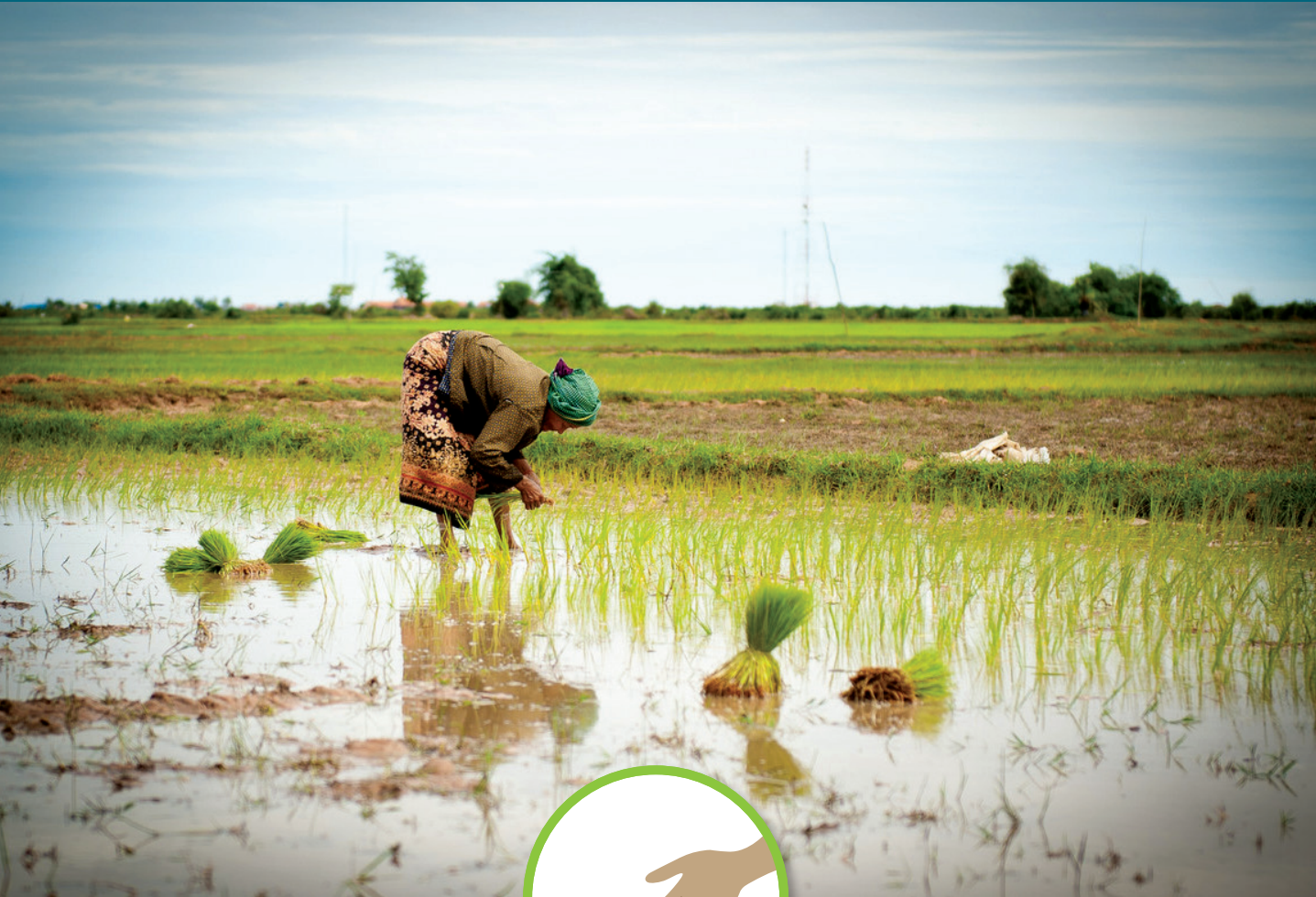


THE RIGHT TO SEEDS:

a fundamental right for small farmers!



May 2017

Coordination SUD (Solidarity - Emergency - Development)

is the national coordination of French NGOs of international solidarity. Founded in 1994, it brings together some 170 NGOs that carry out emergency humanitarian actions, development aid, environmental protection, human rights advocacy near disadvantaged populations, as well as actions of international solidarity education and advocacy.

The Agriculture and food commission (C2A) of Coordination SUD:

Within its mission to support the collective appeal by its members, Coordination SUD set up several working groups. The Agriculture and Food Commission (C2A) brings together NGOs working towards international solidarity, particularly to promote the right to food and to actively support family agriculture in policies impacting global food security: ActionAid France, Action contre la Faim, AEFJN, aGter, Artisans du Monde, AVSF, CARI, CCFD-Terre Solidaire, CFSI, CRID, Gret, Inter Aide, Iram, ISF AgriSTA, MADERA, Oxfam France, Plate-Forme pour le Commerce Equitable, Secours Catholique-Caritas France, SOL and UNMFREO, as well as a guest organization, Inter-réseaux.

C2A represents Coordination SUD at institutions dealing with agriculture and food, such as the Groupe interministériel français sur la sécurité alimentaire (GISA) and the Mécanisme de la société civile (MSC) for the Comité de la sécurité alimentaire mondiale (CSA).

Contact of the Agriculture and food commission:

Sébastien Chailleux, ActionAid Francia
Email: s.chailleux@peuples-solidaires.org

Contact Coordination SUD (Solidarity - Emergency - Development):

Site Web: www.coordinationsud.org
14, passage Dubail 75010 Paris • Tél. : +33 1 44 72 93 72

This document was drawn up by:

Pascal Erard (CFSI) with contributions by Maureen Jorand (CCFD-Terre solidaire), Morgane Laurent (CCFD-Terre solidaire) and Carline Mainenti (AVSF).



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Translated from French by Liz Libbrecht

Without seeds¹, there is no agriculture. Since the beginning of farming, over 10,000 years ago², farmers have selected the best seeds from their harvests to plant in the next season, to exchange, or to sell informally. In this way they select the plants, from the varieties they have, that really correspond to their needs and to the usual diet of the local population. Owing to this selection, these varieties evolve over the years to adapt to the soil in which they grow and to climate changes. These practices are thus conducive to constant improvement and diversification of the biodiversity cultivated.

Access to seeds and the ability to not only choose them but also to produce, store, use, exchange, and sell them are therefore crucial issues for small farmers. Yet a growing number of them are currently being deprived of these rights, while powerful seed multinationals benefit from the situation. As a result, small farmer movements and other civil society organizations are struggling to secure the recognition of the right to seeds as a fundamental right for farmers, recognized by the law as a human right. This right should take precedence over other rights, such as intellectual property rights or free-trade agreements, which weigh against small farmers and benefit large seed companies. To ensure this, the right to seeds would need to be recognized by the United Nations as promoting human rights (Human Rights Council and the UN General Assembly). This process of securing recognition has been underway since 2012. The right to seeds is actually at the heart of the draft United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas³, an international document drafted by the Human Rights Council to protect small farmers from the discrimination and human rights violations to which they are subjected.

This information sheet is designed to answer the following questions:

1. Why defend peasants' right to seeds? What threats are currently weighing on this right?
2. Why and how should small farmers' right to seeds be given the legal status of a human right?

1. Seeds or other organs of reproduction of plants (such as plants, cuttings, grafts, bulbs, and tubers) intended to be sown and harvested.

2. French Ministry of Agriculture: http://agriculture.gouv.fr/histoire/2_histoire/index_histoire_agriculture.htm

3. Coordination SUD, « *Defending the rights of peasants: For a UN Declaration* », C2A Notes n°23, november 2015: <http://www.coordinationsud.org/wp-content/uploads/23-Notes-C2A-N23-Defending-the-rights-of-peasants.pdf>



1. SMALL FARMERS' RIGHT TO SEEDS IS THREATENED IN BOTH THE NORTH AND THE SOUTH

From the 1950s, subsidies for inputs in industrial agriculture (fertilizers, mechanization, pesticides, improved seeds, etc.) and the introduction of laws favouring this agricultural model enabled industry to play a growing role in the selection and production of seeds. The new norms thus established (commercial rules, intellectual property rights) conflicted with age-old practices of selection by farmers themselves, thus dispossessing small farmers of their right to seeds and making them dependent on a handful of multinationals. Moreover, the massive use of industrial seeds led to a reduction of agricultural and food choices for small farmers and consumers. According to the FAO, 75% of the cultivated biodiversity was lost between 1900 and 2000⁴. These phenomena first affected the developed countries where farmers' seeds are hardly used anymore, and are now starting to spread to developing countries, to the detriment of small farmers.



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Cultivated biodiversity in danger: the example of rice

The number of rice varieties cultivated in Thailand dropped from 16,000 to 37 in just a few decades. Worse still, on half of the surface areas cultivated only two varieties are grown⁵. Yet biodiversity is vital, especially to combat certain diseases. In the 1970s a virus destroyed the rice fields of India and Indonesia. The International Institute for Rice Research tested over 6,000 types of rice to find one that had genes resistant to this disease. It found an Indian variety, which was then crossed with the most cultivated type of rice. Biodiversity thus provided the solution. But once the problem had been solved, the necessity to preserve biodiversity was forgotten, and the resistant hybrid found at the time now covers over 100,000 km² of rice fields in Asia⁶! Due to the importance of biodiversity for farmers and for the right to food, Article 23 of the draft Declaration on the Rights of Peasants is devoted to it.

4. UN News Centre, *Crop biodiversity: use it or lose it*, 26 October 2010: <http://www.fao.org/news/story/en/item/46803/icode/>

5. FAO cited by Novethic, 27 February 2012: <http://www.novethic.fr/empreinte-terre/agriculture/isr-rse/la-perte-de-biodiversite-responsable-de-la-malnutrition-136894.html>

6. Réseau semences paysannes, « *l'année de quelle biodiversité ?* », bulletin de liaison n°40, June 2010, page 3: http://www.semencespaysannes.org/l_annee_de_quelle_biodiversite_427.php



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1. Trade rules unfavourable to small farmers' seeds⁷

As long as seeds are produced and exchanged locally, collective rights to use common seeds, which are often oral and are determined and respected within each community, suffice to regulate these exchanges⁸. This is however no longer the case when seeds are produced outside these communities. The traditional system is not adapted to industrial seeds produced and commercialized on a large scale by companies situated at ever-greater distances from the farms on which they will be used. Laws have therefore been passed to guarantee crops and thereby food security by prohibiting the sale of poor-quality seeds that never germinate or that could spread diseases. Unfortunately, the choice of many rich countries, which since the 1950s has been to put genetic improvement at the heart of agricultural policies, has supported legislation preventing farmers from using their own seeds. Whether they focus on security (to ensure that diseases are not spread) or oriented towards biological quality (germination, varietal purity), the arguments used by seed companies have actually served to promote industrial seeds and reduce as much as possible the small farmers' seed market.

These laws also further the interests of the large food retailers and their central buying offices. In France, six retail groups account for 70% of all food product outlets⁹ and only four central buying offices¹⁰ supply them. These buying offices are thus able to influence agronomic research and seed producers' work. As mass retailing needs fruit and vegetables that keep well during transport and then on supermarket shelves, the seed companies have developed plant variety selection programmes that take these requirements into account¹¹. This influence of mass distribution also impacts on the rules of registering plant varieties in the catalogue in order to obtain products adapted to this mode of commercialization.

Throughout the European Union, and in other countries, seeds can be commercialized only if they belong to a variety registered in an official catalogue. In order to be listed in the catalogue, they have to meet with the DHS criteria (distinction, homogeneity, stability). Thus, a variety has to be different from those present in the official catalogue (distinction), and the plants composing it have to present strong similitude (homogeneity) and have to be reproducible and identical from one year to the next (stability).

These three criteria deprive small farmers of the right to sell their seeds. By definition they exclude such seeds, which are hybrids of relatively similar plants that nonetheless have a degree of genetic diversity. These varieties evolve with each generation in the fields, depending on the soil, the climate, and the farmers' selection. The strength of these seeds lies precisely in these characteristics, for wide internal heterogeneity enables peasant seeds to preserve their capacities for adaptation to the diversity of soils and climatic variations, without necessarily requiring chemical fertilizers and pesticides. By contrast, the seeds sold by industrial companies are homogeneous but fragile and can require the use of many forms of protection: pesticides against insects, fungi and

7. Small farmers' seeds are taken from the harvest of local varieties that were selected and reproduced by small farmers in their fields.

8. La Via Campesina and GRAIN, *Seed laws that criminalise farmers: poster, map, tables and additional country cases*, April 2015: <https://www.grain.org/article/entries/5175-seed-laws-that-criminalise-farmers-poster-map-tables-and-additional-country-cases>

9. Avis du Conseil économique, social et environnemental, *Les circuits de distribution de produits alimentaires*, 11 May 2016, page 15: http://www.lecese.fr/sites/default/files/pdf/Avis/2016/2016_03_circuit_produits_alimentaires.pdf

10. In 2014: Casino-Intermarché, Auchan-Système U, Carrefour (avec Dia) et Leclerc. Audrey Tonnelier, « *Distribution : les alliances entre centrales d'achat dans le viseur de Bercy* », *Le Monde*, 23 October 2014: http://www.lemonde.fr/economie/article/2014/10/23/distribution-les-alliances-entre-centrales-d-achat-dans-le-viseur-de-bercy_4511580_3234.html

11. Cité des sciences et de l'industrie, *Oui à la diversité des graines et des semences*: <http://www.cite-sciences.fr/fr/ressources/juniors/lactu-des-juniors/oui-a-la-diversite-des-graines-et-des-semences> et Sciences et avenir, *La tomate n'a plus de goût ? C'est de la faute de Daniela...*, 15 July 2016: www.sciencesetavenir.fr/nature-environnement/plantes-et-vegetaux/la-tomate-n-a-plus-de-gout-c-est-de-la-faute-a-daniela_102652

other crop enemies, fertilizer for minerals, irrigation to ensure sufficient water, and so on. Consequently, as Marc Dufumier and Guy Kastler, among other experts, pointed out in 2013: “there where our farmers used to select varieties adapted to our different terroirs [soil and other local conditions], it is now the terroirs that have to be adapted to a very small number of varieties, with the risk of weakening them (loss of humus and fertility) and of having to use many chemical inputs that are the source of various forms of pollution”¹².



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Note the very high cost of registration in the catalogue: over 6,000 Euros in France for a grain variety¹³. The seed companies can bear such costs because they know that they will sell large quantities of seeds of their standardized varieties made to be cultivated with chemical inputs in a wide diversity of soil and climatic conditions. This is not the case of peasant communities, for their varieties are naturally produced in smaller quantities, since each of them is adapted to a particular type of local condition.

These rules of registration in the catalogue therefore favour industrial varieties and seeds, while preventing those of small farmers from reaching legal (so-called “formal”) markets.

2. Multinationals’ intellectual property rights versus the rights of small farmers to collective use of seeds

When he was United Nations special rapporteur on the right to food, Olivier De Schutter noted that: “*intellectual property rights had been reinforced considerably in recent years throughout the world, at the request of the developed countries and for the benefits of their industrial companies*”¹⁴. This trend has undermined small-scale farmers’ rights to seeds.

When a company invests in research and seed selection, it wants in return to obtain intellectual property rights – plant variety rights (PVR) or plant breeders’ rights (PBR)¹⁵— on its seeds. In this respect we talk of protected seeds. Initially the PVR, regulated by the Convention of the International Union for the Protection of New Varieties of Plants (UPOV), signed in 1961¹⁶, granted less power to the owners of these rights than did patents. Farmers did have to buy seeds protected by a PVR, but they were free to keep some of them and to plant them to grow crops (these seeds were called farm seeds). The amendment to the UPOV Convention in 1991 reinforced this intellectual property system and allowed each country to either maintain this freedom for farmers or not. Many countries, like France, chose to allow farmers to use certain farm seeds (for 34 varieties), provided they pay the holder of the COV a fee.

12. Priscille de Poncins, Philippe de Roux, Bernard Perret, Guy Kastler et Marc Dufumier, « *Un nouveau droit des semences pour protéger la biodiversité et notre alimentation* », Le Monde, 9 November 2013: http://www.lemonde.fr/idees/article/2013/11/19/un-nouveau-droit-des-semences-pour-protéger-la-biodiversité-et-notre-alimentation_3516429_3232.html

13. Réseau semences paysannes, *Réglementation sur la commercialisation des semences et plants*: http://www.semencespaysannes.org/reglementation_commercia_semences_plants_434.php

14. Olivier De Schutter, *Seed policies and the right to food: Enhancing agrobiodiversity, encouraging innovation*, UN General Assembly, 2009: http://www.srfood.org/images/stories/pdf/otherdocuments/20091021_background-doc_seed-policies-and-the-right-to-food_en.pdf

15. La Via Campesina and GRAIN, *Seed laws that criminalise farmers: poster, map, tables and additional country cases*, April 2015, *op. cit.*

16. The UPOV was founded in 1961 and had 74 members in 2016.

This tendency to strengthen intellectual property rights appeared first in the wealthy countries and then spread across the world. Since 1994, the World Trade Agreement on trade-related aspects of intellectual property (TRIPS) has required that member States of the WTO set up an intellectual property regime for plants, or face sanctions. Even though the agreement does theoretically leave States leeway concerning the intellectual property mechanisms to adopt, civil society organizations like GRAIN denounce the TRIPS agreement shaped to benefit the seed companies¹⁷. These organizations also oppose bilateral free-trade agreements that compel States to adhere to intellectual property systems that are more stringent than the TRIPS obligations, to the point of being referred to as “TRIPS +”¹⁸.

For several years now, new techniques used for genetic manipulation and the modification of life forms have extended the scope of intellectual property rights on plants. It is possible today for companies to sequence the genome of plants¹⁹ and thus to identify genes at the origin of particularly interesting characteristics (resistance to drought or to certain insects, for example). A gene can then be transferred to a plant for it to acquire this characteristic, and the plant will thus become a genetically modified organism (GMO). These new techniques also make it possible to modify the genome itself and so to give plants new properties, without inserting genes from the outside. Such plants are called “new GMOs”²⁰.

These characteristics can be patented by multinationals, with “patents on native traits”. Once a company has these intellectual property rights, it can demand license fees for the use of all plants that have the patented characteristic, even when it is naturally present in plants cultivated for generations by peasant farmers²¹. For instance, the European Patent Office (EPO) issued a patent to Syngenta, in May 2013, granting the Swiss firm exclusive rights in many European Union countries on all peppers presenting a resistance to white fly. Yet this resistance was not the fruit of Syngenta’s creativity; it was already present in the Jamaican wild pepper. In a petition filed at the EPO, 34 organizations of farmers, selectors and NGOs from 27 countries stressed that it was in no way an invention but at most a discovery²².

These technical and legal trends are thus impeding access to and utilisation of a growing number of plant varieties by small farmers. They are strengthening the risks of bio-piracy²³, as communities can be deprived of free use of traditional seeds, because of a patent on a native trait. They also expose small farmers to risks of legal action if they grow these crops without knowing that the plants have patented characteristics, and may have to pay license fees they can ill afford.

17. GRAIN, *New trade deals legalise corporate theft, make farmers' seeds illegal*, 18 July 2016: <https://www.grain.org/fr/article/entries/5511-new-trade-deals-legalise-corporate-theft-make-farmers-seeds-illegal>

18. *Ibid.* See also: La Via Campesina and GRAIN, *Seed laws that criminalise farmers: poster, map, tables and additional country cases*, April 2015, *op. cit.*, as well as page 10 of this document on bilateral free-trade agreements.

19. All the genes of a plant.

20. Dossier d'Inf'OGM n°140, « De nouveaux OGM bientôt au menu ? », July-August 2016: <http://boutique.infogm.org/vente-au-numero-le-journal-no140> or <http://www.infogm.org/-des-nouveaux-ogm-au-menu->

21. La Via Campesina and GRAIN, *Seed laws that criminalise farmers: poster, map, tables and additional country cases*, April 2015, *op. cit.*

22. Berne Declaration, *Free Pepper!*, 2014: <https://www.publiceye.ch/en/topics-background/agriculture-and-biodiversity/seeds/free-pepper/>

23. “Bio-piracy can be defined as the illegitimate appropriation and commodification of the biological resources and traditional knowledge of rural and indigenous peoples”. Source: Collectif alternative biopiraterie, *La biopiraterie : comprendre, résister, agir*, page 3: http://www.france-libertes.org/IMG/pdf/livret_fr_310512.pdf

A seed system controlled by an increasingly small number of multinationals

In the countries of the North and those of the South that have developed large agricultural exports, such as Argentina and Brazil, small farmers depend on an increasingly reduced number of seed companies due to industrial concentration, which has accelerated in recent years. In 1996, 30% of all protected seeds were commercialized by ten multinationals²⁴. In 2013, the four biggest companies controlled 60% of the global market for protected seeds: Monsanto (USA), DuPont (USA), Syngenta (Switzerland) and Limagrain (France)²⁵. In 2016 this process accelerated, with three mergers and buy-outs still underway: Bayer wants to buy out Monsanto; DuPont and Dow want to merge; and ChemChina wants to take over Syngenta. These trends will strengthen the ties between seed production and agrochemical production, since the three new groups will thus control over 60% of the world market for protected seeds, as well as chemical inputs for agriculture²⁶. Moreover, seed multinationals are increasing their offer of diversified services (e.g. agricultural risk management and insurance).²⁷

3. Threats to small farmers' seeds in developing countries

While industrial seeds are now predominant in developed countries, the situation is very different in developing countries. Small farmers' seeds still account for 80 to 90% of all seeds planted in Africa, and 70 to 80% in Asia and Latin America²⁸. Access to seeds is a major issue for the inhabitants of these regions, especially in the poorest countries, where 75% of the total population is rural²⁹. Most of these small farmers have an agricultural activity that enables them to live, even if it is often in extreme poverty. Faced with the potential of these markets based largely on the rural economy, many countries of the global South are now coveted by the seed and chemicals multinationals.

The large seed groups lobby intensively to obtain changes to standards and new seed laws that are unfavourable to small farmers in many developing countries. This phenomenon is evident in Africa where a system of regulations concerning intellectual property based on the UPOV 91³⁰ is gradually being set up. To illustrate: the amended Bangui Agreement, which came into effect in 2006, governs intellectual property in 17 member countries of the African Regional Intellectual Property Organization (ARIPO), essentially in West and Central Africa, and in 2014 the ARIPO joined the UPOV by signing the 1991 convention. Another illustration of this trend is the current amendment of the rules of the African Regional Intellectual Property Organization (ARIPO) to which 19 African countries, most of them English-speaking, belong³¹. These trends are all part of the same shift towards increasingly broad and stringent intellectual property rights and a weakening of the rights of small farmers, who are prevented from sharing, exchanging and selling the farm seeds of protected varieties.

Many countries of the South are also affected by the implementation of rules concerning the commercialization of seeds, which come with strict criteria determining how seeds can be put on the market, sold, and even bartered or given away freely. These rules are unsuited to family farming in developing countries; they exclude peasants' seeds, so vital to these farmers, and threaten access to seeds by a majority of farmers in Africa, Asia and Latin America who do not have the means to buy certified and protected seeds, nor the chemical inputs that they require.

24.

Berne Declaration, *Agropoly, ces quelques multinationales qui contrôlent notre alimentation*, 2014: www.publiceye.ch/fileadmin/files/documents/Lebensmittelindustrie/DB-Solidaire216-Agropoly-2e-edition-juin2014.pdf

25.

ETC Group, *Breaking Bad*, Communiqué 115, Décembre 2015, page 5: http://www.etcgroup.org/sites/www.etcgroup.org/files/files/etc_breakbad_23dec15.pdf

26.

Financial times, *Watchdogs weigh up pros and cons of seed mergers*, 30 November 2016: <https://www.ft.com/content/4c5774a8-a69c-11e6-8898-79a99e2a4de6>

27.

CCFD-Terre Solidaire, *OGM, une mauvaise réponse*, 4 September 2015: <http://ccfd-terresolidaire.org/infos/souverainete/dossier-faim-et/le-ccfd-terre-solidaire-623/ogm-une-mauvaise-5152>

28.

La Via Campesina and GRAIN, *Seed laws that criminalise farmers: poster, map, tables and additional country cases*, April 2015, *op. cit.*

29.

UNCTAD, *The Least Developed Countries Report 2015*. Transforming Rural Economies, 2015: http://unctad.org/en/PublicationsLibrary/ldc2015_en.pdf

30.

See page 6.

31.

AVSF, *Non, au monopole des semences industrielles dans les pays du Sud*, 2015: <https://libertepourlespaysans.org/app/uploads/sites/2/2015/11/Dossier-SEMENTES-AVSF.pdf> and *Inf'OGM, Où en est-on de la "protection" des semences en Afrique ?*, 21 Auguste 2015: <https://www.infogm.org/ou-en-est-on-de-la-protection-des-semences-en-afrique>



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The Quality Declared Seed System³²: an alternative route concerning registration in the catalogue and the multiplication of peasant seeds?

In the 2000s, the FAO, aware of the inappropriateness of standard seed legislation copied from that of developed countries, proposed an alternative model of registration in the catalogue and multiplication of seeds: the Quality Declared Seed System (QDS).

In limited geographical areas, the QDS system is based on rules defined on the basis of consensus between local authorities, seeds-producing organizations, and peasant organizations, for the approval of varieties and the certification of seeds. The less stringent commercialization criteria, without registration fees, make it possible to include local varieties and varieties stemming from participatory processes of selection, while providing a guarantee of quality (e.g. regarding germination and purity).

This QDS model has been tested and adapted in Androy, in the south of Madagascar, to develop local seed industries³³. The keystone of the model is a control system validated by the authorities, adapted to local constraints, notably with simple, fast and cheap mechanisms for registering varieties. In this semi-arid area that is regularly exposed to famine, the structuring of a network of seed farms and family farmers who reproduce seeds has made it possible to produce and commercialize seeds of local varieties that can survive in local (often arid) conditions better than most improved varieties. The impact on food security has been significant: over 10,000 farm households now use varieties produced in this system. During the recent droughts, in 2015 and 2016, the only grain and pulse varieties that survived were those that came from this system.

The QDS system is interesting insofar as it takes into account the farmers' demand. For the future, the model could be improved by strengthening the role of small farmer organizations, and adapting better to oral traditions and to certain crops that are essential to food security, such as tubers in the case of Madagascar³⁴.

32.
FAO, *Quality Declared Seed System*, 2007:
<http://www.fao.org/docrep/009/a0503e/a0503e00.htm>

33.
These experiments involve the CTAS, the Gret and the FAO. Further reading:
<http://www.semencesdusud.com/site/node/33>

34.
See also Inf'OGM on a proposal of the Berne Declaration (Public Eye), *Semences : vers un régime juridique alternatif pour les paysans*, 26 May 2016:
<http://www.infogm.org/spip.php?article5948>

These new seed laws are, by contrast, highly favourable to the seed companies and especially those selling GMOs. Since the mid-2000s, the seed companies have been engaged in a full-blown onslaught to impose genetically modified seeds in many developing countries. This has been happening despite resistance by civil society organizations warning against the health, environmental and social implications of authorizing such seeds.

Monsanto’s offensive in Paraguay to introduce GMOs

In Paraguay, civil society organizations accuse Monsanto of having surreptitiously introduced GMOs from neighbouring countries, Brazil and Argentina. This by-passing strategy and “de facto presence” of GMOs in the country, already used in Brazil³⁵, later enabled the firm to lobby intensely to modify the legal framework, leading to the legalization of the first GMOs in 2004 (soy), followed a few years later by the legalization of GM cotton and maize. Since then, 19 GMOs have been authorized for cultivation in Paraguay, which has become Latin America’s third largest GMO producing country³⁶.

Faced with this offensive, many civil society organizations have undertaken research and training on GMOs (mainly with small farmer movements). These organizations structure citizen mobilization with the national campaign “Monsanto Get Out”; they regularly hold large demonstrations and set up people’s ethical courts to lend media coverage to the battle against Monsanto and, more generally, against GMOs³⁷.

The “new GMOs”³⁸ also have to be closely monitored. The seed industry is currently lobbying intensely in many countries of the North, including the European Union, to ensure that these GMOs are not considered as such and thus escape regulation³⁹. If this lobbying is successful, the multinationals will immediately start producing and commercializing them, not only in countries of the North, but also in many developing countries.

Free-trade agreements and initiatives to promote private investments in agriculture are the main means of pressure used by rich countries to obtain the amendment of developing countries’ seed laws, in the interests of the former’s seed industries⁴⁰.

Often these free-trade agreements compel states to adopt intellectual property regimes as well as trade laws that favour the seed companies and limit the production and circulation of peasants’ seeds⁴¹. The current multiplication of free-trade negotiations between the European Union or the USA and countries of the South are all threats to small farmers’ right to seeds in the future.

Free-trade agreements with Thailand: small farmer organizations successfully defend the right to seeds

During free-trade negotiations with the USA, opened in 2004, the American seed industry wanted Thailand to adopt the UPOV 91. In response, small-farmer organizations and other social movements mobilized. In 2006, over 10,000 small farmers, accompanied by their allies, faced the police and blocked the head office where negotiations were taking place. The talks have not resumed since. According to the NGO GRAIN, the European Union exerted similar pressure during free-trade negotiations with Thailand. Civil society mobilization in 2013 also blocked negotiations⁴². The small-farmer movements are nevertheless remaining vigilant.

35. See for example Inf’OGM, *Brésil : vers la légalisation des OGM ?*, 10 October 2003: <https://www.infogm.org/BRESIL-Vers-la-legalisation-des>

36. Inf’OGM, *Semences en Amérique latine : vers une privatisation générale*, 30 April 2015: <http://www.infogm.org/5800-semences-Amerique-latine-vers-privatisation-generale>

37. See in particular the website of the organization Base-Is with regard to the campaign “*Namoseke Monsanto*”: <http://www.baseis.org.py>

38. See page 7.

39. Corporate Europe Observatory, *Biotech lobby’s push for new GMOS to escape regulation*, February 2016: <http://corporateeurope.org/sites/default/files/attachments/biotechlobbies.pdf>

40. Further details in La Via Campesina and GRAIN, *Seed laws that criminalise farmers: poster, map, tables and additional country cases*, April 2015, *op. cit.* and in AFSA and GRAIN, *Land and seed laws under attack: who is pushing changes in Africa?*, January 2015: <https://www.grain.org/article/entries/5121-land-and-seed-laws-under-attack-who-is-pushing-changes-in-africa>

41. Further information in GRAIN, *Avec de nouveaux accords commerciaux, le vol organisé par les multinationales est légalisé et les semences paysannes deviennent illégales*, 16 August 2016.

42. La Via Campesina and GRAIN, *Seed laws that criminalise farmers: poster, map, tables and additional country cases*, April 2015, *op. cit.*

The growing promotion of private investments in agriculture to – officially – combat poverty in developing countries is another Trojan horse of the seed industry. Examples include actions devoted to sub-Saharan Africa, such as the New Alliance for Food Security and Nutrition (NAFSN⁴³), launched in 2012 by G8 countries⁴⁴, and Grow Africa. These initiatives are based on investment projects, mainly of multinationals. Some of them, such as Monsanto, DuPont, Syngenta and Limagrain, prevail over the entire seed industry. The NAFSN aims primarily to improve food security and nutrition in ten African countries, and close to 9 billion dollars from G8 countries and firms have been promised. The African states in question have in return undertaken to amend their laws, primarily in three areas: taxes, land rights, and seeds. Mozambique, for example, was asked to “systematically stop distributing free and non-improved seeds” and to approve a law on the protection of plant varieties that “supports private sector investments in seed production”⁴⁵. According to the most recent joint report on the initiatives of Grow Africa and NAFSN for the period 2014-2015, reforms concerning the seed and chemical inputs sector are the most numerous type of reform at present (62% of these reforms are finalized, against 22% for example for laws on nutrition)⁴⁶.

2. GIVE SMALL FARMERS' RIGHT TO SEEDS THE LEGAL STATUS OF A HUMAN RIGHT

Faced with the situation described above, it is important to recognize and secure small farmers' right to seeds by granting it the same status as a human right. The right to seeds, which is above all a custom, is indeed starting to be formally recognized. But today's rules provide far less protection for small farmers than for the protection of intellectual property rights on the commercialization of seeds, which tend to favour the powerful seed multinationals. This type of discrimination to which small farmers are subjected, justifies the UN Human Rights Council' decision to give small farmers' rights to seeds the same value as a human right, which should in principle take precedence over other rules. This is one of the main objectives of the United Nations Declaration on the rights of peasants and other people working in rural areas, which the Human Rights Council is currently busy drafting.

1.Small farmers' right to seeds: a proposal that is gradually being recognized in international law

A small-farmer definition of the right to seeds

As small farmers are the first to be concerned by the growing restrictions on the right to seeds, their movements have played a key part in drafting this right. In 2009, after seven years of consultation with members of hundreds of peasant organizations, the international movement Via Campesina adopted its Declaration of Peasants' Rights. Article 5 of the Declaration recognizes small farmers' rights to seeds⁴⁷, defined as their right to cultivate, select, exchange, give and sell their seeds. The definition proposed also encompasses the right to choose and to determine the seeds and varieties that they wish to use and, a contrario, the right to reject the plant varieties that they consider to be economically, ecologically and culturally dangerous . This right to choose or refuse applies more broadly to the agricultural model (Paragraph 3 on the right to reject the industrial agricultural model). It includes small farmers' right to use peasant technologies and to decide on their own modes of production and organization. While in many countries laws serving the profits of the seed industry are forcing small farmers to use industrial seeds, and sometimes GMOs, the free choice of seeds is a key element of what ought to define peasants' rights to seeds. This right is essential if small farmers are to have the possibility to choose the agricultural model that they wish to use.

43. See, in particular ACF, CCFD-Terre solidaire et Oxfam-France, *Hunger just another business. How the G8's new alliance is threatening food security in Africa*, 2014: <http://www.actioncontrelafaim.org/fr/espace-jeunes-enseignants/content/hunger-just-another-business>

44. France, the USA, the UK, Russia, Germany, Japan, Italy, and Canada.

45. NASAN, *Cooperation Framework to Support the New alliance for food security and nutrition in Mozambique*, page 4: <http://feedthefuture.gov/sites/default/files/resource/files/Mozambique%20Coop%20Framework%20ENG%20FINAL%20w.cover%20REVISED.pdf>

46. NASAN, *Joint annual progress report: 2014-2015*, page 8: https://www.new-alliance.org/sites/default/files/resources/New%20Alliance%20Progress%20Report%202014-2015_0.pdf

47. La Via Campesina, *Declaration of Rights of Peasants Women and Men*, 2009: <https://viacampesina.net/downloads/PDF/EN-3.pdf>

48. *Ibid*

The emergence in international law of small farmers' right to seeds

As a result of peasant mobilization, small farmers' right to seeds is gradually being recognized in international law owing, in particular, to the signing in 2001 of the International Treaty on plant genetic resources for food and agriculture, which completes the provisions of the Convention on Bio Diversity (1992). A total of 140 parties signed this treaty, including France. The aim was to ensure the conservation and sustainable use of the diversity of seeds for food and agriculture, as well as the fair and equitable sharing of the advantages derived from their use. It was an important step in the recognition of small farmers' right to seeds. The Preamble clearly states that *"the rights recognized by the present Treaty to save, use, exchange and sell farm seeds and other reproducible material and to participate in decisions concerning the use of plant resources for food and agriculture, as well as the fair and equitable sharing of the advantages derived therefrom, are a fundamental element in materializing farmers' rights and in promoting those rights at national and international level"*⁴⁹.

This is a first step but the Treaty leaves most of the implementation of small farmers' right to seeds to the discretion of national governments. Moreover, the peasant movements accuse this text of being harnessed more and more by other interests and of running counter to small farmers' interests, especially their right to seeds. La Via Campesina⁵⁰, for instance, has claimed that: *"The treaty promised equitable sharing of the profit created in industry using our seeds for their own selections. After 10 years we have not seen this, rather a shift in the opposite direction. Peasants have given seeds to industry; industry never paid for them"*⁵¹.

2. Why give the status of a human right to small farmers' right to seeds?

Granting small farmers' right to seeds the status of a human right is essential for other rights to be effective. Moreover, the right to seeds should take precedence over other laws, and should be respected in all legislation pertaining to seeds. This recognition is progressing and could move forward significantly with the adoption of the United Nations Declaration on the rights of peasants and other people working in rural areas.

A necessary right for small farmers' human rights to be effective

As the Advisory Committee of the United Nations Human Rights Council has pointed out: *"Existing international human rights instruments, even if they were better implemented, remain insufficient to protect fully the rights of peasants and other people working in rural areas. These groups have suffered historic and persistent discrimination in many countries around the globe, and the existing protection of their rights is insufficient to overcome this situation. It is therefore necessary to go beyond existing norms and address the normative gaps under international human rights law"*⁵². Thus, complementary to the universal rights of all human beings, it is necessary to recognize specific rights to enable small farmers to combat the discrimination against them. That is the very essence of small farmers' right to seeds, with the value of a human right.

This right is thus expected to contribute to the effectiveness of other human rights for small farmers, such as the right to food, culture and health. Recognized by Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966), the right to food was specified in 1999 by the committee responsible for monitoring the Covenant⁵³: it includes *"the possibility to derive food directly from the land or other natural resources"*. Along with land and water, seeds play a crucial role in enabling family farmers to produce the food that they and their families consume. Their produce can also be sold to secure an income enabling them to buy food, amongst other things. Without access to seeds, or the possibility of reproducing, exchanging or selling them, it is indeed peasants' and their families' right to food that is being undermined. The right to food is therefore currently far from being effective for this category of the population. As the Consultative Committee of the Human Rights Council points out, 80% of people suffering from hunger live in rural areas, and 50% of them have small farms⁵⁴.

49.

FAO, *International Treaty on Plant Genetic Resources for Food and Agriculture*, 2009: <http://www.fao.org/3/a-i0510e.pdf>

50.

La Via Campesina, *You are destroying the Treaty on Plant Genetic Resources*, 25 September 2015: <https://viacampesina.org/en/index.php/main-issues-mainmenu-27/biodiversity-and-genetic-resources-mainmenu-37/1869-you-are-destroying-the-treaty-on-plant-genetic-resources>

51.

See also Inf'OGM, *Traité international sur les plantes : la biopiraterie au coeur du Traité*, 14 March 2016: <http://www.infogm.org/spip.php?article5910>

52.

United Nations, *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, 24 February 2012: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75_en.pdf

53.

United Nations, *Committee on economic, social and cultural rights*, General comment 12: http://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/General_Comment_12_EN.pdf

54.

United Nations, *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, 24 February 2012, *op.cit.*

Primacy and extra-territoriality: two issues in the recognition of small farmers' right to seeds as having the status of a human right

The recognition of the right to seeds as a fundamental right for small farmers would also have the following consequences:

- *The primacy of small farmers' right to seeds*: like human rights, it would have a legal status superior to that of other rules, including intellectual property rights, at both national and international level (ADPIC, UPOV conventions⁵⁵, etc.). Article 103 of the United Nations Charter, for example, stipulates that: "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". Respect for the principle of human rights is one of the obligations presented in the Charter (Article 55).
- *Extra-territorial obligations of states with regard to observance and protection of human rights will apply to small farmers' right to seeds*: States have legal obligations in their territory as well as extra-territorial obligations⁵⁶, insofar as the policies that they adopt should not be in breach of the human rights of the populations of other States. They must also protect these rights. The French State, for example has to take action if a French citizen violates human rights in a foreign country. Therefore, if small farmers' rights to seeds is recognized by the Human Rights Council, France could be obliged to take measures against a French company that is guilty of bio-piracy in a third country.

Although recognized in international law, these two major principles are still not implemented enough in practice for human rights to take precedence over other rules. It is therefore important to encourage the multiplication of international and national legal documents on which national executive, legislative and judicial powers could be based to firmly establish this right in reality. A United Nations document such as the Declaration on small farmers' rights would be decisive progress to guide States in this direction.

Towards a recognition of small farmers' right to seeds with the status of a human right

In 2007, for the first time, the United Nations Declaration on the Rights of Indigenous Peoples provided explicitly for collective rights to seeds. This Declaration recognizes the right of indigenous peoples "to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines [...]"⁵⁷. While this Declaration is unquestionably a step forwards, it applies only to indigenous peoples and cannot serve as a base on which rural and peasant communities can defend their right to seeds.



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55.
See page 6.

56.
On States' extra-territorial obligations, see: CFSI and GRET, *Reducing the negative impacts of European policies toward the countries of the global South*, October 2014: <http://www.alimenterre.org/en/ressource/reducing-the-negative-impacts-of-european-policies-toward-the-countries-of-the-global-south>

57.
United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, article 31: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf



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The decision to draft a Declaration on the Rights of Peasants and other people working in rural areas was taken by the Human Rights Council in September 2012, following two reports that highlighted the extreme gravity and extent of discrimination to which small farmers and other people working in rural areas were subjected. The aim of this new declaration was:

- to improve respect for small farmers' rights by making them better known to governments, companies and small farmers themselves. To that end, it brings existing rights, scattered across various international documents⁵⁸, together in a single declaration;
- to recognize new rights such as peasants' rights to land and to seeds.

Unlike a convention or a pact, a declaration does not have a legal bearing⁵⁹. However, a declaration can be taken up in binding international agreements, and by States and unions of States, in constitutions and countries' laws. In such cases rights become binding and their violation subject to punishment. Thus, for instance, Bolivia integrated the Declaration on the Rights of Indigenous Peoples into its laws in 2007 (Law 3760), and in the Philippines, ten years before the adoption of the final text, the draft Declaration inspired the 1997 law on the rights of indigenous peoples⁶⁰.

The draft version of the Declaration on the Rights of peasants and other people working in rural areas, dated 6 March 2017⁶¹, is based largely on the document written by La Via Campesina⁶², rendered more precise and reworded in the legal terms used by the United Nations with regard to human rights. Small farmers' right to seeds is defined in Article 19 (see Box) and is also specified in Article 20 on the right to bio-diversity. These articles can be improved, but overall they meet the expectations of peasant movements, which stress the necessity to reinforce the obligations – especially extra-territorial – of States⁶³.

⁵⁸. International covenants on civil and political rights, and on economic social and cultural rights; conventions on the elimination of discrimination against women, on children's rights, and declaration on the rights of indigenous peoples, etc.

⁵⁹. However, a large proportion of the content of the Declaration is essential as it codifies existing rights such as the right to food, recognized in binding documents.

⁶⁰. United Nations, *Implementing the UN Declaration on the Rights of Indigenous Peoples*, Handbook for Parliamentarians n°23, 2014: http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/human_rights/Indigenous-Peoples-Parliamentarians-Handbook.html

⁶¹. United Nations, *Draft declaration on the rights of peasants and other people working in rural areas*, May 2017: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WG.15/4/2

⁶². See § 2-1.

⁶³. United Nations, Report of the open-ended intergovernmental working group on the draft United Nations declaration on the rights of peasants and other people working in rural areas on progress made in drafting the declaration, 20 July 2016:

PEASANTS' RIGHT TO SEEDS

In the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas

1. Peasants and other people working in rural areas have the right to seeds, including:
 - (a) The right to the protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
 - (b) The right to equitably participate in sharing the benefits arising from the utilization of plant genetic resources for food and agriculture;
 - (c) The right to participate in the making of decisions on matters relating to the conservation and sustainable use of plant genetic resources for food and agriculture;
 - (d) The right to save, use, exchange and sell farm-saved seed or propagating material.
2. Peasants and other people working in rural areas have the right to maintain, control, protect and develop their seeds and traditional knowledge.
3. States shall respect, protect and fulfil the right to seeds, and recognize it in their national legislation.
4. States shall ensure that seeds of sufficient quality and quantity are available to peasants at the most suitable time for planting, and at an affordable price.
5. States shall recognize the rights of peasants to rely either on their own seeds or on other locally available seeds of their choice, and to decide on the crops and species that they wish to grow.
6. States shall support peasant seed systems, and promote the use of peasant seeds and agro-biodiversity.
7. States shall ensure that agricultural research and development is oriented towards the needs of peasants and other people working in rural areas; they shall ensure their active participation in the definition of priorities and the undertaking of research and development, take into account their experience, and increase investment into research and development of orphan crops and seeds that respond to the needs of peasants and other people working in rural areas. A/HRC/WG.15/4/2 13
8. States shall ensure that seed policies, plant variety protection and other intellectual property laws, certification schemes and seed marketing laws respect the rights of peasants, in particular the right to seeds, and take into account their needs and realities.

3. re small farmers' right to seeds and intellectual property rights compatible?

This question is at the heart of stormy debate on privatization of life forms and on the recognition and remuneration of research and seed selection work. While the debate is raging between private-sector stakeholders and civil society organizations, it is also ongoing within civil society itself.

The seed industry maintains that an intellectual property right – a patent or a PVR – has to recognize and remunerate selection work, and protect the innovation. In France the Groupement national interprofessionnel des s  mences et plantes (GNIS) defends PVR as suitable tools to protect selectors while preserving bio-diversity⁶⁴. Some organizations, a contrario, refuse all intellectual property rights, considering that seeds should be free of all regulation. Many small-farmer movements and organizations close to them, especially in countries of the North, have a more nuanced view, depending on the intellectual property tool. In several countries of the North many farmers use, and often reproduce, seeds developed by the seed industry, and comply with certain standards. Developing these seeds and guaranteeing these standards is costly and requires investments. That is why, to some extent, remuneration can appear to be justified in the eyes of these small-farmer organizations.

This position is nevertheless to be subject to clearly established conditions if intellectual property rights and small farmers' right to seeds are to be reconciled. The former should in no way deprive small farmers of access to seeds and to the inalienable right to replant, reproduce and exchange them. The mechanisms of intellectual property should also make it possible to involve small farmers in research and selection work. They should moreover take into account the seed selection work carried out over centuries by generations of small farmers, which is now enabling the seed industry to create new varieties. In the name of these principles, many peasant organizations and their allies are demanding amendments to the UPOV to enable small farmers who have bought commercial seeds – and who have thus remunerated the selection work – to then reproduce them free-of-charge and for their own use on their farm⁶⁵. These organizations are however firmly opposed to any form of patent – a stricter version of intellectual property – on life forms, including plants, animals, parts thereof or their genetic components. The increasingly firm hand of the UPOV and the extension of the scope of patentability of plants, including patents on native traits⁶⁶, is currently strongly reviving the debate on the irreconcilable nature, or not, of intellectual property rights and peasants' right to seeds.

This tension between intellectual property rights and small farmers' right to seeds is found in discussions on the Declaration of the Rights of peasants and other people working in rural areas. The protection of their seed multinationals' intellectual property rights is probably one of the main reasons why the US and European countries voted against this Declaration in 2012. Gradually the position of European countries has evolved from opposition to abstention in voting to renew the mandate of the working group of the Human Rights Council responsible for drafting the Declaration. This is a positive development, but not enough. Reconciling intellectual property rights and the right of small farmers to seeds is still a major issue is obtaining constructive support by the European countries for the draft Declaration.

In a study on this subject in 2016⁶⁷, the jurist Christophe Golay pointed out that small farmers' right to seeds, as defined in the future Declaration, has four elements:

1. the right of small farmers to save, use, maintain and develop their own varieties and seeds;
2. the obligations of States to respect, protect and promote small farmers' seed systems;
3. the obligations of States to ensure that agricultural research and development is oriented towards the satisfaction of small farmers' needs and take into account their experience;
4. The right of small farmers to save, use, exchange and sell farm seeds, produced by themselves but derived from protected seeds.

64.

Drawn from the seminar organized on 12 October 2016 by Coordination SUD on the topic "Can small farmers' right to seeds be reconciled with intellectual property rights?" Delphine Guey, Head of Public and Press Relations at the GNIS was one of the speakers.

65.

La Via Campesina, *UPOV must respect farmers' rights*, 29 November 2016: <https://viacampesina.org/en/index.php/main-issues-mainmenu-27/biodiversity-and-genetic-resources-mainmenu-37/2191-upov-must-respect-farmers-rights>

66.

See page 6.

67.

Christophe Golay, *The Right to Seeds and Intellectual Property Rights*, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, March 2017: https://www.geneva-academy.ch/joomlatools-files/docman-files/Resarch%20Brief_web.pdf

The legal tension between small farmers’ right to seeds and intellectual property rights lies primarily in the fourth point concerning farm seeds, since they are collected from harvests obtained with seeds protected by intellectual property rights. Yet with the adoption of the UPOV Convention in 1991, small peasants’ right to save, use, exchange and sell farm seeds was called into question in a growing number of countries⁶⁸.

How can the Human Rights Council endeavour to resolve this legal tension? Within the framework of its mandate, it can grant small farmers’ right to seeds the status of a fundamental human right on the basis of which other rights such as the right to food can be effective. This would give precedence to the right to seeds over other international rules. In principle, it would mean that international treaties on trade and intellectual property rights would have to adapt to human rights⁶⁹.

Once the primacy of small farmers’ right to seeds has been recognized, it will be possible to amend intellectual property rules in order to resolve the legal tension over farm seeds. This could be based on Article 27-2 of the TRIPS Agreement to obtain exceptions to the patentability of seeds: *“Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment”*.

The way in which the conflict between the right to health, which implies access to medicines for all, and the intellectual property rights of the pharmaceutical industry has been resolved is an interesting precedent that could guide the Council’s discussions on the legal tension around the issue of farm seeds.

The Human Rights Council and access to medicines

In April 2001 the Human Rights Commission (replaced by the Human Rights Council in 2006) adopted a resolution on the access to medicines in situations of pandemics such as Aids, recognizing this access as a fundamental human right essential for the right to health to be effective. In parallel, the WTO used the flexibility afforded by the TRIPS Agreement and, in November 2001, adopted a Ministerial Declaration specifying that the right to health and to access to medicines was to take precedence over intellectual property rights. Following this Declaration, countries such as Brazil, India, South Africa and Thailand started to produce cheaper generic medicines than those of the multinationals, without paying license fees, and thus enabled millions of people to benefit from treatment for Aids⁷⁰. This precedent could be applied to small farmers’ right to seeds, which in many cases determines the effectiveness of the right to food of small farmers and of the majority of the world’s population.

68.
See page 6.

69.
See page 12.

70.
Christophe Golay, *The Right to Seeds and Intellectual Property Rights*, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, March 2017, *op. cit.*

CONCLUSION

Small farmers' right to seeds, vital to their survival, is seriously threatened and is regressing throughout the world. Their seed systems have been undermined by inappropriate legislation and by insufficient support by governments and public research. This is largely the result of a balance of power that still weighs heavily in favour of a handful of multinationals prevailing over the protected seed market, based essentially on intellectual property rights. Faced with this situation, it is urgent to defend the rights of hundreds of millions of people who are amongst the most vulnerable and yet who feed the planet. Small farmers' right to seeds must be recognized as having the value of a human right. The future United Nations Declaration on the rights of peasants and other people working in rural areas affords the opportunity for this to be achieved, through Article 19. For civil society, including peasant movements, it is necessary to ensure that this article is maintained in the Declaration and not emptied of its substance.

Glossary

TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights
PVR: Plant Variety Right
GMO: Genetically Modified Organism
WTO: World Trade Organization
UPOV: International Union for the Protection of New Varieties of Plants

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14, passage Dubail 75010 Paris

Tél. : +33 1 44 72 93 72

Site web : www.coordinationsud.org