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Citation for published version:

Tsioumani, E, *Benefit-sharing and Farmers Rights*, 2014, Web publication/site, BeneLex Blog.
<<http://www.benelexblog.law.ed.ac.uk/2014/05/13/benefit-sharing-and-farmers-rights/>>

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Publisher's PDF, also known as Version of record

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Benefit-sharing and Farmers Rights

Posted on [May 13, 2014](#) by [elsatsioumani](#)

by *Elsa Tsioumani*



May 2014: Given the contribution of farmers to the global pool of plant genetic resources and thus food security, farmers' rights remain little understood internationally, let alone implemented nationally. The right to the equitable sharing of benefits arising from the utilization of plant genetic resources for food and agriculture is an element of farmers' rights recognized in the [International Treaty on Plant Genetic Resources for Food and Agriculture](#) (ITPGR or Treaty). As the ITPGR Governing Body has recently engaged in an intense debate on future action towards implementation, this post will assess these developments and their potential to shed light on benefit-sharing as part and parcel of the implementation of farmers' rights.

Origin and rationale

A brief exploration of the origin and rationale of farmers' rights is useful for understanding the concept. The development of farmers' rights may be considered as a result of equity considerations. Farmers' rights emerged as a reaction to the asymmetry in the distribution of benefits between farmers as donors of germplasm in the form of open-access traditional seeds/propagating material and the producers of commercial varieties that ultimately rely on such germplasm. While commercial varieties were protected and generated returns on the basis of plant breeders' rights, there was no system of compensation, reward or incentive for the providers of the traditional germplasm that led to the development of protected commercial varieties. At the same time, farmers' rights were meant to ensure that the use restrictions associated with intellectual property rights would not adversely affect farmers'

practices, which provide the basis of all agricultural and food production. That means that farmers should not only be allowed to continue, but also encouraged and supported in their contribution to the maintenance and development of plant genetic resources and food security globally. Farmers' rights are therefore seen not only as a means towards equity but also as a crucial tool for conservation.

Farmers' rights were first introduced into the non-binding [International Undertaking on Plant Genetic Resources](#), adopted under the Food and Agriculture Organization of the UN (FAO) in 1983, as an Agreed Interpretation of the Undertaking adopted by FAO [Resolution 4/89](#). In this resolution, participating States recognized the "enormous contribution that farmers of all regions have made to the conservation and development of plant genetic resources, which constitute the basis of plant production throughout the world, and which form the basis for the concept of Farmers' Rights." In addition, [Resolution 5/89](#) on farmers' rights introduced the element of benefit-sharing, acknowledging that "farmers, especially those in developing countries, should benefit fully from the improved and increased use of the natural resources they have preserved." Farmers' rights were defined in the latter resolution as arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly in the centres of origin/diversity. These rights were vested in the international community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers, and supporting the continuation of their contributions.

In 1993 it was decided that the International Undertaking should be revised in line with the [Convention on Biological Diversity](#), which established the principle of national sovereignty over natural and genetic resources: this led to the negotiation of the [ITPGR](#), which entered into force on 29 June 2004. The issue of farmers' rights was debated intensely during the ITPGR negotiations and was eventually left to the responsibility of national governments. The Treaty provision on farmers' rights acknowledges 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" (Article 9.1).

The Treaty stops short, however, of actually defining farmers' rights. It rather sets out measures a Party should take to protect and promote them, including:

- the protection of traditional knowledge;
- the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and
- the right to participation in decision-making at the national level on related matters (Article 9.2).

Interestingly enough, the final text of the Treaty reaches no conclusion with regard to the link between farmers' rights and intellectual property rights. Instead, it states that "nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate." It does not therefore limit the customary rights of farmers to reuse, exchange or sell farm-saved seeds –nor, however, does it safeguard these rights by establishing an international legal basis for their protection. Still, the Treaty provision obliges governments to assume responsibility for upholding farmers' rights. In addition, the preamble further emphasizes the need to promote farmers' rights at both the national and international levels. It affirms that the basis of farmers' rights is 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. And it adds that "the rights recognized in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regard, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of farmers' rights, as well as the promotion of farmers' rights at national and international levels." The slight but significant differences in formulation, particularly with regard to the right to save and share seeds, are noteworthy but fall outside the scope of a brief blog post.

Benefit-sharing as an element of farmers' rights

Article 9 does not provide any indication of how the right of farmers to benefit-sharing may work in practice. A more systematic examination of other relevant ITPGR provisions is necessary in this regard. Article 13 of the Treaty on benefit-sharing in the Multilateral System identifies a series of possible means, including:

- facilitated access to plant genetic resources for food and agriculture;
- exchange of information;
- access to and transfer of technology; and
- the sharing of monetary and other benefits arising from commercialization.

It is worth noting that benefit-sharing in this context is not bilateral – that is, an arrangement between the farmer that provides the traditional variety and the company that develops the commercial one. As farmers' rights are collective rights, benefits are not to be shared only with those farmers that happen to develop varieties later utilized in commercial breeding. In any case, identifying beneficiaries according to individual rights would be virtually impossible in view of the continuous experimentation and exchanges among farmers and farmer communities. Thus, benefits stemming from the Treaty's Multilateral System are to be shared with farmers engaging in the conservation and sustainable use of agricultural biodiversity, in particular in developing countries (Article 13(3)). The same consideration applies in cases where there is no commercial application, but the conservation of genetic

diversity by farmers contributes to the common good. Therefore, in parallel with the provision on benefit-sharing under the Multilateral System, the priority of funds distributed under the Treaty's Funding Strategy is the implementation of plans and programmes for farmers in developing countries (Article 18(5)).

In addition, farmers should not only be rewarded in monetary terms for their contribution, but should be supported to continue their practices, contributing to the conservation of genetic diversity. It can thus be argued that benefit-sharing as an element of farmers' rights extends beyond Article 9 of the Treaty to include supporting measures, such as:

- the legal recognition of customary agricultural practices;
- assistance in the organization of community-based structures such as local genebanks;
- organization of collaboration between farmers and scientists or professional breeders;
- access to seeds; and
- access to markets.

Such an interpretation would be in line with Article 5 of the Treaty on conservation, exploration, collection, characterization, evaluation and documentation of plant genetic resources for food and agriculture. This provision requires Parties to promote or support farmers' and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture. It should be read together with Article 6 on sustainable use, which calls for the development of legal and policy measures including on promoting the expanded use of local and locally adapted crops, supporting the wider use of diversity of varieties and species in on-farm management, and reviewing regulations on variety release and seed distribution. Farmers' rights are therefore a precondition for the achievement of the Treaty's objectives concerning the conservation and sustainable use of plant genetic resources for food and agriculture, for sustainable agriculture and food security.

The need to enhance national implementation

Despite their importance for achievement of the Treaty's objectives, progress with implementation of farmers' rights at national level has been limited. The [fifth session of the ITPGR Governing Body](#) (24-28 September 2013, Muscat, Oman) adopted a resolution on [implementation of Article 9](#) (farmers' rights), which has the potential to promote and provide guidance for national implementation. The resolution includes a request to the Secretariat to review knowledge, views and best practices, including from farmers' organizations, and to systematically derive examples as options for the national implementation of farmers' rights.

In the resolution, the strong interlinkages between farmers' rights and Articles 5 and 6 of the Treaty are also acknowledged, as outlined above, which indicates recognition of the role of farmers' rights in achieving the objectives of the Treaty. In addition, Parties are invited to consider developing national action plans for the implementation of farmers' rights; and to consider reviewing and adjusting national measures that affect the realization of farmers' rights. Such measures could relate, for instance, to stringent legislation on intellectual property rights.

Albeit procedural and of little importance at first glance, the upcoming development of options for national implementation is particularly noteworthy. In the current international policy and legal landscape, where trade- and intellectual property-related interests usually prevail, a systematic mapping and assessment of the few existing laws and practices implementing farmers' rights could result in a clearer understanding of the concept and promotion of national law-making. It could also shed light on the complex relationship between farmers' rights, human rights (including [the right to food](#)) and intellectual property rights, as well as the necessary balancing these rights require. In addition, it may contribute to ongoing debates under the [Committee on Food Security](#), the [World Intellectual Property Organization](#) and the [International Union for the Protection of New Varieties of Plants \(UPOV\)](#). Ultimately, it will contribute to a rethinking of agricultural development for the benefit of all.

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