

WHAT ARE FARMERS' RIGHTS?



WHAT ARE RIGHTS?

A right is something we are all entitled to. These rights describe what may, must, and must not be done according to the values and morals held in a society. While every person is entitled to these rights, they also have a responsibility to respect and not to infringe on the rights of others.

Rights are guaranteed and protected in many countries' laws. Some rights are developed and enforced locally as part of peoples' cultural norms and traditions. Regardless of a country's laws there are internationally recognised rights that should apply to everyone in the world. These are known as Human Rights because they should be enjoyed by anyone born in this world regardless of where they live.

The highest form of rights in South Africa is the Bill of Rights, contained in Chapter 2 of our Constitution. The Bill of Rights guarantees every person in the country basic Human Rights, and is the cornerstone of our law and democracy.

South Africa's constitutional rights are also Human Rights, but not all internationally recognised Human Rights are included in our Constitution.

Farmers have many rights. These include the basic Human Rights we all have, as well as specific Farmers' Rights which are recognised internationally.



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Farmers have many rights in addition to the Human Rights we all enjoy. The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) recognises a broad suite of rights as Human Rights (see page 7). These include the rights of rural people to their land, waters, and the resources within their territories, including their right to seed. This right to seed includes and expands on the concept of Farmers' Rights.

Farmers' Rights are described in the International Treaty on Plant Genetic Resources for Food and Agriculture (also called the Plant Treaty) and refer to specific rights farmers have to use and propagate (through their seed, cuttings or tubers) the "plant genetic resources" that are used for food and agriculture. This right recognises the role of farmers in the past, present and in the future in developing the diversity of crops that form the basis of our food and agricultural systems.

Farmers' Rights, as described in the Plant Treaty, can be summarised as:

- Farmers' customary rights to save, use, exchange and sell seed or propagating materials grown on their farms.
- Farmers being recognised, equitably rewarded, and supported for their contribution to the global pool of crop genetic resources as well as the resultant development of commercial varieties of plants.
- Farmers' participation in decision-making on issues related to crop genetic resources and related knowledge.
- The protection of traditional knowledge related to crop genetic resources.

WHY ARE FARMERS' RIGHTS IMPORTANT?

Farmers' Rights are important because without them the vital role of farmers (especially smallholder farmers) in maintaining and developing crop genetic diversity can be too easily disregarded and ignored. Recognising and protecting Farmers' Rights is vital for:

- Maintaining the crop genetic diversity we have inherited globally, which is the foundation for all food and agricultural production.
- Greater food security through seeds being available to farmers.
- Greater nutrition security through locally adapted and more diverse diets.
- Contributing to food sovereignty by putting farmers in control of what they plant and eat, and when they do this.
- Protecting the livelihoods of millions of smallholder and rural people who depend on farm-saved seeds.
- Having diverse crops as well as diverse varieties within each crop, which provide more options to farmers when challenges arise and thus greater resilience to climate change, pests and disease.
- Sustaining diverse food cultures.
- Maintaining and protecting indigenous knowledge and practices in relation to food and agriculture.

THE HISTORY OF FARMERS' RIGHTS

The great diversity of food crops in the world were developed by farmers over hundreds and sometimes thousands of years through a continuous process of carefully selecting and saving seed to replant. This resulted in many varieties and a great diversity of crops suited to local climates, soils and cultures. In most parts of the world seed is freely exchanged as a community resource and heritage.

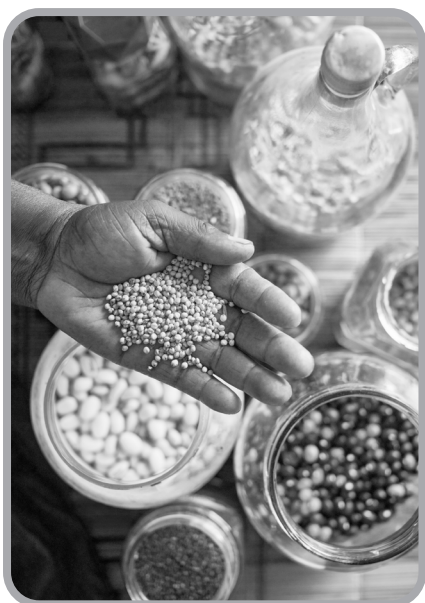
The development of commercial plant breeding changed the view of seed as a common good into a commodity which can be sold and owned. This began in the late 1800s when plant breeders artificially cross-pollinated crop plants to produce new varieties for sale. With growing understanding of how plants reproduce, breeders started developing maize hybrids in the early 1900s. New breeding techniques in the 1920–1930s enabled quicker hybrid production and by the 1950–1960s the industry was able to mass produce the new high yielding varieties of maize, wheat and rice that launched the Green Revolution. The new varieties not only displaced farmer seed, but went hand in hand with irrigation, synthetic chemical fertilisers and pesticides with consequent damage to soils and toxic impacts on human and environmental health, especially in Asia where the Green Revolution took root.

This rapidly growing and globalising seed and agrichemical industry wanted to profit from their investment in plant breeding, beyond the first sale of seed. They lobbied to extend Intellectual Property Rights (which had applied to the invention of new human-made products) to living seed and plants; and the concept of Plant Breeders' Rights (PBRs) was introduced:

- In 1961, industrialised countries initiated the International Convention for the Protection of New Varieties of Plants (UPOV) to protect the rights of private plant breeders in national and international markets.
- Breeders' Rights were further entrenched through an agreement on intellectual property, which was included as part of the establishment of the World Trade Organisation (WTO) in January 1995. This Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement requires member states to extend intellectual property protection to new varieties of plants. These provisions give plant breeders legal control over their varieties for at least 20 years once their breeders' right is registered.

Multinational companies increasingly own the PBRs of commercial varieties, using multiple strategies to entice and even coerce farmers and governments to use their products. They have also influenced national and regional policies to restrict farmers from exchanging and selling seed. However, most of our food and agriculture is based on the agrobiodiversity developed by smallholder farmers. Not only can farmers be prevented from maintaining their crop diversity and seed systems by Property Rights laws, but genetic traits drawn from farmer varieties may be included in new varieties protected by Plant Breeders' Rights and sold back to farmers at a profit.

The concept of Farmers' Rights was advocated by civil society activists in the 1980s to counter the new laws favouring the Intellectual Property Rights of commercial plant breeders. Farmers' Rights are a way to recognise, reward and protect the past and continuing contribution of farmers to our food systems through developing and conserving crop biodiversity.



SOME FURTHER READING

The South African Bill of Rights

www.justice.gov.za/constitution/SACConstitution-web-eng-02.pdf

International Treaty on Plant Genetic Resources for Food and Agriculture

www.fao.org/3/i0510e/i0510e.pdf

– Also see the full Plant Treaty page at www.fao.org/plant-treaty/en/ and the themed focus on Farmers' Rights at www.fao.org/plant-treaty/areas-of-work/farmers-rights/en/

United Nations Declaration on the Rights of Peasants

<https://www.tcoe.org.za/wp-content/uploads/2023/02/Booklet.pdf>

Illustrated book on all Articles in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas

<https://viacampesina.org/wp-content/uploads/2020/04/UNDROP-Book-of-Illustrations-I-EN-I-Web.pdf>

Options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the Plant Treaty

www.fao.org/3/cc7864en/cc7864en.pdf

Inventory of national measures, best practices and lessons learned from the realization of Farmers' Rights

www.fao.org/plant-treaty/areas-of-work/farmers-rights/inventory-on-frs/en/

With sustained civil society lobbying, Farmers' Rights have now been included in several international policies and instruments:

- **1986**

The concept of Farmers' Rights was first raised in international negotiations in the United Nations Food and Agricultural Organisation (FAO).

- **1989**

The 25th Session of the FAO Conference formally recognised the concept of Farmers' Rights.

- **1992**

The Convention on Biological Diversity (CBD) was adopted, including a resolution linking the promotion of sustainable agriculture with the CBD. This resolution urged the FAO to begin negotiations for a legally binding international regime on the management of plant genetic resources for food and agriculture, including the question of Farmers' Rights.

- **2001**

The International Treaty on Plant Genetic Resources for Food and Agriculture – also called the Plant Treaty – was adopted after lengthy negotiations by the FAO Commission on Genetic Resources for Food and Agriculture (see page 5).

- **2018**

The Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) was adopted by the United Nations Human Rights Council (see page 7).

On the next pages (pages 5–8) we discuss two of the most important legal instruments for Farmers' Rights:

- the International Treaty on Plant Genetic Resources for Food and Agriculture; and
- the Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).

THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (THE PLANT TREATY)

In November 2001, the 31st Session of the FAO Conference adopted the International Treaty on Plant Genetic Resources for Food and Agriculture. The Plant Treaty came into force in June 2004, and has 155 Contracting Parties. South Africa acceded to the Plant Treaty on 16 January 2025.

The Plant Treaty has a Preamble and 37 Articles across 7 Parts. The importance of Farmers' Rights is emphasised in the Preamble. It affirms 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"*.

The Preamble also affirms that the Plant Treaty recognises the rights 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 as fundamental to the realisation and promotion of Farmers' Rights nationally and internationally.

Article 9 of the Plant Treaty (which is in Part 3), is dedicated to Farmers' Rights. This recognises the enormous contribution local farmers and communities have and will continue to make to the development of plant genetic resources for food and agriculture. Article 9 states that the responsibility for realising Farmers' Rights rests with the national governments of contracting parties, which must take appropriate measures to protect and promote Farmers' Rights in relation to genetic resources for food and agriculture by:

- protecting relevant traditional knowledge;
- equitably sharing benefits from the use of these resources; and
- the participation (of rights holders) in making decisions on matters related to the conservation and sustainable use of these resources at the national level.

However, Article 9 is limited in that the rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material is *"subject to national law and as appropriate"*. Thus, although international treaties are legally binding on signatory states, Farmers' Rights in this case may be limited by other national priorities and laws.

The Plant Treaty has other important sections that impact on Farmers' Rights. One of these is Part 4, which covers the Multilateral System of Access and Benefit-sharing (MLS). The intention of the MLS is to facilitate easier access by researchers and breeders to the genetic resources of key food and agricultural crops but also to ensure that farmers share in benefits. A Benefit Sharing Fund was established to receive user-based income from breeders accessing the MLS and donations. Farmers are not paid directly by the fund. Instead, the fund supports projects in signatory developing countries with farming communities and other stakeholders to build capacity, transfer technology and support the ongoing conservation and development of crop diversity. The MLS has, however, been controversial as corporations benefiting from access haven't been fairly contributing a portion of their profits to the fund. This has been further complicated by the development of new technologies which can digitally sequence genetic information (called DSI), enabling corporates to bypass the tracking system in the MLS because they no longer need to use the physical propagating materials.

The Plant Treaty has a governing body and technical committees that take the work of the Treaty forward. One of these is Adhoc Technical Expert Group on Farmers' Rights. This was mandated to develop an inventory of the different ways that parties can support Farmers' Rights, and the best practices and learnings. This inventory is still open to new examples that contribute to the understanding of Farmers' Rights. Based on the inventory the technical group has developed, and in 2023 published, *"Options for encouraging, guiding and promoting the realization of Farmers' Rights"*. These detail 11 broad categories, and examples within these, of the ways that governments and others can support farmers.

The Plant Treaty recognises the enormous contribution local farmers and communities have and will continue to make to the development of plant genetic resources for food and agriculture.



UNITED NATIONS DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS (UNDROP)

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) is a landmark declaration for organisations, farmers, rural communities and indigenous people in the global food sovereignty movement. Initiated and championed by La Via Campesina from 2008, this declaration aims to achieve justice for rural communities and workers who are routinely exploited, marginalised and oppressed despite being crucial contributors to global food security and thriving ecosystems. UNDROP was negotiated over a six-year period and was finally adopted by the United Nations Human Rights Council on 17 December 2018.

Although UNDROP is not a legally binding treaty, it contributes a new instrument to the international system protecting Human Rights. In particular, it obliges states to respect, protect and fulfil the rights of peasants and other people working in rural areas, and to take prompt legislative, administrative and other appropriate and progressive steps towards the full realisation of the rights in UNDROP that cannot be immediately guaranteed.

UNDROP is a tool we can use to demand that Farmers' Rights are included in national and regional policies. It can also be used in court as a defence against discrimination, and for mobilising for equity and justice for rural communities.

UNDROP provides rights to individuals but also collective rights to communities of people. It recognises individuals and their dependents involved in small-scale agriculture including raising livestock, pastoralism, fishing, forestry, hunting and gathering, and handicrafts related to agriculture or a related occupation in a rural area.

Its many Articles emphasise a range of different rights. Some of these are already part of international laws and even the Bill of Rights in South Africa's Constitution, while others expand on existing rights and introduce new ones.

Significantly, Article 15 not only provides for the right to adequate food and to be free from hunger, but also the right to food sovereignty – that is people's ability to determine their own food and agriculture systems. This includes participating in decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods that respect their cultures.

Article 19 of UNDROP describes the right to seeds, detailing Farmers' Rights as well as various ways in which the state is obliged to support these (see page 8). By enshrining peasants' right to seeds in international human rights law, we can use UNDROP as a tool to demand that Farmers' Rights are included in national and regional policies.

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UNDROP – Article 19: The Right to Seeds

1. Peasants and other people working in rural areas have the right to seeds, in accordance with Article 28 of the present Declaration, including:
 - a. The right to the protection of traditional knowledge relevant to plant genetic resources for food and agriculture.
 - b. The right to equitably participate in sharing the benefits arising from the utilization of plant genetic resources for food and agriculture.
 - c. The right to participate in the making of decisions on matters relating to the conservation and sustainable use of plant genetic resources for food and agriculture.
 - d. The right to save, use, exchange and sell their farm-saved seed or propagating material.
2. Peasants and other people working in rural areas have the right to maintain, control, protect and develop their own seeds and traditional knowledge.
3. States shall take measures to respect, protect and fulfil the right to seeds of peasants and other people working in rural areas.
4. States shall ensure that seeds of sufficient quality and quantity are available to peasants at the most suitable time for planting, and at an affordable price.
5. States shall recognise the rights of peasants to rely either on their own seeds or on other locally available seeds of their choice, and to decide on the crops and species that they wish to grow.
6. States shall take appropriate measures to support peasant seed systems and promote the use of peasant seeds and agrobiodiversity.
7. States shall take appropriate measures to ensure that agricultural research and development integrates the needs of peasants and other people working in rural areas, and to ensure their active participation in the definition of priorities and the undertaking of research and development, taking into account their experience, and increase investment in research and the development of orphan crops and seeds that respond to the needs of peasants and other people working in rural areas.
8. States shall ensure that seed policies, plant variety protection and other intellectual property laws, certification schemes and seed marketing laws respect and take into account the rights, needs and realities of peasants and other people working in rural areas.