



Food and Agriculture
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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 Third World Network on 30 July 2019.

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



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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

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



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)

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.

- Brief history (including starting year), as appropriate

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

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



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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)²

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.

² <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/>



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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.⁵ 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.⁶

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.³

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.⁴

- 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

⁵ McGown, J., (2006). "Out of Africa: Mysteries of Access and Benefit Sharing", Edmonds Institute, available at <http://bit.ly/1uSCXHa>; Hammond, E., (2013). "Biopiracy Watch: A compilation of some recent cases", Vol. 1. Third World Network, Penang.

⁶ Hammond, E., (2014). "Biopiracy of Turkey's purple carrot", Third World Network, available at http://www.twn.my/title2/intellectual_property/info.service/2014/ip140212.htm



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 ⁷	Also relevant ⁸
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 ⁹ , 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		

- In case you selected 'other measures', would you like to suggest a description of this measure, e.g. as a possible new category? _____

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.



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- Objective(s)

To monitor and enhance transparency with regard to utilization of genetic resources, ensure compliance with prior informed and 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 farmers¹⁰

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

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



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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).

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.¹¹ Peru deleted from its draft legislation a disclosure-of-origin obligation in anticipation of UPOV's opposition¹².

- 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

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.

¹¹ See http://www.upov.org/edocs/mdocs/upov/en/c_extr/22/c_extr_22_2.pdf. See also «Farmers' Right to Participate in Decision-making – implementing Article 9.2 (c) of the International Treaty on Plant Genetic Resources» at http://www.apbrebes.org/files/seeds/files/PE_farmers%20right_9-16_def-high.pdf, fn 15.

¹² See "Owning Seeds, Accessing Food: A Human Rights Impact Assessment of UPOV 1991 Based on Case Studies in Kenya, Peru and the Philippines (2014), available at https://www.publiceye.ch/fileadmin/doc/Saatgut/2014_Public_Eye_Owning_Seed_-_Accessing_Food_Report.pdf