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The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

**Views, Experiences and Best Practices as an example of possible options for
the national implementation of Article 9 of the International Treaty**

Note by the Secretary

At its [second meeting](#) of the Ad hoc Technical Expert Group on Farmers' Rights (AHTEG), the Expert Group agreed on a revised version of the [template](#) for collecting information on examples of national measures, best practices and lessons learned from the realization of Farmers' Rights

This document presents the updated information on best practices and measures of implementing Article 9 of the International Treaty submitted by Association for Plant Breeding for the Benefit of Society (APBREBES) on 16 July 2019.

The submission is presented in the form and language in which it was received.



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Template for submission of

Measures, Best Practices and Lessons Learned from the Realization of Farmers' Rights as set out in Article 9 of the International Treaty

Basic information

- Title of measure/practice
A HUMAN RIGHTS IMPACT ASSESSMENT OF UPOV 1991 PLANT VARIETY PROTECTION (with a focus on the farmers' right to save, use, exchange and sell farm-saved seed and other propagating material).
- Date of submission
5. 2.2019
- Name(s) of country/countries in which the measure/practice is taking place
The human rights impact assessment (HRIA) measure took place in Peru, Kenya, Philippines. However, the methodology could be used as a basis for an impact assessment in every country.
- Responsible institution/organization (name, address, website (if applicable), e-mail address, telephone number(s) and contact person)
Public Eye, Email: laurent.gaberell@publiceye.ch; contact person: Laurent Gaberell
- Type of institution/organization (categories)
NGO
- Collaborating/supporting institutions/organizations/actors, if applicable (name, address, website (if applicable), e-mail address, telephone number(s))
Development Fund www.utviklingsfondet.no; Searice www.searice.org.ph; Third World Network www.twn.my; Bread for the World – Protestant Development Service www.brot-fuer-die-welt.de, Community Technology Development Trust (CTDT) www.ctdt.co.zw; Misereor www.misereor.org; With the support of: Swiss Agency for Development and Cooperation www.eda.admin.ch/sdc, Quaker United Nations Office <https://quno.org>

Description of the examples

Mandatory information:¹

- Short summary to be put in the inventory (max. 200 words) including:

Between 2012 and 2014, a network of seven civil society organizations conducted a study to better understand and raise awareness of the potential implications of the 1991 Act of the UPOV Convention for the realization of human rights. Based on the policy tool Human Rights Impact Assessment (HRIA), a methodology was developed to assess such implications based on a series of case studies. They revealed that from a human rights perspective, UPOV's restrictions on the use, exchange and sale of seed/propagation material of protected varieties could adversely affect the right to food as well as other human rights, by reducing the amount of household income which is

¹ This mandatory information is required in order for the measure/practice to be included in the Inventory.



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available for food, healthcare or schooling as well as by limiting access to seed of preferred quality; beneficial interlinkages between formal and informal seed systems would be cut off. Other negative impacts include limitations to the farmers' rights on the protection of traditional knowledge and to participate in decision-making at national level. While the case-studies were carried out in Kenya, Peru and the Philippines, the developed methodology could be used as a basis for impact assessments in other countries and contexts as well.

(188 words)

- **Brief history (including starting year), as appropriate**
The Human Rights Impact Assessment (HRIA) is a policy tool that has emerged over the last decade. Accordingly, United Nations human rights bodies, academics and civil society organizations alike have increasingly called on governments to carry out such assessments. Based on former HRIA work, a methodology was developed to carry out ex-ante case studies in Kenya, Peru and the Philippines with a special focus on the implications of a UPOV 1991 modelled PVP law on the farmers' right to save, use, exchange and sell farm-saved seed and other propagating material. After a project period of over two years, final results were published in October 2014.
- **Core components of the measure/practice (max 200 words)**
 - Development of a methodology to carry out an ex-ante HRIA of UPOV 1991 modelled PVP laws and the farmers' right to save, use, exchange and sell farm-saved seed and other propagating material, which could be used by others.
 - Case studies using the HRIA tool in Kenya, Peru and the Philippines.
 - The case studies not only demonstrated impact on the Farmers' Right to save, use, exchange and sell farm-saved seed and other propagating material, but also to the Farmers' Right on the protection of traditional knowledge relevant to plant genetic resources for food and agriculture and on the Farmers' Right to participate in making decisions. It showed negative impact on the functioning of the informal seed system, as the beneficial interlinkages between the formal and informal seed systems would be cut off.
 - One of the main conclusion was that «From a human rights perspective, restrictions on the use, exchange and sale of protected seeds could adversely affect the right to food, as seeds might become more costly, harder to access, or of less good quality. They also could affect the right to food, as well as other human rights, by reducing the amount of household income which is available for food, healthcare or schooling.»
- **Description of the context and the history of the measure/practice is taking place (political, legal and economic framework conditions for the measure/practice) (max 200 words)**
Agriculture in most developing countries is characterized by small-scale farming that relies heavily on the informal – rather than the formal or commercial – seed system. The informal seed system is the basis for farmer livelihoods as well as national food security in these countries. PVP laws based on UPOV 91 reduce the effectiveness of this informal seed system by restricting farmers' rights, and disrupting traditions of seed management and sharing. Potentially, this leads to severe consequences, particularly for the most vulnerable groups: smallscale and women farmers. Therefore, UPOV 91-like PVP laws can have negative impacts on the realization of farmers' rights and human rights – particularly the right to food – of those groups. In this context, the lack of information about these impacts needs to be addressed, particularly because many developing countries are considering (often under pressure) joining UPOV 91. For evidence-based decision making, governments in developing countries need to know how UPOV 91-based PVP laws might affect farmer communities and the development of their agricultural sector. This will give governments the opportunity to design their



PVP systems in a way that is most suited to their needs and realities.

- To which provision(s) of Article 9 of the International Treaty does this measure relate

- Art. 9.1
- Art. 9.2a
- Art. 9.2b
- Art. 9.2c
- Art. 9.3

Other information, if applicable

- Please indicate which category of the Inventory is most relevant for the proposed measure, and which other categories are also relevant (if any):

No.	Category	Most relevant ²	Also relevant ³
1	Recognition of local and indigenous communities', farmers' contributions to conservation and sustainable use of PGRFA, such as awards and recognition of custodian/guardian farmers		
2	Financial contributions to support farmers conservation and sustainable use of PGRFA such as contributions to benefit-sharing funds		
3	Approaches to encourage income-generating activities to support farmers' conservation and sustainable use of PGRFA		
4	Catalogues, registries and other forms of documentation of PGRFA and protection of traditional knowledge		
5	In-situ/on-farm conservation and management of PGRFA, such as social and cultural measures, community biodiversity management and conservation sites		
6	Facilitation of farmers' access to a diversity of PGRFA through community seed banks ⁴ , seed networks and other measures improving farmers' choices of a wider diversity of PGRFA.		
7	Participatory approaches to research on PGRFA, including characterization and evaluation, participatory plant breeding and variety selection		

² Please select only one category that is most relevant, under which the measure will be listed.

³ Please select one or several categories that may also be relevant (if applicable).

⁴ Including seed houses.



8	Farmers' participation in decision-making at local, national and sub-regional, regional and international levels		X
9	Training, capacity development and public awareness creation		X
10	Legal measures for the implementation of Farmers' Rights, such as legislative measures related to PGRFA.		X
11	Other measures / practices	X	

- In case you selected 'other measures', would you like to suggest a description of this measure, e.g. as a possible new category? Implementing Farmer's Rights to save, use, exchange and sell farm-saved seed/propagating material in PVP laws.
- Objective(s)
The objective of the measure/practise was to better understand the potential implications of implementation of UPOV 1991 for the realization of human rights in Peru, Kenya and Philippines. A result of this measure/practise was to also raise awareness among actors in the North and South about the potential human rights impact of UPOV-like PVP laws, restricting the farmers' right to save, use, exchange and sell farm-saved seed and other propagating material. Related to this, the measure/practise sought to demonstrate the hands-on application of the HRIA approach, thereby further developing the methodology and enhancing the applicability of this policy tool. Finally, we hope that this assessment will help empower groups affected by PVP laws, by indicating the channels through which they can raise their concerns about new seed-related laws threatening Farmers' Rights.
- Target group(s) and numbers of involved and affected farmers⁵
Governments, Farmer Organisation, NGOs, International and Regional Organisations
- Location(s) and geographical outreach
Kenya (Njabini, Ngelani), Peru (Huayllacoccha, Tinta), Philippines (Lamlifew, Lengaoan). The methodology could be used as a basis for an impact assessment in every country
- Resources used for implementation of the measure/practice
Ca. 200'000 Euro, for developing the methodology and carrying out the three case studies, including the costs of the research team in each country, translation, printing, and dissemination.
- How has the measure/practice affected the conservation and sustainable use of plant genetic resources for food and agriculture?
Not applicable on a short term basis
- Please describe the achievements of the measure/ practice so far (including quantification) (max 200 words)
To raise awareness about the use of a HRIA linked to Farmers Rights.
- Other national level instruments that are linked to the measure/practice
-

⁵ Any classification, e.g. of the types of farmer addressed, may be country-specific.



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- Are you aware of any other international agreements or programs that are relevant for this measure/practice?

The basis of the HRIA is the International Covenant on Economic, Social and Cultural Rights recognizing the "right to an adequate standard of living, including adequate food", as well as the "fundamental right to be free from hunger". Linked to it is the General Comment No. 12. on the Right to Adequate Food by the CESCR (Committee on Economic, Social and Cultural Rights, 1999). Important and very helpful was previous work by Olivier De Schutter, the Special Rapporteur on the right to food, and by James Harrison, Professor at the University of Warwick:

- De Schutter, O. 2009. Seed Policies and the Right to Food: Enhancing Agrobiodiversity, Encouraging Innovation. Background Document to the Report (A/64/170) presented by the Special Rapporteur on the right to food, at the 64th session of the UN General Assembly. New York.
- De Schutter, O. 2011. Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements. Report of the Special Rapporteur on the right to food. A/HRC/19/59/Add.5. United Nations, Human Rights Council.
- Harrison, J. and Stephenson, M.-A. 2010. Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments. Report for the Scottish Human Rights Commission.
- Harrison, J. 2011. Human Rights Measurement: Reflections on the Current Practice and Future Potential of Human Rights Impact Assessment. Journal of Human Rights Practice, 3(2): 162-187.

- Other issues you wish to address, that have not yet been covered, to describe the measure/practice

-

Lessons learned

- Describe lessons learned which may be relevant for others who wish to do the same or similar measures/practices (max 250 words).

There were some main methodological lessons emanating from the HRIA of PVP laws. First, being selective and focusing early on in the process on a narrow set of human rights and policy elements is key to the success of the exercise. Second, HRIAs are iterative processes which require some degree of procedural flexibility. Third, involving field researchers at an early stage of the process and closely assisting them during data gathering is critical to aligning information needs with information collection.

- What challenges encountered along the way (if applicable) (max 200 words)
See lessons learned
- What would you consider conditions for success, if others should seek to carry out such a measure or organize such an activity? (max 100 words)
See lessons learned

Further information

- Link(s) to further information about the measure/practice
The whole report «OWNING SEEDS, ACCESSING FOOD A HUMAN RIGHTS IMPACT ASSESSMENT OF UPOV 1991 BASED ON CASE STUDIES IN KENYA, PERU AND THE PHILIPPINES» is available in English and Spanish: <https://www.publiceye.ch/en/publications/detail/owning-seeds-accessing->



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[food.](#)

A fact-sheet is available in English, Spanish, French, and German at:

<https://www.publiceye.ch/en/publications/detail/owning-seeds-accessing-food-1>

[ETO Consortium. 2017. For Human Rights Beyond Borders: Handbook on how to hold States accountable for extraterritorial violations. Heidelberg, Germany.](#)

(Case Study 1.3: Human Rights Impact of Strict Plant Variety Protection Laws; p.24f.)



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Template for submission of

Measures, Best Practices and Lessons Learned from the Realization of Farmers' Rights as set out in Article 9 of the International Treaty

Basic information

- Title of measure/practice
Ways to implement the Farmers' Right to Participate in Decision-Making (Art. 9.2 (c) of the ITPGRFA)
- Date of submission
5.2.19
- Name(s) of country/countries in which the measure/practice is taking place
International
- Responsible institution/organization (name, address, website (if applicable), e-mail address, telephone number(s) and contact person)
Association for Plant Breeding for the Benefit of Society (APBREBES) ; www.apbrebes.org; Email: contact@apbrebes.org; contact person: François Meienberg, APBREBES Coordinator
- Type of institution/organization (categories)
Civil Society Organization
- Collaborating/supporting institutions/organizations/actors, if applicable (name, address, website (if applicable), e-mail address, telephone number(s))
www.utviklingsfondet.no; Public Eye, www.publiceye.ch; Searice, www.searice.org.ph; Third World Network, www.twn.my
With the support of: Swiss Agency for Development and Cooperation www.eda.admin.ch/sdc

Description of the examples

Mandatory information:¹

- Short summary to be put in the inventory (max. 200 words) including:
In 2016, a network of five civil society organizations published a study entitled “Farmers’ Right to Participate in Decision-making – implementing Article 9.2 (c) of the International Treaty on Plant Genetic Resources” that gives an overview of how this right of farmers can best be implemented. The objective of the study was to support governments, farmer organizations, civil society organizations and other stakeholders in the implementation of Art. 9.2 (c). The study discusses the context and scope of Article 9.2(c) and its importance for the realization of Farmers’ Rights. Using examples and experiences gained, it reviews the status of farmers’ participation in decision-making processes and identifies some of the key issues and challenges. Drawing from norms, principles, good practices and

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mechanisms that already exist within the United Nations system, especially within the human rights framework, the study also presents key elements for the effective implementation of Article 9.2(c). For example, the right to participate in decision-making should have a solid legal basis and be enforceable by law; requires prompt, effective and practical access to information over process and substance in appropriate form and language; and should include the right to seek a review of a decision and redress/remedies.

(197 words)

- **Brief history (including starting year), as appropriate**
So far, to our knowledge, there was no overview of how the Right to participate (Art. 9.2 c) can be best implemented. That is why a network of CSOs commissioned a Study on the matter which was published in September 2016. The same month the report was presented during the Global Consultation on Farmers' Rights in Indonesia.

- **Core components of the measure/practice (max 200 words)**

The Study discusses the context and scope of Article 9.2(c), and its importance for the realization of the bundle of integrated Farmers' Rights, identifying some key elements that should underpin operationalization of Article 9.2(c) including:

- applies to all types of decision-making processes (e.g., administrative, legislative) and outcomes (e.g., policies, legislations, regulations, budgets, strategies etc.) related to the conservation and sustainable use of PGRFA.
 - should have a solid legal basis, be enforceable by law and designed to engage farmers including from the community level, allowing sufficient time and opportunity to provide feedback and proposals.
 - effective and meaningful participation in decision-making is about active participation, not only consultation.
 - requires prompt, effective and practical access to information over process and substance in appropriate formats and languages.
 - requires awareness- raising and capacity building of farmers in respect of their rights.
 - requires financial support by relevant authorities to finance travel of farmer representatives to participate in meetings, etc.
 - should include decision-making at the sub-national and local levels as well as regional, sub-regional, plurilateral and international decision-making processes, as such processes impact national decision- making.
 - needs to extend to farmers' participation in decision-making related to the negotiating positions of national governments in supra-national processes that create commitments and obligations.
 - should include decision-making on matters related to certification and trade of seeds; PVP and patent laws.
- **Description of the context and the history of the measure/practice is taking place (political, legal and economic framework conditions for the measure/practice) (max 200 words)**
Although the Treaty has been adopted in 2001, considerable challenges remain in the implementation of the right to participate in Article 9.2(c), as can be seen from the submissions made to the Treaty by some Contracting Parties, farmers' organisations and civil society organisations (CSOs) over the years and from experiences at the national, regional and international levels.



- To which provision(s) of Article 9 of the International Treaty does this measure relate
 - Art. 9.1
 - Art. 9.2a
 - Art. 9.2b
 - Art. 9.2c
 - Art. 9.3

Other information, if applicable

- Please indicate which category of the Inventory is most relevant for the proposed measure, and which other categories are also relevant (if any):

No.	Category	Most relevant ²	Also relevant ³
1	Recognition of local and indigenous communities', farmers' contributions to conservation and sustainable use of PGRFA, such as awards and recognition of custodian/guardian farmers		
2	Financial contributions to support farmers conservation and sustainable use of PGRFA such as contributions to benefit-sharing funds		
3	Approaches to encourage income-generating activities to support farmers' conservation and sustainable use of PGRFA		
4	Catalogues, registries and other forms of documentation of PGRFA and protection of traditional knowledge		
5	In-situ/on-farm conservation and management of PGRFA, such as social and cultural measures, community biodiversity management and conservation sites		
6	Facilitation of farmers' access to a diversity of PGRFA through community seed banks ⁴ , seed networks and other measures improving farmers' choices of a wider diversity of PGRFA.		

² Please select only one category that is most relevant, under which the measure will be listed.

³ Please select one or several categories that may also be relevant (if applicable).

⁴ Including seed houses.



7	Participatory approaches to research on PGRFA, including characterization and evaluation, participatory plant breeding and variety selection		
8	Farmers' participation in decision-making at local, national and sub-regional, regional and international levels	X	
9	Training, capacity development and public awareness creation		X
10	Legal measures for the implementation of Farmers' Rights, such as legislative measures related to PGRFA.		X
11	Other measures / practices		

- In case you selected 'other measures', would you like to suggest a description of this measure, e.g. as a possible new category? _____
- Objective(s)
To support Governments, Farmer Organisations, CSOs and other stakeholders to implement Art. 9.2 (c) by :
 - identifying key issues and challenges that arise with respect to Article 9.2(c) implementation.
 - highlighting some existing principles, norms and standards expressed in the existing human rights framework, good practices as well as mechanisms that may be considered for enhancing implementation of Article 9.2(c).
 - defining elements that are essential for effective and meaningful implementation of Article 9.2(c), and providing recommendations for its implementation.
- Target group(s) and numbers of involved and affected farmers⁵
Governments, Farmer Organisation, CSOs, International and Regional Organisations
- Location(s) and geographical outreach
International
- Resources used for implementation of the measure/practice
Honorarium for research and writing, additional costs for translation, layout and printing
- How has the measure/practice affected the conservation and sustainable use of plant genetic resources for food and agriculture?
The paper identifies elements for the operationalization of Article 9.2(c), which in turn is crucial for the implementation of Article 6 of the Treaty.
- Please describe the achievements of the measure/ practice so far (including quantification) (max 200 words)
Not applicable

⁵ Any classification, e.g. of the types of farmer addressed, may be country-specific.



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- Other national level instruments that are linked to the measure/practice
-
- Are you aware of any other international agreements or programs that are relevant for this measure/practice?
There are various international agreements, incl. from the human rights sector, that also recognize the right to participate:
 - The Universal Declaration of Human Rights (UDHR), recognises everyone's right to take part in the government of the country, while the International Covenant on Civil and Political Rights (ICCPR) recognises as a human right the right of public participation in the conduct of public affairs
 - The right to participation is also recognised and further developed in the context of the right to food, which is derived from the International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - Provisions on participation in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) are particularly relevant for the implementation of Article 9.2(c) of the Treaty. Participation norms and procedures can be distilled from, inter alia, Articles 5, 18, 19, 27 and 41 of UNDRIP, and should inform implementation of Treaty Article 9.2(c)
 - The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires States to take measures to ensure women's participation in the formulation and implementation of government policy
 - More examples could be found in the study mentioned.
- Other issues you wish to address, that have not yet been covered, to describe the measure/practice

Lessons learned

- Describe lessons learned which may be relevant for others who wish to do the same or similar measures/practices (max 250 words).

Operationalizing of Article 9.2(c) of the International Treaty is crucial to realizing farmers' rights. Farmers face considerable challenges in exercising their right to participate at all these levels, with the consequence that decisions including on policies and laws not only ignore their needs, but also adversely affect farmers' freedom to operate is evidenced for example by the formulation of seed laws, in particular plant variety protection, seed certification and marketing laws that restrict and in some cases criminalize farmers' right to freely use, save, exchange and sell farm saved seed/propagating material.

The challenges farmers face with regard to the right to participate include: the absence of legal recognition of the right to participate; the absence of appropriate mechanisms to facilitate farmers' participation; the lack of political will due to bias in favour of the corporate sector and/or various external pressures; and limited or no access to information and/or financial support.

The Study identified some key elements that should underpin operationalization of Article 9.2(c). For links to the Study see below under "Further Information")

- What challenges encountered along the way (if applicable) (max 200 words)
 - lack of political will and/or awareness with respect to operationalization of Article 9.2(c)
 - International, regional and other plurilateral negotiation processes and initiatives (e.g. UPOV, north-



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south trade agreements, regional intellectual property or economic entities) that are non-transparent and non-inclusive that formulate obligations that impact farmers' rights and interests at the national level.

- What would you consider conditions for success, if others should seek to carry out such a measure or organize such an activity? (max 100 words)
 - See lessons learned.

Further information

- Link(s) to further information about the measure/practice
The whole report «Farmers' Right to Participate in Decision-making – implementing Article 9.2 (c) of the International Treaty on Plant Genetic Resources»
in english: http://www.apbrebes.org/files/seeds/files/PE_farmers%20right_9-16_def-high.pdf
in french: http://www.apbrebes.org/files/seeds/files/PE_farmers%20right_FR_4-17_def-web.pdf
in spanish: http://www.apbrebes.org/files/seeds/files/PE_farmers%20right_ES_3-17_def-web.pdf



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Template for submission of

Measures, Best Practices and Lessons Learned from the Realization of Farmers' Rights as set out in Article 9 of the International Treaty

Basic information

- Title of measure/practice
Recognizing Farmer's Rights to freely save, use, exchange and sell farm-saved seed/propagating material protected varieties in Plant Variety Protection laws.
- Date of submission
5.2.19
- Name(s) of country/countries in which the measure/practice is taking place
Examples from India, Philippines, Ethiopia, Malaysia
- Responsible institution/organization (name, address, website (if applicable), e-mail address, telephone number(s) and contact person)
Examples collected by APBREBES, www.apbrebes.org; Email: contact@apbrebes.org; contact person: François Meienberg, APBREBES Coordinator
- Type of institution/organization (categories)
Civil Society Organisation
- Collaborating/supporting institutions/organizations/actors, if applicable (name, address, website (if applicable), e-mail address, telephone number(s))
-

Description of the examples

Mandatory information:¹

- Short summary to be put in the inventory (max. 200 words) including:

Several developing countries such as Ethiopia, India, Malaysia and the Philippines have developed their own sui generis plant variety protection (PVP) systems, which comply with the demands of the TRIPS Agreement of the WTO as well as implements Farmers' right to freely save, use, exchange and sell farm-saved seed/propagating material. In 2001, India passed the Protection of Plant Varieties and Farmers' Rights Act stating that a farmer shall be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under the Act in the same manner as s/he was entitled before. Likewise, the Ethiopian Plant Breeders Right Proclamation from 2006 grants farmers the right to save, use, multiply, exchange and sell farm-saved seed or propagating material of protected varieties. The Philippine and the Malaysian law have other articles promoting the Farmer's Rights to freely save, use, exchange and sell farm-saved seed/propagating material protected varieties in Plant Variety Protection laws

¹ This mandatory information is required in order for the measure/practice to be included in the Inventory.



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This shows it is feasible to implement an effective PVP system that also recognizes Farmers' Right to freely save, use, exchange and sell farm saved seed/propagating materials. Joining UPOV 1991 limits and restricts countries' ability to fully implement Farmers' Rights.

- Brief history (including starting year), as appropriate

Article 27.3(b) of the WTO-TRIPS Agreement requires WTO members to put in place a sui generis plant variety protection system. Following this there was significant concern that the 1991 Act of the International Union for the Protection of New Plant Varieties (UPOV) was unsuitable for the agricultural system prevailing in developing countries. Hence a number of countries opted to develop their own sui generis PVP system that is suitable to their agricultural system and realization of Farmers' Rights. These include in 2001 (India), 2002 (Philippines) and 2006 (Ethiopia).

- Core components of the measure/practice

Indian Law on Protection of Plant Varieties and Farmers' Rights Act, Farmers Rights,

Chapter VI, Art. 39 (1) (iv): a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act: Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.

The Ethiopian Plant Breeders Rights Proclamation, (based on the African model legislation for the protection of the rights of local communities, farmers and breeders, and for the regulation of access to biological resources)

Part V, Art. 27 about Farmers' Rights:

In relation to the use of plant varieties, farmers shall have the following rights:

(1) [...] c) to save, use, multiply, exchange and sell farm-saved seed or propagating material of protected varieties.

2/ Notwithstanding the provisions of Sub-Article (1) of this Article, farmers may not sell farm-saved seed or propagating material of a protected variety in the seed industry as a certified seed.

Philippine Plant Variety Protection Act,

SECTION 43. Exceptions to Plant Variety Protection. – The Certificate of Plant Variety Protection shall not extend to

d) The traditional right of small farmers to save, use, exchange, share or sell their farm produce of a variety protected under this Act, except when a sale is for the purpose of reproduction under a commercial marketing agreement. [...] This provision shall also extend to the exchange

and sell of seeds among and between said small farmers: Provided, that the small farmers may exchange or sell seeds for reproduction and replanting in their own land.



Malaysia - Protection of New Plant Varieties Act

31.—(1) The breeder's right shall not extend to— [...]

(e) any exchange of reasonable amounts of propagating materials among small farmers; and
(f) the sale of farm-saved seeds in situations where a small farmer cannot make use of the farm-saved seeds on his own holding due to natural disaster or emergency or any other factor beyond the control of the small farmer, if the amount sold is not more than what is required in his own holding

- Description of the context and the history of the measure/practice is taking place (political, legal and economic framework conditions for the measure/practice) (max 200 words)

The importance of farmers' right to freely save, use, exchange and sell farm saved seed/propagating material cannot be overstated. In many developing countries farm-saved seeds, sale and exchanges between farmers, account for more than 80% of farmers' total seed requirements. Hence, many developing countries have adopted PVP laws that are different to UPOV 91, that allow full implementation of the Farmer's Rights to save, use, exchange and sell farm-saved seeds/propagating material.

It is important to note that implementation of Farmers' Rights has not affected the rights of PVP holder or disincentivised use of the PVP system. This is evidenced by the vast number of PVP applications filed in India. As at July 2017, India had received 15053 PVP applications, of this 3556 applications were filed by the private sector. To date 2688 varieties are PVP protected.

UPOV 1991 provides for an «optional exception» (also often referred to as “farmers' privilege”). It allows farmers to save seed and replant on their own holdings only certain crops and subject to certain conditions (e.g. payment of remuneration to the right holder). This limited (optional) exception will not allow national laws to permit farmers to freely exchange or sell farm-saved seed/propagating material (e.g. small amounts or for rural trade) with other farmers.

- To which provision(s) of Article 9 of the International Treaty does this measure relate

Art. 9.1 X

Art. 9.2a □

Art. 9.2b □

Art. 9.2c □

Art. 9.3 X

Other information, if applicable

- Please indicate which category of the Inventory is most relevant for the proposed measure, and which other categories are also relevant (if any):



No.	Category	Most relevant ²	Also relevant ³
1	Recognition of local and indigenous communities', farmers' contributions to conservation and sustainable use of PGRFA, such as awards and recognition of custodian/guardian farmers		X
2	Financial contributions to support farmers conservation and sustainable use of PGRFA such as contributions to benefit-sharing funds		
3	Approaches to encourage income-generating activities to support farmers' conservation and sustainable use of PGRFA		
4	Catalogues, registries and other forms of documentation of PGRFA and protection of traditional knowledge		
5	In-situ/on-farm conservation and management of PGRFA, such as social and cultural measures, community biodiversity management and conservation sites		
6	Facilitation of farmers' access to a diversity of PGRFA through community seed banks ⁴ , seed networks and other measures improving farmers' choices of a wider diversity of PGRFA.		
7	Participatory approaches to research on PGRFA, including characterization and evaluation, participatory plant breeding and variety selection		
8	Farmers' participation in decision-making at local, national and sub-regional, regional and international levels		
9	Training, capacity development and public awareness creation		
10	Legal measures for the implementation of Farmers' Rights, such as legislative measures related to PGRFA.	X	
11	Other measures / practices		X

- In case you selected 'other measures', would you like to suggest a description of this measure, e.g. as a possible new category? Implementing Farmer's Rights to save, use, exchange and sell farm-saved seed/propagating material in in PVP laws.
- Objective(s)
Implementing plant variety protection law protecting breeders rights, fulfilling the TRIPS Agreement requirements –and at the same time safeguarding the Farmer's Rights to save, use, exchange and sell farm-saved seeds/propagating material.

² Please select only one category that is most relevant, under which the measure will be listed.

³ Please select one or several categories that may also be relevant (if applicable).

⁴ Including seed houses.



- Target group(s) and numbers of involved and affected farmers⁵
Governments to implement the law - Farmers to retain the right to to save, use, exchange and sell farm-saved seeds/propagating material. Millions of farmers in the respective countries.
- Location(s) and geographical outreach
Many examples, especially from Asia and Africa.
- Resources used for implementation of the measure/practice
not applicable
- How has the measure/practice affected the conservation and sustainable use of plant genetic resources for food and agriculture?

Farmers in the above mentioned countries are dependent on the informal seed sector and the practices of saving, using, exchanging and selling seeds for their seed requirements. Hence by safeguarding this right, the access to seeds is sustained. It also supports the livelihoods and food security of farmers as they need not spend money to purchase seeds every season. As such, it supports realization of basic human rights such as the right to food, health, nutrition and education.

Further it supports implementation of Article 6 of the Treaty i.e. implementing a fair agricultural policy, strengthening biodiversity, promotes plant breeding efforts by farmers, increases the range of genetic diversity available to farmers etc.

- Please describe the achievements of the measure/ practice so far (including quantification) (max 200 words)
see above
- Other national level instruments that are linked to the measure/practice
-
- Are you aware of any other international agreements or programs that are relevant for this measure/practice?
Article 27.3(b) of the WTO TRIPS Agreement requires its Members to «provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof.». Countries should opt for non-UPOV sui generis PVP system that protects Farmers' Rights while also protecting the rights of breeders.
- Other issues you wish to address, that have not yet been covered, to describe the measure/practice
-

Lessons learned

- Describe lessons learned which may be relevant for others who wish to do the same or similar measures/practices (max 250 words).
-It is feasible to implement an effective PVP system that also fully implements Farmers' Rights in particular the right to freely save, use, exchange and sell farm saved seed/propagating materials.

⁵ Any classification, e.g. of the types of farmer addressed, may be country-specific.



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- It is crucial for every country, to maintain flexibility to implement PVP laws that recognize Farmer's Rights to save, use, exchange and sell farm-saved seeds/propagating material. In the past many countries have limited this flexibility by signing free-trade agreements with developed countries that include the requirement to join UPOV 1991.
- Joining UPOV 1991 limits and restricts countries' ability to implement Farmers' Rights including farmers' right to freely save, use, exchange and sell farm saved seed/propagating material.

- What challenges encountered along the way (if applicable) (max 200 words)
 - Pressure by developed countries and UPOV Secretariat to join UPOV 1991 and recommending deletion of provisions from national PVP legislation that support implementation of Farmers' Rights to freely save, use, exchange and sell farm-saved seeds/propagating material. For example, in the case of the Philippines, UPOV found the farmer's exception in Philippines PVP legislation that support the right of small farmers to save, use, exchange and sell farm-saved seed/propagating material to be inconsistent with UPOV. In its comments UPOV notes inter alia "if 'exchange, share or sell (sic) of their farm produce of a variety protected under this Act' is for the purpose of reproduction, those acts would constitute infringements to the breeder's right [...] The exchange and sale of seeds among and between said small farmers [...] would constitute an infringement to the breeder's right."⁶ UPOV called for the Section to be amended, meaning deletion of provisions that safeguards Farmers' Right.
 - North-South trade agreements that obligate developing countries to adopt UPOV 1991 and consequently limit implementation of Farmers' right to save, use, exchange and sell farm-saved seed/propagating material.
- What would you consider conditions for success, if others should seek to carry out such a measure or organize such an activity? (max 100 words)
 - Political will to ensure that the PVP legal framework recognizes the needs and interests of the informal seed sector, and allows the practices of saving, using, exchanging and selling farm saved seeds/propagating material, which most farmers rely on to access seeds/propagating material.
 - Inclusive, transparent, evidence based law making processes, especially involving smallholder farmers in the decision-making process, has led to PVP laws advancing on implementation of Farmer's Rights in particular the right to save, use, exchange and sell farm-saved seeds/propagating material.

Further information

Link(s) to further information about the measure/practice

- Plant Variety Protection in Developing Countries : A Tool for Designing a Sui Generis Plant Variety Protection System: An Alternative to UPOV 1991 available at <http://www.apbrebes.org/news/plant-variety-protection-developing-countries-tool-design-sui-generis-plant-variety-protection> in english, french and Spanish.
- African model legislation for the protection of the rights of local communities, farmers and breeders, and for the regulation of access to biological resources available at <https://www.wipo.int/edocs/lexdocs/laws/en/oau/oau001en.pdf>

⁶ UPOV doc. C(Extr.)/24/2 available at http://www.upov.int/edocs/mdocs/upov/en/c_extr/24/c_extr_24_02.pdf