Association, <b>Clement Chipokolo</b> , Country Coordinator	<b>Godfrey P. Mwila</b> , Principal Agricultural Research Officer, SADC Plant Genetic Resource Center	5
	Zambia Agriculture Research Institute, <b>Catherine Mungoma</b> , Chief Agricultural Research Officer	Harvest Help, <b>Emma Sitambuli</b> , Programme Coordinator – Agriculture		
<b>Total Africa: (9)</b>	6	3	7	16
<b>ASIA</b>				
<b>Bhutan</b>		Southeast Asia Regional Initiatives for Community Empowerment (SEARICE), Policy and Information Unit, sent by <b>Wilhelmina R. Pelegrina</b> , Executive Director ***		1
<b>China</b>	Institute of Crop Science of Chinese Academy of Agricultural Sciences, <b>Wang Shumin</b> , Deputy Director General			1
<b>Nepal</b>	Plant Protection Directorate <b>Ganesh K.K.C.</b> , Programme Director		<b>Dr. Devendra Gauchan</b> , Senior Scientist, Nepal Agricultural Research Council	3
	Seed Quality Control Center, <b>K.K. Lal</b> , Chief			
<b>Iran</b>		Centre for Sustainable Development and Environment (CENESTA), <b>Maryam Rahmanian</b> , Research Associate		1
<b>India</b>		Green Foundation, <b>Dr. Vanaja Ramprasad</b> , Executive Director	<b>Dr. Anitha Ramanna</b> , Visiting Fellow, London School of Economics & Lecturer, Department of Politics and Public Administration, University of Pune **	4
		Gene Campaign <b>Dr. Suman Sahai</b> , President	<b>Dr. S. Bala Ravi</b> , Advisor (biodiversity) M.S. Swaminathan Research Foundation **	
<b>Philippines</b>		Southeast Asia Regional Initiatives for Community Empowerment (SEARICE), Policy and Information Unit, sent by <b>Wilhelmina R. Pelegrina</b> , Executive Director ***	<b>Elenita C. Dano</b> , Researcher, Former Executive Director of Southeast Asia Regional Initiatives for Community Empowerment (SEARICE)	3

			<b>Dr. Pamela G. Fernandez,</b> Associate Professor, Seed Science and Technology Division, Department of Agronomy, University of the Philippines Los Baños	
Republic of Korea			<b>Seong Hee Lee</b> Director General National Institute of Crop Science, Rural Development Administration	1
Vietnam			<b>Nguyen Thi Kim Oanh</b> Research Specialist, Hanoi Agricultural University	5
		VECO Vietnam <b>Hoang My Lan,</b> Programme Officer in Advocacy	<b>Dr. Nguyen Van Dinh,</b> GRPI component co-ordinator, Hanoi Agricultural University	
		Southeast Asia Regional Initiatives for Community Empowerment (SEARICE), Policy and Information Unit, sent by <b>Wilhelmina R. Pelegrina,</b> Executive Director ***	<b>Dr. Nguen Thi Ngoc Hue,</b> Deputy Director and Project Leader Plant Genetic Resources Center, Vietnam Agricultural Science Institute (VASI)	
<b>Total Asia: (8)</b>	3	7	9	19
<b>LATIN-AMERICA</b>				
Bolivia			<b>Miguel Angel Silva Ramos,</b> Head of Biotechnology and GGRR Unit, Ministry of Agriculture and Peasant Affairs **	1
Chile			<b>Dr. Sergio R. Pena-Neira,</b> Professor Universidad del Mar, Center for Applied Ecology **	1
Ecuador	Instituto Nacional Autónomo de Investigaciones Agropecuarias, <b>Cesar Tapia B.,</b> Lider, Departamento Nacional de Recursos Fitogenéticos y Biotecnología			1
Peru		Grupo Yanapai, <b>Maria Mayer de Scurrah,</b> Presidente de la ONG	<b>Manuel Ruiz Muller,</b> Director Programa de Asuntos Internacionales y Biodiversidad, Sociedad Peruana de Derecho Ambiental **	3

			<b>Orlando C.V. Velasquez,</b> Biólogo, Perito en evaluación de Patentes en Biotecnología y de Nuevas Variedades Vegetales	
<b>Total L-America: (4)</b>	1	1	4	6
<b>NORTH AMERICA</b>				
<b>Canada</b>		Christian Farmers Federation, <b>Elbert van Donkersgoed,</b> Strategic Policy Advisor	<b>Jeremy F. deBeer,</b> Assistant Professor, University of Ottawa, Faculty of Common Law	2
<b>USA</b>		Institute for Food and Development/ Food First, <b>Kirsten Schwind,</b> Program Director **		1
<b>Total N.-America: (2)</b>	0	2	1	3
<b>EUROPE</b>				
<b>Denmark</b>	Danish Plant Directorate, <b>Lars Landbo,</b> Scientific Assistant			1
<b>Germany</b>	Federal Ministry of Consumer Protection, Food and Agriculture, <b>Dr. Wilbert Himmighofen</b> Head of Division 225, Biodiversity and Genetic Resources		<b>Severin Polreich,</b> Institute of Agronomy in the Tropics and the Subtropics, Georg-August-University of Göttingen *	2
<b>Italy</b>		Centro Internazionale Crocevia, <b>Antonio Onorati,</b> President **	<b>Ricardo Bocci,</b> Istituto Agronomico per l'Otremare, Firenze	4
		System-wide Genetic Resources Programme (SGRP) of the CGIAR, with Future Harvest Centres Centres (this is an IGO, please see Chapter 3 for information), <b>Michael Halewood,</b> Head, Policy Research and Support Unit, IPGRI – and – <b>Jane Toll,</b> SGRP Coordinator, IPGRI *	<b>Dr. Jan Engels,</b> Director, Understanding and Managing Diversity Programme a.i., International Plant Genetic Resources Institute (IPGRI)*	
<b>Netherlands</b>			<b>Dr. Bert Visser,</b> Director, Centre for Genetic Resources, Wageningen University and Research Centre *	2
			<b>Niels Louwaars,</b> Researcher, Center for Genetic Resources, Plant Genetic Resources International, Wageningen University and Research Centre **	

Norway		Biological-dynamic Organization, <b>Erik Evenrud,</b> Director	<b>Bell Batta Torheim,</b> Former scholarship holder from the Fridtjof Nansen Institute, now Junior Expert, United Nations Environment Programme (UNEP) **	4
		The Development Fund, <b>Tor Skudal,</b> Project Coordinator Asia & Advisor Biological Diversity Programme *		
		Norwegian Farmers' Union, <b>Pia Borg,</b> Principal Advisor		
Serbia- Montenegro	Ministry of Agriculture, Forestry and Water Management, <b>Srdjan Stojanovic,</b> Head of Department for Genetic Resources			1
Switzerland			<b>Dr. Martin Girsberger,</b> Co-Head of Legal Services, Patents and Design, Swiss Federal Institute of Intellectual Property *	1
Sweden	Ministry of Agriculture, Food and Consumer Affairs <b>Lennart Petterson,</b> Senior Administrative Officer			1
<b>Total Europe: (8)</b>	4	5	7	16
<b>AUSTRAL./PACIFIC</b>				
(No response)				
<b>Total Austr./Pacific:</b>				
<b>SUM</b>				
<b>TOTAL – WORLD (31 countries)</b>	<b>14</b>	<b>18</b>	<b>28</b>	<b>60</b>

\* NGOs and experts filling out solely the international part

\*\* NGOs and experts filling out the international and the national part

\*\*\* SEARICE has filled out the national part of the questionnaire for three countries. All information pertaining to these countries has been utilised. Information pertaining to the views and work of SEARICE has been worked together and counted as one questionnaire.

**Important notice:** The respondents are categorised according to the countries from which the response was received. In several cases, the respondents represent international organisations, and are listed under the countries, where they have their headquarters. Also experts may not be nationals of the countries from which they sent the questionnaires. However, it would be too difficult to account for the nationality of the respondents, and also not relevant to the current study. Therefore the countries indicate solely from where we received the responses.