



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
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))
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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.

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

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

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).

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.

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
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- 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
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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).
-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.
- 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

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

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