



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 information on best practices and measures of implementing Article 9 of the International Treaty submitted by FIAN International on 8 June 2022.

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

Application of constitutional and human rights measures by the Supreme Court of Justice of Honduras to declare unconstitutional the Law for the Protection of New Varieties of Plants, based on the International Convention for the Protection of New Varieties of Plants of 1991 (UPOV 91).

- Date of submission

8 June 2022

- Name(s) of country/countries in which the measure/practice is taking place

Honduras

- Responsible institution/organization (name, address, website (if applicable), e-mail address, telephone number(s) and contact person)

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- 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))



Description of the examples

Mandatory information:¹

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

On November 17, 2021, the Supreme Court of Justice of Honduras issued its judgment in the appeal of unconstitutionality against the Legislative Decree No. 21-2012 containing the Law for the Protection of New Varieties of Plants, issued by the National Congress of Honduras on March 12, 2012. In this judgment, the Court applies several constitutional and international law measures that

- Guarantee the right to life, human dignity and the right of Honduran men and women to have an adequate standard of living;
- Guarantee the human right to food as the right of peoples to nutritious, healthy and culturally adequate food;
- Recognize the obligation of the State of Honduras to conserve an adequate environment to protect the health of its inhabitants;
- Establish the duty of the State of Honduras to protect the native cultures of the country and farmers' rights as constitutionally and internationally recognized.

Applying these legal measures, the Court declared Decree No. 21-2012 unconstitutional and, therefore, the Law for the Protection of Plant Varieties. The Court points out that this law "faithfully reflects the guidelines provided by UPOV" and that it violates farmers' rights as recognized by the ITPGRFA and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

- Brief history (including starting year), as appropriate

The Supreme Court of Justice of Honduras issued its judgment on November 17, 2021. The appeal of unconstitutionality refers to Legislative Decree No. 21-2012 containing the Law for the Protection of Plant Varieties, issued by the National Congress of the Republic of Honduras on March 12, 2012. The Court's ruling applies legal measures contained in the Political Constitution of the Republic of Honduras of 1982, as well as

- the Universal Declaration of Human Rights;
- the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966 and ratified by Honduras in 1981;
- the American Convention on Human Rights, ratified by Honduras in 1977;
- the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted by the United Nations General Assembly in 2018;
- the Convention on Biological Diversity, ratified by Honduras in 1995; and
- the International Treaty on Plant Genetic Resources for Food and Agriculture, ratified by Honduras in 2004.

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

The example concerns the application, by the Supreme Court of Justice of Honduras, of legal measures for the protection of the rights of peasants over seeds (farmers' rights) in the context of the introduction of

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



a law that directly affects such rights. The judgment states that “Articles 2, 4, 7, 8, 10, 11 and 13 of the Law for the Protection of Plant Varieties [...] violate the provisions of Articles 1, 4, 5, 15, 16, 59, 63, 64, 328, 331, 332, 339, 340 and 347 of the Constitution of the Republic [of Honduras], in relation to the provisions of Articles 25 of the Universal Declaration of Human Rights; 1, 2, and 26 of the American Convention on Human Rights; Article 11 of the International Covenant on Economic, Social and Cultural Rights; 19 and 20 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas; 1 and 2 of the Convention on Biological Diversity; 6 and 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) [...]” (p. 38f.)

Applying these legal measures, the Court declares unconstitutional the legislative decree No. 21-2012 containing the Law for the Protection of Plant Varieties.

- 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)

With its ruling, the Court upheld a constitutional challenge that had been filed by the National Association for the Promotion of Organic Agriculture (Asociación Nacional para el Fomento de la Agricultura Ecológica, ANAFAE), as well as several peasant and independent producer collectives in 2018. A first legal appeal filed by ANAFAE in 2016 had been rejected.

The appeal of unconstitutionality was filed after the approval of Legislative Decree No. 21-2012 containing the Law for the Protection of Plant Varieties, by the National Congress of the Republic of Honduras on March 12, 2012. As stated in the judgment, said law is based on the International Convention for the Protection of New Varieties of Plants of 1991 (UPOV 91).

In declaring the Law for the Protection of New Varieties of Plants unconstitutional, the Court states that several articles of said Convention violate the Constitution of Honduras as well as its human rights commitments.

Several organizations and individuals have provided expert opinions to support the Court in its application of the constitutional and human rights measures that protect the rights of peasants over seeds (farmers’ rights).

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

Art. 9.1 x

Art. 9.2a x

Art. 9.2b x

Art. 9.2c x

Art. 9.3 x

[Explanatory note: We consider the different elements of Article 9 of the ITPGRFA to be interconnected and mutually reinforcing].



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		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		x
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		

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

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.



- Objective(s)

The objective of the legal measures underpinning the judgment of the Supreme Court of Justice of Honduras is to guarantee the rights of peasants, recognizing their special contribution to the conservation and protection of biodiversity, in particular the native cultures of the country. In its ruling, the Court reaffirms the rights of peasants over their seeds, which are guaranteed by the Constitution and the international agreements ratified by the State of Honduras. It emphasizes, among others, “that the traditional knowledge of peasants is fundamental to maintaining biological diversity and guaranteeing food security.” (P. 33).

It argues that “the law [...] a prima facie protects the rights of plant variety breeders, nevertheless it contains provisions that contravene the commitments assumed by the State of Honduras to adopt relevant measures to protect and promote the rights of farmers [...], forgetting that the traditional knowledge of peasants is fundamental to maintain biological diversity and guarantee food security.” (Pp. 33-34).

- Target group(s) and numbers of involved and affected farmers⁵

The ruling affects the entire peasant population of Honduras, particularly peasants who contribute to the conservation and sustainable use of plant genetic resources through their seed selection and management practices.

- Location(s) and geographical outreach

Territory of the State of Honduras

- 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 constitutional and human rights measures, as well as their application through the judgment of the Supreme Court of Justice of Honduras, have guaranteed the protection of the rights of peasants in the context of the introduction of plant variety protection regulations. The judgment states that several articles of the Law for the Protection of New Varieties of Plants include norms contained in the UPOV 91 Convention that may directly affect the rights of peasants over their seeds (farmers’ rights). The UPOV Convention is based on and inspired by a form of individual intellectual property for the “creators” of new plant varieties, in order to allow them to exploit them exclusively for a certain period of time. In applying the constitutional and human rights measures, the Court emphasizes that the Law “grants a concession title for up to 25 years (Art. 11), which infringes the constitutional provisions contained in Articles 339 and 340, by establishing temporary privileges to the inventors of new plant varieties, a situation that favors [...] monopolies prohibited by the Constitution of the Republic [...]” (P. 34). It emphasizes that precisely in order to achieve the rational exploitation of natural resources, which are declared of public utility and necessity, to guarantee a healthy environment for the benefit of the

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



inhabitants of the nation, the State becomes obliged to regulate the use of natural resources in accordance with the social interest, without forgetting harmony with the protection and conservation of the ecosystems and the land, elements that interact as a functional unit”. (P. 34).

On the other hand, the Court's judgment emphasizes that “while plant genetic resources play an increasing role in food security and development in the world, it is no less true that they have also been responsible for considerable damage to biological diversity, mainly due to land use change but also overexploitation, intensification of agricultural production systems, excessive use of chemicals and water, nutrient loading, pollution and the introduction of invasive alien species; it is therefore necessary to take appropriate measures to protect and promote farmers’ rights.” (P. 36)

By applying the legal measures enshrined in the Constitution and the international human rights framework, the judgment has thus protected the rights of peasants against the restrictions created by the plant variety protection rules based on the UPOV 91 Convention. In this way, the peasant population of Honduras can maintain their seed systems and continue their fundamental contribution to the conservation and sustainable use of biological diversity.

- Please describe the achievements of the measure/ practice so far (including quantification) (max 200 words)

The application of constitutional and human rights measures by the Honduran Supreme Court of Justice resulting in the repeal of the Plant Variety Protection Law has enabled Honduran peasants to maintain their seed management systems in order to enjoy their rights to save, use, exchange and sell their seeds (farmers’ rights) and contribute to maintaining biological diversity, in particular biodiversity 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?

In its judgment, the Supreme Court of Justice of Honduras explicitly refers to the following international agreements:

- Universal Declaration of Human Rights;
 - International Covenant on Economic, Social and Cultural Rights (ICESCR);
 - American Convention on Human Rights;
 - United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas;
 - Convention on Biological Diversity;
 - International Treaty on Plant Genetic Resources for Food and Agriculture.
- 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).

The example shows that legal measures that protect the rights of peasants over seeds are essential in situations where these may be limited by the introduction of PVP laws. Applying the constitutional measures, as well as Honduras' human rights obligations, has allowed the Supreme Court of Justice to evaluate the provisions of the Plant Variety Protection Law, and thus the UPOV 91 Convention, and to assess their impact on the rights of the peasant population in Honduras.

- What challenges encountered along the way (if applicable) (max 200 words)

The application of the Honduran State's legal measures protecting the rights of peasants through the ruling of the Supreme Court of Justice followed an appeal of unconstitutionality filed in 2018. A first legal appeal filed by ANAFAE in 2016 had been rejected, demonstrating the difficulty for peasant organizations to enforce their rights despite the country's legal provisions.

- 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)

To ensure that judicial bodies can effectively uphold the rights of peasants over seeds (farmers' rights), it is of vital importance to put in place legal measures that enshrine these rights in the national legal framework. In this context, it is also important that state authorities, including the judiciary, take into account the international human rights framework.

Furthermore, the example shows that it is essential to ensure that the conditions and spaces exist for peasant organizations and civil society organizations to articulate and mobilize, in particular to participate effectively in legislative and judicial proceedings.

Further information

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

Supreme Court of Justice of the Republic of Honduras. Appeal of Unconstitutionality Exp: SCO-0877-2018. <https://redanafae.com/wp-content/uploads/2022/03/INCONSTITUCIONALIDAD-LEY-PROTECCION-DE-OBTENCIONES-VEGETALES-HONDURAS-ENERO-2022-1.pdf>.