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POVERTY REDUCTION



**TOWARDS A HUMAN RIGHTS-BASED APPROACH TO FOOD SECURITY:
A SELF-ASSESSMENT TOOL TO ACHIEVE BALANCED PLANT REGIMES
Facilitating Farmers' Participation to Ensure Sustainable Access to Food**





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Towards a Human Rights-Based Approach to Food Security: A Self-Assessment Tool to Achieve Balanced Plant Regimes

**Facilitating farmers' participation to ensure sustainable
access to food**

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LIST OF ACRONYMS AND ABBREVIATIONS

CBD	Convention on Biological Diversity
CSO	Civil Society Organization
BDP	Bureau for Development Policy
FAO	Food and Agriculture Organization of the United Nations
GI	geographical indications
HCHR	Office of the High Commissioner for Human Rights
HRBA	human rights-based approach
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IP	intellectual property
IPRs	intellectual property rights
MEA	Multilateral Environmental Agreement
PVP	plant variety protection
SR	Special Rapporteur
TRIPS	Trade-related aspects of intellectual property rights agreement
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UPOV	International Union for the Protection of New Varieties of Plants
WTO	World Trade Organization



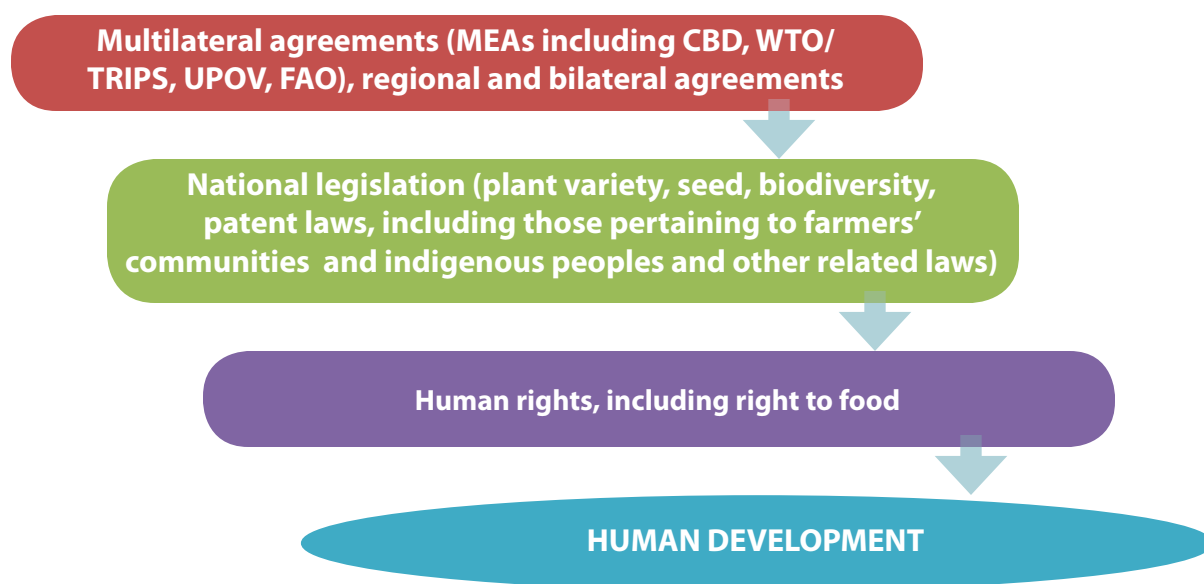
BACKGROUND NOTE

RATIONALE

The agricultural sector is a crucial source of food, employment and trade, and so it contributes to overall economic growth and poverty reduction. Increasingly, the privatization and spread of commercial seeds is harming agricultural biodiversity in developing countries. In particular, intellectual property rights (IPRs) that give incentives to commercialize agriculture may hinder the exchange and reuse of seeds. Plant variety rights that favour commercial and industrial breeders over traditional farmers can potentially undermine agricultural biodiversity and promote monocultures. In turn, this can harm food security and the livelihoods and human rights of farmers.

Legislation relating to 'plant rights' includes seed laws, intellectual property laws protecting plant breeders, and laws protecting farmers' rights. Such laws significantly affect agricultural biodiversity and the right to food for at least two reasons: 1) They affect poor farmers' access to seeds and 2) there is a need to balance the development of commercial varieties of seeds with landraces that are developed by the farmers themselves as they save and re-sow seeds from their harvests.

Internationally, while there are no official standards to protect plant varieties, environmental and trade agreements contain rules that countries must respect when establishing and enforcing plant protection and seed laws. Developing countries often establish national plant protection laws, but sometimes not all implications are considered to fully understand how those laws will affect the livelihoods of those who are most impacted by these laws or how those laws will affect biodiversity and food security. Moreover, such laws often lack built-in safeguards for farmers or indigenous people.





The 2008 UNDP Guidelines¹ that recommend the need for an ‘inclusive process’ to establish and assess plant variety laws was used to hold national consultations in Indonesia and Philippines, which brought together key stakeholders in order to bring about an understanding of the issues around plant rights and its impacts over food security and biodiversity. It was in these consultations that the need for a self-assessment tool for balanced plant regimes was identified.

In this context, UNDP has developed a tool to assess national legal and policy frameworks that underpin the fulfilment of human rights, with particular focus on the right to food, with a view to establishing adequate plant variety laws. This tool can help countries to promote human rights, to establish balanced participatory systems and to learn about rules pertaining to biodiversity, food security and rural livelihoods. It describes the inclusive process by which stakeholders can discuss, assess and ultimately establish plant variety laws. It also provides a review matrix that can help in assessing how well national legislation on protection of and access to plants and plant varieties promotes the right to food. The target audience includes people involved in governance, poverty reduction, agriculture, trade, environment and biodiversity, policy making, development, civil society and academia. This tool thus can help to ensure that a framework on plant rights will meet the needs of the most vulnerable farmers and of the functions of the various acknowledged seed systems.

The tool draws inspiration from the 2009 report of the UN Special Rapporteur (SR) on the Right to Food to the UN General Assembly (the Report) focusing on seed policies and the right to food (A/64/170). The tool has been developed by UNDP’s Bureau for Development Policy in consultation with the UN SR on the Right to Food and the FAO. Initial national consultations were conducted in Indonesia (2009) and the Philippines (2010-11), where the tool was piloted.

BACKGROUND: How can agro-biodiversity contribute to food security?

Facilitating farmers’ participation to ensure sustainable access to food

There is evidence² that privatization and the spread of commercial seeds are seriously threatening the traditional farming practices of saving, selecting, re-sowing, exchanging, sharing and selling seeds. While commercial seeds produced by the seed industry introduce new varieties, the loss of traditional varieties has reduced biodiversity and affected food security³ and violated various human rights. In his Report, the UN SR on the Right to Food discussed the commercialization of agriculture and its effect on farmers’ livelihoods, biodiversity and the importance of farmers in continuing innovation through traditional practices.⁴ The Report helps readers to understand why efforts to improve food insecurity need to include farmers and to present options for maintaining and retrieving biodiversity.

1 See UNDP, *Towards a balanced ‘sui generis’ plant variety regime: Guidelines to establish a national PVP law and understanding of TRIPS-plus aspects of plant rights*, 2008, available at www.tinyurl.com/7y2uokd.

2 See for instance, UNDP (2008).

3 See FAO’s *The Second Report on the State of the World’s Plant Genetic Resources for Food and Agriculture*, October 2010, available at www.fao.org/docrep/013/i1500e/i1500e00.htm.

4 See *Statement by Mr. Olivier De Schutter Special Rapporteur on the right to food: Interactive Dialogue of the U.N. General Assembly (Third Committee) on the report ‘Seed policies and the right to food: Enhancing agrobiodiversity, encouraging innovation’ (A/64/170)* available at www2.ohchr.org/english/issues/food/docs/GA_Statement120909.pdf.



Biodiversity is crucial for long-term food security. On the one hand, diverse plant varieties are a nutritious source of food for households; on the other hand, their depletion deprives agriculture of the means to face climate change challenges. Genetic erosion increases agricultural vulnerability to such climate change, the appearance of new pests and diseases. The SR Report drew attention to the harm that the spread of commercial seeds causes to biodiversity. The Report pointed out, among other things, that the commercial seed system is usually associated with monoculture, which is different from the polyculture common in the farmer seed system. The shrinking of farmer seed systems is in itself detrimental to biodiversity, as this traditional farming system aids the development of collective biodiversity by allowing seeds to continuously adapt to changing environment conditions and to diversify as necessary in response to different local environments. This *in situ* conservation also addresses challenges of climate change because vegetal resources can adapt to new environments.

The commercialization of agriculture affects not only biodiversity, but also farmers' livelihoods, since the cost of agricultural inputs from the commercial seed industry is often higher than inputs from the farmer seed system. As a result, poor farmers might not be able to afford commercial seeds, but, nevertheless relying on those inputs, they might then be at a great economic disadvantage. The SR Report noted this, citing the various reasons that tend to push up the cost of commercial seed. The Report cites, among other reasons, the fact that commercial high-yielded seeds from the seed industry often require additional – and costly – inputs (mechanization, pesticides and fertilizers, water and electricity), whereas farmer seeds might be productive without such inputs. These tend to adapt to local conditions without challenging the general agronomic advantages of commercial seeds; the Report further warns that commercial seeds may be less suited to farmers' specific environments than continuously adapting landraces. The Report also notes that the contractual conditions imposed by commercial seed suppliers often increase the cost of using such seeds. Requiring farmers to save seeds from their harvest and to replant and exchange seeds drives up production costs. Sterilizing the sold seeds also increases costs. Moreover, the cost of commercial high-yielding crop varieties might further indebt farmers. If there is a bad harvest, farmers might be trapped in a vicious circle if they are unable to repay their loans. In contrast, the use of landraces allows farmers to remain independent of seed suppliers.

Finally, the Report points out that IPRs that give incentives to the commercialization of agriculture directly affect the cost of seeds and indirectly affect biodiversity. On the one hand, IPRs often protect commercial seeds, which are typically expensive; on the other hand, such IPRs often exclude farming practices⁵ that help farmers to innovate via traditional knowledge and practices that also maintain biodiversity. The IPRs that commercial seed suppliers claim may be another obstacle to preserving this collective work of biodiversity development. Patents and breeders' rights may hinder the exchange and non-private reuse of seeds. Contractual clauses or certain techniques (such as sterilization) might also keep farmers from replanting seeds from their harvests.

In addition to the loss of biodiversity that comes from replacing landraces with commercial seeds, farming communities might lose traditional skills, depriving current and future generations of traditional and alternative farming knowledge. In particular, indigenous and local communities depend on biological diversity and play a key role in its conservancy. Article 8(j) of the Convention on Biological Diversity (CBD) codifies the need to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities relevant for the conservation of biological diversity and to promote their wider application

⁵ The giving of incentives for monopolistic practices by expansive intellectual property laws affects the age-old farming practices of small farmers in developing countries; at least 1.5 billion people depend on small-scale farming for their livelihoods.



with the approval of knowledgeable people and to encourage the equitable sharing of benefits of the use of biological diversity.⁶

Farmers in the developing world have experienced all of these issues in some way or another, and there have been various studies on the loss of skills among female farmers⁷ and the prosecution of farmers (see Box).

OVERVIEW

In its 2008 Guidelines,⁸ UNDP discussed issues especially related to IPRs. IPRs involving plants and plant varieties in developing countries often arise from compliance with multilateral, regional and bilateral trade and investment agreements. In most cases, countries establish national plant protection laws without having adequately assessed the probable effects of these laws on the livelihoods of precisely those whom these laws most affect. Not only do these laws significantly affect biodiversity and food security, as already noted, but they have no built-in safeguards for farmers, communities, indigenous peoples, and women who have significant roles in work that these laws often disallow. As countries integrate into the globalized markets, an integral part of meeting human development goals and inclusive growth will consist in establishing balanced policies. While intellectual property laws pertaining to food – e.g., plant variety protection and patents on seeds and plants – are obviously not solely responsible for food insecurity, countries must assess and establish balanced regimes to avert future crises and to better manage current challenges.

Plant variety laws in Indonesia

Since 2003, about 12 farmers in East Java have been brought to court by the seed company PT Benih Inti Subur Intani (BISI), accused of stealing parent seeds and copying the company's breeding technique. The court prosecuted some of them for various violations, including seed piracy, illegal breeding, distribution of seed without certification, and failure to protect consumers from unlabelled seeds. Most of these farmers have been involved in buying parent seeds sold in the market and breeding more seeds, using their own knowledge and distributing it among other farmers.

The UNDP farmers' dialogue held in Indonesia in February 2009 saw farmers from around East Java assemble to discuss and understand the complex issues around intellectual property (IP), plant rights, patents and seeds. The issues understood here were then presented for the first time in a national consultation where, on a platform provided by UNDP, detained farmers presented their cases and key recommendations to representatives of ministries of agriculture, environment, trade, patent offices, plant variety offices and civil society organizations.

Source: IGC, Poverty Practice.

6 For further details, see www.cbd.int/traditional.

7 See UNDP study *Intellectual Property, Agrobiodiversity and Gender Considerations: Issues and Case Studies from the Andean and South Asian Regions*, available at www.tinyurl.com/98jh22g.

8 See UNDP (2008), which states that, in order to establish balanced plant variety regimes, countries would benefit from an 'inclusive process', i.e., one that considers the concerns of all key stakeholders. This toolbox has been developed following the recommendations set out in this paper, followed by country consultations and using the Special Rapporteur's Report as the backdrop. For more details, see www.tinyurl.com/UNDP-PR-TIPM-IP.



The Guidelines recommend an ‘inclusive process’ to establish and assess plant variety laws. Between 2009 and 2011, UNDP used the Guidelines to hold national consultations in Indonesia and the Philippines that brought together key stakeholders in an effort to generate greater understanding about plant rights and their effect on food security and biodiversity. These consultations identified the need for a self-assessment tool to achieve balanced plant regimes. Both countries requested that UNDP review their national Plant Variety Protection (PVP) laws and related legislation. Following these requests, it became clear that PVP and patent laws cannot be assessed apart from other laws that could – and probably should – have overlapping and related provisions governing the protection of and access to plant and natural resources.

In 2009, along with the SR Report, FAO released its *Guide on Legislating For the Right to Food*,⁹ which discusses the issue of genetic resources for food and agriculture and recommends that governments assess national IPR laws from the right-to-food perspective. More specifically, the Guide points out that, “when assessing the IPR laws from the right to food perspective [the focus should especially be] on provisions regarding their scope, conditions for granting of protection and exemptions. In order to be right to food compliant, the legislation should provide for mechanisms ensuring the right balance between the need to protect agricultural innovations and the need to protect interests of both farmers and researchers. As is the case of seed laws, the conditions of the seed market and agriculture sector in a country will also play a role in the assessment of the right to food compatibility of a given IPR law.” The self-assessment tool intends to take the next step, namely, to give more detailed guidance on making such an assessment/review by suggesting steps and requirements for the process and providing a framework for the substantive review. The tool also suggests a process framework for assessing, from a right-to-food perspective, all plant regimes, including IP laws, that affect access to and protection of plants.

The self-assessment tool provides the platform for an inclusive process and a set of tools organized in four stages (see Box) and specifies steps and a checklist for each stage. While most of the tools are ‘process’-oriented, the Review Matrix (Stage 3) employs a right-to-food perspective and assists in assessing the provisions of various laws that affect the protection of and access to plants and plant varieties.

Implementing the self-assessment tool: Stages

- 1. Pre-assessment and scoping:** Specifies the steps for applicability and the identification of key stakeholders for using the self-assessment tool.
- 2. Assessment I:** Involves an initial stakeholder meeting that identifies and discusses national responses to global issues and the impact on human rights that are particularly relevant to communities, including farmers’ rights, indigenous peoples’ rights, minorities’ rights and IP rights, and the role of those people in maintaining national biodiversity and food security.
- 3. Assessment II:** Involves the review and uses the ‘Self-assessment review matrix’ that applies right-to-food principles to assess laws related to the access and protection of plants and plant varieties. A sample matrix and a memo on how to use it are attached. This stage also involves preparation of the Policy Review Report that combines all findings from the assessment stages into a national response to the linkages among biodiversity, food security, IP and human rights.
- 4. Post-assessment:** Informs and specifies a UN agenda to assist country follow-up at the level of programmatic and policy interventions after publication of the Policy Review Report.

9 Available at www.fao.org/docrep/014/i0815e/i0815e00.htm. See Section 4.6 (pp. 226-234).



MEMO: USING THE SELF-ASSESSMENT REVIEW MATRIX

The Self-Assessment Review Matrix is a tool for assessing all national legal and policy frameworks that support human rights with regard to the access to and protection of plants and plant varieties. The Review Matrix uses a human rights-based approach (HRBA) — specifically, the standards under the right to food — to achieve balanced plant regimes.

Best use of the Review Matrix requires attention to the following:

1. The attached Review Matrix is a sample and, in Stage II of the Self-Assessment Tool, it is imperative to identify national laws that would benefit from this assessment. For all purposes, the laws stated in the sample are inclusive and assessment need not be limited to this set of laws. The sample provides only a framework that can then be adapted to related national laws and practices and, more important, to national interpretation of human rights, including the right to food.
2. In certain cases, it is possible that only specific provisions under related laws may have to be considered, while, in other cases, the complete law may have to be analysed. In the case of the PVP law, for example, the complete law needs to be considered, while, in the case of Indigenous Peoples Right or National Biodiversity/Protected Areas law, only those aspects pertaining to the protection of and access to plants need to be considered. This scoping exercise of identifying these laws and related provisions must be done before the lead party that is conducting the assessment uses the Review Matrix.
3. The best way to use the Review Matrix or to conduct an assessment using the Review Matrix is to divide the participants in the stakeholder meeting into groups and to assign one or two laws to each group for assessment using the Review Matrix. Each group needs the most diverse representation of stakeholders possible.
4. An overview of the laws must be presented prior to the assessment exercise and two or three specialists must monitor the groups in case there are questions about the interpretation or specific provisions of the laws or about how best to use the Review Matrix.
5. All of the human rights principles and standards are normative and may be interpreted in terms of their positive and negative effects. For example: In assessing the 'accessibility' of laws, it is also crucial to assess the provisions, regulations and practices in terms of whether food will be affordable. Hence, the accessibility standard under a 'seed law' must determine whether it gives too much protection to the producer of a commercial seed, as such protection would make it more difficult for a particular group to buy that seed; however, if the government (local or national) has simultaneously established a practice or programme that allows a 'free' supply of seeds, then features of such seed programme must be pointed out under the 'sustainability' standard.
6. During the assessment exercise, the Review Matrix should be used only for 'pointing out' or laying down the provisions that amplify imbalances. While it is important to discuss the analysis of the effects on larger issues, this should be done in the Policy Review Report and not in the Review Matrix.



7. The Matrix calls for an assessment of the provisions of laws, regulations and practices. Practices on the ground often differ from the requirements of the law and the Review Matrix requires participants to identify those differences.
8. The Matrix divides its set of assessment questions into 1) human rights standards as per the right to food in terms of which a particular law is assessed and 2) human rights principles applicable to all laws that are assessed. Certain human rights aspects may be more relevant and applicable in some laws than in others. Again, these standards and principles are only a guide. National interpretation of these may and should be applied as appropriate in addition to or in place of same.
9. For example, the human rights standards are assessed as below; while the items below are more general, the Matrix develops a connotation more specific to the right to food.
 - a. **Availability:** Are there enough facilities, programmes, goods and services in the relevant sector? For example: Can farmers reuse seeds? Are there opportunities or provisions to reverse the depletion of traditional varieties?
 - b. **Accessibility:** Are facilities, programmes, goods and services of the relevant sector accessible and within safe reach? Can everyone afford them? Do any policies/practices (in)directly restrict access to particular groups? For example, are there provisions or programmes that provide subsidies, economic or other incentives, or special allocations to farmers for research and development in local varieties of seeds?
 - c. **Adequacy (quality and acceptability):** Is the quality (and changes in quality) of facilities, programmes, goods and services of relevant sector considered and are there standards of quality? Are traditional knowledge and cultural rights considered? Are different cultural user patterns and needs considered, particularly those of the people and communities suffering exclusion and marginalization? Is the quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture? Provisions that help answer these questions must be pointed out.
 - d. **Sustainability:** Intrinsically linked to food security, provisions related to implications of availability of food for present and future generations may be assessed.
10. For example, human rights principles are assessed as below. All laws may be assessed in these terms. Some questions concerning these principles are:
 - a. **Non-discrimination and equality:** Is there any qualitative or quantitative information on groups that are particularly marginalized, including with respect to the enjoyment of their rights?
 - b. **Participation and inclusion:** How is it ensured that at least a representative of relevant groups is actively and meaningfully involved and that such groups are considered in findings, decisions, etc.?
 - c. **Accountability and rule of law:** Is official information accessible? Do affected parties have access to redress mechanisms? How is implementation monitored?



THE RIGHT-TO-FOOD-BASED REVIEW MATRIX

The right-to-food-based Review Matrix for related national laws (including PVP, seeds, biodiversity, geographical indications (GIs), laws on issues pertaining to farmers, communities, indigenous peoples and minorities) — As per Stage III of the Self-Assessment Tool

Checklist based on the right to food as under General Comment No. 12 (Art. 11, para. 1 and 2 ICESCR) E/C.12/1999/5*

National Plant Variety Protection Law	National Seed Laws	National Patent law as applicable to plants and / or agrochemicals (TRIPS-plus)	National Biodiversity Law	National Farmers' Rights (Separate regime or included within another)	National Geographical Indications Law	National laws/policies on indigenous peoples' rights and minorities
AVAILABILITY Possibilities either for feeding oneself directly from productive land or other natural resources or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.						
Are there provisions/practices related to: Safeguards with respect to continued farmers' right to reuse and save seeds/plant varieties. Special protection or safeguards with respect to 'domestic varieties'.	Are there regulations/practices related to: Distribution of seeds via seed fairs. Exceptions for specific varieties. Specific classification for 'domestic & farmers' varieties'.	Are there provisions/practices related to: Exceptions to 'domestic varieties' and special safeguards for 'farmers' varieties'. Stringent requirements for agrochemicals, including no 'new use', disclosure of origin and exceptions to natural and known fertilizers.	Are there provisions/practices related to: Specific provisions related to protected areas and agricultural lands.	Are there provisions/practices related to: Provisions granting rights to farmers to reuse and save seeds and plant varieties not only for agricultural purposes but also for select new varieties.	Are there provisions/practices related to: Specific provisions for varieties that are protected as indigenous or sacred.	Are there provisions/practices related to: Provisions related to traditional knowledge, customary law and continued access to market systems and seeds. Right to reuse and save seeds as well as plant varieties.

* While this template is based on principles of the right to food as envisaged under General Comment No.12, policy makers and stakeholders are advised, if needed, to refine the Matrix Template as per principles under the right to food as established under national laws, including constitutional rights or regional human rights mechanisms that the country may be party to.



Checklist based on the right to food as under General Comment No. 12 (Art. 11, para. 1 and 2 ICESCR) E/C.12/1999/5*

National Plant Variety Protection Law	National Seed Laws	National Patent law as applicable to plants and / or agrochemicals (TRIPS-plus)	National Biodiversity Law	National Farmers' Rights (Separate regime or included within another)	National Geographical Indications Law	National laws/policies on indigenous peoples' rights and minorities
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ACCESSIBILITY

Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should not threaten or compromise the attainment and satisfaction of other basic needs. It applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. It also pays attention to special programmes for socially vulnerable groups such as landless persons, women farmers, etc.

Physical accessibility implies that adequate food must be accessible to everyone, including the physically vulnerable (infants, young children, elderly, physically disabled, terminally ill, etc.); victims of natural disasters and people living in disaster-prone areas may need special attention and sometimes priority consideration with respect to accessibility of food.

Are there provisions/practices related to:	Are there regulations/practices related to:	Are there provisions/practices related to:	Are there provisions/practices related to:	Are there provisions/practices related to:	Are there provisions/practices related to:	Are there provisions/practices related to:
Exceptions to domestic varieties specifically grown by women farmers.	Seed pricing review mechanism.	Exceptions to domestic varieties specifically grown by women farmers.	Classification of endangered varieties and/or varieties grown in home gardens.	Granting access to domestic and home varieties without any restrictions.	Special provisions or concessions for home garden varieties.	The right to cultivate own traditional varieties even if one of the varieties has been used to produce a protected commercial variety.
Exceptions to home gardens.	Classification of seeds correlated with biodiversity classification.	Varieties and plants grown in home gardens cannot be patented.	Government grants for home garden varieties.		Specific protection for varieties grown by women's collectives or women's cooperatives.	
Compulsory/Government licenses applicable in case of disasters.	Access programmes for women's cooperatives.	Compulsory/Government licenses, including for quick and free distribution in case of disasters, special attention, etc.				

* While this template is based on principles of the right to food as envisaged under General Comment No. 12, policy makers and stakeholders are advised, if needed, to refine the Matrix Template as per principles under the right to food as established under national laws, including constitutional rights or regional human rights mechanisms that the country may be party to.



Review Matrix

Checklist based on the right to food as under General Comment No. 12 (Art. 11, para. 1 and 2 ICESCR) E/C.12/1999/5*

National Plant Variety Protection Law	National Seed Laws	National Patent law as applicable to plants and / or agrochemicals (TRIPS-plus)	National Biodiversity Law	National Farmers' Rights (Separate regime or included within another)	National Geographical Indications Law	National Indigenous Laws/ Community Rights
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ADEQUACY

Quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture. **Dietary needs:** Implies that the diet as a whole contains a mix of nutrition for physical and mental growth, development and maintenance and physical activity that meet humans' physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns while ensuring that changes in availability and access to food supply do not harm dietary composition and intake. **Free from adverse substances:** Sets requirements for food safety and for a range of protective measures by public and private means to prevent contamination of foodstuffs through adulteration and/or bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must be taken to identify and avoid or destroy naturally occurring toxins. **Cultural or consumer acceptability:** Implies the need also to take into account, as far as possible, perceived non-nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.

Are there provisions/practices related to:	Are there regulations/practices related to:	Are there provisions/practices related to:	Are there provisions/practices related to:	Are there provisions/practices related to:	Are there provisions/practices related to:	Are there provisions/practices related to:
No exclusive rights for data related to quality.	Reliable data in public domain — necessary to establish balanced food safety measures.	No exclusive rights for data related to quality Exceptions to natural fertilizers.	Classification and updated information on varieties that follow traditional dietary needs.	Granting free access to reliable data and to seeds that are culturally acceptable by farmers.	Specific protection for community-grown varieties, specifically those that follow cultural and traditional dietary needs	Government incentives for continued production of the said varieties
No exclusive rights over classified dietary varieties.	Government concessions for farm-saved or farm-grown seeds.	Government concessions/ incentives for use of seeds culturally acceptable.				
Disclose prior informed consent on using source of knowledge.		Disclose prior informed consent on using source of knowledge.				

* While this template is based on principles of the right to food as envisaged under General Comment No. 12, policy makers and stakeholders are advised, if needed, to refine the Matrix Template as per principles under the right to food as established under national laws, including constitutional rights or regional human rights mechanisms that the country may be party to.



Checklist based on the right to food as under General Comment No. 12 (Art. 11, para. 1 and 2 ICESCR) E/C.12/1999/5*

National Plant Variety Protection Law	National Seed Laws	National Patent law as applicable to plants and / or agrochemicals (TRIPS-plus)	National Biodiversity Law	National Farmers' Rights (Separate regime or included within another)	National Geographical Indications Law	National Indigenous Laws/ Community Rights
SUSTAINABILITY						
This is intrinsically linked to the notion of adequate food or food security, implying that food is accessible for both present and future generations.						
Are there provisions/ practices related to: Specific safeguards for varieties in national seed and community databases and registries.	Are there regulations/ practices related to: Establishing database on seeds that are particularly vulnerable to climate change, varieties under threat of eradication, etc.	Are there provisions/ practices related to: Databases of varieties in and derivations of such varieties that may not be patented.	Are there provisions/ practices related to:	Are there provisions/ practices related to: Provisions related to equitable participation in sharing benefits arising from use of plants.	Are there provisions/ practices related to: Disclosure of any information on climate adaptability and diversity in applications — no exclusive rights for this knowledge.	Are there provisions/ practices related to: Establishing community registries with specific information on knowledge regarding climate adaptability of seeds/varieties.

*While this template is based on principles of the right to food as envisaged under General Comment No.12, policy makers and stakeholders are advised, if needed, to refine the Matrix Template as per principles under the right to food as established under national laws, including constitutional rights or regional human rights mechanisms that the country may be party to.



Checklist based on other critical human rights issues such as the rights of indigenous peoples and minorities, including traditional knowledge (UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169¹)

Checklist based on Human Rights Principles** — to be applied to all national laws assessed in general

National Plant Variety Protection Law	National Seed Laws	National Patent law as applicable to plants and / or agrochemicals (TRIPS-plus)	National Biodiversity Law	National Farmers' Rights (Separate regime or included within another)	National Geographical Indications Law	National Indigenous Laws/ Community Rights
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NON DISCRIMINATION AND EQUALITY

All human beings are entitled to their human rights without discrimination of any kind, on the grounds of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

Examples of common questions to be answered for all laws:

- Does the law sufficiently reflect balances between various groups?
- Do any of the provisions provide any quantitative or qualitative information on population groups that are particularly vulnerable or marginalized?
- Are there or have there been programmes before or after passing of the law that considered disaggregated data and analysis of vulnerable groups and the law's effects on them?
- Have programmes been established to offset any harmful effects of the law on vulnerable groups?

PARTICIPATION AND INCLUSION

All human beings are entitled to their human rights without discrimination of any kind, on the grounds of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

Examples of common questions to be answered for all laws:

- Before the passing of the law, was it ensured that at least a representative number of people, including from particularly vulnerable groups (e.g., farmers, indigenous peoples, local communities, women farmers), were meaningfully and actively involved in the creation of the law?
- How was it ensured that people's inputs have and shall continue to be considered in findings, decisions, etc.? Are programmes or consultative groups in place?

**These principles are those outlined by the UN Common Understanding on a Human Rights-Based Approach (2003) and derived from the Universal Declaration of Human Rights and nine core international human rights treaties. Only three of the six principles are used here; however, national review assessment has the flexibility to use, as deemed applicable, any human right principle to any of the assessed national laws.

1 [Note: Leave table blank for participation at least to consider other human rights issues in addition to right-to-food and human rights principles]



Checklist based on Human Rights Principles** — to be applied to all national laws assessed in general

National Plant Variety Protection Law	National Seed Laws	National Patent law as applicable to plants and / or agrochemicals (TRIPS-plus)	National Biodiversity Law	National Farmers' Rights (Separate regime or included within another)	National Geographical Indications Law	National Indigenous Laws/ Community Rights
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ACCOUNTABILITY AND RULE OF LAW

States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to initiate proceedings for appropriate redress before a competent court or other adjudicator, in accordance with the rules and procedures provided by law.

Examples of common questions to be answered for all laws:

- Which roles and responsibilities does the applicable administrative or legal framework give to the relevant state authorities? Are government authorities' responsibilities clearly defined at the local, regional, national levels? Are traditional authorities and customary governance systems recognized?
- Is official information accessible and are relevant processes transparent? Do groups and stakeholders have access to key information regarding the rules and regulations and status of applications for protection?
- Do those affected have access to a complaint/redress mechanism? How is implementation monitored to ensure that there are no unintended impacts on all groups? Are initial impact assessments conducted and are there regular monitoring and evaluation of programmes and services, especially to detect effects?

** These principles are those outlined by the UN Common Understanding on a Human Rights-Based Approach (2003) and derived from the Universal Declaration of Human Rights and nine core international human rights treaties. Only three of the six principles are used here; however, national review assessment has the flexibility to use, as deemed applicable, any human right principle to any of the assessed national laws.



STEPS AND CHECKLIST: PROVIDING A FRAMEWORK FOR AN INCLUSIVE PROCESS

STAGE 1: Pre-Assessment – Scoping and Mapping

Steps	Checklist	
1.1. Applicability of the Process	What are/is the national law and policies that provide/s for protection/promotion of biodiversity, access to plant varieties and human rights-related issues? Existence of national laws. (At least one must be checked.)	<ul style="list-style-type: none"> • Plant Variety Law; • Seed Law; • Biodiversity Law; • Patent Law (specific provisions regarding plants/organisms); • Specific national laws and policies on farmers', indigenous peoples' or minorities' rights; • National Farmers' Community/Indigenous governance systems and customary law (specific provisions regarding management of knowledge in plants and plant varieties); • Geographical Indications.
	Have the laws been implemented? Status of the laws. (At least two must be checked.)	<ul style="list-style-type: none"> • To be implemented (WTO status); • Not implemented; • Already implemented; • Undergoing implementation/national parliamentary review.
	Why the assessment?	<ul style="list-style-type: none"> • Expert Review requested (by government or concerned stakeholder).
1.2. Identification of Key Stakeholders	Who is likely to assist the process in the short, medium and long terms? <ul style="list-style-type: none"> • Intergovernmental • Government • National experts/Key CSO • Indigenous peoples 	<ul style="list-style-type: none"> • UNDP Bureau for Development Policy; • UNDP Country Office; • UN Agencies designates (including those agencies working closely with the UNDP Country Office on these issues, such as UNEP and FAO) Identification of focal points; • Key representatives from government/ministry officials: <ul style="list-style-type: none"> • Agriculture, • Environment, • Patent office, • Justice Department, • Foreign Affairs, • Trade, • Related departments, • National human rights institutions. • Key national experts from the following fields: <ul style="list-style-type: none"> • Farmers' rights; • Environmentalists; • Patent, international; • intellectual property law; • National plant varieties, seed and biodiversity laws; • National trade priorities; • Indigenous knowledge; • Human rights, specifically human right to food, indigenous peoples' and minorities' rights.



STAGE 1: Pre-Assessment – Scoping and Mapping

Steps	Checklist	
	<p>Who will likely be affected by the law?</p> <p>Focal points must assist in identifying key counterparts and representatives among all stakeholders.</p>	<ul style="list-style-type: none"> • Farmers' groups (including sustenance farmers and women farming cooperatives); • Indigenous peoples (specific reference to those who use traditional knowledge in small-scale farming and food trade); • Private enterprises (specific reference to small-scale food producers and organic farming units); • Agricultural research institutes; • Others (please specify).
1.3. Preparation of the National Stakeholder Consultation	What are the aim, agenda and timeframe of the consultation?	<ul style="list-style-type: none"> • Preparation of a concept note and invitation; • Find common understanding on situational analysis. The broad focus of the agenda must be twofold: 1) How are plant varieties protected and 2) how are they accessed and how does this impact the human rights of communities, national food security and biodiversity?
	<p>Include presentations and panel discussions on all key issues (these issues are not exclusive, but a broad representation).</p> <p>Meeting may last 2-3 days.</p>	<ul style="list-style-type: none"> • National Plant Variety law (status and provisions) and related intellectual property laws, if any, patents and GIs; • National Biodiversity and Seed laws as related to plant variety protection and access; • Traditional knowledge and recognition in national laws, policies and plans; • National trade priorities, including current bilateral and regional trade negotiations and obligations with relation to plant rights; • Status of agro-business as it relates to small farmers, traditional knowledge/seed policies and human right to food and other key human rights issues; • International rhetoric/discussions on the issues as they affect national implementation; • Analysis of laws in countries in the region for learning lessons and South-South cooperation.



Steps and Checklist

STAGE 2: Assessment I – The National Stakeholder Meeting

IPF Steps	IPF Checklist	
2.1. Plenary Presentation and Discussions	<p>How can maximum balance be achieved in the presentations and discussions?</p> <p>The sessions must be moderated by an independent moderator.</p>	<ul style="list-style-type: none"> • Presentations must be based on issues already set out. • Same as above. • Presentations must last 15 minutes in a panel discussion format with a Q&A from the floor. However, this and the overall format may be flexible and consider the different cultural backgrounds of participants. • The issues broadly identified may be represented by two speakers, one from each side of the spectrum, to provide for a more balanced discussion. • For example: A panel discussion on farmers' rights must include a presenter from the private enterprise and a representative from the farmers' group. OR • For example: The session on plant rights and the right to food must include a national human rights expert and a representative from the Ministry of Agriculture/plant rights department.
2.2. Group Break-out Session	<p>How do we further ensure inputs from all stakeholders?</p> <p>The participants are broken into small diverse groups and are given around 15-20 minutes to work and report back on aspects including, but not restricted to, the following:</p> <ul style="list-style-type: none"> • Has the overlap of plant variety rights been consistent in all national laws? • Have said national laws and provisions within them used all available flexibilities in international treaties and conventions such as CBD, TRIPS, & human rights conventions? • Are there any additional aspects to consider, such as farmers' varieties registry or autonomy of research institutes? 	<ul style="list-style-type: none"> • The groups may work on the <ul style="list-style-type: none"> • Key takeaways, • Key concerns, • Key action points. • These key points are reported back to the plenary and then collated into a key action pointer.



STAGE 2: Assessment I – The National Stakeholder Meeting

IPF Steps	IPF Checklist	
2.3. Provide pointers to the Review Stage, establishing key groups	<p>Have national strategies with national plant rights and/or with regard to legal/policy reform-related law(s) been developed? If so, do they require a review?</p> <p>If yes, what groundwork must be done for constructive follow-up?</p> <p>What are the key outputs of this meeting?</p>	<ul style="list-style-type: none"> • Establish a focus group responsible for follow-up work of action to set up the Review Assessment stage. • The focus group must include a representative from: <ul style="list-style-type: none"> • UNDP Country Office • Key CSO • Traditional authorities and representatives from indigenous peoples/minorities • Establish a working group to prepare a review pointer document collated from the break-out session. This group shall include representatives from: <ul style="list-style-type: none"> • UNDP Country Office • UNDP Global Project • Key CSO • Traditional authorities and representatives from indigenous peoples/minorities • Review pointer to benefit from government and national expert comments. • Release review pointer on a public domain such as UNDP website as an output of the meeting. • A report of the meeting to be submitted for records.



Steps and Checklist

STAGE 3: Assessment II – The Review

Steps	Checklist	
3.1. Using the Review Matrix*	The Focus Group to identify and prepare the groundwork for assessment of national laws	<ul style="list-style-type: none"> List and provide copies of various national laws to be assessed Also prepare for those national or local laws that may have overlapping provisions related to protection of and access to plants and plant varieties Provide an overview of the laws to be assessed and also brief participants using the Memo
	The participants to be broken into groups to assess the laws and use the Review Matrix. Each group to appoint a rapporteur to report on findings concerning the existence or non-existence of related provisions	<ul style="list-style-type: none"> Each group shall be restricted to 1 or 2 laws for assessment using the Review Matrix Groups shall contain members representing the greatest diversity of stakeholders as possible
3.2. Preparing a short synopsis of the assessment process and prepping for the Policy Review Report	<p>All the assessment findings as reported back to the plenary must inform discussions on national food security and biodiversity</p> <p>Is the analysis from review pointers and desk review of the laws enough?</p>	<ul style="list-style-type: none"> While the Matrix should be used for only 'pointing out' imbalances, possible impacts must be discussed in plenary Further consultations with stakeholders, if required Further interviews with government representatives, if needed
3.3. Develop Policy Review Report	<p>What is the national landscape with regard to the law and practice on human rights and plant varieties?</p> <p>What are the significant overlaps with regard to protection of plant varieties and related human rights issues in all related national laws?</p> <p>Have they sufficiently taken into consideration available flexibilities within international obligations?</p> <p>Is there scope for creating further flexibilities that consider all stakeholder concerns?</p> <p>What effects do laws and/or any further developments have on national biodiversity, food security and rural livelihoods?</p> <p>How can these effects be mitigated?</p>	<ul style="list-style-type: none"> Collate all findings into a single review report Prepare an outline of the review based on available flexibilities Recommend new provisions for flexibilities where possible (derived from PRA Matrix and/or other national laws) Establish mitigation indicators for potential impacts (such as potential bilateral Free Trade Agreement) OR compliance with the upcoming ABS regime Analyse the findings as they relate to the three main areas of concern, i.e., to biodiversity, food security and farmers livelihoods Provide policy options for an integrated national response

* Refer to the Right-to-food-based Review Matrix (page 8) in this document.



STAGE 3: Assessment II – The Review

Steps	Checklist	
3.4. Technical Consultation on Policy Review Report	How useful is the report?	<ul style="list-style-type: none"> • Submit Report to the government.
	Technical validation meeting involving the same stakeholders should be set up.	<ul style="list-style-type: none"> • Set up a country focal point or team to carry out post-assessment work.

STAGE 4: Post-Assessment – Policy and Programmatic Intervention

Steps	Checklist	
4.1. Programmatic Approach to Policy Intervention	How can UNDP sustain its support for the protection of plant varieties and related human rights issues?	<ul style="list-style-type: none"> • Establish country presence and create programmes specifically oriented towards the issues.
	What strategy must the UNDP Country Office apply, given the national focus and development plan?	<ul style="list-style-type: none"> • Create new activities within programmes related to biodiversity/food security/ indigenous communities. • Assign someone to coordinate an update of the review report every two years.
4.2. Policy intervention to post-assessment	How can the review report influence policy making? A country focal point/team established can continue the work.	<ul style="list-style-type: none"> • Follow up on parliamentary and constitutional process with regard to national law <ul style="list-style-type: none"> • Review • Develop proposals for new laws/policies • Change and amendment
	Policy interventions (National & multilateral) (Hard/soft policy)	<p>Use review report to provide advice on various national matters, including</p> <ul style="list-style-type: none"> • Promotion of indigenous peoples' rights, minorities' rights, intellectual property rights; • Commercialization of small-scale farming; • Commercialization of seeds and effects on rural livelihoods and national women farmers; • Poverty indicators in cases of small-scale farming; • Status of food research institutes; • Assistance to farming; • Multilateral negotiations on issues regarding climate change, biodiversity, access and benefit-sharing regime; • National analysis and responses to food security.



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