



Food and Agriculture
Organization of the
United Nations



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 African Centre for Biodiversity (Acbio) on 29 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

Exemptions or flexibilities in seed registration for farmers' varieties

- Date of submission

5 February 2019, revised 31 July 2019

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

Brazil, Peru, Nepal

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

Brazil – Secretaria de Agricultura Familiar e Cooperativismo, Embrapa (national agricultural research institute), National Crop Agency (CONAB)

Peru – Ministry of Environment, International Potato Centre (CIP), Instituto Nacional de Innovación Agraria (INIA), Ministry of Agriculture and Irrigation, Peruvian Society for Environmental Law (SPDA), Bioversity International

Nepal – Nepal Agricultural Research Council (NARC), Local Initiatives for Biodiversity, Research and Development (LI-BIRD)

- Type of institution/organization (categories)

National and local authorities, agricultural research institutes, farmer associations, NGOs

- Collaborating/supporting institutions/organizations/actors, if applicable (name, address, website (if applicable), e-mail address, telephone number(s))

Brazil – Secretaria de Agricultura Familiar e Cooperativismo, Embrapa (national agricultural research institute), National Crop Agency (CONAB)

Peru – Ministry of Environment, International Potato Centre (CIP), Instituto Nacional de Innovación Agraria (INIA), Ministry of Agriculture and Irrigation, Peruvian Society for Environmental Law (SPDA), Bioversity International

Nepal – Nepal Agricultural Research Council (NARC), Local Initiatives for Biodiversity, Research and Development (LI-BIRD)

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)

In Brazil, Peru and Nepal, responsible ministries and authorities, along with partnering NGOs and/or research organizations, developed policies, laws and regulations to facilitate registration of farmer varieties. Objectives of these initiatives were to provide options for the registration of farmer varieties that are easy, low cost and appropriate to the character of these varieties; to document farmers' varieties and knowledge; to protect them from biopiracy; and to facilitate their dissemination at larger scale. In Brazil, a seed law offering voluntary registration of farmer varieties under specific criteria was passed in 2003. In Peru, a law listing native crops for protection was passed in 2005; furthermore, a national register was established. In Nepal, the Agricultural Biodiversity Policy of 2007 (amended in 2014) identified participatory plant breeding (PPB) as a strategy to enhance local varieties; criteria for the registration of such varieties in the national registration system were adapted in 2005. In Brazil, efforts to promote farmer varieties, combined with a wider agroecology approach, family farmer and food security programmes, resulted in enhanced food security nationally by 2013. In Nepal, PPB varieties have been successfully registered and sold; in Peru, farmer varieties have been maintained and used.

(195 words)

- Brief history (including starting year), as appropriate

With democratisation in the middle of 1980s and progressive government in 2000s, Brazil passed a Seed Law (2003) that recognised farmer's varieties. Together with other policies and laws on family farming, food security and agroecology, space was opened for farmers' varieties to receive differential treatment in relation to commercial varieties.

Following the Convention on Biological Diversity (CBD) in 1992, the Peruvian government officially recognised agrobiodiversity zones and the need for protection of this biodiversity. A law was passed in 2005 listing native crops for protection, and later a national register was created.

In Nepal, a multi-stakeholder project on in situ conservation of agricultural biodiversity from 1997-2006 produced rice varieties from participatory plant breeding (PPB) processes. The National Seed Policy of 1999 emphasised the need for the conservation of agricultural biodiversity, and the Agricultural Biodiversity Policy of 2007 (amended in 2014) identified PPB as a strategy to enhance local varieties. Although the Seed Law and regulations had provisions for the registration of new varieties, PPB varieties were not recognised. On the basis of the work done on the rice varieties, participating organisations successfully lobbied for their recognition in the registration system with adapted criteria in 2005.

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

In Brazil, registration of local, traditional or Creole cultivars used by family farmers, Agrarian Reform settlers or indigenous peoples is not mandatory (Article 11.6) and there are exemptions for those who

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

multiply seeds or seedlings for distribution, exchange or trade among themselves. The exemption is for all varieties as long as they are traded and exchanged among family farmers (Article 8.3).

Where farmers choose to register their varieties in Brazil, requirements are as follows (Ministerial Decision 51/2007):

- i. They must be developed, adapted and produced by family farmers, agrarian reform settlers or traditional and indigenous populations and communities;
- ii. They must have phenotypical characteristics that are well established and recognised in these communities;
- iii. They must have been in use by farmers in one of these communities for more than three years;
- iv. They cannot be developed by means of genetic engineering or have evolved from hybridisation processes that are not controlled by local family farmer communities;
- v. They are not eligible for patents, ownership or any form of private protection, meaning there can only be collective and non-exclusive rights

On the basis of Law 28477, which declares “crops, native breeds and wild species the natural patrimony of the nation”, Peru passed regulations to establish public local registers for farmers’ varieties and knowledge. The requirements to catalogue as a commercial variety are more flexible for registered farmer varieties. DUS and VCU are not required on the basis that value has largely been proven by the years of cultivation in farmers’ fields. Certification is free of charge and does not have to be renewed.

In Nepal, changes were made to seed regulations (Ministerial Decision published in Nepal Gazette on 6 June 2005) to enable farmers to register participatory plant breeding varieties. These changes included: i) use of qualitative data based on their traditional knowledge of the landrace in their application for registration, including major traits of the variety obtained through a preference ranking, consisting of aroma, flavour, texture and cooking qualities; ii) removal of the requirement for cultivation data from several different locations in the country and for multiple years of production, with just one location and one year’s yield performance required; and iii) uniformity criteria are relaxed.

- 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)

Brazil had a historical background of community seed banks, but these were often filled with conventional seed. CSO and social movement mobilisation, first to get smallholder family farmer varieties/landraces into the seed banks, and then to call for their recognition and public support to develop them. Progressive governments at state and national level contributed to acceptance. Ongoing work by CSOs/farmer associations on farmer varieties/landraces provided a material basis for advocacy.

Peru is recognised as a centre of origin and diversity of crops important for food and agriculture. The Convention on Biological Diversity (CBD) in 1992 played a catalytic role in official recognition of agrobiodiversity zones, the need for protection of this biodiversity, and the eventual establishment of an official register of native crops. Three main factors motivated the process: i) re-evaluation by some institutions of native crops and indigenous culture; ii) specific projects such as Potato Parks and the Global Environmental Facility on in situ conservation of native crops and their wild relatives; and iii) an enabling legal framework.

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

Art. 9.2b X
 Art. 9.2c X
 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		X
4	Catalogues, registries and other forms of documentation of PGRFA and protection of traditional knowledge	X	
5	In-situ/on-farm conservation and management of PGRFA, such as social and cultural measures, community biodiversity management and conservation sites		X
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.		X
7	Participatory approaches to research on PGRFA, including characterization and evaluation, participatory plant breeding and variety selection		X
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

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.

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)

Make registration of farmer varieties easier, less costly and more appropriate to the character of the varieties and farmer practices. To document farmer seed and knowledge; to protect farmer varieties from biopiracy; to facilitate larger scale dissemination of farmers' varieties.

- Target group(s) and numbers of involved and affected farmers⁵

Family and smallholder farmers, indigenous populations and communities nationally.

- Location(s) and geographical outreach

National

- Resources used for implementation of the measure/practice

State and national resources, NGO and farmer contributions.

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

Conservation and sustainable use of PGR are long term processes. In Brazil the whole process is relatively recent (really from 2009), and there are few studies looking at the impacts on conservation and sustainable use of PGR.

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

In Brazil, the combined efforts of the promotion of family farmer varieties and exemptions from registration, their recognition and incorporation into wider agroecology, family farmer and food security programmes resulted in significant improvement in food security nationally by 2013. In Nepal PPB varieties have been registered and sold. In Peru biodiversity has been maintained and used. No specific statistics readily available.

- 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?

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

Convention on Biological Diversity

- 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).

As mentioned in our submission on recognition of farmers' varieties in Brazil, there was resistance to the registration of local, traditional and creole farmers' varieties and hence a much more flexible system was adopted. Initially, those that opted for registration were those farmers that needed to access insurance coverage, although this is no longer required. In order to address the concerns of peasants about private ownership, the government once again responded positively by Directive 51 that establishes that local, traditional and creole cultivars are part of the socio cultural heritage of local communities and are thus not eligible for patents, ownership of any form of private protection for individuals, businesses or organisations. Again, political will on the part of the Brazilian government was key in the protection of farmers' rights. More discussion and dialogues need to be undertaken in an open and transparent manner with peasants on the question of registration of farmers' varieties.

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

Lack of documentation of farmer varieties and lack of technical capacity may make registration of farmer varieties impracticable. According to Santilli, the Brazilian government has argued in favour of registration as an important mechanism to producing more information/data on the use of such varieties in order to inform policy aimed at strengthening farmer seed and food systems. Other obstacles such as requirements for registration as a breeder may still exclude farmer varieties from being registered. It could be that local seed banks are sufficient, and that it is important to register the seed bank as a link to local seeds, but there is no need to register the seeds themselves.

- 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)

Farmers should have specific objectives in registering their varieties. Demand should come from farmers. Even for commercialisation registration may not be necessary if smallholder farmer seed is exempted entirely.

Further information

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

Brazil

Law # 10.711 Regulating the National Seed and Seedling System, (Seed Law), 5 August 2003

<https://www.ecolex.org/details/legislation/law-no-10711-ruling-on-national-system-for-seeds-and-moult-lex-faoc049379/>

Seed Law (English) <https://agrobiobrasil.org.br/wp-content/uploads/2014/06/Law-n%C2%BA-10.711-of-August-5-2003-The-purpose-of-the-National-Seeds-and-Seedlings-System.pdf>

Decree # 5.153 Implementing Regulations for Seed Law

<https://www.ecolex.org/details/legislation/decree-no-5153-implementing-law-no-10711-on-national-system-for-seeds-and-moults-lex-faoc061592/>

Ministry of Agrarian Development, Ministerial Decision 51/2007 establishing register of farmers' varieties [not readily available]

FAO-IFAD 2017. "Overcoming hunger and rural poverty: Brazilian experiences". FAO/IFAD, Brasilia/Rome.

Santilli, J. 2016. "Commentary on the Brazilian seed law", in Halewood, M. (ed) 2016. Farmers' crop varieties and farmers' rights: Challenges in taxonomy and law. Routledge, Oxon/New York.

Nepal

Seeds Regulation of 1997, as amended by Ministerial Decision published in Nepal Gazette, 6 June 2005 [not readily available]

Shrestha, P. 2016. "Leveraging the successful participatory improvement of Pokhareli Jethobudho for national policy development in Nepal", in Halewood, M. (ed) 2016. Farmers' crop varieties and farmers' rights: Challenges in taxonomy and law. Routledge, Oxon/New York.

Peru

Muller, M. 2009. "Agrobiodiversity zones and the register of native crops in Peru: Learning from ourselves". Sociedad Peruana de Derecho Ambiental/Bioversity International, Miraflores. (Law 28477 in English on pp.70-72)

Regulation of the Biodiversity Law Concerning the Conservation and Sustainable Use of Biological Diversity was enacted in 2001 and approved by Supreme Decree 068-2001-PCM published in the Official Gazette El Peruano dated 20 June 2001

Ley 28477, Ley que declara a los cultivos, crianzas nativas y especies silvestres usufructuadas natural de la nacion, 22 March 2005 <https://www.wipo.int/edocs/lexdocs/laws/es/pe/pe045es.pdf>

SPDA draft Law (Decree-Resolution) which creates the Official National Register of Native Crops and their Wild Relatives (in Muller 2009 pp.73-75)

Noriega, I. 2016. "Defensive protection of farmer's varieties", in Halewood, M. (ed) 2016. Farmers' crop varieties and farmers' rights: Challenges in taxonomy and law. Routledge, Oxon/New York.

Muller, M. "Commentary on the registry of native crops in Peru: Law 28477 and the registry of native potatoes", in Halewood, M. (ed) 2016. Farmers' crop varieties and farmers' rights: Challenges in taxonomy and law. Routledge, Oxon/New York