



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 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.*

## 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](mailto: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](http://www.utviklingsfondet.no); Searice [www.searice.org.ph](http://www.searice.org.ph); Third World Network [www.twn.my](http://www.twn.my); Bread for the World – Protestant Development Service [www.brot-fuer-die-welt.de](http://www.brot-fuer-die-welt.de), Community Technology Development Trust (CTDT) [www.ctdt.co.zw](http://www.ctdt.co.zw); Misereor [www.misereor.org](http://www.misereor.org); With the support of: Swiss Agency for Development and Cooperation [www.eda.admin.ch/sdc](http://www.eda.admin.ch/sdc), Quaker United Nations Office <https://quno.org>

#### Description of the examples

##### Mandatory information:<sup>1</sup>

- 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 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

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

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 <sup>2</sup>	Also relevant <sup>3</sup>
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 <sup>4</sup> , 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		X

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

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

<sup>4</sup> Including seed houses.

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 farmers<sup>5</sup>**  
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**  
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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

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

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

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### 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-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.)