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ON PLANT GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE

**FOURTH MEETING OF THE AD HOC TECHNICAL EXPERT GROUP ON  
FARMERS' RIGHTS**

**4 – 7 May 2021**

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

**Information Document**

*Note by the Secretary*

1. At its third meeting, the Ad Hoc Technical Expert Group on Farmers' Rights (AHTEG-FR or Expert Group) exchanged views on the draft *Options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty (the Options)* and requested the Secretariat "to prepare a working document for the next meeting which will include the Options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty (IT/GB-9/AHTEG-FR-3/20/2), the issues that may need further discussion, based on the exchange of views held during the third meeting, and proposals on possible ways to address those issues."<sup>1</sup>
2. The Secretariat thus prepared a document, IT/GB-9/AHTEG-FR-4/21/2, identifying issues that may need to be further discussed, taking into account interventions made by the experts at the third meeting, and developing indicative and exemplary proposals on possible ways to address those issues, as requested by the Expert Group.
3. This information document has been prepared for the purpose of facilitating a comparison with the document, [IT/GB-9/AHTEG-FR-3/20/2](#), considered by the third meeting of the Expert Group. It clearly indicates where tentatively proposed text changes are made, reflected in the light grey text boxes as follows: new text is underlined and deleted text is ~~crossed out~~.

<sup>1</sup> [IT/GB-9/AHTEG-FR-3/Report](#), *Report of the third meeting of the Ad Hoc Technical Expert Group on Farmers' Rights*.

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## A. Introduction

At its third meeting, the Ad Hoc Technical Expert Group on Farmers' Rights (AHTG-FR or Expert Group) requested the Secretariat "to prepare a working document for the next meeting which will include the *Options for encouraging, guiding and promoting the realization of Farmers' Rights as set out in Article 9 of the International Treaty* (IT/GB-9/AHTEG-FR-3/20/2), the issues that may need further discussion, based on the exchange of views held during the third meeting, and proposals on possible ways to address those issues."<sup>2</sup>

The Secretariat identified issues that may need to be further discussed based on the exchange of views held during the third meeting of the Expert Group, taking into account the interventions made by the experts. Wherever possible, several such interventions were summarized, e.g., if they referred to the same text passages, to facilitate further discussion.

In developing the indicative and exemplary proposals on possible ways to address those issues, as requested by the Expert Group, suggestions that were made by the experts themselves during their discussions were taken into consideration. These indicative and exemplary proposals are based on the following three assumptions:

- The categories will remain as they were developed by the Expert Group and presented to the Governing Body,<sup>3</sup> indicating that these same categories would also be used for *the Options*;
- *The Options* will follow the outline developed by the Expert Group, and noted by the Governing Body, as a basis for the completion of its tasks;
- The non-prescriptive character of *the Options* the Expert Group proposed following its discussions at previous meetings will be maintained and reflected in the language that is used.

The document is organized as follows:

- Following the Introduction (Section A), issues that may need to be further discussed are presented in three broad sections: issues concerning the overall approach and the document as a whole (Section B); issues concerning the introductory part (Section C); and issues concerning specific options (Section D).
- Each section has been subdivided further to facilitate the discussion.
- After summarizing the issues that may need to be further discussed, proposals are made as to how they could be addressed, followed by an indicative example of how the amended text passage(s) could look like (if possible).
- These examples are highlighted in light grey colour to distinguish them from the rest of the text.
- Changes from the previous text of the corresponding passage(s) in document [IT/GB-9/AHTEG-FR-3/20/2](#) are indicated in this document as follows: deleted text is ~~crossed-out~~ and new text is underlined.

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<sup>2</sup> [IT/GB-9/AHTEG-FR-3/Report](#), *Report of the third meeting of the Ad Hoc Technical Expert Group on Farmers' Rights*.

<sup>3</sup> [IT/GB-8/19/12.2](#), *Report of the Ad Hoc Technical Expert Group on Farmers' Rights to the Eight Session of the Governing Body*; and [Resolution 6/2019](#).

## B. Issues concerning the overall approach and the document as a whole

### *B1. Issues concerning the overall approach*

Issues listed in this section do not relate to any specific part of *the Options*. They reflect general views and concerns that were expressed by some experts, or suggestions made to ensure that *the Options* contribute in the best possible way to fulfilling the Expert Group's mandate.

**B1.1 Suggestions that the importance of Farmers' Rights and of farmers' seed systems should be highlighted more in the document;** that *the Options* should take a comprehensive approach to promote the realization of Farmers' Rights as a bundle of rights; that they should address the non-realization of Farmers' Rights after more than 15 years since the entry into force of the Treaty; suggestions to also refer to the ongoing COVID19 pandemic, in the sense that the realization of Farmers' Rights is important for smallholder farmers' ability to respond to the pandemic and other shocks.

#### **Possible way(s) to address the issue:**

1. Consider including, in the introductory part, text that takes up these suggestions (e.g. at the beginning of the section "Background and rationale").
2. Consider using, as far as possible, language from the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA or International Treaty) as a basis for new/amended text. For example, the importance of Farmers' Rights and farmers' seed systems is highlighted in the Preamble and in Art. 9.1;<sup>4</sup> the importance of farmers' contributions to developing sustainable, diverse farming systems and adaptation to specific social, economic and ecological conditions is also highlighted in Art. 5.1 and Art. 6.2.

→ See suggested text in the revised introductory part at the end of Section C.

**B1.2 Suggestions that "small-scale farmers", "indigenous communities", etc. should be more explicitly mentioned as rightsholders;** that farmers should not be included in the recurring mention of "Stakeholders"; and that custodian/guardian farmers should be focused on more.

#### **Possible way(s) to address the issue:**

1. Avoid including farmers into the group of "Stakeholders" in cases where they could be referred to as rightsholders.
2. Use, as much as possible and depending on the context, the language of the International Treaty. For example, "farmers in all regions of the world, particularly those in centres of origin and crop diversity" are mentioned in the Preamble of the Treaty and in Art. 9.1 regarding their past, present and future contributions to the conservation and development of PGRFA. "Farmers and local communities" and "indigenous and local communities" are also mentioned in Art. 5 about on-farm/in situ conservation of PGRFA, including in protected areas.
3. Consider giving attention to the situation/needs of farmers in centres of origin of crop diversity and mentioning specific groups of farmers and/or local and indigenous communities, when formulating options for which this may be particularly relevant.

→ This issue could be addressed systematically when finalizing *the Options*.

→ See also suggested text in the revised introductory part at the end of Section C.

→ See also tentative examples of language that could be added to the description of some options, e.g. Options 1C and 6C.

<sup>4</sup> See [texts of the International Treaty](#).

**B1.3 Suggestion that gender should be highlighted more in *the Options*,** especially for more gender-sensitive options.

**Possible way(s) to address the issue:**

1. Consider addressing gender in the introductory part, e.g. by mentioning that it may be relevant for some options.
2. Identify options for which gender is likely to be relevant and add a sentence to the description of such options, with a brief explanation.

→ This issue could be addressed systematically when finalizing *the Options*.

→ See suggested text in the revised introductory part at the end of Section C.

→ See also tentative examples of sentences that could be added to the description of some options, e.g. Option 1A.

**B1.4 Whether references will be made to other treaties, and if so, to which treaties and how; *inter alia*,** suggestions were made to mention linkages with other treaties explicitly in the title of some options; to rephrase the wording used in the description of some options so that it is aligned with the language of other treaties; to mention specific instruments or approaches, such as Free Prior Informed Consent (FPIC) where this was deemed relevant; to mention the rightsholders of those other treaties explicitly in *the Options*, or to provide, in *the Options*, an explanation of relevant terms used in other treaties.

When exchanging their views, experts mentioned possible linkages between Art. 9 of the international Treaty and various other treaties, supplementary agreements, human rights declarations or related processes, for example:

- Convention on Biological Diversity (CBD)
- The Nagoya Protocol on Access and Benefit-sharing
- UPOV Convention
- ILO Convention No. 169 (Indigenous and Tribal Peoples Convention)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)
- The human rights framework in general.

The Expert Group further discussed that among the Contracting Parties of the International Treaty, there are both members and non-members of UPOV, the CBD, Nagoya Protocol, CEDAW and ILO Convention No. 169. It was also mentioned that UN Declarations are generally not legally binding.

Some experts argued against including any reference to the UPOV Convention, whereas others highlighted the importance of implementing the UPOV Convention and the International Treaty in a mutually supportive manner, where Contracting Parties are at the same time members of UPOV. Diverging views were also articulated regarding references to specific principles, like FPIC/PIC, that are mentioned in other treaties or UN Declarations.

Other experts stated that it was the task of Contracting Parties, not of the Expert Group, to find ways of implementing the ITPGRFA in a harmonious and mutually supportive manner with any other commitments or priorities they may have.

**Possible way(s) to address the issue:**

1. Discuss further whether and to what extent possible linkages between Art. 9 of the International Treaty and other international agreements should be considered in *the Options*, taking into account the complexity of the issue and the AHTEG's mandate.

2. Address the issue by (a) including language in the introductory part of *the Options*, highlighting Contracting Parties' possibilities for implementing different international instruments in a mutually supportive manner; and (b) by providing examples from *the Inventory* that illustrate how this complex issue has been addressed by some Contracting Parties for their specific situation and context.

→ See suggested text in the revised introductory part at the end of Section C.

→ Further advice by the Expert Group is needed on how to address this issue.

**B1.5 Suggestions that Farmers' Rights should be understood as collective rights**, and that collective rights should be given priority over private rights and opportunities; other experts proposed that private rights that may be used by farmers or their associations to protect and promote their rights should be given more attention. Examples of various approaches are part of *the Inventory*.

**Possible way(s) to address the issue:**

1. Consider in the discussions of the Expert Group that various proposals have been made on this issue and that they may be relevant for addressing different situations and needs.

→ Suggestions are not directly related to possible text amendments.

*B2. Issues concerning the document as a whole*

Various proposals were made on how to accommodate additional information within the current structure of *the Options* to make the document user-friendly and to enhance its value for the intended users/target audiences. Some of these proposals may need to be systematically applied throughout the document when finalizing *the Options*. Proposed revisions or amendments of text passages are therefore only of an exemplary nature.

**B2.1 Whether *the Options* should be a rolling document that will be regularly updated.** Some experts argued in favor of a rolling document to be able to include new approaches on a continual basis. Other experts expressed views that the AHTEG-FR had been established to fulfill their mandate within a limited time and that it might be difficult to get approval from the Governing Body for a document that needed to be regularly reviewed.

**Possible way(s) to address the issue:**

1. Finalize *the Options* and include a recommendation in the AHTEG-FR's report to the Governing Body that it may consider the need to update *the Options* and make further amendments in the future.

→ Further advice by the Expert Group is needed on how to address this issue.

**B2.2 Whether the "tick boxes" indicating references to relevant provision(s) of Article 9 of the International Treaty should be maintained.** Some experts expressed views that the tick boxes would not provide useful information to those who are not familiar with the provisions of Art. 9; or that the relation with relevant provisions of the Treaty was explained anyway in the introduction of each category. More specific concerns were stated regarding Art. 9.3 because "it does not establish/confer any rights" or "it does not request Contracting Parties to promote these rights." Other experts considered the tick boxes valuable and advised that they should be included. The outline of *the Options* that was developed by the expert group and presented to the Governing Body<sup>5</sup> states that the introduction of each category would include a reference to relevant provisions of Article 9 of the International Treaty without specifying in which form this reference would be made.

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<sup>5</sup> Annex 4 of IT/GB-8/19/12.2

**Possible way(s) to address the issue:**

1. Maintain the tick boxes and address the views of some experts by explaining in the introductory part (e.g. Section V, “Guide to the document”) that references that are made to sub-articles of Art. 9 are not meant to provide any specific interpretation of their legal content.
2. Alternatively, delete the tick boxes and/or include a table at the end of the document, providing an overview of how *the Options* relate to the various sub-articles of Art. 9.

→ Further advice by the expert group is needed on how to address this issue.

→ See suggested text in the revised introductory part at the end of Section C for a possibility to include language in the introductory part, explaining that 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.

**B2.3 Whether examples should be included**, and if so, in which way and how they should be selected. Several suggestions were made, including to provide links to all relevant examples instead of presenting any selected examples; to maintain the currently selected examples while also including links to further examples; to maintain the selected examples but include additional ones (e.g., 3-5 for each option); or to include the same number of examples for each option.

Further suggestions were also made regarding the question of how exactly the examples should be selected, e.g., that they should be “balanced”, “in line with the spirit of the Treaty”, “show the best possible options”, “cover the option in its entirety”, or focus on national measures that are already implemented. Other experts recalled that the group had agreed (for *the Inventory*) not to assess the proposed measures/practices, or “judge” over them. Examples could thus be selected to represent the range of measures/practices that have been submitted by Contracting Parties and Stakeholders.

**Possible way(s) to address the issue:**

1. Discuss further if examples should be included, how many, based on which criteria they should be selected and how exactly they should be represented in the document (e.g. title of the respective measure/practice and link to the relevant submission).
2. Revise Section V (Guide to the document) accordingly to explain the purpose of the selected examples.

→ Further advice by the Expert Group is needed on how to address this issue.

**B2.4 Whether linkages should be addressed/highlighted across categories/options**, since certain options may be related or mutually supportive to one another. Several experts suggested that such linkages should be highlighted. Specific suggestions were also made to highlight relations between options under Category 10 and other categories/options.

**Possible way(s) to address the issue:**

1. Consider mentioning, in the introductory part that several options may be mutually supportive and may be combined to create synergies and develop stronger impact.

→ See suggested text in the revised introductory part at the end of Section C for a possibility to include language in the introductory part.

**B2.5 Suggestions that “treaty language” should be used**, especially for options under Category 10 and/or every time when a right of farmers to save, use, exchange and sell seed is mentioned. Several experts expressed their views that imprecise wording could cause misunderstandings, especially regarding the content of Art. 9.3.

**Possible way(s) to address the issue:**

1. Give particular attention to using concise language whenever a right of farmers to save, use, exchange and sell seed is mentioned.

2. Add “subject to national law and as appropriate” whenever a text passage refers directly to such rights.

→ See also the proposed wording in options under Category 10.



## C. Issues concerning the introductory part

Issues concerning the introductory part are summarized here according to the text passages they refer to. An indicative example of how the introductory part could look like after addressing these issues, together with those mentioned under B1, is provided at the end of this section.

### *C1. Issues concerning Section I (Background and rationale)*

#### **C1.1 Suggestion to include some explanation of Farmers' Rights under 'Background and Rationale'.**

##### **Possible way(s) to address the issue:**

1. Consider addressing this issue together with other suggestions for amending the text of the section "Background and rationale."

→ See suggested text in the revised introductory part at the end of Section C.

#### **C1.2 Suggestion that paragraphs 3-6 should be condensed, and that the focus should be on the AHTEG-FR's mandate, rather than the process.**

##### **Possible way(s) to address the issue:**

1. Revise the text of relevant paragraphs so that the focus is on the mandate.

→ See suggested text in the revised introductory part at the end of Section C.

### *C2. Issues concerning Section II (Objective)*

#### **C2.1 Whether paragraphs 9-11 are needed;** these paragraphs explain how *the Options* may encourage, guide and promote the realization of Farmers' Rights, after this has been stated as an objective.

##### **Possible way(s) to address the issue:**

1. Condense the text so that it can be included in one paragraph, stating the objective and referring to the AHTEG-FR's mandate.

→ See suggested text in the revised introductory part at the end of Section C.

### *C3. Issues concerning Section III (Nature and scope)*

#### **C3.1 Suggestion to change the text under 'Nature and scope' so that it comes out more clearly how the Expert Group understands "options",** as the current text of paragraph 13 mainly explains how "options" are understood in other contexts; **and to further highlight that the use of the Options is discretionary and non-prescriptive** and that they should not be interpreted as guidelines.

##### **Possible way(s) to address the issue:**

1. Consider revising the relevant sentences so that it becomes clearer that this is the Expert Group's understanding of "options" and how they differ from "guidelines".

→ See suggested text in the revised introductory part at the end of Section C.

#### **C3.2 Suggestions to revise the second sentence of paragraph 14 of document IT/GB-9/AHTEG-FR-3/20/2 so as not to create the impression that measures must be taken;** to include a sentence that "mutually supportive systems should be established"; and to include a paragraph on success factors/conditions for success.

##### **Possible way(s) to address the issue:**

1. Include language in the relevant paragraphs of Section III of the introductory part as suggested.

→ See suggested text in the revised introductory part at the end of Section C.

#### *C4. Issues concerning Section IV (Intended users/target groups)*

**C4.1 Suggestion to include in this section a stand-alone paragraph** that clarifies that “in the context of Art. 9 we are referring to small-scale farmers, peasants, and indigenous people’s communities”.

**Possible way(s) to address the issue:**

1. Include a paragraph clarifying the role of farmers as rightsholders.
2. Use, depending on the context, language from the International Treaty when specifying any groups (i.e.. “local and indigenous communities and farmers of all regions of the world”; “farmers and local communities”; or “indigenous and local communities”).

→ See suggested text in the revised introductory part at the end of Section C.

#### *C5. Issues concerning Section V (Guide to the document)*

**C5.1 Suggestion that the “disclaimer” the Expert Group developed for *the Inventory* should be adapted for *the Options* and included somewhere around paragraph 24-26.**

**Possible way(s) to address the issue:**

1. Consider revising the text of the “disclaimer” so that it fits to *the Options* and including it as a stand-alone paragraph at the end of Section V.

→ See suggested text in the revised introductory part at the end of Section C.

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

### **Part A: Introduction**

#### **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 systems and plant varieties that are adapted to specific social, economic and ecological conditions, environmental changes 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 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.

3. The realization of Farmers’ Rights is thus of paramount importance for sustainable agriculture and resilient food 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. According to Article 9.2 of the ITPGRFA, the responsibility for realizing Farmers’ Rights, as they relate to PGRFA ~~plant genetic resources for food and agriculture (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 9.2b); 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.”

5. ~~2-~~ However, the progress made so far in realizing these rights has been limited. Many examples of measures and practices have been developed but not implemented nor shared on a larger scale. To assist Contracting Parties in developing and implementing such 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.

6. ~~3-~~ 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*).<sup>6</sup>

4. ~~The Expert Group, with the support of the Secretariat, developed the *Inventory of National Measures, Best Practices and Lessons Learned on the Realization of Farmers' Rights* (the *Inventory*), which is a compilation of measures/practices that were submitted by Contracting Parties and Stakeholders in various countries.~~

5. ~~However, the Expert Group was unable to finish its task of developing *the Options*, due to the volume of work and time constraints, and considering the significant progress made so far, recommended that the Governing Body reconvene the Expert Group to enable it to finalize its tasks.~~

6. ~~At its Eighth Session, the Governing Body reconvened the Expert Group for the 2020–2021 biennium in order for it to complete its tasks, based on the Terms of Reference established at the Seventh Session of the Governing Body, and requested the Secretary to prepare the relevant documentation to facilitate the work.~~

7. ~~The draft *Options* for Encouraging, Guiding and Promoting the Realization of Farmers' Rights, as set out in Article 9 of the International Treaty (*the Options*) have been developed on the basis of the *Inventory*; each option represents are based on typical measures or practices that have been shared by Contracting Parties and Stakeholders as examples of possible options and that are compiled in *the Inventory*.<sup>7</sup>~~

<sup>6</sup> See Appendix A.7 of the Report of the Seventh Session of the Governing Body: <http://www.fao.org/3/MV606/mv606.pdf>

<sup>7</sup> [Link to the Inventory]

## II. Objective

8. 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.

9. ~~They aim to *encourage* the realization of Farmers' Rights by showing the range of Options that are available, based on the experiences that have been attained and shared by Contracting Parties and relevant Stakeholders, including in different regions and contexts.~~

10. ~~They aim to *guide* the realization of Farmers' Rights by explaining how these Options relate to Article 9 of the International Treaty; why they can be regarded as Options for encouraging, guiding and promoting the realization of Farmers' Rights; and what types of measures would typically be involved.~~

11. ~~They aim to *promote* the realization of Farmers' Rights, recognizing the enormous contribution that the local and indigenous communities and farmers of all regions of the world have made and will continue to make to the conservation and development of plant genetic resources, which constitute the basis of food and agriculture production throughout the world.~~

## III. Nature and scope

9. ~~12. In the process of developing *the Options*, the Expert Group had reflected on what could be understood by options and how they differed from guidelines. The word "options" means the act or opportunity of choosing, or a thing that can be or is chosen. It implies that there is a discretion or right to choose, and that several alternatives exist from which a choice can be made.<sup>8</sup>~~

10. ~~13. Several international organizations use the term "options" when they want to present courses of actions or possible measures to achieve a desired objective. Options are thus understood in this document as examples of actions or measures that *may be* taken to achieve an anticipated objective., whereas guidelines are intended to advise on how something *should be* done. This non-prescriptive and discretionary character of *the Options* distinguishes them from guidelines that are intended to advise on how something *should be* done.~~

11. ~~14. 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 to be taken by each Contracting Party may thus differ from one another, given the fact that different countries' needs, priorities, legal frameworks and general conditions vary.~~

12. ~~15. In that they build on national measures that are already implemented or are in the process of being implemented in various countries, *the Options* include a range of possibilities to address different situations, priorities and needs. This may include priorities of Contracting Parties to enhance programmes, policies and legislation relating to PGRFA to support the realization of Farmers' Rights as set out in Article 9 of the International Treaty or to establish mutually supportive systems that allow for the implementation of Article 9 in harmony with aims and obligations of other treaties. *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. Several options may be related to one another and could be combined.~~

13. ~~(15.) Several options may be related to one another and could be combined to create synergies and develop stronger impact. Examples of such combined measures/practices can be found in *the Inventory*. Farmers' Rights may thus be understood and promoted as a bundle of rights that are mutually supportive. The careful consideration of synergies between options, and how they~~

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

relate to other rights and obligations that concern rights of farmers, women and men, as well as local and indigenous communities, could thus be considered a major factor of success.

#### IV. Intended users/target groups

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

15. Farmers, indigenous and local communities are rightsholders that can make legitimate claims, and thereby contribute to the realization of their rights. Farmers and their organizations may thus want to use *the Options* as source of information to continue fulfilling their roles as custodians, developers and guardians of agrobiodiversity.

~~16. — Other Stakeholders who may be involved in the realization of Farmers' Rights are also potential users, especially farmers' organizations including their respective national and international federations, as well as governmental, inter-governmental and non-governmental organizations operating at various levels and scales, such as research and extension, and community-based organizations.~~

~~17. — The same applies for private sector entities and their respective national and international organizations aiming to support the realization of Farmers' Rights, as set out in Art. 9 of the International Treaty, including through partnerships, own initiatives, or corporate responsibility programmes.~~

16. 17.&18. Other Stakeholders, including public and private entities aiming to support the realization of Farmers' Rights and operating at various levels and scales, may also find inspiration for possible partnerships, programmes or initiatives.

17. ~~19.~~ A further target group includes donors 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, ~~as well as and/or~~ non-monetary, resources, ~~or by considering Farmers' Rights in their own programmes and initiatives~~

18. ~~20.~~ 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

##### *Options*

~~21. — The description of each Option follows a uniform pattern, following the outline the Expert Group has agreed upon. For each Option, there is explanation of what the Option is about, and what types of measures are typically involved.~~

##### *Categories*

19. ~~22.~~ A set of eleven categories was used to structure *the Options*, so that several Options are presented under each category. ~~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. The same categories were also used in *the Inventory*:<sup>9</sup>~~

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;

<sup>9</sup> See IT/GB-8/AHTEG-FR-2/19/Report

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>10</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;
11. Other measures/practices.

20. ~~22-~~ 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. 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*

21. ~~The presentation~~description of each  $\Theta$ option follows a uniform pattern. ~~following the outline the Expert Group has agreed upon. For each Option, there is An~~ explanation is given of what the  $\Theta$ option is about, and what types of measures ~~are~~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 illustrative examples from *the Inventory* are given for each option.

#### *Type(s) of measures*

22. ~~23-~~ The description of each  $\Theta$ 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.);

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<sup>10</sup> Including seed houses.

- Other measures refer to all other measures or practices, including studies, advocacy work, 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*

23. ~~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*.

24. ~~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.

25. ~~26.~~ *The Options* present this information in a more general and summarized form, based on the examples from *the Inventory*, with the description of each Option being based on several of the submitted examples. Some illustrative examples from the Inventory are listed after each option. For ~~further~~ empirical experiences related to each option, the reader is encouraged to consult *the Inventory*.

#### *Use of the Options*

26. 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.

## D. Issues concerning specific options

### D1. Issues concerning the names/titles of options

**D1.1 Suggestions to amend the titles of, merge or delete specific options, move certain options to other categories, or create new ones.** Specific proposals were made to amend the titles of specific options (e.g. 1B, 2A, 4C, 6C), to merge options with overlapping content (e.g. 1C and 5C), to consider moving certain options to other categories (e.g. to move Option 11A to Category 5; and 11B to Category 10), to delete them (e.g. Options 11C and D), or to address their content elsewhere (e.g. to address the content of Option 3C in Category 10). Suggestions were also made to create some additional options, e.g. “Provide financial support to capacity development for farmers and farming communities who conserve, develop and sustainably use PGRFA”, “Support farmers’ innovation in seed systems”, or “Support farmers’ conservation, management and sustainable use of PGRFA through targeted emergency assistance and financial aid.”

A particularly great number of proposals were made for enhancing the options under Category 10; these proposals are addressed separately, below.

For Option 4C, an additional proposal to align the title with the language used in Art. 12.3 of the Nagoya Protocol has not yet been included.

#### Possible way(s) to address the issue:

1. Tentatively revise the names/titles of some options based on proposals that were made as a basis for further discussion.
2. Tentatively merge option, move options to other categories or create new options based on proposals that were made as a basis for further discussion.

→ See tentatively revised list of options at the end of Section D1.

→ Further advice by the Expert Group is needed on how to address this issue.

**D1.2 Suggestions to thoroughly revise the options under Category 10,** including to split, merge or delete options, or to add new ones, or to take a completely different approach. Views were also expressed that options under this category were “too defensive” and “not really open to innovation or new systems”. Other experts noted that Contracting Parties needed leeway to implement the ITPGRFA and other treaties in a harmonious manner, in accordance with their priorities and needs, as set out in Art. 9 of the Treaty. Suggestions were also made to use or not to use specific language, e.g. not to use terms like “concept”, “exception”, “flexibilities” or “mainstream”; to use terms like “enable”, “ensure” or “safeguard”; to use “neutral language” or “treaty language” to avoid misunderstandings, especially regarding Art. 9.3; or that the language used should not be “prescriptive” or “like guidelines”.

Some experts had questions whether Option 10D in the current version of *the Options* was “in line with the Treaty” or not; and how exactly an option for the joint implementation of the Treaty and Nagoya Protocol should be phrased, e.g., regarding the mention of FPIC/PIC and other language used in the Nagoya Protocol. Suggestions were also made to include Option 11B (“Study national policies and laws regarding their contributions to the realization of Farmers’ Rights”) in this category.

Individual contributions indicated that some expert’s views were very far apart or even incompatible, for example:

- Statements that intellectual property rights were *per se* contradicting Art. 9 of the International Treaty versus statements that intellectual property rights may be used as tools to promote and protect Farmers’ Rights.
- Suggestions that Farmers’ Rights may be addressed in a country’s constitution or addressed systematically in a country’s legal system relating to PGRFA versus proposals to address Farmers Rights without making any changes in existing legislation.



- Suggestions to delete options while their importance was highlighted by other experts.
- Proposals to use single measures from *the Inventory* as “options” while other experts expressed views that such measures should not be considered in *the Options* at all.

Proposals for new options included:

- To create a new option on strengthening farmers’ seed systems that recognize farmers’ seed and seed-related practices; including possibilities for registering diverse farmer varieties that may not comply with current requirements of seed laws.
- To include an option on disclosure of origin requirements for both seed and Traditional Knowledge, and/or to address disclosure mechanisms (disclosure of origin/legally obtained material) within other options dealing with intellectual property laws.
- To add an option that farmer organizations (e.g., cooperatives) could use existing laws to protect their products; and to explore how farmers can “sign up” to existing IPR tools to protect their knowledge/products/practices; and to add an option for “farmers that become breeders and can protect varieties.”
- To consider an additional option on harmonious implementation of Art. 9 and the UPOV Convention, e.g. with the same title as the respective submission (“Plant Breeders’ Rights legislation in the EU implementing the Treaty and the UPOV 1991 Convention in a mutually supportive manner”).

**Possible way(s) to address the issue:**

1. Take note of the full range of examples of legal measures that have been submitted by Contracting Parties and Stakeholders as examples and that are compiled in *the Inventory*.
2. Derive, based on examples from *the Inventory*, options that represent various possible approaches that may be taken, e.g. to systematically address Farmers’ Rights in a country’s legal system relating to PGRFA, to create or enhance legislation for certain elements of Farmers’ Rights (e.g. protection of Traditional Knowledge), or to use existing legal possibilities to protect and promote Farmers’ Rights.
3. Consider also that certain types of legislation, such as seed laws and intellectual property laws, may require specific attention for the implementation of the International Treaty, including Art. 9. For example, Art. 6.1 states “*The Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture*”; and 6.2g suggests “*reviewing, and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution*” as part of the measures that may be taken. Seed laws and intellectual property laws relating to PGRFA could, therefore, each be treated in a specific option.
4. Studies on policies and legal systems as they relate to Farmers’ Rights could also become an option under Category 10, as proposed.

→ Further advice by the Expert Group is needed on how to deal with this issue.

→ See table of tentatively revised options under Category 10 and list of options at the end of Section D1.

**Tentative titles of options under Category 10 and range of measures/practices covered by and addressed in the description.**

Tentative titles of options	Range of measures/practices covered by and addressed in the description of each option
<p><b>10A</b> <u>Recognize and address Farmers' Rights systematically within the national legal system relevant for the conservation and sustainable use of PGRFA.</u></p>	<ul style="list-style-type: none"> <li>• Law for the national implementation of Farmers' Rights, covering all relevant provisions of Art. 9 of the Treaty.</li> <li>• Establish Farmers' Rights in the constitution of the country.</li> <li>• Review and systematically revise/amend existing laws, policies and related procedures that cover all aspects that are deemed relevant, including for example national legislation on biodiversity, plant genetic resources, seeds, plant variety protection, or rights of indigenous peoples.</li> </ul>
<p><b>10B</b> <u>Recognize and address elements of Farmers' Rights, such as the protection of Traditional Knowledge and/or farmers' seed systems, fair and equitable sharing of benefits or participation in decision-making, within the national legal system.</u></p>	<ul style="list-style-type: none"> <li>• Laws and procedures that allow for the protection of collectively held Traditional Knowledge relating to PGRFA, i.e., knowledge held by farmers, indigenous communities, etc. (this may also include disclosure of origin and/or consent requirements).</li> <li>• Laws and procedures that protect farmers' seed systems, such as law establishing a temporary GMO moratorium in centres of origin and diversity.</li> <li>• Laws and procedures that establish national mechanisms that enable to enable the fair and equitable sharing of benefits arising from the use of PGRFA, or governance procedures for access to PGRFA held by local and indigenous communities, etc.</li> <li>• Laws establishing rights for farmers to be represented in decision-making bodies and/or advisory boards of government institutions working on matters related to the conservation and use of PGRFA.</li> </ul>
<p><b>10C</b> <u>Protect and promote Farmers' Rights through reviewing and, as appropriate, adjusting intellectual property law and/or related procedures.</u></p>	<ul style="list-style-type: none"> <li>• Include provisions within intellectual property law relating to PGRFA laws to protect/safeguard rights of farmers so that they can continue to save, use, exchange and/or selling seed of protected varieties.</li> <li>• Include provisions for disclosure of origin/legal obtainment within intellectual property law to enable the fair and equitable sharing of benefits arising from the use of PGRFA.</li> </ul>
<p><b>10D</b> <u>Protect and promote Farmers' Rights through reviewing and, as appropriate, adjusting seed laws and/or related procedures.</u></p>	<ul style="list-style-type: none"> <li>• Seed laws acknowledging and/or protecting rights of farmers to save, use, exchange and/or sell seed.</li> <li>• Laws and/or procedures for farmers to register varieties that may not comply with general requirements for variety registration and seed marketing, e.g. extant, conservation/amateur or other farmer varieties, or evolutionary populations.</li> </ul>
<p><b>10E</b> <u>Use and/or enhance other legal possibilities to protect and promote Farmers' Rights</u></p>	<ul style="list-style-type: none"> <li>• Use collective tools such as Geographical Indications, Seals of Origin or trademarks etc. for the protection of traditional knowledge that is associated with geographical regions and/or developed/held by specific local communities.</li> <li>• Use instruments such as author's rights for the protection of various forms of Traditional Knowledge.</li> </ul>

	<ul style="list-style-type: none"> <li>• Use plant variety protection law for the protection of farmers' varieties.</li> <li>• Use existing possibilities of private law to protect and strengthen farmers' seed systems (e.g. certification or licensing).</li> </ul>
10F Study national <u>and international</u> policies and laws regarding their contributions to the realization of Farmers' Rights	<ul style="list-style-type: none"> <li>• Research on how existing legal frameworks or specific laws contribute to and/or affect Farmers' Rights.</li> <li>• Studies that address the relations between the ITPGRFA and other international agreements and how they can be implemented in a harmonious manner.</li> </ul>

### Tentatively revised list of options under each category

**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 and/or farming communities who contribute to the conservation and sustainable use of PGRFA in an outstanding manner.

**Option 1B:** Highlight the role and expertise of farmers and farming communities 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 heritage sites for the conservation and sustainable use of PGRFA and support farmers in the sustainable management 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 and farming communities who conserve, develop and sustainably use PGRFA.

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

**Option 2C:** Provide financial support to capacity development for farmers and farming communities who conserve, develop and sustainably use PGRFA.

**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 consumer demand 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:** Use tools such as Geographical Indications, certification schemes, seals of origin etc. to facilitate value creation and marketing of products made from local/under-utilized PGRFA.~~

**Option 3C (new):** Create markets for products issued from farmers' varieties/seed, including through public procurement programmes.

**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 sharing and disseminating traditional knowledge relating to PGRFA.

**Option 4C:** Create or improve instruments for farmers and farming communities to govern access to traditional knowledge relating to PGRFA based on self-determined rules.

**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 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:** Support farmers in the management of conservation and heritage sites.~~

**Option 5C (new):** Conduct studies on ~~the~~ in situ/on-farm conservation, management and sustainable use of PGRFA, including technological, 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 seed festivals and fairs.

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

**Option 6D (new):** Support farmers' innovation in seed systems.

**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 local 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 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, ~~relating to the~~ 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 PGRFA.**

~~**Option 10A:** Mainstream the concept of Farmers' Rights into the constitution of the country and/or overall legislation and policies pertaining to agriculture and the environment and their related procedures.~~

**Option 10A (new):** Recognize and address Farmers' Rights systematically within the national legal system relevant for the conservation and sustainable use of PGRFA.

**Option 10B (new):** Recognize and address elements of Farmers' Rights, such as the protection of Traditional Knowledge and/or farmers' seed systems, fair and equitable sharing of benefits or participation in decision-making, within the national legal system.

**Option 10C (formerly 10B):** Protect and promote Farmers' Rights through reviewing and, as appropriate, adjusting intellectual property law and/or related procedures.

**Option 10D (formerly 10C):** Protect and promote Farmers' Rights through reviewing and, as appropriate, adjusting seed laws and/or related procedures.

~~**Option 10D:** Promote Farmers' Rights through national laws and/or procedures for Access and Benefit sharing.~~

**Option 10E (new):** Use and/or enhance other legal possibilities to protect and promote Farmers' Rights.

**Option 10F (new):** Study national and international policies and laws regarding their contributions to the realization of Farmers' Rights.

**Category 11: Other measures/practices.**

~~**Option 11A:** Conduct studies on the conservation, management and sustainable use of PGRFA, including technological, socioeconomic and cultural aspects.~~

~~**Option 11B:** Study and analyse policies and legal frameworks governing PGRFA.~~

~~**Option 11C:** Enhance farmers' access to new agricultural technologies, including varieties, seed and agricultural practices.~~

~~**Option 11D:** Support farmers' conservation, management and sustainable use of PGRFA through other measures.~~

**Option 11A (new):** Support farmers' conservation, management and sustainable use of PGRFA through targeted emergency assistance and financial aid.

## *D2. Issues concerning the description of specific categories and options*

Proposals were also made to amend the text introducing each category or describing specific options. These proposals are briefly summarized here so that they are documented as a basis for further discussion and/or consideration when establishing a future new version of *the Options*. In addition, new options are tentatively described as a basis for further discussions.

### **D2.1 Issues concerning Category 1**

**Suggestions that the legal recognition of rights that farmers have to save, use, exchange or sell seed** should be part of the introductory text for this category.

#### **Possible way(s) to address the issue:**

1. Consider if and how linkages between options or across categories may be addressed in *the Options* in general.

→ Further advice by the Expert Group is needed on how to address this issue.

**Suggestions that in Option 1A**, awards for custodian/guardian farmers should be supported by legal measures to prevent risks of unagreed use/appropriation ("biopiracy").

#### **Possible way(s) to address the issue:**

1. Consider if and how linkages between options or across categories may be addressed in *the Options* in general.
2. Note that awards for custodian/guardian farmers according to *the Inventory* are given in a variety of situations and legal contexts.
3. Address the issue in the description of this option by mentioning that risks may be involved, and that relevant legal requirements may need to be observed.

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

Prizes and awards may be established to honour custodian/guardian farmers and farming communities for outstanding contributions to the conservation and sustainable use of PGRFA. Such prizes and awards may be conferred, for example, at the occasion of events that attract public attention; they may include cash prizes, certificates, plaques, medals, or token gifts.

Prizes and awards can help raise public awareness of the importance of conserving and sustainably using PGRFA and encourage awardees to continue and further expand their work. In the longer term, public awareness may result in opportunities for custodian/guardian farmers and farming communities to generate additional income from the conservation and use of PGRFA and/or raise additional funds for their activities.

Women's and men's contributions to the conservation, management and use of PGRFA may focus on different crops, uses or types of activities, which may be useful to consider in the preparation of eligibility criteria and terms of participation.

When establishing awards, the awarding authority or organization may want to carefully assess any related risks of unagreed use or appropriation of specific PGRFA and/or associated Traditional Knowledge held by the awardee(s) and take preventive measures that inhibit such acts.

Legal requirements may need to be observed in cases where samples of seed or other propagating materials of specific PGRFA conserved or developed by applicants are deposited with the awarding authority or organization, or if associated Traditional Knowledge is disclosed.

**Suggestion that in the description of Option 1B**, the practice of giving recognition to farmers by mentioning their names and further details in official records if they have contributed to evaluating or developing a variety should be assisted by legal measures to ensure that the farmers' contribution is documented by a legally valid receipt given to the farmers/communities who provide PGRFA to

the MLS collections and, subject to their consent, to enter their name/details into the public passport data.

**Possible way(s) to address the issue:**

1. Note that the description of this option has so far not covered the case of farmers or farming communities contributing PGRFA to *ex situ* collections.
2. Consider whether this case should be included in the description of Option 1B.

→ Further advice by the Expert Group is needed on how to address this issue.

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

To express recognition for the contribution of a farmer or farming community to the conservation and/or development of a variety, the name of the farmer or the community may be mentioned in official records, such as variety registers, with their consent. Such cases may occur if varieties were conserved or developed by dedicated individuals or communities, or if they were co-developed in participatory breeding projects or programs.

By mentioning the name(s) of the farmers or communities, their contribution may become more visible, thus raising awareness of their role as farmer-breeders and local experts. It may also be a way of collectively memorizing such contributions.

**Suggestions to merge Option 1C with Option 5C** require changes in the description of the option; suggestion to add explanation after “heritage sites” which type of heritage s referred to.

**Possible way(s) to address the issue:**

1. Revise the description of the option to cover its new content and include suggested text revisions.

**Option 1C: Designate locally, nationally or globally important heritage sites for the conservation and sustainable use of PGRFA and support farmers in the sustainable management of such sites.**

The designation of heritage sites for the conservation and sustainable use of PGRFA could be a way to leverage recognition of farmers, local and indigenous communities in their role as custodians of biodiversity. ~~of the importance of such sites for the conservation and sustainable use of PGRFA and other agricultural and associated biodiversity.~~ Such heritage and conservation sites are typically long-term initiatives that ~~may~~ combine conservation and sustainable use of PGRFA with economic development, scientific studies and/or educational work. ~~Local actors' roles and networks may be strengthened through such initiatives, for example through linkages.~~ They may be linked with national or global initiatives and programmes, such as Biosphere Reserves or Globally Important Agricultural Heritage Systems (GIAHS).

Their management usually requires cooperation of stakeholders across different sectors and levels of governance. Farmers, local and indigenous communities may be considered key actors at the local level. They may thus be given a clear role in establishing and implementing conservation and management plans or development strategies, as well as in monitoring and evaluation activities. Furthermore, farmers, local and indigenous communities involved in the management and conservation of heritage sites for the conservation and sustainable use of PGRFA may be supported through targeted capacity development, networking and knowledge exchange activities that target the interests and needs of women and men, as well as different age groups.

## D2.2 Issues concerning Category 2

**Suggestion to include, in the description of Option 2A,** legal measures under “typically involved measures” and/or to establish “fixed quota”.

### Possible way(s) to address the issue:

1. Enhance the description of Option 2A and clarify what kind of programmes and initiatives are referred to (e.g. mostly projects, programs and voluntary initiatives).

**Option 2A: Develop funding mechanisms at local, sub-national and national level and provide funds and incentives for farmers and farming communities who conserve, develop and sustainably use PGRFA.**

~~Funds for farmers and farming communities who conserve, develop and sustainably use PGRFA may be provided through national programmes, international cooperation or other types of partnerships, including private sector and local initiatives.~~

Farmers’ and farming communities’ activities for the conservation, development and sustainable use of PGRFA may require funding and incentives to ensure the preservation of specific PGRFA that are maintained in situ, to enhance knowledge sharing among custodian/guardian farmers, develop their technical and organizational capacities, and/or raise public awareness.

~~Such funds may rely, for example, on public budgetary resources, donor support, including international cooperation, or resources voluntary contributions of private enterprises, e.g. based on corporate responsibility projects. They may be made available in various forms, including via temporary or long-term contributions to the budgets of implementing organizations or as competitive funds for which farmers or farmer organizations may apply.~~

~~Funded activities may include, for example, conservation and use of specific PGRFA that are maintained in situ, research, capacity development, as well as market and value chain development.~~

**Suggestions to include, in the description of Option 2B,** “that shares should be “appropriate”; or to fix certain shares/quota”; further suggestions to delete the last sentence of the last paragraph.

### Possible way(s) to address the issue:

1. Highlight further that Option 2B is about voluntary contributions, which may take various forms.

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

The Benefit-sharing Fund (BSF) of the International Treaty invests directly in projects supporting farmers in developing countries in conserving crop diversity on farm; it also supports projects and innovative partnerships aiming to adapt PGRFA to changing needs. All developing countries that are Contracting Parties to the International Treaty are eligible to apply for funding under the BSF.<sup>11</sup> ~~Benefit-sharing Fund (BSF).~~

The BSF Benefit-sharing Fund relies primarily on payments made by users who obtain of PGRFA obtained through the Multilateral System of the International Treaty. In addition to such use(r)-based payments, Contracting Parties and Stakeholders may also decide to make voluntary contributions to the BSF ~~Benefit-sharing Fund~~ to share benefits that arise more generally from the use of PGRFA in the breeding and seed sector, or beyond (e.g. agriculture and food industry).

<sup>11</sup> A list of eligible countries is available at [www.fao.org/fileadmin/user\\_upload/faoweb/plant-treaty/cfp4/cfp\\_4\\_2017\\_a3\\_en.pdf](http://www.fao.org/fileadmin/user_upload/faoweb/plant-treaty/cfp4/cfp_4_2017_a3_en.pdf). It has been established based on the World Bank’s classification of economies, following a decision of the Governing Body at its Third Session (IT/GB-3/09/Report, Appendix A.3, Resolution 3/2009).



To illustrate the idea of sharing benefits, such payments may correspond to a specific share of the value that is created in the economic sector that is being referred to. Alternatively, a fixed amount may be pledged as an annual support.

**Suggestions to create an additional Option 2C** on financial support for capacity development of farmers, especially “active” farmers, requires a description of this possible new option.

**Possible way(s) to address the issue:**

1. Tentatively draft a description for Option 2C based on information from relevant submissions.

**Option 2C: Provide financial support to capacity development for farmers and farming communities who conserve, develop and sustainably use PGRFA.**

Developing the capacities of farmers and farming communities can contribute to enhancing their ongoing efforts to conserve, develop and sustainably use PGRFA and secure that they can continue in the future.

Capacity development may include technical, organisational, social, cultural and/or economic aspects; or it can also enhance farmers' capabilities to participate in political processes at various levels so that their causes and needs are addressed more broadly.

Financial support to capacity development can come from government agencies of all levels as well as through donations of private companies or foundations; it is also a typical element of international cooperation. In most cases, the measures are implemented with the help of local partner organisations that have the appropriate infrastructure, experience and contacts in the target regions.

**D2.3 Issues concerning Category 3**

**Suggestions that the role of farmers’ seed systems for value creation should be highlighted in the introduction of the category** (e.g., importance for food production); and that the role of public policies in this regard should be highlighted.

**Possible way(s) to address the issue:**

1. Revise the introduction to this category to highlight the importance of farmers’ seed systems for such approaches.
2. Address the role of public policies in facilitating and promoting such approaches in the descriptions of specific options under this category, since the introduction itself mainly clarifies the relation of options under the category with relevant sub-articles of Art. 9.

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

In Art. 9.1 of the International Treaty, the Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world have made and will continue to make for the conservation and development of PGRFA, which constitute the basis of food and agriculture production (Art. 9.1). Approaches that facilitate and promote farmers’ income generation from the conservation and sustainable use of PGRFA could thus act as an incentive for farmers to continue and/or expand such their activities. in this regard.

Contracting Parties have also agreed to take measures to protect and promote Farmers’ Rights, including the protection of traditional knowledge relevant to PGRFA (Art. 9.2a) and ~~to equitably participate~~ equitable participation in sharing benefits arising from ~~the their~~ utilization of PGRFA (Art. 9.2b). ~~Through~~ By raising awareness on the multiple values of locally produced diverse food and supporting income-generating activities, such as value-chain development, farmers may be enabled to continue cultivating PGRFA that would otherwise be at risk of being lost. ~~They may thus also be able and~~ to continue using, sharing and disseminating related traditional knowledge. Depending on how activities are set up, benefits arising from the use of PGRFA, e.g. through sales of

~~specific products, may be shared among actors along the chain, including farmers accrue to those farmers who engage in activities for their conservation and sustainable use.~~

Rights that farmers have to save, use, exchange and sell seed, subject to national law and as appropriate (as referred to in Art. 9.3) may be of crucial importance for the successful implementation of such approaches, given that farmers' seed systems are often the only source of seed and planting material for the specific PGRFA that are utilized in such activities.

~~Income-generating activities may also enable farmers to continue saving, using, exchanging and selling seed of specific PGRFA that are covered by the activities (Art. 9.3).~~

**Suggestions to replace, in the description of Option 3A,** “food diversity” with “agrobiodiversity in food”; to add “subject to national law and as appropriate” to the last sentence, or to clarify which varieties (e.g. “local, non-protected etc.”) is precisely referred to; further suggestions to emphasize the importance of public procurement programs for creating/sustaining markets for products from farmer varieties.

**Possible way(s) to address the issue:**

1. Include text revisions to address agrobiodiversity for food, nutrition and health and Art. 9.3.
2. Address public procurement in a separate option, since it is quite different from what is addressed in Option 3A and 3B but supported by various submissions.

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

Promotional activities to strengthen consumer demand for products derived from the conservation and sustainable use of PGRFA may include food, agrobiodiversity or culinary fairs, traditional food festivals, exhibitions, or similar events.

The general aim of such activities is to raise interest of consumers and professionals, such as restaurant chefs and hoteliers, for traditional and/or new products made from PGRFA and stimulate demand. ~~Promotional Awareness-raising~~ activities may also strengthen initiatives for promoting food diversity and healthy diets agrobiodiversity for food, nutrition and health, from which farmers and farming communities may eventually benefit.

Stronger demand may, in the longer term, increase marketing opportunities for farmers and farming communities, thus enabling them to continue cultivating PGRFA that would otherwise be at risk of being lost. They may also be enabled to continue using, applying and disseminating related traditional knowledge, and to continue saving, using, exchanging and selling seed of local crops and varieties, subject to national law and as appropriate.

**Suggestion to include, in the description of Option 3B,** plant breeders as value chain actors; and that this option, rather than focusing on value chains, should focus on states supporting farmers' economies.

**Possible way(s) to address the issue:**

1. Include plant breeders as value chain actors and “subject to national law and as appropriate” to the last sentence.
2. Address state programmes etc. here and also separately in Option 3C (new).
3. Include other edits to improve the text and avoid repetitions.

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

Developing value-chains for local crops, varieties and populations may be a way of creating incentives for farmers and their market partners to continue or expand their joint efforts to conserve and use PGRFA, also with a view to income generation and employment in rural areas. Women and men may be involved in different steps of value chains or focus their activities on different crops

or products; it may thus be useful to assess how women and men can benefit from any planned activities.

Value-chain development is based on cooperation among various actors, including farmers, plant breeders, food processors, chefs and hoteliers, retailers, and consumers. In the case of traditional or rarely used PGRFA, it may involve research and/or pilot activities to develop the necessary expertise at all levels of the chain and to communicate the advantages and specific quality of products to consumers. Public policies and programs can support such activities, e.g. by offering research funds or starting capital, facilitating networking opportunities, or by removing obstacles.

Important factors for developing value-chains for local PGRFA and farmer varieties include, for example, legal possibilities to produce and distribute seed or planting material of the relevant varieties, and secure market access for the products produced.

~~Value chain development may thus contribute to reviving and/or enriching traditional knowledge relating to PGRFA and, depending on how activities are set up, sharing benefits among the partners of the chain. Farmers may also continue saving, using, exchanging and selling seed of local crops and varieties.~~

**Various suggestions that public procurement programmes and states supporting markets for farmer-managed PGRFA should be addressed in this category (see above).**

**Possible way(s) to address the issue:**

1. Tentatively draft a description for Option 3C (new) based on information from relevant submissions.

**Option 3C (new): Create markets for products issued from farmers' varieties/seed, including through public procurement programmes.**

Markets for products issued from farmer varieties/seed can be created and/or supported in various ways. Integrating traditional food crops and farmer varieties into public procurement programmes may strengthen and diversify production systems of small-scale farmers and result in healthier diets for consumers.

Such programmes may target community catering, including school meals, and/or food distribution schemes for vulnerable population groups. They are often established for the mid- or long-term, with funds provided by national or sub-national governments; local organizations, including NGOs, may be involved in the implementation. Public procurement programmes can have sustainable impacts by stimulating demand, fostering cooperation between actors and securing markets for local PGRFA and derived products. Not only locally produced food but also seed of local and farmer varieties may be included, thus offering additional sources of income and contributing to a wider use of local PGRFA in farmers' fields.

National and subnational governments may also contribute indirectly to creating and/or stimulating markets for products issued from farmer varieties/seed, e.g. by reviewing or lifting regulations that hinder their wider use, by providing infrastructures, or by facilitating collaboration among the market partners.

#### **D2.4 Issues concerning Category 4**

**Suggestion that options under this category should indicate legal measures for the protection of Traditional Knowledge in relation to the practices mentioned in the title; and to revise the last sentence of the introduction to cover a broader range of possible measures/practices, and to clarify that the measures mentioned address unagreed use as well as extinction of Traditional Knowledge.**

**Possible way(s) to address the issue:**

1. Consider if and how linkages between options or across categories may be addressed in *the Options* in general (legal measures that address the protection of traditional knowledge are addressed in Category 10).

2. Revise the introductory text as suggested.

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

Contracting Parties have agreed to take measures to protect and promote Farmers' Rights, including for the protection of traditional knowledge relevant to PGRFA, as appropriate and subject to national legislation (Art. 9.2a).

Measures for collecting and documenting, sharing and disseminating traditional knowledge may be useful to increase overall awareness and recognition of its importance and to prevent loss.

~~Measures such as~~ The development of Community Biodiversity Registers, or Biocultural Community Protocols or similar tools may protect traditional knowledge from unagreed use, ~~or~~ appropriation and/or extinction.

**Suggestions to include, in the description of Option 4A,** precautionary measures, FPIC and rights to maintain customary values and practices and/or to align the text with the provisions of the Nagoya Protocol, specifically Articles 7 and 12.3; views that the Nagoya Protocol was not be relevant for all Contracting Parties, or that practices like FPIC should not be referred to.

**Possible way(s) to address the issue:**

1. Clarify how references to other treaties will be dealt with in *the Options* and revise the description of Option 4A accordingly.

→ Further advice by the Expert Group is needed on how to address this issue.

**Suggestion to add, in the description of Option 4B,** “farmers’ markets” in the first paragraph.

**Possible way(s) to address the issue:**

1. Revise the text as suggested.

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

Sharing and disseminating traditional knowledge relating to PGRFA may take place through gatherings and events, such as workshops and seminars, farmers’ markets, seed festivals or fairs; or it may be facilitated through the formation of networks, associations or groups of custodian/guardian farmers, seed savers, etc. Such activities may also include cultural activities relating to PGRFA, such as for example storytelling as a way of collectively recalling and passing on traditional knowledge.

Besides facilitating contacts and a general exchange of knowledge and experiences, a focus may also be on passing on or reviving practical skills, such as specific propagation techniques that are used for some crops, or the preparation of typical dishes.

**Suggestions to revise the description of Option 4C,** including to remove the word “individual” (first paragraph); to make a reference to Art. 8j of the CBD; that access to registers and other documents on PGRFA held by farmers and indigenous communities “must be subject to (a) formal consent of the communities, and (b) a legal guarantee that no intellectual property right or other right can infringe the rights of farmers”; and that “access to information” should be included.

**Possible way(s) to address the issue:**

1. Consider if and how linkages between options or across categories may be addressed in *the Options* in general; and if and how references will be made to other treaties.
2. Include minor text edits and consider revising the description of this option based on further inputs/advice of the Expert Group.

→ Further advice by the Expert Group is needed on how to address this issue.

**Option 4C: Create or improve instruments for farmers and farming communities to govern access to traditional knowledge relating to PGRFA based on self-determined rules.**

Creating instruments for farmers and farming communities to govern access to traditional knowledge relating to PGRFA may build on activities for collecting and documenting of such knowledge. Protocols may be established that articulate self-determined rules, procedures, terms and conditions for access that may be used as a basis for individual and/or community interactions with external actors, such as representatives of government, companies or research organizations, regarding their access to PGRFA and related traditional knowledge in a community's territory.

Such tools can help build links between actors and institutions operating at different scales, from local to national and/or international, and establish a clear basis for their interactions. They may further help farmers and farming communities to take advantage of their countries' commitments under international agreements, such as the ITPGRFA and Nagoya Protocol, and strengthen their role in the process of implementation ~~implementing such international agreements~~, especially with a view to the protection of Traditional Knowledge.

## D2.5 Issues concerning Category 5

**Suggestions to include, in the description of Option 5A**, that in situ/on-farm management of PGRFA requires strong legal protection against contamination with GMOs and other seeds created using breeding technologies that involve potential threats to farmers' seed systems, especially where the average size of landholdings is small; suggestions to also mention a need that such initiatives are supported by legal measures that protect PGRFA conserved by farmers from unagreed appropriation ("biopiracy") or no intellectual property rights or other rights concerning the plants, parts of them or the components and genetic information contained therein, infringe on the Farmers' Rights to continue to conserve, use, exchange and sell seed of the PGRFA that are conserved by farmers and the associated knowledge they hold.

**Possible way(s) to address the issue:**

1. Consider if and how linkages between options or across categories may be addressed in *the Options* in general.
2. Add a sentence/paragraph explaining that protective measures may be required, including to prevent uncontrolled pollination/contamination with GMO.
3. Add a sentence/paragraph to highlight the importance of farmers' seed systems for in situ/on-farm conservation.

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

Community biodiversity management is an integrated approach to the conservation and sustainable use of PGRFA, which combines practical activities with empowerment of farming communities to strengthen them in their role as local managers of PGRFA. Activities may include documentation, monitoring and exchange of local PGRFA as well as their use in breeding and/or value creation. Similar activities may also be pursued in in situ/on-farm conservation projects.

Farmers' seed systems and management, including their practices to save, use, exchange and/or sell seed, subject to national law and as appropriate, are at the core of such approaches. Effective protective measures may be required to ensure that PGRFA managed by farmers are not affected by uncontrolled pollination, especially with genetically modified (GM) crops, or other types of negative impacts that would impede farmers' management and conservation efforts.

Approaches for community biodiversity management or in situ/on-farm conservation may be considered in national or communal/local action plans, including in the context of biodiversity conservation, rural and agricultural development. Funds may be provided through national programmes and/or donors to address identified needs of farmers and farming communities and enable them to continue and expand their activities, e.g. through capacity development, sharing of good practices,

income-generation or investments in education and rural infrastructure, such as locally based training centres.

**Suggestions regarding Option 5B** that strengthening the role of custodian farmers would go beyond social and cultural measures; and that it should be based on legal protection of their rights and not on social and cultural measures.

**Possible way(s) to address the issue:**

1. Note that this option is based on measures/practices that were submitted by Contracting Parties and/or Stakeholders as examples of possible options.
2. Consider if and how linkages between options or across categories may be addressed in *the Options* in general.

→ Further advice by the Expert Group is needed on how to address this issue.

**Suggestions to move Option 11A** to this category as a new Option 5C make it necessary to draft/revise the description of the option.

**Possible way(s) to address the issue:**

1. Use the description of the former Option 11A and adjust it, as necessary.
2. Note that studies on legal and policy aspects are addressed as a separate option under Category 10.

**Option 5C (new): Conduct studies on the in situ/on-farm conservation, management and sustainable use of PGRFA, including technological, socioeconomic and cultural aspects.**

Studies on in situ/on-farm ~~the~~ conservation, management or sustainable use of PGRFA may focus on deepening scientific understanding of farmers' practices and needs as well as underlying causes, values, social structures, or economic outcomes. ~~They may also contribute to enhancing current practices, e.g. by offering innovative solutions for identified problems.~~

Such studies can provide the necessary evidence for targeting and/or designing ~~other~~ measures that support farmers' and farming communities' efforts for in situ/on-farm conservation, management and sustainable use of PGRFA and the realization of Farmers' Rights. ~~They may also contribute to enhancing current practices, e.g. by developing proposals on how such practices may be enhanced or obstacles removed.~~

## D2.6 Issues concerning Category 6

**Suggestion to revise the introductory text of Category 6**, second paragraph, last sentence "aims" instead of "rights" because Art. 9.3 does not confer any rights in a legal sense but reflects that nothing in Art. 9 shall be interpreted to limit any rights that farmers may have, subject to national law and as appropriate; that options under this category should underline the importance of dynamic and collective management of seed by farming communities through their seed systems; and that text on the role of the private sector should be included.

**Possible way(s) to address the issue:**

1. Consider using the language of Art. 9.3 of the International Treaty for the reference that is made to Art. 9.3 to avoid misunderstandings and clarify that rights are not established but may be strengthened where they exist.
2. Address the importance of dynamic and collective management of seed in the introduction as well as descriptions of some options under this category.
3. Address the role of the private sector in the description of Option 6C.

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

In the International Treaty, Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres

of origin and crop diversity, have made and will continue to make for the conservation and development of PGRFA (Art. 9.1).

Facilitating farmers' access to a diversity of PGRFA, including for example ~~genebank accessions~~, traditional and/or new varieties, ~~and evolutionary~~ populations; or accessions from genebanks and research institutes, may encourage farmers ~~and~~, local and indigenous communities to continue and/or expand their efforts.

~~Measures Options~~ under this category may also contribute ~~to the realization of Farmers' Rights~~ to the protection of traditional knowledge (Art. 9.2.a), for example by documenting, sharing, reviving or developing further farmers' knowledge relating to ~~production, processing, storage and distribution of seed~~.

They may also ~~further~~ contribute to ~~the realization of the strengthening~~ rights farmers have to save, use, exchange or sell seed, subject to national law and as appropriate (Art. 9.3), ~~mentioned under Art. 9.3 by strengthening~~ reviving farmers' traditional practices of dynamically and collectively managing seed and varieties or developing new ones, in accordance with national law, ~~to save, use, exchange and sell seed, by or developing new ones. practices, in accordance with national law.~~

**Suggestions to delete, in the description of Option 6A**, references to “seed clubs” and “seed producer networks” because such initiatives should not be included in a document that aims to give orientation on Farmers' Rights; and to use the term “seed houses” rather than “seed banks”; Suggestions to include a reference to the private sector at the end of the third paragraph of the description, or to address this proposal in other options under this category; views that a reference to the private sector should not be made in this particular option, since there may be restrictions to sharing or disseminating such seed through farmers' practices; further proposals to revise the description of the option to include that farmer practices should also be supported by legal measures that guarantee full respect of Farmers' Rights to seeds without any restrictions.

**Possible way(s) to address the issue:**

1. Note that different terms may be preferred in various languages and contexts and that terms like “community seedbanks” “seed clubs” etc. are used in the submissions on which this option relies.
2. Consider adding “seed houses” to the title and description of the option and replacing “seed-producer networks” with “seed-saver networks”.
3. Consider including a reference to the private sector in other options since relevant submissions do not mention that varieties from the private sector were focused on.
4. Consider if and how linkages between options or across categories may be addressed in *the Options* in general.

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

Community seed banks, seed houses, seed clubs, ~~seed-saver~~producer networks or similar approaches may serve, *inter alia*, to provide farmers with good quality seed of a range of locally adapted crops and varieties, which may otherwise not be easily accessible.

Activities are based on local governance structures and collectively agreed rules. They may be conducted by informal groups or legal entities, such as associations, co-operatives or community-based organizations; several local initiatives may cooperate via networks or umbrella organizations. Seed is produced by the members of such organizations and may be selected, processed and stored centrally or in a decentralised manner. Distribution may be limited to members or also be extended to external users., ~~for example if larger amounts of seed are marketed.~~

The focus may be on the conservation and/or re-introduction of local varieties, e.g. via cooperation with national genebanks and research institutes, and/or on the dissemination of new varieties developed by public and/or participatory plant breeding programs.

**Suggestions to include, in the description of Option 6B,** that seed fairs imply that knowledge is also transferred; and that seed fairs should be accompanied by legal measures to guarantee the implementation of Articles 9.2 and 9.3 of the International Treaty; and that measures should be put in place to impede unagreed use or appropriation of PGRFA (“biopiracy”).

**Possible way(s) to address the issue:**

1. Assess whether knowledge exchange is sufficiently addressed in the first paragraph, third sentence.
2. Include a paragraph on precautionary measures that may be taken to address any risks of unagreed use/appropriation.
3. Consider if and how linkages between options or across categories may be addressed in *the Options* in general.

**Option 6B: Organize and/or support seed festivals and fairs.**

Seed festivals and fairs may be set up as one-off or regularly recurring events; they may be organized as part of traditional celebrations or commemoration days. Farmers may be invited to present farm-saved seed and propagating materials for exchange or selling to other participants. Visiting farmers may thus choose from a great diversity of PGRFA, while also having a possibility to exchange knowledge and experiences among each other.

By attracting participants from larger areas, e.g. various villages or provinces, such events can facilitate farmers’ access to a wide range of PGRFA. Seed festivals and fairs can thus offer opportunities for farmers to increase their portfolio of crops and varieties or to acquire seed of crops and varieties that may otherwise be difficult to obtain.

Authorities or organizations that invite to seed festivals or fairs, or host such events, may want to carefully assess any related risks of unagreed use or appropriation of specific PGRFA and/or associated Traditional Knowledge and take preventive measures that inhibit such acts.

**Suggestions to explicitly mention, in the description of Option 6C,** biocultural community protocols in the third paragraph of the description; to mention simplified Material Transfer Agreements for farmers to access genebank material that are in conformity with the SMTA of the International Treaty and the PIC and MTA of the Nagoya Protocol; and/or that the entire description of this option should be aligned with the Nagoya Protocol; and if farmers obtain samples from ex situ collections, the material transfer agreements used should not limit Farmers’ Rights, including rights to save, use, exchange or sell seed, or include any obligations for farmers to return material after it has been grown in their fields, or to provide information; and suggestions that traceability of materials and information between farmers and genebanks should be guaranteed.

Further proposals to delete the word “individuals” in the first paragraph of the description, and to mention explicitly “indigenous communities”; and suggestion that the scope of this option should be broadened to include PGRFA in general, including for example lines from breeders as well as finished cultivars, including those protected by intellectual property rights; proposals to make the sentence that refers to varieties of which the protection had expired more concise.

**Possible way(s) to address the issue:**

1. Revise the text of the last paragraph to include a reference to Biocultural Community Protocols.
2. Clarify how references to other treaties will be dealt with in *the Options* and revise the description of Option 6C accordingly (→ text has not been aligned with the language used in the Nagoya Protocol).
3. Address the proposals to address transfer of materials between farmers and genebanks by adding a sentence/paragraph to the description of the option, to delete “individuals” and mention “indigenous communities”.
4. Review the sentence that refers to varieties developed by breeders to ensure it is concise.



5. Discuss further if/how farmers' access to protected varieties/breeding lines should be mentioned.

→ Further advice by the Expert Group is needed on how to address this issue.

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

Farmers may ~~also~~ be enabled to gain access a wide range of PGRFA by facilitating access to PGRFA from collections held by national, regional or international genebanks, research institutes, universities and the private sector. ~~Genebanks~~ These collections are commonly used by plant breeders and researchers, ~~to obtain small quantities of seed or planting materials,~~ but they may also serve interested ~~individuals, including~~ farmers and gardeners, or local and indigenous communities. Providing small quantities of seed or planting materials to interested farmers for direct use may also be of interest for the holders of collections ~~genebanks~~ to ensure dynamic conservation and enhanced use of such accessions.

~~Genebank materials~~ PGRFA that are of interest for farmers may include traditional varieties or landraces of certain crops, for example those collected in other ~~parts of the world~~ geographical areas, as well as formerly ~~popular varieties that are no longer commercially available, for example due to expiry of plant variety protection~~ protected varieties. ~~Such varieties~~ that are made available via the MLS for further conservation and use.

To facilitate farmers' access to ~~genebank materials~~ collections held by genebanks, research institutes universities or the private sector, ~~Contracting Parties and Stakeholders may consider creating specific procedures~~ may be required for farmers to obtain such materials, ~~including for example by presenting information in a way that facilitates direct use by farmer, or by creating simplified Material Transfer Agreements.~~ For example, Biocultural Community Protocols can be used to promote those communities' collective interests and capacities to identify and access useful PGRFA from national and international PGRFA collections.

Information may be presented in a way that facilitates use by farmers, or simplified Material Transfer Agreements may need to be established, based on and in conformity with the SMTA of the International Treaty, where it applies. Such agreements may be designed in a way to ensure that they do not limit Farmers' Rights, including rights to save, use, exchange and sell seed of the material obtained, subject to national law and as appropriate, or that they do not establish any obligations for farmers to return any material after it has been grown in their fields, or to provide information.

In cases where farmers, local and indigenous communities deposit PGRFA in collections on a voluntary basis, clear terms and procedures may need to be established to ensure traceability of such materials as well as possibilities for the farmers to access and use the materials again, in the same way as they were used before the deposit was made.

**Suggestions to create a new Option 6D** ("Support farmers' innovation in seed systems) require drafting a description for this option.

#### **Possible way(s) to address the issue:**

1. Collect further advice/input from the Expert Group on the content of this option and relevant submissions, before drafting a description.

→ Further advice by the Expert Group is needed on how to address this issue.

### **D2.7 Issues concerning Category 7**

**Suggestion that the introduction to Category 7** would require an indication on protection of Traditional Knowledge, fair and equitable sharing of benefits arising from the utilization of PGRFA

and associated Traditional Knowledge as well as formal acknowledgement of farmers' contribution to research activities.

**Possible way(s) to address the issue:**

1. Assess whether protection of Traditional Knowledge and fair and equitable sharing of benefits are sufficiently addressed in the second paragraph of the introduction.
2. Consider mentioning formal acknowledgment of farmers contributions in the description of specific options under this category.

→ Further advice by the Expert Group is needed on how to address this issue.

**Suggestion to add, to the description of Option 7A**, last sentence of the second paragraph, that newly introduced PGRFA/species should not threaten existing PGRFA, biodiversity or local livelihoods, particularly of farmers and indigenous communities, and such processes of introduction should be according to national legislation.

**Possible way(s) to address the issue:**

1. Address the issue by adding text on precautionary measures, as suggested.

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

Involving farmers in the characterization, evaluation and selection of PGRFA involves growing larger sets of PGRFA for testing purposes, with the aim to identify those that are most suitable for direct use and/or further breeding.

Genebank accessions, traditional or farmer varieties, evolutionary populations, newly bred varieties or variety "candidates" from breeding programs may all be included in such trials. The focus may also be on introducing new crops or species that have so far not been cultivated by farmers in a given area. Implementing organizations may want to carefully assess if introduced PGRFA could have any negative impacts on existing PGRFA, biodiversity or livelihoods, particular of farmers and indigenous communities, take precautionary measures as necessary and ensure that any introduction of PGRFA is in accordance with national law.

Through joint activities for the characterization, evaluation and selection of PGRFA, both farmers and researchers may apply, share, deepen and enrich their knowledge. Farmers may make choices based on their own observations and judgement and, depending on how the activities are set up, access seed or planting material for further evaluation or direct use. They may also participate in making decisions on a further course of action.

## D2.8 Issues concerning Category 8

**Suggestion to mention, in the description of the Option 8A**, that effective participation of peasants in decision-making processes on matters relating to PGRFA is not possible without free access to information on PGRFA-related matters in formats, languages and media of their locality in due time given to process, articulate and form individual and then collective opinions within their respective organizations and communities; and that legislations should be made and resources, including but not limited to financial resources, should be made available for effective participation in decision-making; and that farmers' participation in decision-making should be supported by legislation, especially in relation to seed policy.

**Possible way(s) to address the issue:**

1. Consider if and how linkages between options or across categories may be addressed in *the Options* in general.
2. Consider if and how references to other treaties or the human rights framework will be dealt with in *the Options*, whether the mentioning of the human rights framework in the description of Option 8A should be maintained, and which type of language should be used.

3. Discuss whether it is sufficient to mention that “rules and procedures may be established, including by drawing from norms, principles, and practices that have been developed in other contexts, such as the human rights framework” – or whether the above suggested details should be added to the description of Option 8A.
4. Revise the description of Option 8A accordingly.

→ Further advice by the Expert Group is needed on how to address this issue.

**(no suggestions were made on the description of Option 8B)**

### **D2.9 Issues concerning Category 9**

**Suggestion to mention, in the introduction to Category 9**, that capacity building is not sufficient to guarantee the realization of Farmers’ Rights and that it should be supported by legal measures; suggestion to reconsider which examples are best here, because in many cases capacity building is embedded in other measures and not described as such in the Template developed by the Expert Group.

**Possible way(s) to address the issue:**

1. Consider if and how linkages between options or across categories may be addressed in *the Options* in general.
2. Highlight the importance of legal measures in the description of options under Category 10.
3. Collect further advice/input from the Expert Group on relevant examples.

→ Further advice by the Expert Group is needed on how to address this issue.

**Suggestion that it should be specified, in the description of Option 9C**, that capacity building should be for “small-scale” farmers or “active and outstanding” farmers; and that the focus should be on exchange of knowledge between farmers.

**Possible way(s) to address the issue:**

1. Observe discussions on how to address rightsholders in *the Options* in general.
2. Revise the second paragraph of the description to further highlight knowledge exchange aspects.

### **Option 9C: Enhance farmers’ technical and/or organizational capacities relating to the conservation and sustainable use of PGRFA.**

Technical and/or organizational capacities are required for farmers to effectively implement practical measures for the conservation and sustainable use of PGRFA, including production and dissemination of seed, community seed banks, participatory plant breeding or variety evaluation, etc.

~~This is why~~ Capacity development may be an important component of such measures. Depending on the situation and needs of participants ~~or target groups~~, capacity development may take ~~be implemented in~~ various forms, including for example knowledge-exchange workshops, farmer field schools and other group-based methods. Media such as videos, posters, technical leaflets and brochures may be used to support such approaches. ~~use of media (including technical leaflets and brochures), farmer field schools as well as farmer breeder, seed grower or seed saver groups, etc.~~

Government representatives and stakeholders, including farmers’, community, research and civil-society organizations as well as international donors may all play important roles in this regard, e.g. by funding and/or ~~organizing~~ implementing such measures.

### **D2.10 Issues concerning Category 10**

**Suggestions that a completely new approach should be taken for deriving Options under Category 10** requires redrafting descriptions of options under this category.

**Possible way(s) to address the issue:**

1. Tentatively draft descriptions for Options 10A-F as a basis for further discussions, considering the content of relevant submissions.

→ Further advice by the Expert Group is needed on how to address this issue.

→ See also tentative (draft) descriptions of new/revised options under Category 10.

**10A (new): Recognize and address Farmers' Rights systematically within the national legal system relevant for the conservation and sustainable use of PGRFA.**

Contracting Parties may like to recognize and address Farmers' Rights systematically within their national legal system. This may include establishing laws, policies and related procedures that cover all aspects of Farmers' Rights that are deemed appropriate, following Article 9 of the International Treaty. These laws and related procedures would form a legal basis, e.g. for establishing prizes and awards to recognize the efforts made by custodian/guardian farmers, local or indigenous communities for the conservation and sustainable use of PGRFA; for protecting their Traditional Knowledge as it relates to PGRFA; for enabling fair and equitable sharing from benefits arising from the use of PGRFA; and for ensuring participation of farmers', local and indigenous communities' representatives in decision-making bodies. Such laws and related procedures may further protect farmers' seed systems and related practices.

In cases where there are already laws touching on different aspects of Farmers' Rights, Contracting Parties may choose to systematically review, and as necessary revise, such laws and related procedures to enable the realization of Farmers' rights within their national legal system relevant for biodiversity, PGRFA, plant varieties, seeds and Traditional Knowledge, or rights of indigenous peoples.

Rights of farmers, local and indigenous communities, as they relate to the conservation and sustainable use of PGRFA, may also be addressed in the constitution of a country. Policies and programmes may be established to further promote the realization of Farmers' Rights at various levels.

**10B (new): Recognize and address elements of Farmers' Rights, such as the protection of Traditional Knowledge and/or farmers' seed systems, fair and equitable sharing of benefits or participation in decision-making, within the national legal system.**

Contracting Parties may like to give priority to recognizing and addressing certain elements of Farmers' Rights within their national legal system that are deemed particularly relevant. This may include laws and procedures for the protection of Traditional Knowledge, including Traditional Knowledge related to the conservation and sustainable use of PGRFA held farmers, local and indigenous communities. Such laws and procedures may include disclosure of origin and/or 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 practices, and to products derived from them.

Priority may also be given to the legal protection of farmers' seed systems, e.g. based on laws and regulations addressing the use of genetically modified seed (GMO), particularly in centres of origin and diversity; to governing access to PGRFA held by farmers, local and indigenous communities and establishing national mechanisms that enable the fair and equitable sharing of benefits arising from the use of PGRFA; or to providing a legal basis for the representation of farmers, local and indigenous communities in decision-making bodies and/or advisory boards of government institutions working on matters that relate to PGRFA.

**10C (new): Protect and promote Farmers' Rights through reviewing and, as appropriate, adjusting intellectual property law and/or related procedures.**

Farmers' Rights can be provided for in intellectual property laws, such as laws protecting traditional and new knowledge relating to PGRFA, plant variety protection and patents. Such laws typically define the item or product for which protection may be sought, requirements or conditions for applicants as well as scope and duration of the right(s). They may also establish rights or conditions for users of the protected item or product.

To protect and promote Farmers' Rights, Contracting Parties may consider reviewing and, as appropriate, adjusting intellectual property laws and related procedures, for example by including requirements 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 continue to save, use, exchange and/or sell seed of protected varieties, subject to national law and as appropriate. Such legal possibilities may be used, for example, in *sui generis* laws on plant variety protection and Farmers' Rights.

**10D (new): Protect and promote 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 facilitate the legal dissemination of seed of farmers' varieties and/or varieties and populations with specific adaptation and uses. Farmers, local and indigenous communities may 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 seed. 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. Special possibilities could also be created for quality control of seed of such varieties and/or for non-commercial seed dissemination and use, for example based on traditional practices.

Seed laws that aim to protect and promote Farmers' Rights may also generally acknowledge and/or protect rights that farmers have to save, use, exchange or sell seed, subject to national law and as appropriate.

**10E (new): Use and/or enhance other legal possibilities to protect and promote Farmers' Rights.**

Other legal possibilities may also be actively used and/or enhanced to protect and promote Farmers' Rights. Collective tools like Geographical Indications, Seals of Origin or in some cases trademarks may be used to protect various forms of Traditional Knowledge held by specific groups or communities of farmers. This type of protection may cover know-how, practices, processes, skills and/or products, especially if this knowledge is collectively held by farmers, local and indigenous communities and associated with specific geographical regions, including, for example, protected areas.

Furthermore, authors' rights, plant variety protection and similar tools may be used by farmers and/or farmer-managed legal entities to protect knowledge and/or varieties developed by them. Private law, including certification and licenses, may be used in some situations to protect farmers' seed systems, e.g. by ensuring that certain breeding technologies are or are not used, or to protect seed and varieties from patents and other forms of privatization.

**10F (new): Study national and international policies and laws regarding their contributions to the realization of Farmers' Rights.**

Studying 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.

### **D2.11 Issues concerning Category 11**

**Suggestions to move several options from Category 11** to other categories and creating Option 11A require revising the introductory text and the description of Option 11A; however, there are currently very few submissions that offer insights regarding the possible content of this option,

#### **Possible way(s) to address the issue:**

1. Collect further advice/input from the Expert Group on the content of this option and review relevant new submissions, before drafting a description.

→ Further advice by the Expert Group is needed on how to address this issue.