



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



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

Item 13 of the Provisional Agenda

NINTH SESSION OF THE GOVERNING BODY

New Delhi, India, 19–24 September 2022

Report of the Ad Hoc Technical Expert Group on Farmers' Rights to the Ninth Session of the Governing Body

Note by the Secretary

At its Eighth Session, the Governing Body reconvened the Ad Hoc Technical Expert Group on Farmers' Rights for the 2020-2021 biennium in order to complete its tasks, based on the Terms of Reference established at the Seventh Session of the Governing Body, through Resolution 7/2017, to:

- i. produce an inventory of national measures that may be adopted, best practices and lessons learned from the realization of Farmers' Rights, as set out in Article 9 of the International Treaty; and*
- ii. based on the inventory, develop options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty.*

This document contains the Report of the Expert Group to the Ninth Session of the Governing Body, describing the work undertaken by the Expert Group during the biennium, including the draft Options for encouraging, guiding and promoting the realization of Farmers' Rights, as set out in Article 9 of the International Treaty (Options).

The Report on the Implementation of Farmers' Rights is provided in the document, IT/GB-9/22/13, which also contains elements for a draft resolution on Farmers' Rights, for the consideration of the Governing Body.

The document IT/GB-9/22/13.3 contains the Options for encouraging, guiding and promoting the realization of Farmers' Rights, as set out in Article 9 of the International Treaty, as well as the Co-Chairs' proposal for Category 10 of the Options, which could not be finalised by the Expert Group.

The document IT/GB-9/22/13/Inf.1, contains the Updated Inventory of national measures, best practices and lessons learned from the realization of Farmers' Rights, as set out in Article 9 of the International Treaty.

Guidance Sought

The Governing Body is invited to welcome the Report of the Ad Hoc Technical Expert Group on Farmers' Rights, and to finalise the draft *Options for encouraging, guiding and promoting the realization of Farmers' Rights, as set out in Article 9 of the International Treaty* as contained in document IT/GB-9/22/13.3 and, if approved, provide further guidance for their implementation, taking into account the elements for a draft Resolution contained in the document, IT/GB-9/22/13.

FAO-ITPGRFA documents can be consulted at: <https://www.fao.org/plant-treaty/meetings/meetings-detail/en/c/1259571/>

**REPORT OF THE AD HOC TECHNICAL EXPERT GROUP ON
FARMERS' RIGHTS
TO THE NINTH SESSION OF THE GOVERNING BODY**

I. INTRODUCTION

1. The Ad Hoc Technical Expert Group on Farmers' Rights (Expert Group) was established by the Governing Body through Resolution 7/2017. Its mandate is to:
 - i. Produce an inventory of national measures that may be adopted, best practices and lessons learned from the realization of Farmers' Rights, as set out in Article 9 of the International Treaty; and
 - ii. Based on the inventory, develop options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty.
2. At its Eighth Session, through Resolution 6/2019, the Governing Body decided to reconvene the Expert Group for the 2020-2021 biennium in order to complete its tasks based on the Terms of Reference established at the Seventh Session of the Governing Body and the provisions of Resolution 6/2019.
3. The terms of reference of the Expert Group, as contained in Resolution 7/2017, are provided in *Annex 1*.
4. In reconvening the Expert Group, the Governing Body decided that, subject to the availability of financial resources, the Expert Group may hold up to two meetings in the biennium 2020-2021.
5. The Governing Body, through Resolution 6/2019, decided to expand the Expert Group with two more representatives of farmers' organizations particularly from centres of origin and crop diversity.
6. The Expert Group accordingly comprised up to five members designated by each FAO region, up to five representatives of farmer organizations, particularly from the centers of origin and crop diversity, and up to three other stakeholders, including the seed sector, that were designated by the Bureau of the Governing Body. The list of experts is given in *Annex 2*.
7. The Expert Group held its third meeting from 25 to 28 August 2020 and its fourth meeting from 4 to 7 May 2021 and from 23 to 27 August 2021, all by virtual means.
8. Pursuant to Resolution 7/2017, the Bureau of the Eighth Session of the Governing Body appointed Ms. Svanhild-Isabelle Batta Torheim and Mr. Rakesh Chandra Agrawal as the Co-chairs of the Expert Group. It further appointed Ms Modester Kachapila-Milinyu as interim Co-Chair for the first part of the fourth meeting, in the absence of Mr. Agrawal.
9. This report describes the work undertaken by the Expert Group during the biennium pursuant to its Terms of Reference.

**II. OPTIONS FOR ENCOURAGING, GUIDING AND PROMOTING
THE REALIZATION OF FARMERS' RIGHTS, AS SET OUT IN
ARTICLE 9 OF THE INTERNATIONAL TREATY**

10. The Expert Group recalled that the Governing Body welcomed the *Inventory of National Measures, Best Practices and Lessons Learned on the Realization of Farmers' Rights* (the Inventory), recognizing that it will be periodically reviewed and updated, as necessary, and that it took note of the outline of the *Options for Encouraging, Guiding and Promoting the Realization*

of *Farmers' Rights*, as set out in Article 9 of the International Treaty (the *Options*), which would form the basis for the completion of the task of the Expert Group.

11. It also recalled its work during the last biennium and its agreement on the structure and elements of *the Options*, as given in the report of its second meeting.

12. The Expert Group agreed to continue its work during this biennium on the basis of a first draft *Options* document prepared by the Secretary,¹ in accordance with its Terms of Reference. It reviewed all elements of *the Options* and developed several revisions.

13. The Expert Group noted the relevance of other international agreements to *the Options* and advised to keep references to such agreements at a general level, in line with the language of the International Treaty.

14. The Expert Group recalled that the *Inventory* is a rolling document, and agreed to recommend to the Governing Body that *the Options* be reviewed periodically.

15. The Expert Group agreed that the Secretariat will include examples of measures for each option that would reflect the diversity of submitted measures.

16. The Expert Group finalised the introductory part of *the Options*, with the exception of one sentence in its paragraph 22, as given in *Annex 3*, and the titles of all options, except those for Category 10, as given in *Annex 4*.

17. The Expert Group worked extensively on titles for options under Category 10. Based on the range of views and inputs received from members at this and previous meetings, the Co-chairs presented their proposal of possible options under Category 10. However, the Expert Group was not able to finalise its work on options under Category 10. The Co-chairs' proposal, as given in *Annex 5*, will be presented to the Governing Body for its further consideration.

18. The Expert Group also discussed and provided its inputs to the draft descriptions of the options, except those for options under Category 10, and requested the Secretary, with the guidance of the Co-chairs, to update the draft *Options* based on the discussions at this meeting, ensuring coherency among options and with the submissions forming the basis of the options.

19. The draft *Options*, updated by the Secretary, will be presented to the Ninth Session of the Governing Body in a separate document, for its consideration.

20. The Expert Group requested the Secretary to update the *Inventory*, by undertaking quality checks, such as ensuring that submitted examples are included under the correct categories and including new submissions. The updated *Inventory* is provided in the documentation to the Ninth Session of the Governing Body.

III. RECOMMENDATIONS AND POSSIBLE FUTURE WORK

21. The Expert Group recommends that the Governing Body welcome the updated *Inventory*, and consider the draft *Options* for its further decision.

22. The Expert Group requested the Secretary to prepare elements of a possible draft Resolution for the consideration of the Governing Body at its Ninth Session, based on its work and incorporating the relevant recommendations and issues the Expert Group had agreed on. It invited the Secretary to consider the following possible elements:

- a. The Expert Group recommends that the Governing Body welcome the updated *Inventory*;
- b. The Expert Group recommends that the Governing Body request the Secretary to translate the *Inventory* in the official languages;

¹ IT/GB-9/AHTEG-FR-3/20/2, *Options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty*.

- c. The Expert Group recommends that the Governing Body consider the draft *Options* for its further decision; and
- d. The Expert Group encourages Contracting Parties and other stakeholders to consider using the *Options*, as may be adopted, in encouraging, guiding and promoting the realization of Farmers' Rights.

Annex 1

A. Terms of reference for the Ad Hoc Technical Expert Group on Farmers' Rights

1. The Ad Hoc Technical Expert Group on Farmers' Rights will:
 - i) Produce an inventory of national measures that may be adopted, best practices and lessons learned from the realization of Farmers' Rights, as set out in Article 9 of the International Treaty;
 - ii) Based on the inventory, develop options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty.
2. In the development of its work, the Ad Hoc Technical Expert Group may consider the proceedings from the Global Consultation on Farmers' Rights held in Bali, Indonesia, in 2016, as well as other relevant consultations.
3. The Ad Hoc Technical Expert Group will comprise up to five members designated by each FAO region, up to three representatives of farmer organizations, particularly from the centers of origin and crop diversity, and up to three other stakeholders, including the seed sector, designated by the Bureau of the Eighth Session of the Governing Body.
4. The Bureau of the Eighth Session of the Governing Body will appoint two Co-Chairs from the Contracting Parties of the International Treaty - one from a developing country and one from a developed country.
5. The Ad Hoc Technical Expert Group may hold up to two meetings in the biennium 2018-2019, subject to the availability of financial resources.
6. The Ad Hoc Technical Expert Group will report back to the Governing Body on its work for further consideration at the Eighth Session of the Governing Body.
7. The Secretary will facilitate the process and assist the Ad Hoc Technical Expert Group in its work.

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Introductory part

Options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty

I. Background and rationale

1. The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA or International Treaty) acknowledges that plant genetic resources for food and agriculture (PGRFA) constitute the basis for food and agricultural production throughout the world. It highlights their importance for developing sustainable and diverse farming and seed systems and plant varieties that are adapted to specific social, economic and ecological conditions, environmental changes, cultures, and future human needs.
2. The International Treaty affirms that the past, present and future contributions of farmers in all regions of the world, particularly those in centres of origin and crop diversity, in conserving, improving and making available these resources, is the basis of Farmers' Rights. Its preambular text further affirms that rights recognized in the International Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of PGRFA, are fundamental to the realization of Farmers' Rights, as well as their promotion at national and international levels. Farmers acknowledged in the International Treaty are also the carriers of traditional knowledge related to PGRFA, and their contributions are based, at their core, on traditional systems of seed exchange.
3. The realization of Farmers' Rights is thus of paramount importance for sustainable agriculture and resilient food and seed systems worldwide but also for farmers themselves to sustain and improve their livelihoods and increase their resilience to external shocks. The Covid-19 pandemic, for example, has affected people around the world and hit farmers hard as their livelihoods and farming activities depend on functioning food systems, markets, transportation and other services.
4. Farmers in all regions of the world contribute to the conservation, development and sustainable use of PGRFA. In many countries, particularly in the centres of origin and crop diversity, small-scale farmers, and among them specifically women, have a prominent role in this regard. It is, therefore, particularly important that women who engage in the conservation, development and sustainable use of PGRFA are recognised in their crucial role as custodians of crop diversity and that their needs are addressed equally when it comes to the realisation of Farmers' Rights.
5. According to Article 9.2 of the ITPGRFA, the responsibility for realizing Farmers' Rights, as they relate to PGRFA, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including the protection of traditional knowledge relevant to PGRFA (Article 9.2.a); the right to equitably participate in sharing benefits arising from the utilization of PGRFA (Article 9.2.b); and the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of PGRFA (Article 9.2.c). Furthermore, it is stated in Article 9.3 that "nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate."

6. There are many examples of measures and practices being implemented for the realization of Farmers' Rights, for example at the local level and by civil society organisations. To assist Contracting Parties in developing and implementing national measures, and to draw from the experiences that have been attained so far, the Governing Body continually invites Contracting Parties and relevant Stakeholders, especially farmers' organizations, to submit views, experiences and best practices as examples of possible options for the national implementation of Farmers' Rights, as set out in Article 9 of the International Treaty. Nevertheless, such experiences and practices should be shared on a larger scale, and the further implementation of Farmers' Rights should be promoted.

7. In this context, at its Seventh Session in 2017, the Governing Body established the Ad hoc Technical Expert Group on Farmers' Rights (AHTEG-FR or Expert Group) with the mandate to produce an Inventory of national measures that may be adopted, best practices and lessons learned from the realization of Farmers' Rights, as set out in Article 9 of the International Treaty (*the Inventory*); and based on *the Inventory*, to develop Options for encouraging, guiding and promoting the realization of Farmers' Rights, as set out in Article 9 of the International Treaty (*the Options*).⁴

8. *The Options* are based on measures or practices that have been shared by Contracting Parties and Stakeholders as examples of possible options and that are compiled in *the Inventory*.⁵

II. Objective

9. The purpose of *the Options* is to encourage, guide and promote the realization of Farmers' Rights as set out in Article 9 of the International Treaty.

III. Nature and scope

10. The word "options" means the act or opportunity of choosing, or a thing that can be or is chosen. It implies that there is discretion or right to choose, and that several alternatives exist from which a choice can be made.⁶

11. Options are thus understood in this document as examples of actions or measures that *may be* taken to achieve an anticipated objective. This non-prescriptive and discretionary character of *the Options* distinguishes them from guidelines that are intended to advise on how something *should be* done.

12. Contracting Parties of the International Treaty have committed themselves to take measures to protect and promote Farmers' Rights, in accordance with their needs and priorities, as appropriate and subject to national legislation. The measures taken by each Contracting Party may differ from one another, given the fact that different countries' needs, priorities, legal frameworks and general conditions vary, including to which other international agreements they have adhered to. The International Treaty affirms, in its Preamble, that nothing in it shall be interpreted as implying in any way a change in the rights and obligations of the Contracting Parties under other international agreements.

13. *The Options* may thus serve as a source of inspiration and guidance for Contracting Parties to promote the realization of Farmers' Rights in their own specific contexts.

14. Several options may be related to one another and could be combined to create synergies and develop stronger impact with respect to realization of Farmers' Rights. Examples of such combined measures/practices can be found in *the Inventory*. Farmers' Rights may thus be promoted as a bundle of measures, practices and policies that are mutually supportive. Furthermore, the

⁴ See Appendix A.7 of the Report of the Seventh Session of the Governing Body: <http://www.fao.org/3/MV606/mv606.pdf>

⁵ The Inventory, available at: <http://www.fao.org/plant-treaty/areas-of-work/farmers-rights/overview-inventory/en/>

⁶ See IT/GB-8/AHTEG-FR-2/19/4 Rev.1; <https://www.merriam-webster.com/dictionary/option> (18 April 2020)

careful consideration of synergies between options, and how they relate to other rights and obligations that concern the rights of farmers, women and men, as well as local and indigenous communities, could be considered a major factor of success.

IV. Intended users/target groups

15. Contracting Parties of the International Treaty are the primary target group of *the Options*, based on the obligation they have to implement the International Treaty and comply with its provisions, including Article 9.

16. Farmers, indigenous and local communities are rights holders that can make legitimate claims for the implementation of their rights. Farmers and their organizations may thus want to use *the Options* as a source of information in pursuit of their cause.

17. Other Stakeholders aiming to support the realization of Farmers' Rights, including NGOs, civil society and the private sector operating at various levels and scales, as well as international organizations, research and academia, may also find inspiration for possible partnerships, programmes or initiatives.

18. A further target group includes donors, such as governments, foundations and international financial organizations, who may be inclined to support the realization of Farmers' Rights as set out in Article 9 of the International Treaty, for example by providing financial and/or non-monetary resources.

19. Furthermore, Non-Contracting Parties and all other types of organizations working towards the realization of Farmers' Rights could also use *the Options* as a source of inspiration and guidance.

V. Guide to the document

Categories

20. A set of eleven categories was used to structure *the Options*, so that several options are presented under each category. The same categories were also used in *the Inventory*.⁷

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 banks⁸, 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;

⁷ See IT/GB-8/AHTEG-FR-2/19/Report

⁸ Including seed houses

10. Legal measures for the implementation of Farmers' Rights, such as legislative measures related to PGRFA;
11. Other measures/practices.

21. For each category, the reference to relevant provisions of Article 9 of the International Treaty is provided, with explanation of why measures under this category can be regarded as options to encourage, guide and promote the realization of Farmers' Rights. An overview table is also provided at the end of the document. However, any references that are made to sub-articles of Article 9 in *the Options* are not meant to provide any specific interpretation of their legal content.

Options

22. The presentation of each option follows a uniform pattern. An explanation is given of what the option is about, and what types of measures may typically be involved. Gender is likely to be relevant for some options; in such cases, a brief explanation is included in the description to support a gender-responsive approach. Some examples from the Inventory are given for each option.⁹

Type(s) of measures

23. The description of each option includes information on type(s) of measures that may be involved. Measures are classified here into "technical", "legal", "administrative" and "other" types of measures, based on the following criteria:

- Technical measures refer to initiatives/programmes/project activities that strengthen individual farmers' or farming communities' contributions to on farm, *in situ* and *ex situ* conservation and/or sustainable use of PGRFA (e.g., documentation of PGRFA and related traditional knowledge, training and capacity development, community seed banks, seed-saver networks and seed fairs, participatory plant breeding and variety selection, farmer field schools);
- Administrative measures refer to executive orders, ministerial, inter-ministerial, departmental instructions/circulars/memoranda, awards/recognition, establishment of protocols, codes, guidelines, etc.;
- Legal measures refer to national/regional laws, policies and any other legal instruments (act, law, bill, etc.);
- Other measures refer to all other measures or practices, including studies, advocacy work, and financial instruments.

The same criteria were also used to classify the type(s) of measures in *the Inventory*.

Relation with the Submissions and the Inventory

24. The submissions of Contracting Parties and Stakeholders, through which they have shared their experiences from the realization of Farmers' Rights in various countries, form the basis of both the Inventory and *the Options*.

25. In *the Inventory*, measures/practices that have been proposed by Contracting Parties and Stakeholders as examples of possible options are listed, each with a link to the original submission, where they are described in detail, including with specific information on history and context, core components, key outcomes, and lessons learned. The Expert Group did not evaluate or assess these measures and practices as to whether or not any specific measure and practice contributes to the realization of Farmers' Rights.

26. *The Options* present this information in a more general and summarized form, based on the examples from *the Inventory*. For empirical experiences related to each option, the reader is encouraged to consult *the Inventory*.

⁹ This sentence is highlighted in grey colour because it was not finalized by the Expert Group (see Paragraph 16 of this Report).

Use of the Options

27. Article 9 of the International Treaty states that the responsibility for realizing Farmers' Rights rests with national governments. Contracting Parties are thus invited to consider the full range of options for the implementation of Farmers' Rights at the national level, in accordance with their needs and priorities and as appropriate; however, no particular option should be understood as being specifically required under Article 9 of the International Treaty.

Annex 4

A. List of titles of options**Category 1: Recognition of local and indigenous communities' and farmers' contributions to the conservation and sustainable use of PGRFA, such as awards and recognition of custodian/guardian farmers**

Option 1A: Establish prizes and awards to honour custodian/guardian farmers, farming communities and their organizations who contribute to the conservation and sustainable use of PGRFA in an outstanding manner

Option 1B: Highlight the role and expertise of farmers, farming communities and their organizations in the conservation and/or development of PGRFA by mentioning their names and further details in official records

Option 1C: Designate locally, nationally or Globally Important Agricultural Heritage Systems sites for the conservation and sustainable use of PGRFA and support farmers and their organizations in the sustainable management and governance of such sites

Category 2: Financial contributions to support farmers' conservation and sustainable use of PGRFA such as contributions to benefit-sharing funds

Option 2A: Provide funds for farmers, farming communities and their organizations who conserve, develop and sustainably use PGRFA, including to capacity development

Option 2B: Contribute voluntarily to the Benefit-sharing Fund (BSF) of the International Treaty

Category 3: Approaches to encourage income-generating activities to support farmers' conservation and sustainable use of PGRFA

Option 3A: Conduct and/or support promotional activities to strengthen sustainable consumption for products derived from the conservation and sustainable use of PGRFA

Option 3B: Develop value-chains for local crops, varieties and evolutionary populations with specific adaptation, nutritional value, uses or other benefits

Option 3C: Create and support markets for products issued from farmers' varieties/farmers' seed systems

Category 4: Catalogues, registries and other forms of documentation of PGRFA and protection of traditional knowledge

Option 4A: Recognize, collect and document traditional knowledge on PGRFA, including knowledge relating to cultivation and use

Option 4B: Conduct and/or support activities for conserving, sharing and disseminating traditional knowledge relating to PGRFA

Option 4C: Support farmers and farming communities to develop instruments to govern access to PGRFA over which they have established rights and traditional knowledge associated with PGRFA based on their local practices, procedures and community protocols

Category 5: *In situ* on-farm conservation and management of PGRFA, such as social and cultural measures, community biodiversity management and conservation sites

Option 5A: Support and safeguard community biodiversity management and/or other practical activities of farmers and farming communities for *in situ*/on-farm management of PGRFA

Option 5B: Strengthen the role and identity of custodian/guardian farmers and communities through social and cultural activities

Option 5C: Conduct and disseminate studies on the participation of farmers and communities in *in situ*/on-farm conservation, management and sustainable use of PGRFA, including technological, ecological, socioeconomic and cultural aspects

Category 6: Facilitation of farmers' access to a diversity of PGRFA through community seed banks, seed networks and other measures improving farmers' choices of a wider diversity of PGRFA

Option 6A: Establish and/or support community seed banks, seed clubs, seed houses, seed-saver networks or similar approaches

Option 6B: Organize and/or support farmers' seed festivals and fairs

Option 6C: Facilitate farmers' access to material from genebanks, research institutes, universities and the private sector

Option 6D: Support farmers' seed systems and innovation

Category 7: Participatory approaches to research on PGRFA, including characterization and evaluation, participatory plant breeding and variety selection

Option 7A: Involve farmers in the characterization, evaluation and selection of PGRFA, including landraces/farmers' varieties, and/or new varieties, populations and genebank accessions

Option 7B: Develop participatory plant breeding programmes or projects

Option 7C: Conduct participatory research on other aspects of PGRFA

Category 8: Farmers' participation in decision-making at local, national and sub-regional, regional and international levels

Option 8A: Ensure representation and effective participation of farmers and/or their organizations in national advisory committees, commissions, councils or working groups addressing issues relating to the conservation, management and sustainable use of PGRFA

Option 8B: Organize policy dialogue processes with participation of farmers and/or their representative organizations

Category 9: Training, capacity development and public awareness creation

Option 9A: Promote understanding and raise awareness of the importance of Farmers' Rights

Option 9B: Strengthen farmers' and their organizations' capacities to effectively participate in policy dialogue and decision-making processes

Option 9C: Enhance farmers' and their organizations' technical and/or organizational capacities, systems of knowledge and management that foster biodiverse systems, conservation and sustainable use of PGRFA

Category 10: Legal measures for the implementation of Farmers' Rights, such as legislative measures related to PGRFA¹⁰

Category 11: Other measures/practices

Option 11A: Support farmers' conservation, management and sustainable use of PGRFA through targeted emergency assistance

¹⁰ The Co-Chairs' proposal on options under Category 10 is presented in *Annex 5* (see Paragraph 17 of this Report).

B. Co-chairs' proposal for options under Category 10

Category 10: Legal measures for the implementation of Farmers' Rights, such as legislative measures related to PGRFA

Reference to relevant provision/s of Article 9 of the International Treaty

<i>Art. 9.1</i>	✓
<i>Art. 9.2a</i>	✓
<i>Art. 9.2b</i>	✓
<i>Art. 9.2c</i>	✓
<i>Art. 9.3</i>	✓

Why can measures under this category be regarded as options to encourage, guide and promote the realization of Farmers' Rights?

Contracting Parties to the International Treaty have agreed that the responsibility for realizing Farmers' Rights, as they relate to PGRFA, rests with national governments. Each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights (Art. 9.2). Several measures of Farmers' Rights are suggested, including the protection of traditional knowledge relevant to PGRFA, the fair and equitable sharing of benefits arising from their utilization, and the right to participate in making decisions, at the national level, on related matters (Art. 9.2a-c). Rights that farmers have to save, use, exchange and sell farm-saved seed/propropagating material are referred to in Art. 9.3.

To implement the commitments they have made under international agreements, governments of Contracting Parties may consider reviewing and, as appropriate, adjusting existing national law, or creating new law, in accordance with their priorities and needs. In that process, Contracting Parties may want to assess and consider needs of rightsholders, including farmers, indigenous and local communities, in cases where they are directly affected by such legal measures.

C. Option 10A: Realize Farmers' Rights within the national legislation, administrative and policy framework relevant for the conservation and sustainable use of PGRFA

Laws and policies pertaining to PGRFA, agriculture and the environment, as well as their related procedures, may be created or amended to support the realization of Farmers' Rights. Such policies and laws may cover issues such as, for example, national legislation on biodiversity conservation, GMOs, PGRFA, seeds, plant variety protection, rights of peasants, local and indigenous communities. They may address Farmers' Rights in a holistic manner and/or focus on specific aspects that are deemed particularly relevant in certain situations.

This may include laws and procedures for recognizing the efforts made by custodian/guardian farmers, local and indigenous communities, regarding the conservation and sustainable use of PGRFA; for the protection of traditional knowledge related to the conservation and sustainable use of PGRFA; or for the representation of farmers, local and indigenous communities in decision-making bodies and/or advisory boards of government institutions working on matters that are related to PGRFA. Such laws and related procedures may further protect and safeguard farmers' seed systems and related practices.

Type(s) of measures that may typically be involved

<i>Technical</i>	
<i>Administrative</i>	✓
<i>Legal</i>	✓
<i>Other</i>	

Option 10B: Realize Farmers' Rights through reviewing and, as appropriate, adjusting, intellectual property law and/or related procedures

Intellectual property laws, including those relating to PGRFA, typically define the item, product or process for which protection may be sought, requirements or conditions for granting protection as well as scope and duration of the right. They may also establish rights or conditions for users of the protected item or product, for example conditions under which farmers may save, use, exchange and/or sell seed of protected varieties.

Contracting Parties may consider reviewing and, as appropriate, adjusting intellectual property laws and related procedures, for example by including provisions to safeguard rights that farmers have to save, use, exchange and/or sell farm-saved seed.

They may also include requirements in intellectual property laws and related procedures for disclosure of origin to enable fair and equitable sharing of benefits arising from the use of PGRFA; or by adjusting the scope of protection, thereby defining conditions under which farmers may save, use, exchange and/or sell seed of protected varieties, subject to national law and as appropriate.

Type(s) of measures that may typically be involved

Technical

Administrative ✓

Legal ✓

Other

Option 10C: Realize Farmers' Rights through reviewing and, as appropriate, adjusting seed laws and/or related procedures

Contracting Parties may consider reviewing and, as appropriate, adjusting seed laws and related procedures in order to create legal space for farmers to save, use, exchange and/or sell farm-saved seed in general, or farmers' varieties and/or varieties and populations with specific adaptation and uses in particular.

In this context, farmers, local and indigenous communities may also be encouraged and supported in registering varieties they conserve and/or develop and use, e.g. in registers held by the community and/or deposited with local authorities, or in national variety catalogues, should they wish to do so. This may also involve reviewing and, as appropriate, adjusting the necessary procedures and/or requirements for the registration of such varieties or populations, as well as for the quality management and/or marketing of seeds. For example, simplified procedures and/or criteria for the registration of such varieties may be established, fees may be reduced or active support provided to farmers, local and indigenous communities to register varieties.

Seed laws that aim to protect and promote Farmers' Rights may also explicitly acknowledge rights that farmers have to save, use, exchange or sell seed, subject to national law and as appropriate, e.g. by providing for special possibilities for quality control of farmers' seed, including in cases of non-commercial seed dissemination and use, based on traditional practices.

Type(s) of measures that may typically be involved

Technical

Administrative ✓

Legal ✓

Other

Option 10D: Realize Farmers' Rights through reviewing and, as appropriate, adjusting national laws for access and benefit-sharing and/or related procedures

Possibilities to address Farmers' Rights to equitably participate in sharing benefits arising from the utilization of PGRFA include determining rules for governing access to PGRFA, especially those

managed on-farm or *in situ* by farmers and local and indigenous communities. Such rules may rely on internationally agreed procedures, such as Prior Informed Consent (PIC) or use tools such as community biodiversity registries and biocultural community protocols.

Since national measures and procedures for access and benefit-sharing may be required under several international agreements, requirements of all relevant agreements may be reviewed and implemented in a harmonious manner, for example by establishing ‘single window’ systems for access and benefit-sharing.

Furthermore, laws and procedures for the protection of traditional knowledge may include consent requirements in cases where traditional knowledge is documented, explored or used otherwise. The protection of traditional knowledge may also extend to seed of varieties that were developed based on traditional knowledge, practices or skills as well as related processes, and to products derived from them. Priority may also be given to the legal protection of farmers’ seed systems, e.g. to govern access to PGRFA held by farmers and local and indigenous communities and establishing national mechanisms that enable the fair and equitable sharing of benefits arising from their use.

Type(s) of measures that may typically be involved

Technical
Administrative ✓
Legal ✓
Other

Option 10E: Study national and international policies and laws regarding their contributions to the realization of Farmers' Rights

Studying national and international policies and legal frameworks may help identify specific strengths and weaknesses of current legislations and propose solutions to address possible gaps. They may also include comparative studies, e.g. on approaches that are taken in different countries or regions. A further focus may be on the coherence of international commitments, regional, national and sub-national legislations and related policies and programmes.

Such studies may provide lawmakers with the necessary evidence for better targeting and/or designing measures that support the realization of Farmers’ Rights and can also contribute to raising awareness of broader audiences.

Type(s) of measures that may typically be involved

Technical
Administrative
Legal
Other ✓