



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 International Seed Federation (ISF) on 31 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 : Exceptions to IP rights (the private and non-commercial use exception and the farm saved seed exception)
- Date of submission 31/07/2019
- Name(s) of country/countries in which the measure/practice is taking place Several but as an example the European Union
- Responsible institution/organization (name, address, website (if applicable), e-mail address, telephone number(s) and contact person) European Commission
- Type of institution/organization (categories) public
- Collaborating/supporting institutions/organizations/actors, if applicable (name, address, website (if applicable), e-mail address, telephone number(s)) NA

Description of the examples

Mandatory information:¹

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

Plant breeder's rights is a time-limited intellectual property right on plant varieties, which is limited through exceptions. The objective is to balance the interests of breeders and farmers against each other and to create a system where both parties benefit. Acts done privately and for non-commercial purposes are exempted from the scope of the plant breeder's right. Thus, subsistence farmers who carry out their normal practices can be covered by the private and non-commercial use exception.

Further on, there is also an optional exception, called the farm-saved seed exception or agricultural exception as foreseen by Article 15(2) of the UPOV 1991 Convention. This exception, under certain conditions, allows farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety. According to UPOV Explanatory Note (UPOV/EXN/EXC/1), "small farmers" with small holdings might be permitted to use farm-saved seed to a different extent and with a different level of remuneration to breeders than "large farmers". In EU law, for example, small commercial farmers are exempted from the payment of remuneration on the use of farm-saved seed.

As an outcome of these provisions, many UPOV members have implemented both the private and non-commercial use exception and the optional farm-saved seed exception in their national laws.

- Implementing entity and partners national governments
- Start year Various
- Objective(s)

The objective of the exceptions to the right is to really balance the interests of breeders and farmers against each other and to create a system where both parties benefit.

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



- Summary of core components

See above.

- Key outcomes

As an outcome of these provisions in the UPOV Convention many UPOV members have implemented both the private and non-commercial use exception and the optional Farm Saved seed exception in their national laws.

- Lessons learned (if applicable)

- Brief history (including starting year), as appropriate

Plant breeder’s rights is a time-limited intellectual property right on plant varieties, which is also limited through a few exceptions. For example, acts done privately and for non-commercial purposes are exempted from the scope of the plant breeder’s right. Thus, subsistence farmers who carry out their normal practices and can be covered by the private and non-commercial use exception.

Further on, there is also an optional exception, called the farm saved seed exception or agricultural exception as foreseen by Article 15(2) of the UPOV 1991 Convention. This exception “within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or Article 14(5)(a)(ii)”.

As stated in UPOV Explanatory Note (UPOV/EXN/EXC/1), “small farmers’ with small holdings (or small areas of crop) might be permitted to use farm-saved seed to a different extent and with a different level of remuneration to breeders than “large farmers”. This has been implemented in EU law in a way that small commercial farmers are exempted from the payment of remuneration on the use of farm saved seed. If however they exchange and/or commercialize farm saved seed, this act remains subject to the breeder’s authorization.

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

Private and non-commercial use exception: Under this exception even the occasional sale of seeds produced from protected varieties by subsistence farmers does not significantly jeopardize intellectual property rights, and thus does not substantially undermine incentives to innovate by breeders. However, a free and unlimited use of farm saved seed of protected varieties by commercial farmers is negatively impacting the continued release of new varieties and ultimately limits farmer’s choice.

- 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)

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

Art. 9.1

Art. 9.2a

Art. 9.2b

Art. 9.2c

Art. 9.3



Other information, if applicable

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

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

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.



- 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)
- Target group(s) and numbers of involved and affected farmers⁵ For the private and non-commercial use exception the target group is subsistence/smallholder farmers; whereas for the farm saved seed exception it is more commercial farmers.
- 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?
- Please describe the achievements of the measure/ practice so far (including quantification) (max 200 words)
- 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?
- Other issues you wish to address, that have not yet been covered, to describe the measure/practice

As far as the EU legislation is concerned, the private and non-commercial use exception as well as the farm saved seed exception is not only included in the plant variety regulation but also in the EU Directive 98/44 which deals with patent protection for biotechnological inventions. Therefore, in the event if there is a patent covering plant varieties farmers have exactly the same exceptions to rely on as under the plant variety protection regime.

Lessons learned

- Describe lessons learned which may be relevant for others who wish to do the same or similar measures/practices (max 250 words).
- What challenges encountered along the way (if applicable) (max 200 words)
- 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)

Further information

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

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01994R2100-20080131&qid=1564053898711&from=EN>

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0044&from=EN>

<https://www.upov.int/upovlex/en/conventions/1991/content.html>

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