

# RESEARCH BRIEF

## THE RIGHT TO SEEDS AND FOOD SYSTEMS

### KEY MESSAGES

- Certain natural resources should be considered common goods due to the importance they have as fundamental elements for humanity. These are water, air, land and biodiversity, including seeds. Seeds are crucial for food production and hence for the maintenance of human life.
- The future of food systems worldwide depends on the conservation and sustainable use of agrobiodiversity. The conservation and improvement of seeds go hand in hand with the maintenance of socioeconomic and cultural dynamics developed by peasants and their communities for time immemorial.
- Strategies for the protection of global seed diversity must incorporate measures to protect peasants and their communities as well as seed-related cultural activities, customary and religious practices, innovations, techniques and knowledge.
- International human rights law establishes key principles and global standards for the protection of the most fundamental rights of peasants and their communities, as well as indigenous peoples and traditional local communities. These include the democratic and ecologically responsible governance of natural resources, the respect for peasants' rights to seeds and the safeguarding of their seed-related cultural heritage.
- States must respect, protect and fulfil peasants' rights to seeds. The implementation of peasants' rights to seeds is critical to achieving food sustainability. This right should be fully incorporated into domestic normative and policy frameworks.
- Governments must ensure that the development and use of new seed-related technologies, such as genetically-modified seeds, do not pose threats to peasants' seed diversity. This requires the adoption of specific measures to control the import of genetically modified seeds and their use in crops within states' territory.
- National laws and policies must guarantee that the production, commercialization and use of industrial seeds do not negatively affect the availability and accessibility of peasants' seeds and their traditional systems of collective use and management.

AUGUST 2020 | ADRIANA BESSA AND KATYUSSA VEIGA

## INTRODUCTION

The advancement of agro-industrial food systems worldwide has taken place alongside the fast development of new norms, policies and institutions designed to govern their operation. At the same time, non-industrial food systems have remained largely neglected by laws and public policies and have had to be accommodated by normative bodies that have either overlooked the different dynamics in which they are embedded or have contradicted the values and customary norms that govern them. In recent years, concerns over the depletion of agrobiodiversity, global food security, the rights of peasants and the conservation of seed-related cultural heritage have called for a revision of these rules.

The reorientation of laws and policies, however, is all but uncomplicated. This is particularly so with respect to complex and interdisciplinary matters such as seed engineering and intellectual property rights, norms for seed access and control and techniques for the preservation and enhancement of seed diversity. The fragmentation of international law, the lack of coordination of the different intergovernmental agencies and pressures of the economic and political kind are examples of factors that slow down the process at the international level and lead to unclear guidance for national governments.

This research brief identifies international legal standards that should be taken into account by law- and policy-makers when developing normative and policy frameworks governing seeds and food systems.

## THE UPOV CONVENTION AND PATENTS ON SEEDS

The green revolution has triggered the adoption of international agreements for the protection of the commercial interests of the seed industry across countries. The International Union for the Protection of New Varieties of Plants (UPOV, from the French 'Union internationale pour la protection des obtentions végétales') is an intergovernmental organization established by the International Convention for the Protection of New Varieties of Plants (UPOV Convention). It now counts on

74 member states. The convention was adopted in 1961 and revised on three occasions: 1972, 1978 and 1991. The central purpose of the UPOV Convention is to ensure that plant breeders are financially rewarded for the development of new plant varieties through intellectual property rights. In order to be eligible for legal protection in one of the UPOV member states, plant breeders must provide evidence that the plant variety fulfills four criteria: it has to be new and never have been commercialized, clearly distinct (D) from other known varieties, uniform (U) and homogeneous and stable (S) after successive reproductions (DUS criteria). New plant varieties are protected for 20 to 25 years. In countries such as the United States, breeders' rights are protected through patents.

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In the most recent versions of the UPOV Convention, limitations on breeders' rights have been prescribed to address the apparent injustice: the 'farmers' privilege' and the 'breeder's exemption clause'. These allow the saving and replanting of protected seeds under certain conditions, the use of a protected variety for the development of new ones and the private use of protected varieties for non-commercial purposes. Not members of UPOV, India and Thailand have gone further and determined benefits are shared with peasants and local communities anytime traditional varieties are used in industrial breeding.

## THE CONVENTION ON BIOLOGICAL DIVERSITY AND PROTOCOLS

The Convention on Biological Diversity (CBD) was adopted in 1992 with the aim of promoting the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. With 196 states parties, this treaty determines that even if states have sovereign

rights over their own biological resources, the conservation of biological diversity, including seed diversity, is a common concern of humankind. Therefore, it is states' responsibility to adopt relevant national strategies as well as to integrate seed conservation and sustainable use in sectoral and cross-sectoral plans, programmes and policies. The CBD establishes a number of state obligations of relevance to seed governance, such as the duty to promote research and adopt in situ and ex situ conservation measures, protect and encourage customary use by indigenous peoples and traditional local communities and establish and maintain education and training programmes as well as information exchange, taking into account not only existing scientific but also traditional and ancestral knowledge.

In situ conservation measures include the conservation on-farm of native and domesticated seeds and incentives for food systems that enhance agrobiodiversity and apply ecological farming principles and techniques. Ex situ conservation measures include the creation of inventories and seed banks at community and state levels.

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CBD States Parties have adopted two supplementary protocols. The Cartagena Protocol on Biosafety (Cartagena Protocol) was adopted in 2000 and established measures to ensure that all handling, transport and use of living modified organisms, which include genetically-modified seeds, do not provoke adverse effects on biological diversity and human health. Special attention has been devoted to the risks posed by living modified organisms to the territories and livelihoods of indigenous peoples and traditional local communities, as well as the conservation of their traditional seeds. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol) was adopted in 2010 with the purpose of creating clear rules for agreements on access to genetic resources and associated traditional knowledge and benefit sharing. The

states parties to the protocol must take effective measures to guarantee that access to these resources and knowledge is dependent on the prior informed consent of peoples and communities that own them; participation in the benefits is fair and equitable; they observe mutually agreed conditions and abide by customary laws and community procedures.

## INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

The Food and Agriculture Organization's International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) is complementary to the CBD and establishes general rules for the conservation and sustainable use of plant genetic resources, including seeds, for global food security. The 129 states parties to this treaty have undertaken the obligation to adopt measures for seed conservation, exploration, collection, characterization, evaluation and documentation. This includes conducting studies and inventories, promoting collection systems and supporting farmers, indigenous peoples and traditional local communities in the conservation of their seeds. Moreover, the pursuit of agricultural policies that promote the development and maintenance of diverse farming systems that enhance seed diversity is also encouraged. Likewise, states should strengthen capacity to develop seeds and plant varieties particularly adapted to marginal social, economic and ecological areas and expand the use of local crops, varieties and underutilized species.

The ITPGRFA recognizes farmers' contribution to the conservation and development of plant genetic resources worldwide and calls upon states to adopt effective measures to protect farmers' rights: the right to traditional knowledge associated with plant genetic resources, the right to a fair and equitable share of the benefits arising from their utilization and the right to participate in decision-making processes related to the conservation and sustainable use of these resources. Finally, the treaty recognizes the right of farmers to save, use, exchange and sell farm-saved seeds and propagating materials.

**The adoption of measures to facilitate the exchange and distribution of native and domesticated seeds among farmers is key to reforestation, the recovery of agrobiodiversity, the diversification of crops and ultimately the improvement of food security and nutrition.**

## THE UNITED NATIONS DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS

In 2018, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) was adopted. It has the ambitious mission of reducing structural discrimination against peasants and their social and economic marginalization. To face this challenge, UNDROP reaffirms human rights already recognized in international instruments and includes new rights so as to address peasants' specific needs. The right to land and other natural resources, the right to biological diversity, and of special relevance to this study, the right to seeds, are amongst the new human rights. As far as the right to seeds is concerned, the UNDROP endorses the CBD and the ITPGRFA and recognizes the rights of peasants to protect seed-related traditional knowledge, to receive benefits derived from their commercial use and to participate effectively in relevant decision-making, as well as to save, use, exchange and sell farm-saved seeds.

Moreover, the UNDROP clarifies states' human rights obligations related to seeds. These include the obligation to ensure that peasants have access to seeds of sufficient quality and quantity, to take measures to support peasant seed systems and promote the use of their seeds and agrobiodiversity and to invest in research and the development of orphan crops and seeds that account for peasants' needs and experience. Finally, states must guarantee that public laws and policies, especially those regarding the protection of plant varieties and intellectual property, as well as certification systems and seed marketing laws do not adversely affect peasants' rights or represent direct or indirect discrimination against them, their ways of life and their seed systems. This includes, for example, the promotion of participatory guarantee schemes for the certification of farmers' seeds.

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## THE UNESCO CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (Intangible Cultural Heritage Convention) was adopted in 2003 to establish mechanisms to protect cultural manifestations. The convention defines intangible cultural heritage as the 'practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage'. The instrument clarifies that '[t]his intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity'.

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The protection of 'social practices, rituals and festive events' and 'knowledge and practices concerning nature and the universe' are expressly included in the scope of the convention. All traditional knowledge, tales, legends and traditions related to seeds as well as the work of peasants in seed selection, collection, conservation and preparation for germination are part and parcel of the global intangible cultural heritage and must be protected. The states parties to the convention (178 as of June 2020) have undertaken the international obligation to adopt various measures to guarantee this heritage's safeguarding with the effective participation of pertinent peoples and communities as well as other interested non-governmental groups and organizations. Among the safeguarding measures are the identification and preparation of inventories; the adoption of public policies and creation of specialized institutions; the promotion of scientific, technical and artistic studies; the creation of educational and training programmes and enhancement of capacity building in safeguarding the intangible cultural heritage and non-formal means of knowledge transmission.

## **POLICY CONCLUSIONS**

The regulation of seed access and control crosscuts various domains of law as well as socioeconomic actors and interests: industrial development and trade, environmental conservation, food security, human rights and cultural heritage protection. It is the role of states to cooperate and adopt appropriate measures to conserve global seed diversity. This necessarily entails the adoption of laws and public policies that provide incentives for the conservation and sustainable use of seeds, the improvement of seed diversity and ecological farming techniques and the empowerment of peasants, indigenous peoples and traditional local communities through a human-rights based approach. There is an urgent need to promote more democratic food systems attuned to the human rights agenda. These must contribute to global food security without neglecting or abusing the fundamental rights of peasants, especially their right to seeds.

## RECOMMENDATIONS

- States must promote research and adopt in situ and ex situ conservation measures for seeds, protect and encourage their customary use and establish and maintain education and training programmes as well as information exchange, taking into account not only existing scientific but also traditional and ancestral knowledge.
- States must ensure that the handling, transport and use of living modified organisms, which include genetically-modified seeds, do not provoke adverse effects on traditional crops and peasants' livelihoods.
- States should promote the development and maintenance of diverse farming systems, strengthen capacity to develop seeds and plant varieties particularly adapted to marginal social, economic and ecological areas and expand the use of local crops, varieties and underutilized species.
- States must respect, protect and fulfill peasants' right to seeds. This includes the right to save, use, exchange and sell farm-saved seeds.
- States must take appropriate measures to support peasant seed systems and the use of their traditional seeds and agrobiodiversity. This includes more investment in research and development in tune with peasants' needs and experience.
- States must guarantee that public laws and policies, especially those regarding the protection of plant varieties and intellectual property, as well as certification schemes and seed marketing laws do not adversely affect peasants' rights or represent direct or indirect discrimination against them, their ways of life and their seed systems.
- States must adopt measures to safeguard intangible cultural heritage associated with seeds. These include the preparation of inventories, the creation of specialized institutions, the promotion of scientific, technical and artistic studies and the establishment of educational and training programmes.

## SELECTED REFERENCES ON THE RIGHT TO SEEDS AND FOOD SYSTEMS GOVERNANCE

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Convention on Biological Diversity

Food and Agriculture Organization, International Treaty on Plant Genetic Resources for Food and Agriculture

UN Declaration on the Rights of Peasants and Other People Working in Rural Areas

UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage

UPOV, UPOV Convention

## THE GENEVA ACADEMY

The Geneva Academy provides post-graduate education, conducts academic legal research and policy studies, and organizes training courses and expert meetings. We concentrate on branches of international law that relate to situations of armed conflict, protracted violence, and protection of human rights.

## TOWARDS FOOD SUSTAINABILITY: RESHAPING THE COEXISTENCE OF DIFFERENT FOOD SYSTEMS IN SOUTH AMERICA AND AFRICA (FOODSAF)

FOODSAF is a six-year project, launched in 2015 and funded by the Research for Development Programme (r4d) of the Swiss National Science Foundation (SNSF) and the Swiss Agency for Development and Cooperation. It aims to provide evidence-based knowledge for the formulation and promotion of innovative strategies and policy options that improve food sustainability. It is composed of five interconnected pillars: food security, the right to food and other related human rights, the reduction of poverty and inequality, environmental integrity and social-ecological resilience.

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