

**Views, Experiences and Best Practices as an example of possible options for the national implementation of Article 9 of the International Treaty Submitted by Contracting Parties and Relevant Organizations**

*Note by the Secretary*

*This document presents the views, experiences and best practices on the implementation of Farmers' Rights, as set up in Article 9 of the International Treaty submitted by Switzerland on 29 June 2018.*

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



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### **Per email**

Our reference: dif  
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## **Submission concerning the implementation of Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)**

We thank the Secretariat of the ITPGRFA (hereafter “the Treaty”) for the opportunity to submit an overview of elements of the Swiss regulation and international cooperation activities relevant for the implementation of Article 9 of the Treaty.

In Switzerland, the preparation process of legislation foresees a prior public consultation procedure to give stakeholders the possibility to provide their views. Thus, the farmers’ organizations are consulted systematically and can regularly participate in decision-making processes regarding legislative decisions on conservation and sustainable use of PGRFA.

Other than these more general participation opportunities in policy and regulatory development, there are more specific provisions made relevant to Art. 9 of the Treaty. In the following, please find some details in this regard.

- National Plan of Action on Plant Genetic Resources for Food and Agriculture and the Ordinance on the Conservation and Sustainable Use of PGRFA

A National Action Plan for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture (Plan d’action national pour la conservation et l’utilisation durable des ressources phylogénétiques pour l’alimentation et l’agriculture (NPA-PGRFA))<sup>1</sup> is implemented since 1999. Since 2015, the Ordinance on Conservation and Sustainable Use of

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<sup>1</sup> [Plan d’action national RPGAA](#), 1999

Plant Genetic Resources for Food and Agriculture<sup>2</sup> referring to the NPA-PGRFA entered into force. It provides a legal framework for the measures of conservation of PGRFA and regulates the management of the national gene bank of PGRFA in Switzerland. It states that access to PGRFA in the Swiss national gene bank can be obtained under the conditions of the Standard Material Transfer Agreement under the Treaty. Furthermore, this ordinance promotes the sustainable use of PGRFA and frames the funding of such projects.

NPA-PGRFA strategies and guidelines are defined and implemented based on a multi-stakeholder approach, together with a wide range of private (including farmer's organizations, breeders and NGOs) and public institutions<sup>3</sup>. Furthermore, farmers and farmers' organizations can participate and profit in many ways from the NPA-PGRFA through promoted activities such as the maintenance and marketing of landraces/farmers' varieties; participatory plant breeding/participatory varietal selection; seed-exchange networks; facilitated access to information on plant genetic diversity so as capacity building<sup>4</sup>.

- “Niche Varieties”

The regulation on niche varieties aims at the release of crops of niche status and insignificant or no breeding activity in the sense of neglected crops or orphan crops and complements the regulation on commercial varieties. Niche varieties are local varieties, ecotypes of fodder plants, or old varieties that have been deleted from the national variety register.

These niche varieties benefit from a simplified market access procedure, which doesn't need the official registration of the variety and the certification of seeds or planting material<sup>5</sup>. These varieties are recognized as an official niche variety with their respective description. However only limited amounts of reproductive material for each niche variety could be produced or used depending on the culture.

- Farmers' Privilege

The farmers privilege is regulated for plant breeders rights (PBR) as well as patents: Farmers who have acquired propagating material from a protected agricultural variety put in circulation by the holder or with his consent may, on their holdings, propagate the harvested material they have obtained by growing such material<sup>6</sup> <sup>7</sup>. According to these laws, the Federal Council has determined 23 plant species to which the farmer's privilege shall apply<sup>8</sup>. Farmers which make use of the farmers' privilege don't have to pay any remuneration to the holder of the PBR or patent.

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<sup>2</sup> [Ordonnance sur la conservation et l'utilisation durable de ressources phylogénétiques pour l'alimentation et l'agriculture](#), RS 916.181

<sup>3</sup> The NPA-PGRFA is a Public-Privat-Partnership and more than 50 organizations participate in the conservation and sustainable use of PGRFA in Switzerland in a very decentralized manner. The National Genebank for PGRFA actually consist of 56 collections managed by different organizations in different parts of Switzerland. Agroscope, the Swiss Centre of excellence for agricultural research is affiliated to the Federal Office for Agriculture. It is ensuring the conservation of seed-saved species and represent the biggest collection existing within the National Genbank in Switzerland. The collaboration with so many partners is ensuring the conservation and enables the sustainable use of PGRFA. The sustainable use within the National Plan of Action aims at promoting a broad genetic diversity of PGRFA with positive effects on a diverse, innovative or sustainable production - based on locally adapted varieties. Key measures for the sustainable use of PGRFA are the characterization and evaluation of plant genetic resources as well as ensuring high phytosanitary standards for propagation material and promoting PGRFA for niche production.

<sup>4</sup> Examples of Projects on the conservation and sustainable use of PGRFA that are also including farmer's organization and farmers can be found here: <https://www.bdn.ch/pan/>

<sup>5</sup> [Ordonnance du DEFR sur les semences et les plants des espèces de grandes cultures, de cultures fourragères et de cultures maraîchères](#), Art.29, SR 916.151.1, 01.01.2018

<sup>6</sup> [Loi fédérale sur la protection des obtentions végétales](#), Art.7, SR 232.16, 01.01.2011

<sup>7</sup> [Loi fédérale sur les brevets d'invention](#), Art.35a, SR 232.14

<sup>8</sup> [Ordonnance sur la protection des obtentions végétales](#), Annexe 1, SR 232.161

- International Cooperation

Beside the elements of our national legislation, the Swiss government contributes also to the implementation of Article 9 through its Swiss Agency for Development and Cooperation (SDC) and other federal institutions. The intent of SDC's work is to promote seed programs and policies that reflect the needs and realities of smallholders stipulating the complementarity of informal and formal seed systems to enhance smallholders' access to sufficient, affordable, diversified and locally adapted plant genetic resources, including local and improved varieties. The different projects and approaches of the integration of Farmers' Rights focus on national, regional and global level, with a strong emphasize on Southern Africa.

For instance, in the Southern Africa region, there is a need for harmonization of regulations on seeds. SDC supports integrated seed systems since there is a tendency to provide legal and policy support only to the large-scale commercial sector, to the disadvantage of small-scale farmers. It therefore facilitates interactions between informal and formal systems by recognizing the complementary roles of private and public sectors and the important role farmers play in this regard, including through promoting their entrepreneurship and market orientation. With an aim to enable all stakeholders to participate in the policy dialogue, Civil Society Organizations (CSOs) shall be strengthened for these discussions and negotiations. In this respect, SDC promotes the participation of CSOs in the policy dialogue concerning seed issues in the Southern African Development Community, in particular small-scale farmers and farmer support organizations in the region. SDC promotes initiatives that foster democratic debate over legal frameworks having an impact on food security and nutrition in the region.

Other approaches aim to link evidence from the field to the national, regional and global policy setting levels. For example the project "Improving seed systems for smallholder food security" aims to increase directly the availability and diversity of planting materials to smallholders to reduce vulnerability to external shocks as well as improving policy dialogue at various levels, on equity and redistribution issues regarding seed systems. Smallholders in developing countries will get (1) political recognition for their role in germplasm conservation as well as (2) get improved access to the necessary diversity of planting material needed for their families' food security and (3) through enhanced policy dialogue at different levels, seed systems and relevant policy frameworks will be better connected to the realities of smallholders.

Furthermore, Switzerland supports the establishment and use of appropriate and economically sound intellectual property frameworks, including the use of IP-tools, such as Geographical Indications, which add value to farmers' products.

Additional information of activities can be found in the Swiss report on the implementation of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)<sup>9</sup>.

Kind regards,

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<sup>9</sup> <http://www.fao.org/plant-treaty/areas-of-work/compliance/compliance-reports/en/>