



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 information on best practices and measures of implementing Article 9 of the International Treaty jointly submitted by Oxfam and South Centre on 15 December 2020.*

*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 of patented plants and plant material
- Date of submission : 1 December 2020
- Name(s) of country/countries in which the measure/practice is taking place : Global inventory of national measures
- Responsible institution/organization (name, address, website (if applicable), e-mail address, telephone number(s) and contact person) :  
Inventory established by South Centre and Oxfam
  - Oxfam, The Netherlands  
POB 30919  
2500 GX Den Haag,  
THE NETHERLANDS  
Contact person: Bram de Jonge, [bram.de.jonge@oxfamnovib.nl](mailto:bram.de.jonge@oxfamnovib.nl)
  - South Centre  
International Environment House 2, Chemin du Balaxert 7-9  
1219 Vernier, Geneva  
SWITZERLAND  
Contact person: Viviana Munoz, [munoz@southcentre.int](mailto:munoz@southcentre.int)
- Type of institution/organization (categories)
  - Oxfam: Civil Society Organization
  - South Centre: Intergovernmental Organization
- Collaborating/supporting institutions/organizations/actors, if applicable (name, address, website (if applicable), e-mail address, telephone number(s))

#### Description of the examples

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

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

Since patent laws do not normally allow the use of a patented plant, plant part or DNA sequence for the development of a new variety, the growing number of patents on plants across the world will decrease the gene pool from which farmers and breeders can source freely the seeds and breeding materials they want. In addition, patents may inhibit farmers' traditional farming practices of using, exchanging and selling farm-saved seed that contains patented material.

Despite the fact that the WTO TRIPS Agreement allows countries to exclude plants (and animals) from patentability (Article 27.3.b), developed countries and 60% of all emerging economies and developing countries allow for the patenting of plants or parts thereof.

---

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



Food and Agriculture  
Organization of the  
United Nations



The International Treaty  
ON PLANT GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE

This submission briefly discusses 1) how countries can exclude patent protection for plants, including plant varieties, biological materials, and essentially biological processes for the production of plants. In case countries do allow patents on plants, this submission discusses 2) how countries can limit the scope of patents relating to plants and 3) possible exceptions to the exclusive rights normally granted by a patent.

- Brief history (including starting year), as appropriate :

This submission is based on three studies:

1. The inventory “The Status of Patenting Plants in the Global South” was executed in 2018 and can be found here in English, Spanish, French and Chinese:  
<https://www.sdhsprogram.org/publications/statusofpatentingplantsintheglobalsouth/>
2. The study “Patent protection for plants: Legal options for developing countries” was published in 2014 and can be found here: [https://www.southcentre.int/wp-content/uploads/2014/11/RP55\\_Patent-Protection-for-Plants\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2014/11/RP55_Patent-Protection-for-Plants_EN.pdf)
3. The study “Implementing Farmers Rights to Seeds” was published in 2017 and can be found here: [https://www.southcentre.int/wp-content/uploads/2017/05/RP75\\_Implementing-Farmers-Rights-Relating-to-Seeds\\_EN-1.pdf](https://www.southcentre.int/wp-content/uploads/2017/05/RP75_Implementing-Farmers-Rights-Relating-to-Seeds_EN-1.pdf)

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

The WTO TRIPS Agreement allows countries to exclude from patentability “plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.” (Article 27.3.b). At least 51 countries make full use of this important flexibility.

Most countries, however, follow the ‘European approach’ and exclude plant varieties and essentially biological processes for their obtention, rather than plants as such. In these countries, patents on parts and components of plants may be used to control the production and commercialization of plant varieties even if they do not specifically claim plants. To counter this practice, some countries have rejected or invalidated patents on the argument that protecting a plant cell would be equivalent to obtaining protection on the whole plant. This indicates that when patents on plants are not permissible, plants’ parts such as seeds and cells can be equally excluded from patentability.

Other measures that countries can take to limit the number and scope of patents on plants are 1) clear provisions on the non-patentability of discoveries; 2) a clear and broad definition of ‘essentially biological processes’; 3) high standards for inventive step; 4) strict disclosure requirements; and 5) broad exemptions, 4) a revision of national laws where needed to ensure their compatibility with the realization of Farmers’ Rights.

- 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)

Multiple studies have shown that the numbers of patents on plants and plant genetic material, as well as on breeding processes, have rapidly grown around the world since the 1980s onward. This trend seems only to be increasing with the advent of new breeding technologies such as gene-editing and synthetic biology (Oldham and Hall, 2018). It has also been shown that the biggest agro-chemical multinationals



own and apply for the bulk of patents, which contributes to further consolidation in the sector (Louwaars *et al*, 2009).

Several countries have take measures to exclude or limit the patentability of plants and plant materials in their jurisdictions. Some examples include:

- Brazil excludes from patentability “all or part of natural living beings and biological materials found in nature, even if isolated therefrom, including the genome or germplasm of any natural living being, and the natural biological processes.” (Brazil, Law No. 9.279 of May 14, 1996 (Law on Industrial Property), Article 10.IX).
- India excludes from patentability “plants and animals in whole or any part thereof other than micro organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals” (India, The Patents Act, 1970, Article 3j).
- Germany, France, Switzerland and the Netherlands introduced a breeder’s exemption to patent rights, according to which a patent shall not extend to “the use of biological material for breeding, discovery and development of a new plant variety type” (Section 11.2.a of the German Patent Act, adopted in 2005);
- Germany and Switzerland have included a provision regarding immunity conferred in respect of the unintended use by farmers of patented materials (see also: <http://www.fao.org/3/a-bb904e.pdf>).

It is important to note that none of these examples have been challenged as being incompatible with article 30 (exceptions to rights conferred) or article 31 (uses without the authorization of the patent holder) of the TRIPS Agreement.

- 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>
-----	----------	----------------------------	----------------------------

<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).



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		
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? \_\_\_\_\_
- Objective(s) : Farmers to retain the right to save, use, exchange and sell farm-saved seeds/propagating material.
- Target group(s) and numbers of involved and affected farmers<sup>5</sup> : Governments implementing patent law - Millions of farmers (and breeders) in the respective countries.
- Location(s) and geographical outreach : Global
- 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)

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

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



**Food and Agriculture  
Organization of the  
United Nations**



**The International Treaty**  
**ON PLANT GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE**

- 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 :

For further information we refer the reader to both aforementioned studies at

- <https://www.sdhsprogram.org/publications/statusofpatentingplantsintheglobalsouth/>
- [https://www.southcentre.int/wp-content/uploads/2014/11/RP55\\_Patent-Protection-for-Plants\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2014/11/RP55_Patent-Protection-for-Plants_EN.pdf)
- [https://www.southcentre.int/wp-content/uploads/2017/05/RP75\\_Implementing-Farmers-Rights-Relating-to-Seeds\\_EN-1.pdf](https://www.southcentre.int/wp-content/uploads/2017/05/RP75_Implementing-Farmers-Rights-Relating-to-Seeds_EN-1.pdf)

### **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://www.sdhsprogram.org/publications/statusofpatentingplantsintheglobalsouth/>
  - [https://www.southcentre.int/wp-content/uploads/2014/11/RP55\\_Patent-Protection-for-Plants\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2014/11/RP55_Patent-Protection-for-Plants_EN.pdf)
  - [https://www.southcentre.int/wp-content/uploads/2017/05/RP75\\_Implementing-Farmers-Rights-Relating-to-Seeds\\_EN-1.pdf](https://www.southcentre.int/wp-content/uploads/2017/05/RP75_Implementing-Farmers-Rights-Relating-to-Seeds_EN-1.pdf)