

**Responses to the unanswered questions
from the webinar on Farmers' Rights and seed systems**

Q1: (from Shawn McGuire)

Framed broadly, 'complementarity' covers a great deal of work on plant genetic resources. For instance, FAO's Seeds and genetic Resources Team links formal and informal seed sectors in various ways, and links conservation to use. Lots of other groups and projects do this as well. So what is the goal of gathering cases of complementarity?

Szonja: Indeed, there are many projects where complementarity is present and I think that everybody knows that the complementary presence or involvement of both the formal and the informal seed sector is necessary for a better implementation of Farmers' Rights. However, I think what is missing, and what the idea here is an open discussion about and open recognition of this need for complementarity by all stakeholders involved in the discussion.

Juanita: Ms. McGuire is correct when saying that there are many examples of projects where complementarity between the informal and formal seed sectors is supported and promoted. However, complementarity should be strengthening and can be improved. Trust relationships between different actors and communication channels between different stakeholders is needed (we have to move from the usual kind of relationships and stakeholders to involve others, be more inclusive). And the most important thing, to move from complementarity through projects to complementarity recognized, promoted and reinforced through policy, institutional and legal measures.

Q2: (From Isabelle)

The report from Bali has been made by the two co-chairs and is not the result of an agreement by all participants in this meeting.

Szonja: This is actually correct. As one of the participants of the consultation, I fully agree with this statement.

Mario: The Co-Chairs and organizers of the Bali meeting gathered all the recommendations received during the consultation as well as those received via email from participants. Due to the large number of recommendations, large number of participants, time limitation, and the fact that some participants represented organizations without a mandate to adopt recommendations, it was agreed to request the Co-Chairs to make a summary reflecting their interpretations of the discussions at the consultation.

Q3: (From Asmita)

How can we make farmers aware about their rights and how do we keep the balance between formal seed systems and informal seed systems?

Szonja: Regarding the first part of the question I would say that this is a role for farmers' organizations but there is also a role for the Treaty and perhaps some specific training or

educational programs on Farmers' Rights could help in reaching to as many farmers possible. Regarding the balance, I think what is needed is a balanced legal and policy background which provides a defined framework for both systems in which they can both operate and cooperate.

Juanita: There are a lot of farmers and other stakeholders, including researchers and decision makers who are not aware of Farmers' Rights in the context of the International Treaty on Plant Genetic Resources for Food and Agriculture. There are different ways of increasing capacity and awareness on these rights. One of them is through the Joint Capacity Building Programme on Farmers' Rights formally established in 2015. Through this Programme, the Global Forum on Agricultural Research (GFAR), the Secretariat of the International Treaty and other formal partners including the Swaminathan Foundation, la Sociedad Peruana de Derecho Ambiental and ERS Pakistan, and informal partners including the Development Fund of Norway, GEF/UNDP Small Grants Programme, and farmers' organizations and NGOs such as ASOCUCH in Guatemala, FIPAH in Honduras and CEPA in Malawi, have jointly develop capacity building materials on Farmers' Rights; organize national meetings on Farmers' Rights, trained farmers' leaders, women farmers' and farmers on Farmers' Rights; supported seed fairs where presentations on Farmers' Rights have been made; develop radio spots on Farmers' Rights, etc.

Other ways of helping people understand about Farmers' Rights is through the work of so many NGOs and organizations working closely with farmers and decision makers implementing Farmers' Rights. They should not only promote activities in the fields implementing these rights, but explain to people what Farmers' Rights are, identify the gaps of their implementation at local and national level, and increase awareness on the importance of recognizing and implementing these rights, including through appropriate policy and legal measures.

Mario: Farmers and local communities and various stakeholders particularly the national and local government institutions should be aware; have sense of practical understanding to "mainstream" the idea or concept of Farmers' Rights. CSOs and NGOs and other institutions have indeed an important role in the implementation of Farmers' Rights, but it is equally important that the concept of Farmers' Rights can be taken firmly by government institutions to be able to mainstream in their projects, programmes, policies and agenda related to their national food security programmes, national biodiversity action plans and other similar agenda on sustainable agriculture and rural development. In that sense, everyone should be able to contribute to its realization.

Q4: (From Teshome)

Do farmers distinguish seed system as formal and informal or draw on both? The latter appears normal and I wonder if the presenters can share experiences that have approached FR implementation based on farmers' practices?

Gloria: Yes, farmers do distinguish the formal and informal systems. They rely on the formal system for the commercial purposes i.e mainly to produce what they would like to sell, and the informal system for most of what they are consuming at the household....the informal seed system provides a wide range of diversity for household food and nutrition security – that meets the specific tastes and preferences that farmers want, some farmers in Uganda

grow mixtures of beans which have different maturity rates e.g. early, medium and long to ensure they have a consistent supply of beans for a longer time within the household – this is used as a strategy for household food security. Bioversity International has helped to establish community seed banks (CSBs) to conserve this diversity in three sites of Uganda. Farmers not only conserve these varieties but they also multiply them and produce seed of these varieties for the benefit of other farmers in the community. The same farmers are also trained on production of quality declared seed (QDS) of the formal sector varieties to ensure their availability and accessibility within their localities.

Bram: Farmers may source seed from various seed systems dependent on the crop and the purpose for growing it (market/own consumption), see e.g. <https://www.youtube.com/watch?v=4BQxR5vZw>

At Oxfam, we approach FRs by looking at what farmers do and want and then try to adjust legal frameworks to allow and support such practices. For example, if farmers want to market farmer varieties we try to influence national variety registration and seed certification systems in order to allow for such practices, because in many countries the regulatory systems only support the formal sector, i.e. modern varieties that are Distinct, Uniform and Stable (DUS) and have gone through VCU testing across the country, something that is not feasible (and useful) for many farmer varieties (*see some of the information documents from Bram – which I have uploaded to Dropbox - Peter*).

Q5: (From Rudiger Stegemann)

Can you please include reference e.g. to the work on UN Declaration on Rights of Peasants (Human Rights Council)?

Szonja: It is not clear from the question where such a reference should be included. In any case, reference to the mentioned Declaration is very often made in the discussions on Farmers' Rights, so this is not omitted. However, as far as I am concerned I think we need to be very clear that the Treaty provides for Farmers' Rights in Article 9 and not for peasants' rights so what is said in the mentioned Declaration probably cannot be directly used or translated to the discussion on Farmers' Rights.

Juanita: It is clear to me that the International Treaty recognizes the rights of farmers in a very concrete and limited scope: Farmers' Rights as they relate to plant genetic resources for food and agriculture. That is not to say that there are other frameworks recognizing rights to indigenous peoples, local communities (who could be farmers) over natural resources and traditional knowledge, innovations and practices relevant for the conservation and use of those resources (i.e. the Convention on Biological Resources). That is the case of the Declaration on Peasants' Rights, which of course has a broader scope in terms of the rights recognized to farmers, peasants, pastors and other people working in rural areas. The Declaration, which is under discussion and not yet approved, recognizes Farmers' Rights, and other rights that are relevant for Farmers' Rights, including the right to water, land and seeds. I believe that despite recognizing the different legal frameworks recognizing the rights of farmers over their resources and knowledge, it is clear that farmers have a holistic perception when thinking and talking about their rights: they as farmers claim the recognition and implementation of their rights to water, land, seeds, credit, participation in decision making, non discrimination, etc. etc.)

Mario: The Fourth Session of the open-ended intergovernmental working group on a United Nations Declaration on the rights of peasants and other people working in rural areas from 15-19 May 2017, have deliberated the Draft Declaration. In this Draft, one of the articles is about the right to « seeds » of which the basis or reference is Article 9 of the International Treaty. However, the latest version of the draft declaration of the Fourth Session is up to this writing, not available yet in their website <http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/4thSession.aspx> If the declaration would go through, obviously it would help to create awareness and visibility of Farmers' Rights.

Q6: (From Stefano Orsini)

Is there any sort of treaty dealing with organic seeds?

Juanita: As of my knowledge, there is no international treaty dealing with organic seeds, as its main scope. However, lots of debate has been happening on organic agriculture at the international level. For example, in 2004, FAO, IFOAM (International Federation for Organic Agriculture Movement) and ISF (International Seed Federation) held in Rome the First Conference on Organic Seed, with the aim of:

- Create a platform for international information and knowledge exchange between the organic movement and the conventional seed sector
- Evaluate regulatory requirements and related issues for organic seed
- Provide a platform for networking and cooperation

Further information on this First Conference is available at

<http://www.fao.org/docs/eims/upload/229953/organic-seed-conf.pdf>

There is also an International Centre for Research in Organic Food Systems which website contains very interesting information. The link is

http://www.icrof.org/Pages/News_and_events/index.html

Mario: The scope of the International Treaty on PGRFA relates to plant genetic resources for food and agriculture and it doesn't make specific reference to a production system in agriculture.

In fact the objectives are the conservation and sustainable use of PGRFA and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.

Since we are talking about sustainable agriculture the organic seeds production is part of such a process. Therefore we can say that the Treaty deals with organic agriculture too (ref to art. 6 – Sustainable Use of PGRFA).

Q7: (From Mathieu Ayenan)

How do you manage intellectual property right (IPRs) in the participatory breeding programs?

Bram: At Oxfam, farmers are in charge of setting the breeding objectives in PPB projects, supported by researchers and/or extension workers of the public sector. They have full access and control over the process and genetic resources/varieties used. To date, no formal intellectual property rights have been applied on the final varieties coming out of the PPB

process. However, some of the varieties have been registered in the national variety catalogue. This is often done by the public research or extension office that supports the farmers, recognizing the farmer communities as the breeders.

Gloria: This is managed by agreements between farmers and breeders. In some countries e.g. in India farmers have used Mutual Transfer Agreements (MTAs) with breeding and research programs, the MTAs specify how the IPRs are managed. In some cases farmers pledge to have these materials in the open source to protect the commons' and to provide freedom of access to other farmers and breeders.

Q8: (From Asmita)

With the right of commercial growers to improved varieties when the conservation of indigenous variety is in danger. How can we protect both the formal and informal seed systems?

Szonja: See question 3 referring to the need for balanced legislative and policy framework.

Juanita: I believe that the important thing is to ensure the implementation of both systems having, on one side, varietal identity and purity, and on the other side, crop genetic diversity.

Q9: (From Teshome)

Can you also provide examples of national instrument that recognizes such farmers' variety registration?

Gloria: There are very few examples in this area as many countries don't recognize farmers' variety registration. India is the only country with a document that recognizes this. it is the Protection of Plant varieties and farmers rights Act of 2001.

Szonja: Under EU law there are two EU Directives which have created a specific legal framework for the registration/commercialization of so-called conservation varieties and landraces. One of them relates to vegetable species (Directive 2009/145):

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1496266274463&uri=CELEX:02009L0145-20130828> and the other one relates to agricultural species (Directive 2008/62): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008L0062>

Q10: (from Atenchong)

With the diminishing reproducibility of the high yield or tolerant varieties, there is an increasing cost or long-term cost. Obviously because of the branding and the commercialisation of 'nature's gifts' i.e. the seed. Who bears the cost?

Bram: Not sure I understand the question. Who bears to cost of plant breeding? That depends on the crop and market. If there is a strong commercial market and for hybrids, the private sector will be willing to make the investments and market the seed, which the farmer will pay for. For crops (and countries) where there is not a strong commercial seed market, the public sector and farmers themselves will have to invest in plant breeding to maintain and improve yields and disease tolerance.

Q11: void... was answered during the actual webinar.

Q12: (From Isabelle)

Can you share more concrete examples of practices/exchange between farmers and plant breeders and seed companies?

Szonja: I refer once more to our website: <https://www.euroseeds.eu/voluntary-benefit-sharing-activities-european-seed-industry>

All the projects under 'capacity building' are examples of direct collaboration/exchange between breeders/seed companies on one hand and local farmers or farmer communities on the other.

Q13: (From Wanjama)

What does "protection of breeders rights" mean? In my opinion it means farmers should pay royalties if they save seeds of the patented varieties.

Szonja: There are two different IP systems we are talking about here: one is plant variety protection (or plant breeders' rights or plant variety rights) and the other is patents. They are very different in their scope of protection therefore it is important not to mix them up. With plant variety protection one can protect a plant variety and with patent protection it is possible to protect plant-related inventions (what exactly is patentable from the plant field will differ from country to country depending on the national legislation). The question whether farmers have to pay royalties for farm saved seed use depends on the scale of the activity concerned. If it is not of commercial scale and for private use, these activities are not under the scope of the plant variety protection right, so the farmers can do what they want with the seeds and need no authorization, pay nothing. If the activity is of commercial scale, under the UPOV type plant variety protection system the saving and reuse of the seeds from the previous harvest is allowable but an equitable remuneration (royalty) is considered necessary in order to counterbalance the interests of the breeders. Whether the same possibility exists or not under patent laws, again will depend on the national laws of the different countries. At least in EU law, the possibilities regarding farm saved seed are the same under plant variety rights and patent law.

Bram: Patents are different from Plant Breeder's Rights (PBRs, or Plant Variety Protection). During the webinar, we talked about PBRs and in particular the UPOV system. If a variety is protected by a PBR, anyone has to ask permission to the right holder to multiply, sell, export etc. the protected variety, which means in practice that the right holder will be able to charge an extra fee (the royalty) when selling seed of the protected variety. In some countries, farmers are allowed for certain crops to re-use seed on their own holding (i.e. farm-saved seed), but they may have to pay a reduced royalty to the breeder if they do so. This is called the farmer's privilege under the UPOV 1991 Convention. At Oxfam, we argue that smallholder farmers in developing countries should be free to use, exchange and locally trade any seed, including seed of varieties that fall under a PBR, see: <https://www.sdhsprogram.org/publications/reconciling-farmers-and-plant-breeders-rights/>

Q14: (From Teshome)

Wanted to ask those of you who collaborate with national and international genebanks in a PPB project and how it has practically contributed to the implementation of Farmers' Rights? Consider the 4 rights as defined by the ITPGRFA if you wish.

Gloria: PPB helps farmers to participate in decision making by allowing them to contribute to the varieties being bred for their use i.e. to specify their desired traits etc.

PPB also helps farmers to have equitable access and share benefits from genetic resources – they are obviously benefiting from and improve variety and providing access to their varieties which have potential traits used in PPB by breeders PPB puts to use farmers indigenous knowledge which in a way helps to document and protect it once farmers contribute to a variety through PPB they have the right to save exchange and sell it

Q15: (From Luis Alvarado)

Is this sustainable in a trade dominated world, where small farmers are not prepared to fight with? Legislations are not a trade order, even in an informal sector (In Latin America 80% of farmers live in an informal sector). How we could help in this situation?

Juanita: You are right when saying that farmers alone cannot change the current situation. During our webinar, I said that not one stakeholder or organization could do this by its own. We need partnerships and collective actions to strengthen complementarity of both the informal and formal seed systems. We need to bring people together from different perspectives and sectors, build trust between the stakeholders and build communication channels. We need to think in our own role and how from our role we can contribute to the implementation of Farmers' Rights and the complementarity of the systems.

Q16: (From Ephraim Wachira)

It is important to partner with regulatory agencies on recognition of community germplasm resources even if it's not possible to protect them since breeders are allowed to access all germplasm materials.

Szonja: I wonder what is meant by “breeders are allowed to access all germplasm materials”. Breeders, such as anybody else, are allowed to access genetic resources under the applicable legal and administrative requirements. From provider countries breeders can access material if they follow the national ABS laws, from the MLS they can access under the SMTA, from genebanks they can access under the terms and conditions of the genebanks etc. ABS laws and the MLS of the Treaty however provide access for use in research and breeding (and training), so those laws do not apply to access to the same material for; for example, multiplication purposes. For such purposes there are often no rules or conditions to fulfil or if there are, that is another set of conditions and not the same as the laws on access for research and breeding.