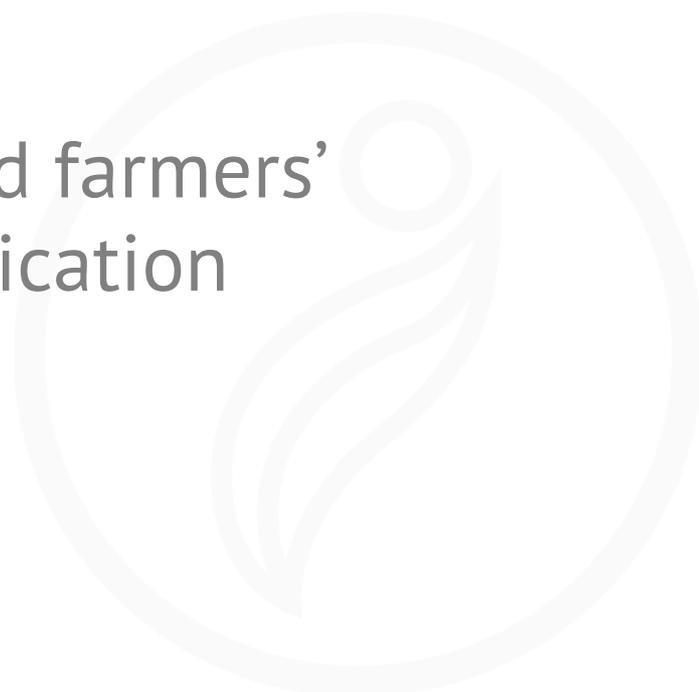


# Farmers' Rights and farmers' exemption: a clarification

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## CONTEXT

The terms Farmers' Rights and farmers' exemption, and the concepts behind them, are often misunderstood and misused in various fora.

ISF would like to remind that:

- The term Farmers' Rights appears both in the preamble and in a separate provision of the ITPGRFA. It draws its origin from debates in the late 1970s and was seen by some to be a means of rewarding farmers and their communities for their past contributions and is an acknowledgement of the contribution of farmers and their forebears in selecting and maintaining landraces.
- Farmers' Rights is a concept outlined in Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) which aims at recognizing the contribution of farmers to the conservation and development of plant genetic resources for food and agriculture. Article 9.2 lists the elements that are considered to form part of Farmers' Rights. At the same time, Article 9.3 of the ITPGRFA states: *"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."* Article 9.3 therefore does not provide for an unconditional right for farmers but merely states that Article 9 does not intend to limit any rights or obligations that farmers have due to national laws.

ISF supports the view that Farmers' Rights should be implemented at a national level.

- Farm saved seed exception or exemption (also known as farmers' privilege) refers to the optional exception permitted by the breeder's right in Article 15(2) of the 1991 Act of the UPOV Convention which *"within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or Article 14(5)(a)(ii)"*.

These two concepts should neither be confused nor viewed in opposition.

## POSITION

ISF recognizes both Farmers' Rights and farmers' exemption and believes that:

- effective intellectual property protection stimulates breeders to invest in the development and accelerates the release of new varieties so farmers have the widest possible choices for productivity and success. The UPOV 91 Act, the most advanced international standard for IP protection for plant varieties, balances protection as an incentive for innovation and access to enable others to improve protected varieties.
- plant breeder's rights, a time-limited intellectual property right on plant varieties, do not apply to acts done privately and for non-commercial purposes.
- the concept of farmers' exemption only applies to protected varieties. There is no limit on saving, swapping, selling progeny seed from non-protected varieties or varieties obtained by crossing a protected variety with landraces. Moreover, as stated in UPOV Explanatory Note (UPOV/EXN/EXC/1), *"small farmers' with small holdings (or small areas of crop) might be permitted to use farm-saved seed to a different extent and with a different level of remuneration to breeders than "large farmers".*<sup>1</sup>
- both instruments, the ITPGRFA and UPOV Convention, are equally important to reach food security, in line with the ISF vision: *"A world where the best quality seed is accessible to all, supporting sustainable agriculture and food security"*. ISF recognizes and supports both instruments and calls for a mutually supportive interpretation and implementation.

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<sup>1</sup> UPOV Explanatory Note on Exceptions to the Breeder's Right, page 9, point 20:  
[http://www.upov.int/edocs/expndocs/en/upov\\_exn\\_exc.pdf](http://www.upov.int/edocs/expndocs/en/upov_exn_exc.pdf)