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 Third World Network on 30 July 2019.

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

  Require applicant for plant variety protection to disclose the source of genetic material used in development of plant variety for which protection is sought, whether it is legally acquired and evidence of benefit sharing to prevent misappropriation and promote fair and equitable benefit sharing and protect traditional knowledge.

- Date of submission

  06/02/2019

- Name(s) of country/countries in which the measure/practice is taking place

  India, Malaysia, Thailand, Egypt and several other countries.

- Responsible institution/organization (name, address, website (if applicable), e-mail address, telephone number(s) and contact person)

  Examples collected by Third World Network (www.twn.my) Contact person: Sangeeta Shashikant (Legal Advisor), Email: sangeeta@twnetwork.org, Mob: +44 7972175128

- 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))

  APBREBES, www.apbrebes.org; Email: contact@apbrebes.org; contact person: François Meienberg, APBREBES Coordinator
Misappropriation of local plant genetic resources through the plant variety protection system (PVP) is a major concern for developing countries. Hence several developing countries such as India (2001), Thailand (1999), Malaysia (2004) and Egypt (2002) have implemented sui generis PVP systems that implement a disclosure obligation in their national PVP legislation i.e. require an applicant seeking PVP to disclose information about genetic material used in the development of the plant variety for which PVP protection is sought: provide evidence that the material used for breeding has been lawfully obtained, require the applicant to show prior informed consent of the farmers/communities who have developed/conserved the materials has been obtained and compliance with benefit sharing requirements. Disclosure obligation facilitates identification of farmers and local communities that should be entitled to benefit sharing payments. The objective hence is to protect the genetic resources and associated traditional knowledge of local farming communities from misappropriation and promote implementation of Article 9.2(a) and (b) of the ITPGRFA. Disclosure also supports Article 9.1 of the ITPGRFA as it recognizes the historical and present contribution of local and indigenous communities and farmers for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

A major challenge in implementation of disclosure obligation in PVP systems is the UPOV system which does not recognize or allow countries to institute disclosure obligations in national PVP law, although it is a prerequisite to further implementation of Farmers’ Rights. As such, countries should opt for alternative sui generis PVP systems as implemented in India, Malaysia, Thailand etc. allowing countries to institute disclosure obligation in national PVP law, necessary to promote implementation of Farmers’ Rights. The implementing entity would be the relevant national PVP authority.

A major concern of many developing countries is the misappropriation of local plant genetic resources through the intellectual property system including the plant variety protection system (PVP).

The Convention on Biological Diversity (CBD) and the Nagoya Protocol confirms that States have sovereign rights over genetic resources, and access to genetic resources is subject to prior informed consent (PIC) and utilization of genetic resources is subject to fair and equitable benefit sharing on mutually agreed terms.

Disclosure requirements including evidence of compliance with access and benefit sharing requirements in intellectual property applications is widely seen as a crucial tool to prevent

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1 This mandatory information is required in order for the measure/practice to be included in the Inventory.
misappropriation of genetic resources and associated traditional knowledge and to facilitate implementation of PIC and benefit sharing arising from the utilization of such resources and knowledge.

Accordingly, in various international fora (WTO, CBD, WIPO), developing countries have called for a disclosure obligation in intellectual property applications including PVP. A disclosure obligation will require an applicant seeking PVP to disclose information about genetic material used in the development of the plant variety for which PVP protection is sought: provide evidence that the material use for breeding has been lawfully obtained, require the applicant to show PIC of the traditional farmers/communities who have developed/conserved the materials has been obtained and compliance with benefit sharing requirements. Disclosure obligation facilitates identification of farmers and farming communities that should be entitled to benefit sharing payments. The objective hence is to protect the genetic resources and associated traditional knowledge of local farming communities from misappropriation and promote implementation of Article 9.2(a) and (b) of the ITPGRFA.

The UPOV system does not recognize a country’s right to institute a disclosure obligation. Hence several developing countries have adopted alternative non-UPOV sui generis systems that are more suited to the needs and interest of their farmers, and implemented a disclosure obligation that is aimed at preventing misappropriation and promoting implementation of Article 9.2(a) and (b) of the ITPGRFA.

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

**INDIA: Protection of Plant Varieties and Farmers’ Rights Act, 2001 (PPVFR Act)**

*Section 18.*—(1) Every application for registration under section 14 shall—

(e) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organization in breeding, evolving or developing the variety;

(h) contain a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; and

Certain Information to be Given in Application for Registration

*Section 40.*—(1) A breeder or other person making application for registration of any variety under Chapter III shall disclose in the application the information regarding the use of genetic material conserved by any tribal or rural families in the breeding or development of such variety.

(2) If the breeder or such other person fails to disclose any information under sub-section (1), the Registrar may, after being satisfied that the breeder or such person has wilfully and knowingly concealed such information, reject the application for registration.

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2 [https://indiacode.nic.in/bitstream/123456789/1909/1/200153.pdf](https://indiacode.nic.in/bitstream/123456789/1909/1/200153.pdf)
THAILAND: Plant Varieties Protection Act 2542 (1999)³

Section 19: An application shall have the following particulars:
(3) details showing the origin of the new plant variety or the genetic material used in the breeding of the variety or in the development of the new plant variety, including its breeding process, provided that details enabling clear comprehension of such process shall also be included;

(5) a profit-sharing agreement in the case where a general domestic plant variety or a wild plant variety or any part thereof has been used in the breeding of the variety for a commercial purpose.

MALAYSIA: Protection of New Plant Varieties Act 2004⁴

Section 12: An application for the registration of a new plant variety and a grant of a breeder’s right....shall:
(b) Specify the method by which the plant variety is developed
(e) contain information relating to the source of the genetic material or the immediate parental lines of the plant variety;
(f) be accompanied with the prior written consent of the authority representing the local community or the indigenous people in cases where the plant variety is developed from traditional varieties;
(g) be supported by documents relating to the compliance of any law regulating access to genetic or biological resources.

EGYPT: Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights

Article 200: The breeder shall disclose the genetic source relied on to develop the new plant variety. The protection of the new plant variety requires that the breeder has acquired that source by legitimate means under the Egyptian law.

Such a requirement extends to traditional knowledge and experience accumulated among local communities the breeder could have relied on in his efforts to develop the new plant variety.

Likewise, the breeder who deals with Egyptian genetic sources, with a view to develop new varieties derived therefrom, shall undertake to obtain the approval of the relevant competent administrative authorities. He shall also undertake to acknowledge the Egyptian traditional knowledge as sources to what he could have achieved using such knowledge and experience, through the disclosure of the Egyptian source the breeder benefited from, and by sharing the profits gained with the interested party, as prescribed in the Regulations of this Law.

A register shall be established in the Ministry of Agriculture to include the genetic Egyptian plants, both wild and domesticated.

• 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)

³ http://www.ecap3.org/sites/default/files/IP_Legislation/TH_Plant%20varieties_0.pdf
⁴ http://pvpbkkt.doa.gov.my/
A major concern of farmers in many developing countries is misappropriation of their local plant genetic resources and traditional knowledge through the intellectual property system.

There are numerous documented cases of misappropriation. For example Hammond found that Seminis (a subsidiary of Monsanto) planted farmers’ carrot seeds from Turkey, and through a simple process of selection – mainly selecting plants that were slow to bolt and which had a desirable root shape and shade of purple (associated with health benefits) – emerged with a new carrot variety over which it has obtained PVP protection in the United States and Europe.

A PVP application is an important checkpoint to monitor and enhance transparency with regard to utilization of genetic resources and compliance with access and benefit-sharing rules. UPOV’s restrictive position on this subject undermines the implementation of the CBD and the Nagoya Protocol as well as the efforts of developing countries to curb misappropriation of genetic resources.

Hence a number of developing countries have opted for alternative sui generis PVP systems that has allowed the adoption of progressive disclosure obligations that inter alia promotes implementation of Article 9.2(a) and (b) of the ITPGRFA.

In India, a breeder or other person making an application for registration of any variety must disclose the passport data of the parental lines from which the variety is derived, the contribution of any farmer/community in developing the variety (Article 18(1)(e) of the PPVFR Act) as well as information regarding the use of genetic material conserved by any tribal or rural families in the breeding or development of such a variety (Article 40(1) PPVFR Act). In Malaysia, applications for the registration of a new variety need to provide information relating to the source of the genetic material, and should be accompanied with the prior written consent of the authority representing the local community or the indigenous people in cases where the plant variety is developed from traditional varieties, and need to be supported by documents relating to the compliance of any law regulating access to genetic or biological resources (Section 12(1)(e), (f), (g) of the Protection of New Plant Varieties Act). The Thai PVP Act makes the registration of a variety conditional upon the disclosure of the origin of either the new plant variety or the genetic materials used in the breeding of that variety (Section 19(3)). In Egypt, the breeder is obliged to disclose the genetic resource from which the new plant variety has been derived; prove that it was obtained lawfully consistent with the Egyptian law; and disclose traditional knowledge and experience belonging to local communities upon which the breeder relied to derive the new plant variety.

- 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 □

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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):

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<td>Other measures / practices</td>
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- In case you selected ‘other measures’, would you like to suggest a description of this measure, e.g. as a possible new category? ____________________________________________________________

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7 Please select only one category that is most relevant, under which the measure will be listed.
8 Please select one or several categories that may also be relevant (if applicable).
9 Including seed houses.
Objective(s)

To monitor and enhance transparency with regard to utilization of genetic resources, ensure compliance with prior informed access and benefit-sharing requirements and promote implementation of Article 9.1 as well as Article 9.2(a) and (b) of the ITPGRFA.

Target group(s) and numbers of involved and affected farmers

Policy makers, local farming communities including women farmers, peasant farmers, indigenous communities, tribal communities as well as CSOs.

Location(s) and geographical outreach

Resources used for implementation of the measure/practice

How has the measure/practice affected the conservation and sustainable use of plant genetic resources for food and agriculture?

The measure supports implementation of Article 6 of the Treaty. Preventing misappropriation, ensuring compliance with PIC and fair and equitable benefit sharing as well as protecting traditional knowledge are key components of pursuing fair agricultural policy, encouraging and supporting diverse farming systems, incentivizing farmer led plant breeding, expanding use of local and locally adapted crops, varieties etc.

Please describe the achievements of the measure/practice so far (including quantification) (max 200 words)

Implementation by India, Malaysia, Thailand and Egypt shows that it is possible to implement an effective sui-generis PVP system that grants PVP protection as well as incorporates measures that protect and promotes the rights and interests of farmers and local communities.

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?

-Convention on Biological Diversity
-Nagoya Protocol on Access to Genetic Resources and Equitable Sharing of Benefits Arising from their Utilization
-UN Declaration on the Rights of Peasants and Other People Working in Rural Areas

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

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

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

Non-UPOV sui generis PVP system allows countries to institute disclosure obligations in national PVP law, that are necessary to further implementation of Farmers’ Rights.

- What challenges encountered along the way (if applicable) (max 200 words)

The UPOV system and its proponents are a major challenge to implementation of the above measure. UPOV Secretariat and developed countries are advising countries to remove disclosure obligations from their sui generis PVP laws, and hence undermining implementation of Farmers’ Right in developing countries.

For example, UPOV has called for the removal of disclosure obligations (with regard to origin, prior informed consent and compliance with access and benefit-sharing legislation) from Malaysia and Egypt’s PVP legislation. Peru deleted from its draft legislation a disclosure-of-origin obligation in anticipation of UPOV’s opposition.

- 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)

An important condition for success would be political will.

Further information

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


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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
Implementing Sui Generis Plant Variety Protection System that Recognizes Farmers’ Seed Systems, Farmers’ Varieties and Advances Farmers’ Rights

• Date of submission
06/02/2019

• Name(s) of country/countries in which the measure/practice is taking place
India, Malaysia

• Responsible institution/organization (name, address, website (if applicable), e-mail address, telephone number(s) and contact person)
Examples collected by Third World Network (www.twn.my) Contact person: Sangeeta Shashikant (Legal Advisor), Email: sangeeta@twnetwork.org, Mob: +44 7972175128

• 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))
APBREBES, www.apbrebes.org; Email: contact@apbrebes.org; contact person: François Meienberg, APBREBES Coordinator

Description of the examples
Mandatory information:¹

- Short summary to be put in the inventory (max. 200 words) including:
  - Implementing entity and partners
  - Start year
  - Objective(s)
  - Summary of core components
  - Key outcomes
  - Lessons learned (if applicable)

WTO Members have complete freedom to develop sui generis plant variety protection (PVP) systems that recognize and support farmer managed seed systems and implement Farmers’ Rights.

Hence several countries (e.g. India (2001), Malaysia (2004) have opted to depart significantly from the one-size fits all model of UPOV 1991 and adopt innovative national PVP legislation that includes unique features that balances the different interests (public interests, commercial breeders and farmers), as well as advances the key requirements and objectives of the ITGRFA, the Convention on Biological Diversity (CBD) and its Nagoya Protocol on access and benefit sharing (Nagoya Protocol). Importantly these legislations recognize farmers’ seed systems, farmers’ varieties and advances implementation of Article 9 of the ITPGRFA.

For example India’s Protection of Plant Varieties and Farmers’ Rights Act, 2001 (PPVFR Act) grants PVP protection to plant varieties but also recognizes the right of a farmer “to save, use, sow, re-sow, 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.” There are also a number of other measures in the legislation that protects farmers’ interests and needs.

Malaysia’s Protection of New Varieties of Plants Act 2004 includes provisions that recognize farmer seed systems, their need for protection as well as the need for distinct criteria for registration. It grants protection to varieties of farmers, local communities or indigenous people if the plant variety is “new, distinct and identifiable”.

India and Malaysia’s PVP legislations also includes disclosure obligation i.e. requiring a PVP applicant to inter alia declare the source of the genetic material and present evidence of prior informed consent and benefit sharing.

Innovative PVP systems of India and Malaysia has not discouraged its use. To the contrary, the system is widely used by domestic and international companies, government research agencies, universities, individuals and farmers. The implementing entity would be the relevant national PVP authority.

¹ This mandatory information is required in order for the measure/practice to be included in the Inventory.
Article 27.3(b) of the WTO-TRIPS Agreement requires WTO Members to provide for protection of plant varieties. The only condition established by Article 27.3(b) is to provide “effective sui generis protection”. “Sui generis” means “unique”, “of its own kind”. Hence, WTO Members have broad policy space to define how the protection is conferred and may opt for sui generis protection that is not UPOV-compliant.

Many independent experts have recommended that developing countries should not join the UPOV system as it offers a rigid model inappropriate for developing countries where farmer managed seed systems (informal seed systems) and the practices of freely saving, using, exchanging and selling seeds are prevalent.²

Therefore, several countries (e.g. India, Malaysia) have opted to depart significantly from the one-size fits all model of UPOV 1991 and adopt innovative national PVP legislation that balances the different interests (public interests, commercial breeders and farmers), as well as advances the key requirements and objectives of the ITGRFA, the Convention on Biological Diversity (CBD) and its Nagoya Protocol on access and benefit sharing (Nagoya Protocol). Importantly these legislations recognize farmers’ seed systems, farmers’ varieties and advances implementation of Article 9 of the ITPGRFA.

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

**India**

There are a number of provisions in India’s Protection of Plant Varieties and Farmers’ Rights Act, 2001 (PPVFR Act) that recognize farmers’ seed system, farmers’ varieties and advances Farmers’ Rights. These include:

(i) defines Farmers’ variety and recognizes farmers’ role in breeding and cultivating crops (Section 2, Section 39);

(ii) recognizes granting of PVP to farmer varieties under a separate criterion from new plant varieties (Section 14);

(iii) requires an applicant for PVP to disclose passport data of the parental lines from which the variety for which protection is sought has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution,

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if any, of any farmer, village community, institution or organization in breeding, evolving or
developing the variety (Section 18(1)(e));

(iv) requires an applicant for PVP to disclose genetic material or parental material acquired for
breeding, evolving or developing the variety has been lawfully acquired (Section 18(1)(f));

(v) recognizes that a farmer who is engaged in the conservation of genetic resources of land races and
wild relatives of economic plants and their improvement through selection and preservation shall be
entitled in the prescribed manner for recognition and reward from the Gene Fund: Provided that
material so selected and preserved has been used as donors of genes in varieties registrable under the
Act (Section 39 (1)(iii));

(vi) recognizes the right of a farmer “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.” (Section 39 (1)(iv)

(vii) breeder has to disclose the expected performance of the registered variety and farmers entitled to
compensation if the protected variety fails to perform as claimed by the breeder (Section 39(2));

(viii) an applicant for PVP to disclose in the application information regarding the use of genetic
material conserved by any tribal or rural families in the breeding or development of such variety,
failing which application to be rejected. (Section 40)

(ix) recognizes the right of communities to compensation for contribution of the people of that village
or local community, in the evolution of the variety registered and allowing any
person/persons/governmental / NGO to make a claim on their behalf (Section 41)

(x) establishes mechanisms to operationalize fair and equitable benefit sharing arising from use of
plant genetic resources. This includes disclosure obligations, inviting claims of benefit sharing with
respect to the variety registered (Section 26)

(xi) a farmer cannot be prosecuted for infringement of rights specified in the Act if he/she can prove
in court that he/she was unaware of the existence of PVP on the variety (Section 42)

(xii) where an essentially derived variety is obtained from a farmers’ variety, need consent of farmers
that have contributed in the preservation/development of such variety (Section 43)

(xiii) farmers/village community not liable to pay any fees in any proceedings under the Act (Section
44).

(xiv) establishes a Gene Fund to facilitate *inter alia* fair and equitable benefit sharing payments to
local farmers and communities as well as supporting the conservation and sustainable use of genetic
resources including in-situ and ex-situ collections (Section 45)

For India’s Protection of Plant Varieties and Farmers’ Rights Act, 2001 (PPVFR Act) see,
https://indiacochn.nic.in/bitstream/123456789/1909/1/200153.pdf
Malaysia

Utilizing the policy space accorded by the TRIPS Agreement, Malaysia enacted the Protection of New Varieties of Plants Act 2004. This law is unique as it delicately balances the different interests as well as furthers implementation of the ITPGRFA, the CBD, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and mutual supportiveness among national laws. Some of the unique features of this law include:

(i) recognition of farmer seed systems and their need for protection as well as their need for distinct criteria for registration. It grants protection to varieties of farmers, local communities or indigenous people if the plant variety is “new, distinct and identifiable”

(ii) requiring an applicant for plant breeders’ rights (PBR) to inter alia declare the source of the genetic material or the immediate parental lines of the variety, present evidence of prior informed consent as well as show compliance with access and benefit sharing. These requirements are aimed at preventing ‘biopiracy’, facilitating fair and equitable benefit sharing, supporting implementation of other national laws.

(iii) recognizing as an exception to PBRs, the absolute right of small farmers to save seeds/propagating materials on their own holding, to exchange seed/propagating material among small farmers and to sell farm saved seeds in situations where a small farmer cannot make use of the farm saved seed on his own holdings due to circumstances beyond the farmer’s control.

(iv) requiring the PVP holder to make available propagating material, of reasonable quality, in reasonable quantities and at a reasonable price.

Malaysia’s Protection of New Varieties of Plants Act 2004 is available at http://pvpbkkt.doa.gov.my/

- 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)

In many developing countries, more than 80% of the seeds/propagating material is from the farmer managed seed system (informal seed sector) through practices of freely saving, using, exchanging and selling seeds among farmers. However, the value, needs and practices of this sector is not fully recognized by UPOV modelled PVP systems. A Study on behalf of the German Federal Ministry for Economic Cooperation and Development concluded that UPOV 91-based PVP laws did not advance the realisation of Farmers’ Rights; rather they are effective in the opposite direction.3

WTO Members have complete freedom to develop sui generis PVP systems that recognize and support implementation of Farmers’ Rights and as shown above, several developing countries have done so. Evidence available suggests that non-UPOV sui generis PVP systems do work effectively.

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In India smallholder farmers supply around 80% of the seed required in India. 86% of farmers operate on land holding of less than 2 hectares while less than 1% hold more than 10 hectares.\(^4\) This national context led India to adopt a unique PPVFR system that advances implementation of Farmers’ Rights.

The uniqueness of India’s PPVFR Act has not discouraged use of the PVP system. On the contrary, a large number of PVP applications have been filed and granted in India. As at July 2017, 15053 PVP applications were filed with 2,439 applications concerning new plant varieties, of these 2143 were filed by the private sector. 2688 varieties have been granted protection\(^5\). In addition, India has utilized the Gene Fund set up under its PPVFR Act to establish awards, rewards and recognition for farmers and farming communities involved in the conservation of genetic resources used as donors of genes in varieties registrable under the Act.

In Malaysia, smallholder farmers are an important source of seeds, often from local markets, farm saved seed, relatives and neighbours. Hence ensuring protection of the needs and interests of farmers is essential leading to a sui generis PVP system. Malaysia, which began operationalizing its PVP system in 2008, received 299 PVP applications between 2008 and 2018. International companies filed the majority of these applications (61%). Domestic private companies (12%), government research agencies (17%), universities (7%) and individuals (3%) accounted for the remaining applications filed.

- 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**

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- 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)

Implementing non-UPOV effective sui generis PVP System that recognizes farmers’ past, present and future contribution to the development of plant genetic resources, the value and characteristics of their varieties and advances implementation of Farmers’ Rights.

- Target group(s) and numbers of involved and affected farmers\(^9\)

Policy makers, farmers and civil society organizations.

- Location(s) and geographical outreach

- Resources used for implementation of the measure/practice

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\(^8\) Including seed houses.

\(^9\) Any classification, e.g. of the types of farmer addressed, may be country-specific.
How has the measure/practice affected the conservation and sustainable use of plant genetic resources for food and agriculture?

The measure/practice is positive for conservation and sustainable use as there are incentives provided toward those objectives. For instance, India has utilized the Gene Fund set up under its PPVFR Act to establish awards, rewards and recognition for farmers and farming communities involved in the conservation of genetic resources used as donors of genes in varieties registrable under the Act. The measure/practice also promotes fair agricultural policies, supports development and maintenance of diverse farming systems, encourages farmer led plant breeding, 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)

The uniqueness of India’s PPVFR Act has not discouraged use of the PVP system. On the contrary, a large number of PVP applications have been filed and granted in India. As at July 2017, 15053 PVP applications were filed with 2,439 applications concerning new plant varieties, of these 2143 were filed by the private sector. 2688 varieties have been granted protection. In addition, India has utilized the Gene Fund set up under its PPVFR Act to establish awards, rewards and recognition for farmers and farming communities involved in the conservation of genetic resources used as donors of genes in varieties registrable under the Act. These are the Plant Genome Saviour Community Award, Plant Genome Saviour Farmer Reward and Plant Genome Saviour Farmer Recognition. Thus far, several awards, rewards and recognition have been handed out. These include cash rewards to 10 farming communities of 10 lakh rupees (about US$15,700) each between 2009 and 2011; and to 10 farmers, one lakh rupees (US$1,570) each in 2012. Recognition (citation and memento) has also been given to 16 farming communities (2007-2010) and 15 farmers (2012).

Importantly a major achievement of India’s PPVFR is the implementation of measures that promote Farmers’ Rights in particular recognizing the right of a farmer “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.”

Malaysia, which began operationalizing its PVP system in 2008, received 299 PVP applications between 2008 and 2018. International companies filed the majority of these applications (61%). Domestic private companies (12%), government research agencies (17%), universities (7%) and individuals (3%) accounted for the remaining applications filed.

In Malaysia, smallholder farmers are an important source of seeds, often from local markets, farm saved seed, relatives and neighbours. Hence implementation of measures that safeguard and promote Farmers’ Rights is a major achievement of the PVP Act in Malaysia.

Other national level instruments that are linked to the measure/practice

10 http://www.plantauthority.gov.in/pdf/Status%20Crop%20wise%20Application1.pdf. For more information see also http://plantauthority.gov.in/
Are you aware of any other international agreements or programs that are relevant for this measure/practice?

- Convention on Biological Diversity
- Nagoya Protocol on Access to Genetic Resources and Equitable Sharing of Benefits Arising from their Utilization
- UN Declaration on the Rights of Peasants and Other People Working in Rural Areas - UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Human rights instruments related to right to food and women.

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).

1. WTO Members have complete freedom to develop sui generis PVP systems that recognize and support farmer managed seed systems and implementation of Farmers’ Rights.

2. It is feasible to implement a successful non-UPOV sui generis PVP systems that grant PVP protection and reflects the needs and interests of farmer managed seed systems as well as advances Farmers’ Rights implementation. It is not recommended for countries to join the UPOV system, for it undermines farmer managed seeds systems and implementation of Farmers’ Rights.

Often accompanied by inaccurate and misleading information about the benefits of the UPOV system, there is a lot of pressure especially on developing countries to join UPOV and compromise on Farmers’ Rights. Usually no information is provided on alternative sui generis PVP systems, the importance of the informal seed sector and Farmers’ Rights.

Countries joining UPOV 1991 have very little room to manoeuvre, as they have to present their legislation to the UPOV Council for assessment of conformity with the 1991 Act. To assess conformity, the UPOV Secretariat scrutinises a country’s legislation, rejecting any clause that in its view is inconsistent with its understanding of the 1991 Act. Only if the decision is positive (in conformity) can the said country become a member of UPOV 1991.

There are many examples of UPOV rejecting clauses implementing Farmers’ rights. For instance, in the case of Malaysia, UPOV called on Malaysia inter alia to delete from its PVP legislation disclosure requirements that are important to facilitate fair and equitable benefit sharing as well as provisions that allow exchange of propagating materials among small farmers.

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

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1 Article 34(3) of the 1991 Act.
sale of seeds among and between said small farmers [...] would constitute an infringement to the breeder’s right.”

UPOV called for the Section to be amended, meaning deletion of provisions that safeguards Farmers’ Right.

Accordingly using the policy space accorded by WTO-TRIPS Agreement, countries should opt for alternative sui generis PVP systems as done by India and Malaysia. These models are successfully being implemented at the national level.

3. In granting protection to farmers’ varieties, it may be better to accord a remuneration right rather than “exclusive rights”.

- What challenges encountered along the way (if applicable) (max 200 words)

- North-South trade agreements that obligate developing countries to adopt UPOV 1991.
- Pressure by developed countries and UPOV Secretariat to join UPOV 1991 and delete provisions from national PVP legislation that support farmer managed seed systems and implementation of Farmers’ Rights.

- 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)

First and foremost, it is important to have political will to establish an alternative sui generis PVP system. Further, the following objectives should be considered:

- adapted to the agricultural, socio-economic and cultural country/region profile;
- consistent with and supportive of policies on conservation and sustainable use of plant biodiversity for food and agriculture;
- achieves the right balance between breeders’ rights and those of farmers and the society at large;
- recognizes and supports the farmer managed seed system;
- safeguards against misappropriation of local genetic materials;
- preserves traditional knowledge associated with genetic resources and the traditional farming practices of saving, using, exchanging and selling seeds/propagating material, having in view the importance of ensuring the livelihood of farming communities, the continuous adaptation of seeds/propagating material to the evolution of agricultural ecosystems, and food security;
- respects, protect and fulfill states obligations regarding the right to food, the right to enjoy the benefits of scientific progress and its application, the rights of indigenous peoples and the rights of peasants and other people working in the rural areas;
- is supportive of and does not counter the objectives and the obligations under the CBD, the Nagoya Protocol and the ITPGRFA.

Development of an effective sui generis PVP regime is ultimately also very much dependent on the process for the development of such a regime. The process should be well-defined, transparent and inclusive based on a sound assessment of the factual and empirical evidence.\textsuperscript{15}

**Further information**

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

There are different possibilities available to countries wishing to develop alternative sui generis PVP system that reflects local agricultural system, is supportive of farmer seed systems and Farmers’ Rights. A useful tool with possible model provisions to consider is “Plant Variety Protection in Developing Countries: A Tool for Designing a Sui Generis Plant Variety Protection System: An Alternative to UPOV 1991”. It is available at http://www.apbrebes.org/news/plant-variety-protection-developing-countries-tool-design- sui-generis-plant-variety-protection in english, french and Spanish.

Another important reference is 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 available at https://www.wipo.int/edocs/lexdocs/laws/en/oau/oaau001en.pdf

\textsuperscript{15} For further information on steps to consider in developing a sui generis PVP regime see Chapter 5 of Carlos M. Correa et al., Plant Variety Protection in Developing Countries: A Tool for Designing a Sui Generis Plant Variety Protection System: An Alternative to UPOV 1991, APBREBES, 2015, available at http://www.apbrebes.org/news/new-publication-plant-variety-protection-developing-countries-tool-designing-sui-generis-plant