



THE NOTES OF SUD

The Right to Seeds: a fundamental human right for sustainable and equitable food systems

As the first link in agricultural activity, seeds are a crucial issue for family farmers. Since the dawn of agriculture, farming communities have used selection and exchange to freely develop and use species and varieties that meet their needs.



1 TRADE LEGISLATION INCOMPATIBLE WITH THE CHARACTERISTICS OF FARMERS' SEEDS

As long as seeds were produced and exchanged locally, “[t]he collective rights to use community seeds [were] respected enough within each community for such use to be regulated.”¹ However, with the development of commodity seed systems, trade legislation has emerged to “guarantee the quality” of seeds.

Thus, many countries make the marketing of a variety

conditional on its inclusion in an official catalogue. For this, the variety must meet three criteria: it must be different from those already present in the catalogue (distinction), the plants of which it is composed must have the same characteristics (uniformity), and it must be identical from one year to the next (stability).

These criteria guide the selection of varieties adapted to the industrial model and exclude farmers’ seeds that have intra-varietal diversity and evolve according to soils, climate, and selections. >>>

1. La Via Campesina and GRAIN, *Seed Laws that criminalise farmers: Resistance and fightback*, 2015. p. 7.

WHAT IS MEANT BY “FARMERS’ SEEDS”?

Farmers’ seeds are a common good and part of a co-evolution involving crop species, farming communities, and local territories. These seeds come from dynamic plant populations capable of evolving according to growing conditions and environmental pressures. They are selected and multiplied with natural, non-transgressive methods of the plant cell and are within the reach of farming communities. Farmers’ seeds, along with the knowledge and know-how associated with them, are freely exchangeable in accordance with the rights of use determined by the collective bodies that promote them.² The quality, accessibility, diversity, and adaptability of these seeds grant them a key role in ensuring the autonomy, resilience, and food security of farming communities.

From the 1950s, the rise of industrial agriculture was supported by legislation promoting an increased role for industry in seed production. For around 30 years, such legislation has been spreading under pressure from the countries of the Global North, which are seeking to disseminate the productivist agricultural model throughout the world. Today, the global seed market is dominated by four companies representing 60% of the market³; this threatens the freedom of farmers to preserve, use, exchange, and sell their seeds.

On the other hand, the right of farmers to seeds is recognized by several international legal instruments. In 2018, this right was enshrined as a human right by the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), which assumes a crucial role in ensuring those people’s rights to food and health and in providing for the sustainable use of biodiversity, on which the future of our food systems depends.

These standards were established in the countries of the Global North and have spread throughout the world⁴ despite their unsuitability to certain contexts. But farmers’ seeds still represent 80 to 90% of the seeds sown in Africa and 70 to 80% in Asia and Latin America.⁵

Some organizations, such as Réseau Semences Paysannes, are warning about the impact of these rules, which marginalize farmers’ varieties and severely restrict the diversity of available varieties. According to FAO, 75% of crop diversity disappeared between 1900 and 2000.⁶

2 APPROPRIATION OF LIVING ORGANISMS BY COMMERCIAL INTERESTS

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1995) requires States to establish an intellectual property regime on plant varieties.

The most widely adopted framework is the Convention for the Protection of New Varieties of Plants (UPOV). It introduces a Plant Variety Certificate (PVC), which initially granted protection mainly limited to marketing. The last revision of the Treaty in 1991 considerably extended “breeders” rights to the exchange and use of protected varieties.

UPOV was adopted by 6 European countries in 1961. There are now 78 States party to it, and many countries adopt legislation based on UPOV without having ratified it. This widespread application is largely the result of the trade agreements of the European Union and the United States, which impose the adoption of UPOV-compliant intellectual property regimes⁷ despite the possibility offered by TRIPS to opt for systems adapted to local specificities.

These intellectual property frameworks specific to plant varieties were designed because the field of living organisms was long considered non-patentable.⁸ However, with the development of biotechnology, it has become possible to patent genetic information and technical or microbiological production processes⁹ for which protection extends to all plants derived from that biotechnology.¹⁰ This is how patents on genetically modified organisms (GMOs) have increased in number.

The exclusive rights of patents and PVCs prohibit any production of farm seeds that come from varieties or plants subject to these exclusive rights, or they make production conditional on the payment of royalties.¹¹ This situation is all the more worrying because it is accompanied by the development of databases of “digital sequence information”,¹² which enables multinationals to privatize genetic resources that go back thousands of years.

2. Réseau Semences Paysannes definition.

3. Report of the Special Rapporteur on the Right to Food, *Seeds, right to life and farmers’ rights*, 2021, p. 4.

4. SOL, ROPPA, CNCR, CFSI, Oxfam Belgique, Humundi, and SOS Faim Luxembourg, *Afrique de l’Ouest – Union européenne : Faire germer une coopération et des échanges agricoles équitables et durables*, 2023, p. 30.

5. La Via Campesina and GRAIN, *op. cit.*, 2015, p. 9.

6. Centre d’actualités de l’ONU, *FAO : la perte de biodiversité végétale menace la sécurité alimentaire globale*, 2010.

7. Coordination Sud, *THE RIGHT TO SEEDS: a fundamental right for small farmers!*, 2017, p. 7.

8. InFOGM, *Patents on life, a US “invention”*, 2022.

9. Article 2 of Directive 98/44/EC on the legal protection of biotechnological inventions.

10. From an interview in French with Amélie Hallot Charmasson, legal coordinator at Réseau Semences Paysannes.

11. Under Article 14 of European Regulation No. 2100/94, the reproduction of protected varieties is prohibited, except for 23 species for which it is authorized on the condition of “equitable remuneration to the holder”, with an exemption for farmers producing less than 92 tons.

12. Report of the Special Rapporteur on the right to food, *op. cit.*, 2021, p. 14.

GMO DEREGULATION

Under European law, GMOs are subject to strict risk assessment, labeling, and traceability regulations.¹³ However, with the emergence of new genomic editing techniques, commonly known as “New Genomic Techniques” (NGTs) or “New Breeding Techniques” (NBTs), the European Commission would like to deregulate the marketing and cultivation of these new GMOs. It considers these techniques as more accurate and therefore less risky – and also necessary to deal with the climate emergency. On February 7, 2023, the Court of Justice of the European Union handed down a ruling that also paved the way for deregulation by considering that GMOs obtained by random *in vitro* mutagenesis can be exempted from regulatory obligations.¹⁴

However, “*all genome-editing techniques involve in vitro cultivation and uncontrolled genetic mutations, with no progressive co-evolution between the human-plant-territory elements of the system. Because of this, we lack sufficient hindsight to understand the potential environmental and health impacts. These risks are all the more unacceptable because they are accompanied by genetic contamination of the seeds of farmers who choose organic farming and the precautionary principle. Finally, GMOs and patents feed on each other: this deregulation would increase the appropriation of living organisms.*”¹⁵

This legal muzzling of seeds, as well as the biological muzzling of sterile F1 hybrid seeds, marginalize farmer innovation and lock farmers into a cycle of indebtedness and dependence. Commodity seed performance depends on expensive inputs such as fertilizers, pesticides, herbicides, and fungicides. The cost of their harmful effects on the environment and health comes on top of the cost of seeds that must be bought again each year. It is easy to see why seeds play such a crucial role in the agrifood industry: the same four companies that account for 60% of the global seed market control 75% of the global pesticide market.¹⁶

In 2004, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) came into force. This treaty recognizes the right of farmers to conserve, use, exchange, and sell seeds, as well as their right to share in the benefits arising from the use of plant genetic resources and the traditional knowledge associated with them. These rights are based on their past, present, and future contributions to seed conservation and improvement. Unfortunately, the treaty leaves too much room for maneuver for States in its implementation.¹⁷

To respond to these challenges, the global peasant movement, La Via Campesina, has worked for better recognition of the rights of peasants. This approach culminated in the adoption of the UNDROP Declaration by the United Nations on December 17, 2018. Article 19 of the Declaration recognizes the right of peasants and other people working in rural areas to seeds, which is a significant step forward in several respects.

3 RECOGNITION OF THE RIGHT TO SEEDS AS A HUMAN RIGHT

First, we can see the very comprehensive definition given to the right to seeds in the Declaration. Article 19 recognizes the right of peasants and other people working in rural areas to control, protect, and develop their own seeds and traditional knowledge, as well as to use, exchange, and sell farm seeds. It also imposes an obligation on States to support peasant seed systems and participation by peasant communities in agricultural research.

Next, the Declaration recognizes that the rights of peasants have the value of human rights. This consequently allows for the setting up of specific monitoring mechanisms. For example, the United Nations Human Rights Council has created a working group to monitor the implementation of the Declaration. In accordance with the principle of the primacy of human rights, this also implies a higher legal value of the rights of peasants over other standards, both national and international.¹⁸

Thus, although non-binding, the Declaration is a political commitment at the highest level and a tool for interpreting binding law.¹⁹ The Governing Body of ITPGRAP has affirmed the need to take it into account in the implementation of the treaty. Furthermore, the Supreme Court of Honduras declared the country’s Plant Variety Protection Law, modeled on the UPOV model, unconstitutional, basing its decision largely on the Declaration.²⁰

UNDROP is also a powerful advocacy tool for:

- protecting agricultural systems in the Global South against agribusiness lobbies and encouraging countries in the Global North to reform their international trade policies; and

13. Directive 2001/18; Regulation 1829/2003

14. InfOGM, OGM – La justice européenne ouvre la porte à la déréglementation, 2023

15. From an interview in French with Maxime Schmitt, SOL coordinator for the Maison des Semences Paysannes Maralpines

16. Report of the Special Rapporteur on the right to food, *op. cit.*, 2021, p. 4.

17. From an interview with Christophe Golay, researcher at the Geneva Academy of Humanitarian Law and Human Rights.

18. Fulya Batur and Christophe Golay, *Le droit aux semences en Afrique*, 2023, p. 5.

19. Article 2.4 of the Declaration.

20. Defending Peasants Rights, *Honduras: Supreme Court uses UNDROP article 19 on the right to seeds to declare unconstitutional the Monsanto Law*, 2023.

- real recognition of farmers' seeds, their role in the fight against the climate crisis, and the need to conserve and promote them. To this end, it is essential to support, strengthen, and revitalize farmers' seed systems.

4 PROTECTING PEASANT SEED SYSTEMS AND FAMILY FARMING TO MAKE THE RIGHT TO SEEDS A REALITY

Farmers' varieties are inextricably linked to the farming communities that select and conserve those varieties and to the knowledge, know-how, and practices of those communities. Thus, *"the preservation of farmers' seeds is inseparable from the recognition and protection of farmers' seed systems, that's to say seed management and selection methods based on traditional knowledge and practices as well as collective procedures for regulating quality and circulation."*²¹

Peasants select, multiply and reproduce their seeds directly in the field and then exchange or market their surpluses, enabling the mixing and evolution of farmers' varieties. These systems help ensure farmer autonomy and the adaptation of varieties to the needs, local areas, and food traditions. Peasant seed systems are therefore inseparable from farmers' "seed-to-plate" practices.

The protection of farmers' seeds therefore implies the protection of farmers' rights in the face of intellectual property rights and the creation of appropriate trade

and marketing regimes. However, it above all implies the defense and promotion of family farming in the face of the hegemonic will of the productivist model.

Against a backdrop of a climate crisis affecting the countries of the Global South in particular, the characteristics of farmers' seeds (i.e., that are free of rights, diversified, and adaptable) are crucial for meeting climate, environmental, and social challenges. They cannot be replaced by the technological "solutions" promoted by agribusiness. The advocacy carried out by farmer and citizen movements on this issue is bearing fruit: the West African Peasant Seed Committee (COASP) has highlighted a growing recognition of the importance of farmers' seed systems in West Africa.²²

5 CONCLUSIONS

Given the excessive use of plant protection products, the development of biotechnology and the associated risks, and the privatization and standardization of seeds, it is urgent to guarantee farmers the right to choose the seeds they consider economically, ecologically, and culturally viable and to protect them from contamination by other, genetically modified plants. Farmers' seeds are not representative of outdated agriculture. On the contrary, they are a solution for setting up resilient food systems capable of adapting to climate change and offering decent living conditions to family farming communities. ●

21. From an interview in French with Anne Berson Dena, Mali focal point for COASP.

22. *Ibid.*



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