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UPOV 91 and other seed laws:  
a basic primer on how companies  
intend to control and monopolise seeds

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**A**ll over the world, farmer's seeds and seed systems are under attack. Corporations are pushing for ever more aggressive new laws and regulations that criminalise farmers for sowing, keeping, exchanging, and taking care of their seeds. If companies get their way, farmers around the world will face the possibility of being jailed or harshly fined for doing what they have been doing over centuries.

Alarmingly, the governments of non-industrialised countries are showing little or no will to resist, and in more than just a few cases, they are happily cooperating with these attacks. The recent approval of a new protocol on intellectual property over plant varieties by member states of the African Regional Intellectual Property Organization (ARIPO) is just the latest example.

Farmer seed systems stand at the very origin of agriculture, as we now know it. They are a fundamental prerequisite if farming families and communities across the world are to remain free, as well as to achieve food security and food sovereignty. The rights of farmers over seeds have been recognised by governments in several international treaties, but the same governments are signing new laws and regulations that trample on those very same rights to allow multinational corporations to further dominate the world's seed supply. The changes we are witnessing are major.

Via Campesina and GRAIN have recently published a booklet describing how farming communities are being affected by these new legislations and how they are struggling against them<sup>1</sup>. GRAIN also published a database and a map documenting what farmers across the world are or are not allowed to do with their seeds.<sup>2</sup>

This primer is meant to further explain how farmers are affected by seed laws, illustrated with extracts from legislation from a variety of countries.

### International pressure to privatise seeds

**C**orporations are using multiple strategies to control and monopolise seeds. A fundamental one is putting pressure on countries to privatise seeds through legislation that provides what is called **plant breeders' rights** or **plant variety protection**.

But there are other regulations with similar aims: patent laws for plants are becoming increasingly common, and then there are seed certification laws, seed marketing regulations and food safety rules. Many social movements have dubbed them "Monsanto Laws" to



## UPOV

UPOV is the French acronym for the International Union for the Protection of New Varieties of Plants. Officially an intergovernmental body since 1961, it has worked exclusively and explicitly for the privatization of seeds around the world by imposing intellectual property rights on plant varieties. Member states must join the UPOV Convention, and write it into national law.

The Convention was first drafted in 1961 and has been revised three times (in 1972, 1978 and 1991), each time to strengthen the rights of corporate breeders and restrict what others can do with the seeds. The 1991 revision was particularly controversial because it eliminated the right of farmers to save privatised seeds and also limited what other plant breeders can do with that seed.

For most of its history UPOV has been a small and rather obscure club of mostly rich countries that wanted to advance the interests of their seed companies.

At the time of the last revision, 1991, only 20 countries were members. But after the World Trade Organization agreed in 1994 that all WTO member countries should have intellectual property rights for plant varieties, UPOV membership quickly increased and over 70 countries are members today. Much of this was due to arm twisting by rich countries to get non-industrialised countries to sign on, like through the trade agreements.

*Article 15.2. Each Party shall ratify or accede to the following agreements:*

....

*e) the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention);*

### **US-Morocco Free Trade Agreement<sup>6</sup>**

*By the end of the fourth year after the entry into force of the Agreement, Egypt shall accede the following multilateral conventions on intellectual property rights:*

*.... the International Convention for Protection of New Varieties of Plants (UPOV) (Geneva Act 1991);*

### **European Union – Egypt Association Agreement<sup>7</sup>**

highlight the transnational seed corporation that has been active in their drafting – and who will benefit most from their adoption.

The new rules may be imposed as laws, decrees, executive orders, administrative orders, ministerial regulations, etc., but their purpose is the same across the board: handing over exclusive rights to corporations to control the seed supply. In some cases, this is made very explicit. For example, a model seed law for Southern African countries promoted by USAID stipulates that the national seed agency “*shall take the necessary measures to promote the seed industry enhancement and development*”<sup>3</sup>

Although it can be argued that small local seed producers could also be part of the seed industry, the fact is that governments are responding to pressure from big companies, and the rules are clearly biased in favour of big companies, not local seed producers – through requirements on the facilities and staff needed to market seeds, for example. Governments are also being forced to keep the public sector out of any seed breeding or distribution activities. For example, the government put in place after the US invasion of Afghanistan duly returned the favour by including the following requirement in its new seed law: “*the Ministry shall take such steps as are necessary to ensure that the production and trade in all kinds of seeds are undertaken by the private sector and that the Ministry shall divest itself of all seed production and trading enterprises and activities*”<sup>4</sup>

An important strong arm tactic used by industrialised countries to push for seed privatisation across the world is including it in bilateral or regional trade agreements. One could wonder what the right of small farmers to save seeds has to do with free trade, but for the trade negotiators that link is very clear: peasants saving and exchanging seed are competing with the global seed trade. The goal is to ensure that companies like Monsanto or Syngenta can control seed trade in general and maximise profits from their seeds business by preventing farmers from multiplying and saving seeds – a bit like the way Hollywood or Microsoft try to stop people from copying and sharing films or software. So, in all the trade agreements the USA has signed, it has included a paragraph that obliges the other country to join – as a minimum – the 1991 version of the UPOV Convention, which gives corporate plant breeders intellectual property rights over plant varieties.

The European Union is applying exactly the same policy, and Japan is moving in the same direction. If the Trans-Pacific Partnership agreement (TPP) is signed, matters will probably get worse, as leaked documents show that the US is pushing not only for UPOV 91 type of legislation, but also for the patenting of plants and animals.<sup>5</sup>

## Assesing future scenarios

Although all laws and regulations are officially drafted at the national level, the ones that affect seeds are all in fact very similar to each other – in some cases carbon copies of texts drafted by UPOV bureaucrats or by industry representatives themselves. Therefore, the contents of these laws and the way they are being implemented in countries that have already passed them is a good indication of what will happen in countries that may adopt them in the future.

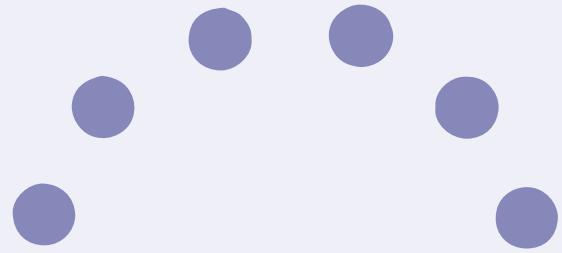
When trying to understand what the new legislations might mean, it is important to keep in mind that they will be interpreted and enforced with a certain ideology and within a certain political context. In most cases, the authorities implementing seed legislation know little or nothing about seeds, know little or nothing about small farmers and are strongly and undeniably biased in favour of the interests of companies. Experience shows that the effect of these laws gets worse with time, because they are enforced increasingly more strictly or because they are repeatedly revised to become more strict and encompassing. The newer laws show a clear tendency to grant wider privileges to companies and simultaneously apply harsher sanctions and forms of punishment to farmers and consumers. One example of this is the extension of privatisation beyond plants, to animals and animal breeds.

In sum, this means that, when trying to assess what a new draft law or new regulation might mean, the worst-case scenarios are often the most realistic indication of what may happen if the new laws and rules are imposed.

Below we list a series of implications that these combined laws have for farmers and farming, and selected examples of the legal texts from countries that enforce them at the national level.

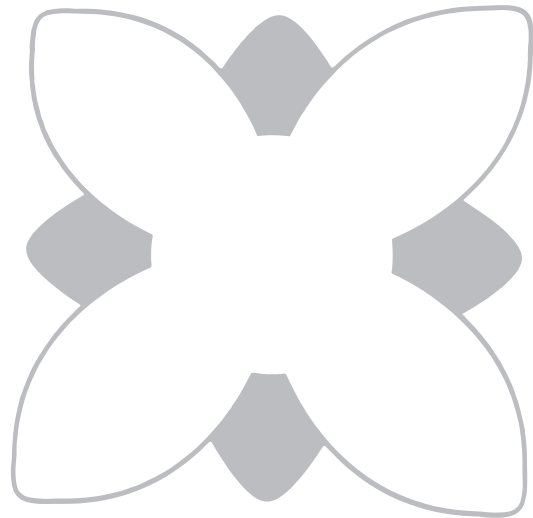
### 1. Bans or restrictions on using and exchanging privatised seeds.

The 1991 version of the UPOV Convention and the laws drafted in line with it grant companies or institutions property rights over new plant varieties of any plant species (wild, cultivated, medicinal, etc.), and increasingly over fungi, bacteria and algae as well. This means that only the company or institute that is granted property over a variety can produce, reproduce, sell, export or import that variety. If anyone else wants to do that, it requires a permit from the company and to fulfil the conditions that the company determines, such as paying a fee and/or royalty for keeping seeds for continued use in later seasons.



One example of this: a patent shall give the exclusive right to use a selection achievement and this right shall be protected by the State...

“Protected selection achievements” means patented plant material and pedigree animal registered in the State register;  
**Law on Selection Achievements, Azerbaijan<sup>8</sup>**



Article 15.-

Any production or reproduction, conditioning for the purpose of propagation, offering for sale, selling or marketing, importing and exporting, stocking of a variety or protected material shall require the right owner’s authorization.

The right owner may authorize the use of his variety subject to certain conditions or limitations.

**Law on Seed Management and Plant Breeder’s Rights, Cambodia<sup>9</sup>**

The owner of the plant patent may, at his discretion, make any such authorization subject to conditions and limitations.

**Law on Patents for Plant Varieties of April 13, 1995 . (Latest Edition [Amendment] from June 14, 2004), Belarus<sup>10</sup>**

“Plant” includes all fungi and algae

**Plant Varieties Protection Act 2004, Singapore<sup>11</sup>**

Article 12 : The protection conferred by the plant breeder's right places no limitation on the right of farmers to use the variety freely for the purposes of planting their own field, ...

**Law no. 010-2006/An Regulating Plant Seeds in Burkina Faso.**<sup>12</sup>

Anyone who saves and plants, on his own property, within reasonable limits and subject to the safeguarding of the breeders' legitimate interests, the product of the harvest that he has obtained from the growing, on his own property, of a protected variety or a variety covered by section 18(c) of this Act does not thereby infringe the breeder's right. This provision does not apply to fruit, ornamental, and forest species exploited for commercial purposes.

**Plant Breeders' Rights Act no. 8631, Costa Rica**<sup>13</sup>

(2) A farmer who [reproduces privatized seed in his/her own farm] ...shall pay an equitable remuneration to the holder of plant breeder's right,

**Act on Amendments to the Plant Variety Protection Act of October 21, 2012, Croatia**<sup>14</sup>

The breeder's rights shall not extend to:

- acts performed in a particular context for experimental purposes which are not commercial in nature;
- operations performed in connection with education or scientific research which relate to the creation of new varieties.

**Law No. 99-42 of May 10, 1999, on Seeds, Seedlings and New Plant Varieties, Tunisia**<sup>15</sup>

[The rights of the breeder] apply also to the production of seeds or propagating material of specific species of a protected variety for the purpose of repeated reproduction (multiplication) for [the farmer's] own use.

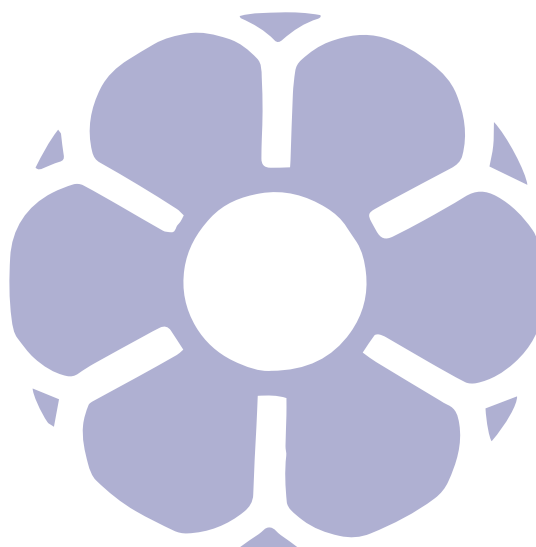
**Plant Variety Rights Act, Estonia**<sup>16</sup>

For farmers, it means that

- a) They can legally get that seed only if they buy it from a store that has permission to sell it from the company or institute that claims it as property
- b) Privatised seeds cannot be exchanged in any manner among peasants, not even as a gift
- c) Their right to keep seed for the next season is restricted or banned
  - In some countries, farmers can reproduce and keep a privatised seed variety for the next season, but only for use on their own farms. This is often restricted to certain crops and farmers are often restricted to saving only the same amount as they originally bought.



- In other countries, farmers can reproduce and keep a privatised seed for the next season if they use it in their own farm, and only if they pay a royalty to the company that claims property
- In a growing number of countries, no exceptions are granted to farmers, and hence reproducing a privatised seed and keeping it for the next season is banned outright.



Even when farmers and peasants are allowed to reproduce and keep privatised seeds for the next season (with or without a royalty payment), they face an additional burden: they must tell government authorities and sometimes seed companies where they will sow the seed they kept and how much seed they will use, and they must accept inspections by public or private agents.



## 2. Privatising farmers seeds

It could be argued that as long as farmers keep their own seeds and avoid using privatised seeds, they don't need to worry. But things do not work that way.

UPOV 91 and patent laws allow the privatisation of farmers' and peasants' seeds through two mechanisms:

- a) Companies and breeding institutes can take seeds from farmers' fields, reproduce them, do some selection to homogenize them, and then privatise them as a variety they have "discovered".
- b) To make matters worse, a second provision of UPOV 91 allows breeders to extend rights over a specific variety to any other varieties that are similar to the one they have privatised.

*A farmer is in obligation to give, upon request, the authority and the plant breeder's right holder the necessary information for establishing the payment obligation.*

***Plant Breeder's Right Act (1279/2009), Finland<sup>17</sup>***

*(13) Growers and seed processors are obliged, upon request, to provide to the holder, information in writing about their name, surname, permanent residence address and identification number ...*

*(15) Growers are obliged, upon request, to provide to the holder, information in writing about the scope of use of farm saved seed.*

***ACT of 25 October 2000 on the protection of plant variety rights and the amendment to Act No. 92/1996 Coll., on plant varieties, seed and planting material of cultivated plants, as last amended, Czech Republic<sup>18</sup>***

*"Breeder" means a physical or legal person, or any employee who has bred, **discovered** and developed a new plant variety.*

***The Law No. 8880 Dated April 15, 2002, of The Republic of Albania on Plant Breeder's Right, Albania<sup>19</sup>***

*Art. 37. — The rights granted ...cover*

*a) the protected plant variety*

*b) all varieties that cannot be clearly differentiated from the protected variety...*

***Law of Algeria n° 05-03 of 27 Dhou El Hidja 1425 or 6 February 2005 relative to seeds, plants and the protection of plant varieties, Algeria<sup>20</sup>***

*A variety shall be deemed to be new if... it has not been sold or otherwise marketed, by or with the consent of the breeder...*

**Law on seed management and plant breeder's rights, Cambodia<sup>21</sup>**

*A plant variety or animal breed shall be deemed to be new if, ..the seeds or breeding material of the given selection achievement has not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for purposes of exploitation of the selection achievement*

**Law on the Protection of Selection Achievements, Russian Federation<sup>22</sup>**

*A variety shall be considered to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application.*

**Law on Patents for Plant Varieties of April 13, 1995 . (Latest Edition [Amendment] from June 14, 2004), Belarus<sup>23</sup>**

*The following varieties shall be deemed to be of matter of common knowledge*

- a) protected in the Czech Republic or abroad,
- b) entered in the official plant variety register in the Czech Republic or a similar register abroad,
- c) in respect of which an application for grant of plant variety rights or for entry in the plant variety register has been filed in the Czech Republic provided the application will led to the granting or entering,
- d) in respect of which an application for grant of plant variety rights or for entry in the plant variety register has been filed abroad, provided the application will led to the grant or entry, or
- e) offered for sale or sold in the Czech Republic or abroad

**ACT of 25 October 2000 on the protection of plant variety rights and the amendment to Act No. 92/1996 Coll., on plant varieties, seed and planting material of cultivated plants, as last amended, Czech Republic<sup>24</sup>**

Using these two provisions, a seed company can take farmers' seeds from the field, privatise them, and then claim property over all similar varieties. Farmers will then find out that they cannot use their own seed, unless they buy them or pay a royalty to the company that claims the variety as its property.

Advocates of the privatisation of seeds have argued that a scenario where farmers find their own seeds have been privatised cannot happen, because no property rights can be granted over anything which is not "new" and "distinct", that is, over anything that existed before a property right was claimed. What these laws actually say is that a seed cannot be privatised if it is "previously known", a "matter of common knowledge" or has not been "sold by or with the consent of the breeder". So if the company claiming rights over a seed variety has not previously sold this seed – even if the variety has been circulating in farmers' markets for years – it is still considered "new" and can be privatised. Also "previously known" and "common knowledge" refer not to what common people or peasants know, but to what is known to the seed industry, seed institutes and intellectual property officers. Therefore, something that is well known by farmers or peasants but not acknowledged as existing by industry or the authorities can be privatised too.





### 3. Limits or bans on keeping, exchanging and selling seeds

UPOV-style legislation to privatise seeds is often complemented by other rules and laws, such as marketing and certification laws. Taken together, they can

a) Force peasants and farmers to keep seeds packaged and labelled, even their own seeds, and ban the marketing, exchange and transportation of unpackaged seeds. If the new regulations were strictly applied, walking around with a handful of seeds in your pocket would become a legally punishable offence in some countries.



b) ban the marketing of seeds that are not certified or deemed homogeneous enough, which is in fact a way of banning farmers' or peasants' seeds, as they often do not meet such requirements.



*OBLIGATIONS: Natural or legal persons [who produce seeds] shall:*

.....

*Market and/or transfer free of charge [only] seeds meeting the established requirements concerning signage, tagging, and labelling;*

.....

*Market or transfer free of charge seeds with authorized labelling, tagging, packaging, repackaging, and/or containers....*

.....

*In those cases where it is found that any act of production, ... storage, marketing, transfer without charge, and/or use is being performed with seeds, whether identified or not, ... for the purposes of their disposal in any manner or form, in warehouses or storehouses, on lots or premises, in barns, fields, or mills, or at other sites where there are seeds and/or other plant materials that do not meet the provisions of this Decision, ... the applicable control measures and sanctions may be imposed without entitlement to any compensation.*

***Decision 970 of the Instituto Colombiano Agropecuario (ICA), Colombia<sup>25</sup>***

*Article 7. The following cases will be considered as violations and infringements of the Act and the violators will be treated in accordance with the prevailing laws and regulations...*

*v) Production and propagation of seeds and seedlings to be supplied to the market without obtaining of the certificate from the Institute*

***Act of Plant Varieties Registration, Control and Certification of Seeds and Seedlings, Islamic Republic of Iran<sup>26</sup>***

*Only varieties that have been approved for release and notified and included in the variety list may be sold.... A variety may be recognized [and included in the variety list] if ... (b) it is sufficiently homogeneous having regard to the particular features of the reproduction or vegetative propagation thereof;*

***Seed Act (Act No.9 of 1996), Malawi<sup>27</sup>***

*An official list of varieties shall be established to register varieties that can be marketed in the country and in the region following the regional variety release system. The landraces and local varieties will also be registered with special provisions.*

**Model Seed Act For Southern Africa Countries.  
Southern African Seed Systems Development Initiative.  
USAID/RCSA<sup>28</sup>**

*Art. 17. — .... only those varieties registered and listed as such in the official catalogue of varieties, subject to the modalities and conditions prescribed by this act, are authorized to be produced, multiplied, imported, exported, distributed, or marketed.*

**Law no. 05-03 of 27 Dhu al-Hijjah 1425 corresponding to 6 February 2005 in respect of seeds, plants, and plant breeders' rights, Algeria<sup>29</sup>**

*9. Only seeds and seedlings of the plant varieties entered in the official register in one of the categories referred to in Article 3 of this Law may be marketed.*

**Law No. 99-42 of May 10, 1999, on Seeds, Seedlings and New Plant Varieties, Tunisia<sup>30</sup>**

*Only varieties that have been approved and notified and included in the variety list may be sold.*

*“sell” includes to exchange or barter*  
**Seed Act (Act N°9 of 1996), Malawi<sup>31</sup>**

*In the case of agricultural species, only propagating material of registered varieties shall be put on the market, further commercialised and exported.*

**Seeds and Planting Material Act. Consolidated Text of the Act of October 6, 1966, as Last Amended by the Act of January 28, 1999, The Netherlands<sup>32</sup>**

*Article 7: Any physical or legal person who engages in an activity with seeds shall keep a record of transactions by species, variety, and category under the conditions defined by regulation.*

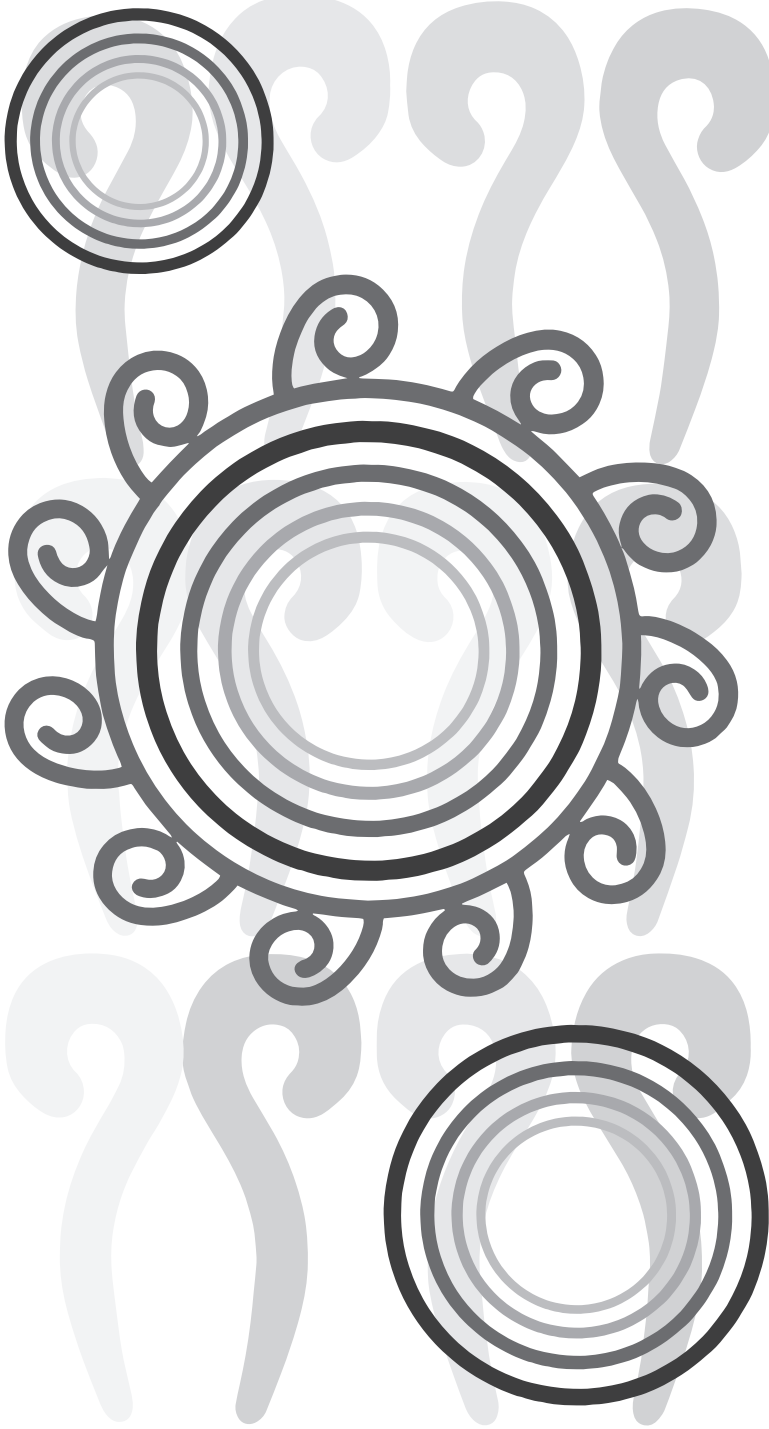
**Law no. 2001/014 of 23 July 2001 in respect of seed-related activities, Cameroon.<sup>33</sup>**

*Article 16 : Any physical or legal person may freely produce or multiply seeds if he is registered with the competent bodies.....*

c) ban the marketing, gift or exchange of varieties that are not registered. A variety can be registered only after fulfilling a set of requirements, such as having a detailed and cumbersome but useless description.

d) ban farmers and peasants from producing or exchanging seeds unless they are registered seed producers. To become a registered seed producer, a farmer must get permission from the government to produce seeds, after informing the authorities exactly where he/she will produce seeds and fulfilling a set of requirements including having costly infrastructure and hired technical staff. A monthly or annual allowance to stay registered is often required as well,





e) ban the production of seeds outside registered fields. Those that produce seeds have to tell government authorities exactly where they will produce them,

*The conditions of registration shall be determined by a decision of the ministers responsible for agriculture and forests.*

**Law no. 010-2006/An Regulating Plant Seeds in Burkina Faso.**<sup>34</sup>

*(1) A person desiring to practice seed business shall be equipped with facilities prescribed by a Presidential Decree and register his business with the Mayor or Provincial Governor.*

*(2) Any person desiring to practice seed business in accordance with Paragraph (1) shall have one (1) or more seed managers;*

**Seed Industry Law, Korea**<sup>35</sup>

**SEED PRODUCER:** *The natural or legal person duly registered to engage directly or indirectly in, or to take responsibility for someone else's involvement in, the multiplication, drying and packing, storage, distribution, and marketing of seeds and nursery plants for planting.*

**Section 28.-** *The requirements for becoming a seed and nursery plant producer are as follows:*

*1) Possess the basic knowledge of the practices essential to the process of seed and nursery plant production or have technical personnel with knowledge of the activity to be carried out.*

*2) Possess the agricultural machinery or implements necessary for the activity involving the production of seeds and nursery plants.*

*3) Possess the financial resources necessary for the performance of the various field and post-harvest management activities*

**Seed Production and Trade Act and Regulation, Nicaragua**<sup>36</sup>

*The transfer of seeds in any manner [e.g., exchange], for the purposes of trade, planting, or propagation by third parties thereof, may only be carried out by a person listed in the National Seed Trade and Supervision Registry.*

**Draft Seed and Plant Variety Act (presented by the government of Argentina in 2012 and later withdrawn due to widespread resistance)**<sup>37</sup>

[Farmers must] register their fields...indicating the plant material to be sown, number of hectares to be sown, placement and area of the farm, sowing date, seed category....

**Resolution 970, Colombia**<sup>38</sup>

*sell* includes letting on hire and exchanging by way of barter.  
**Plant Breeder's Rights Act 1994, Australia**<sup>39</sup>

The word "sale" includes "gift"

**Seed Act (Act N°9 of 1996), Malawi**<sup>40</sup>

"sell" means to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange or dispose of for any consideration or transmit. Convey or deliver in pursuance of the sale, exchange or barter...

**Protocol for the Protection of New Varieties of Plants (Plant Breeders' Rights) in the Southern African Development Community Region (draft)**<sup>41</sup>

Anyone who produces, multiplies, imports, fraudulently exports, distributes, or markets seeds or plants not registered or listed in the official catalogue is punishable by a prison term of two (2) months to six (6) months and to a fine of one million (1 000 000) to one million five hundred thousand (1 500 000) dinars [USD \$10000–15000]. The seeds and/or plants concerned by the offence shall be destroyed. The penalty is doubled in the case of a repeat offence.

**Law no. 05-03 of 27 Dhu al-Hijjah 1425 corresponding to 6 February 2005 in respect of seeds, plants, and plant breeders' rights, Algeria**<sup>42</sup>

48.—(1) Any person who wilfully offers for sale or markets propagating material of a variety protected in Barbados in contravention of this Act, is guilty of an offence, and liable on summary conviction to a fine of \$20 000 [10000 USD], or imprisonment for 3 years, or to both.

**Protection of New Plant Varieties Act, 2001—17, Barbados.**<sup>43</sup>

Any individual who knowingly commits an act which constitutes an infringement of plant breeder's right, ... shall be guilty of an offense punishable by a fine of between 5 million Riels and 20 million Riels [1250 – 5000 USD], or by a period of imprisonment of one to five years, or by both a fine and a period of imprisonment.

Re-offenders shall have their previous sentences doubled.

**Law on Seed Management and Plant Breeder's Right, Cambodia**<sup>44</sup>

f) ban the exchange of seeds between farmers and/or peasants, even if they exchange their own seeds. This is done with the excuse that exchanging seed is a way of selling, and therefore falls within the scope of marketing and seed privatization laws

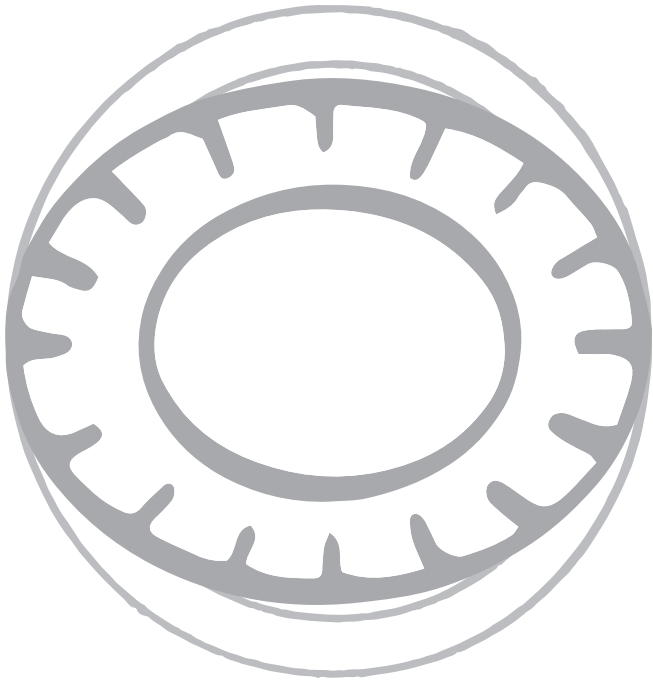


Together, these regulations can make it increasingly difficult or outright illegal for farmers and peasants to use their own seeds. They may find themselves forced to use privatized commercial seeds.

#### 4. Fines and jail terms over seed saving and exchange

Along with mandating the privatisation of seeds, UPOV 91 and trade agreements require that countries "provide for appropriate legal remedies for the effective enforcement of breeders' rights"; in other words, countries must put in place a set of sanctions for any possible infringement. Where UPOV 91 laws and the like are already in place, if farmers infringe these new regulations, even by keeping on doing what they and their communities have been doing for generations, the sanctions are harsh and getting harsher.

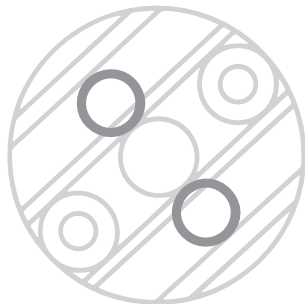
a) fines can be imposed for a long list of actions that will be treated as offences, from reproducing a privatized seed and keeping it for the next season, to keeping your own seed unlabelled or unpackaged. The severity of the fines changes from country to country, but in general terms they are significant, they double in case of a second offence, and the person fined can go to jail if the fine is not paid. In a growing number of countries, the punishment includes jail and / or a fine. Jail terms can range from months to ten years,



b) If a farmer uses privatised seeds without the permission of the owner of that variety (for example, if he or she got the seed from a neighbour, or bought seed one year and then kept part of the harvest to use the next season), their crop can be seized and destroyed, as well as their harvest and the products obtained from their harvest. This kind of sanction can be imposed even before the farmer accused is actually declared guilty, as was the case in Colombia, where tons of farmers' seeds have been confiscated and destroyed based on suspicion of infringement.<sup>46</sup>

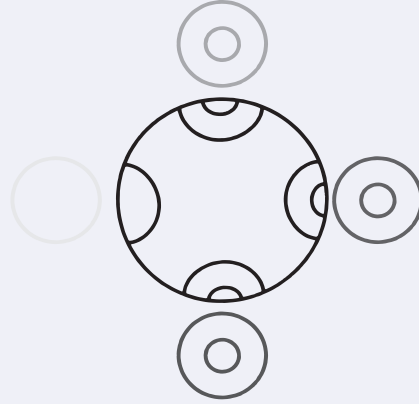
c) Tools and machinery used to manage the crops or the seeds can be seized as well.

d) Some of the latest draft laws – clearly under the pressure of industry – have included provisions that would allow someone to be banned from farming if these laws are infringed.



*Any person who has infringed a breeder's right or an exclusive exploitation right shall be punished by imprisonment with work for not more than ten years or by a fine of not more than 10,000,000 yen, or combination thereof.*

***The Plant Variety Protection and Seed Act (Act No. 83 of May 29, 1998) as amended by Act No. 49/2007, Japan<sup>45</sup>***



*(2) The holder of a breeder's right or the holder of an exclusive exploitation right, ...may demand the destruction of the propagating material, the harvested material or the processed products which is a component of the act of infringement, or the objects used in the commission of the act of infringement, or other measures necessary for the prevention of such infringement.*

***The Plant Variety Protection And Seed Act (Act No. 83 of May 29, 1998) as amended by Act No. 49/2007, Japan<sup>47</sup>***

*In the case of illegal reproduction of the variety, in addition to the fine and prison sentence, the propagating materials obtained, and the materials and equipment used in the process of propagating the variety illegally, shall be confiscated.*

***Law on Protection of Breeder's Rights for Varieties of Plants, Dominican Republic<sup>48</sup>***

*There shall be created, under the jurisdiction of the National Institute of Seeds:*

.....

*b) The "National Registry of Seed Users," in which any physical or legal person who uses seeds shall be registered*

.....

*Section 44. — Where the offences defined in section 45 are committed, the National Institute of Seeds shall sanction the perpetrators with.....*

*e) temporary or permanent suspension from the relevant registry;*

*f) temporary or permanent disqualification.*

Section 45. — *The National Institute of Seeds shall, as prescribed in section 44, sanction anyone who:*

*a) infringes the provisions of sections 9 [inadequate signage associated with seeds exhibited, sold, or exchanged],18 last paragraph [distributing an unregistered variety] or 29 [giving privatized seed in any manner];...*

*i) fails to register in the National Registry of Seed Users as prescribed by regulation.*

**Draft Seed and Plant Variety Act (presented by the government of Argentina in 2012 and later withdrawn due to widespread resistance)<sup>49</sup>**

*For the purposes of claiming the remuneration [for the use of privatised seed] ... any farmer who... may be deemed to have performed an exploitation [of that seed] ... is obliged to deliver ... data to the holder – upon his request..... If the authenticity of the data provided is disputed, the burden of proof shall be on the farmer.*

**Act XXXIII of 1995 on the Protection of Inventions by Patents, as last amended by Act XXVII of 2009. Part V. Protection of Plant Varieties, Hungary<sup>50</sup>**

*An Inspector may,*

*a) At any reasonable time, enter any place, premises or vehicles or receptacle where he/she believes there is any seed to which this Act applies, packaged or not, take samples for the purpose of ensuring that the provisions and regulations of this Act, are being complied with...*

*g) enter any public or private premises during or after regular business hours without notice of inspection when a suspected violation of this Seed Act and regulations.*

**Model Seed Act For Southern Africa Countries. Southern African Seed Systems Development Initiative. USAID/RCSA<sup>51</sup>**

*A seed inspector may, for any of the purposes of this Act and at all reasonable times*

*a) enter upon any land, building, premises or vehicle at*



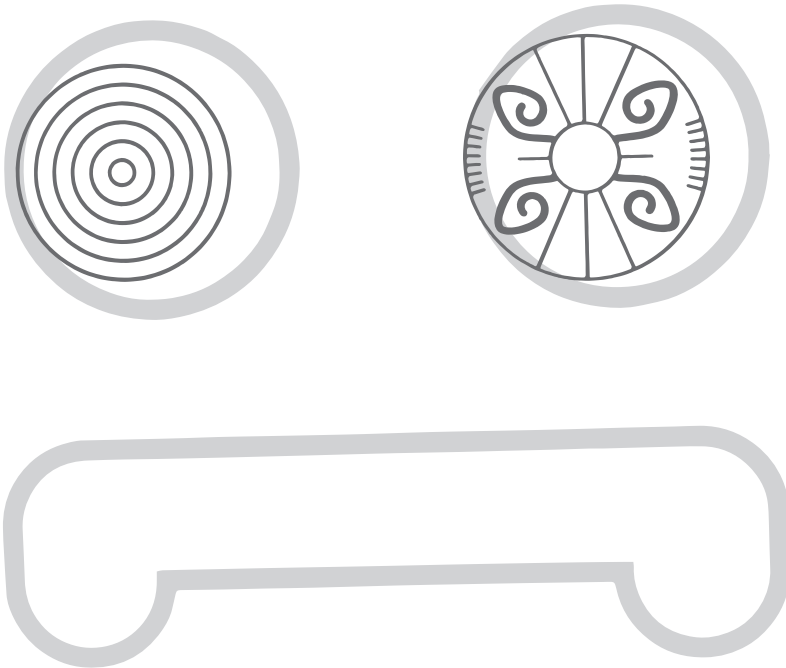
## 5. Guilty by suspicion

If sanctions are harsh, the legal procedures imposed by the new regulations are a giant step backwards in the evolution of human and social rights. The UPOV 91 laws, as well as other laws related to seeds or granting property rights over plants, have increasingly imposed what is called a “reversal of the burden of proof”. This means that those who accuse farmers of infringement do not need to present strong proof of such infringement, while farmers must bear an increasing part of the burden of showing that they have not infringed the law. In order to do so, they must keep records of the seeds they use, buy and sell, and must accept inspections of their premises, fields and books when they keep them. This is in direct conflict with the Universal Declaration of Human Rights that states that everyone must be considered innocent until proven guilty.

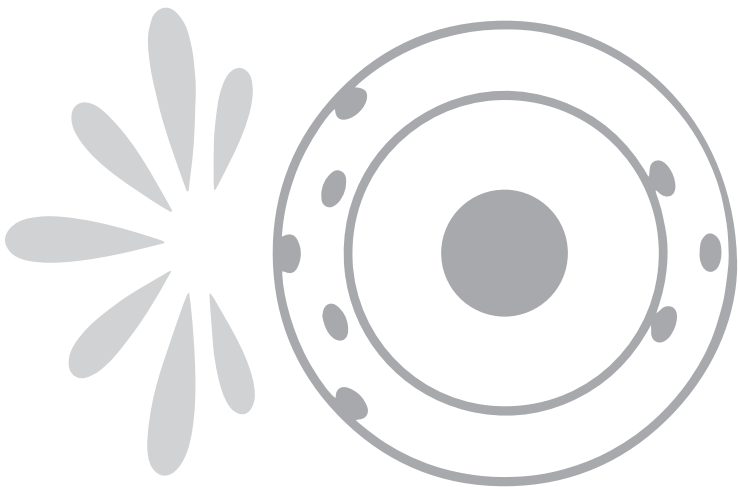
Using this logic, the new legislations sanction or punish farmers and peasants before they are proven guilty or before they are even informed they have been accused. For example:

- a) Peasants’ houses and other buildings and vehicles in a farm can be searched without a court order, based on suspicion

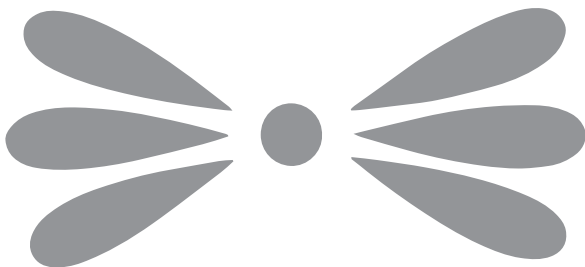




b) Searches can be carried out based on accusations that the accused may not have been informed of...



c) Crops, harvests and products made from the harvested material can be seized or destroyed before a farmer is proven guilty, once again, based on suspicion...



or in which there is reasonable cause to believe that any prescribed seed or restricted seed is being stored, sold or transported for sale in contravention of this Act, or is being packaged in packages or other containers which are marked or labeled.... in contravention of this Act....

d) further, may seize and remove therefrom any prescribed seed or restricted seed....

The word "sale" includes "gift"

**Seed Act (Act N°9 of 1996), Malawi<sup>52</sup>**

Any authorized officer or police officer not below the rank of Inspector may, for the purpose of enforcing this Act, do all or any of the following:

(a) enter, inspect and examine with or without notice any premises or farm at any reasonable hour in relation to any offence reasonably suspected to have been committed under this Act;

**Protection of New Plant Varieties Act 2004 . Act 634, Malaysia<sup>53</sup>**

Where a precautionary measure is applied [including confiscation of crops, seeds, and harvest products] without the other party having been given a prior hearing, OFINASE [the National Seeds Office] or the competent judicial authority shall notify the affected party within the three working days following the application of the measure.

**Plant Breeders' Rights Act no. 8631, Costa Rica<sup>54</sup>**

B. 1. The breeder of the protected variety, before bringing a claim of infringement, may, with by a bond, request the court to order any of the procedures provided in paragraph (A) of this Article, without notifying the defendant.

**Coalition Provisional Authority Order Number 81. Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law, Iraq<sup>55</sup>**

The court may order the confiscation of the infringing variety as well as the materials and tools substantially used in the infringement of the protected variety.

The court may also decide to destroy the infringing variety as well as the materials and tools or to dispose of them in any noncommercial purpose."

**Coalition Provisional Authority Order Number 81. Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law, Iraq<sup>56</sup>**

Art. 24.- *The testing period will be of eight working days.*  
**Decree Num. 530, El Salvador**<sup>57</sup>

*The following non exhaustive list of enforcement measures might be considered...*

*vi) measures to require an infringer to provide information to the holder of the breeder's right on third persons involved in the production and distribution of infringing material*

**Explanatory Notes on The Enforcement of Breeders' Rights Under The UPOV Convention. Adopted by the Council at its forty-third ordinary session on October 22, 2009**<sup>58</sup>

Article 67.- *The local authorities at all levels, armed forces, customs and excise, airport and port offices, and other relevant authorities shall co-operate in the uncovering, prevention and suppression of seed offenses and in the temporary storage of evidence relating to seed offenses upon request by the Seed Inspector.*

**Law on Seed Management and Plant Breeder's Right, Cambodia**<sup>59</sup>

*The accredited certification system shall allow individuals, third parties, seed laboratories, and/or seed entities to inspect fields, sampling and test seeds, and /or issuance of labels subject to the regulation of this Seed Act.*

**Model Seed Act For Southern Africa Countries. Southern African Seed Systems Development Initiative. USAID/RCSA**<sup>60</sup>

d) Accused farmers often have a very short time to gather proof of their innocence

e) Accused farmers may have the obligation to denounce others that have infringed the law,



f) Searches and seizures can be carried out with the support of military force.



g) Private entities or individuals may be granted the power to act as inspectors or certifying authorities, creating de facto private police entities. Seed companies can set up such entities and become inspectors of small seed producers or other competing companies.



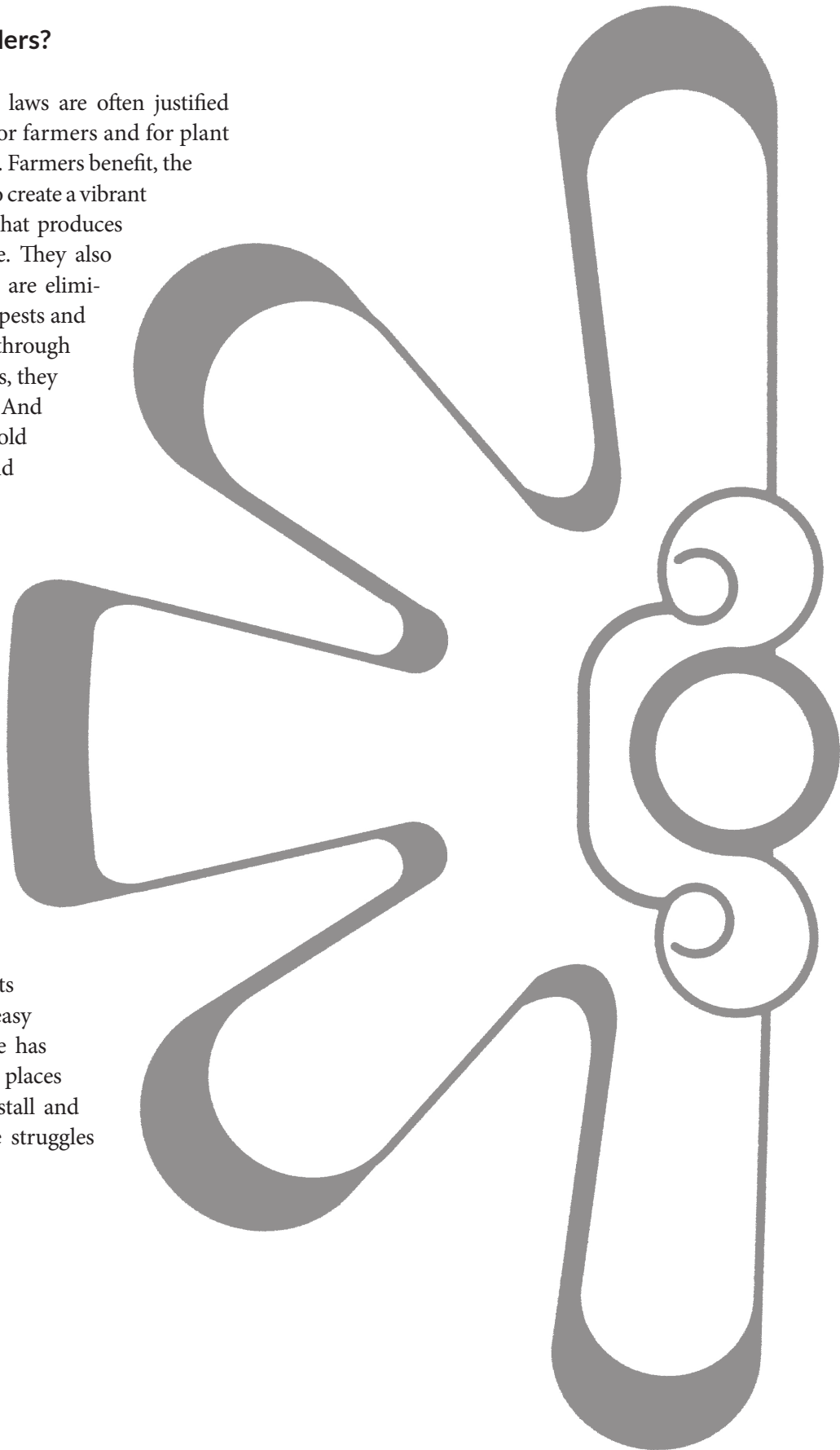


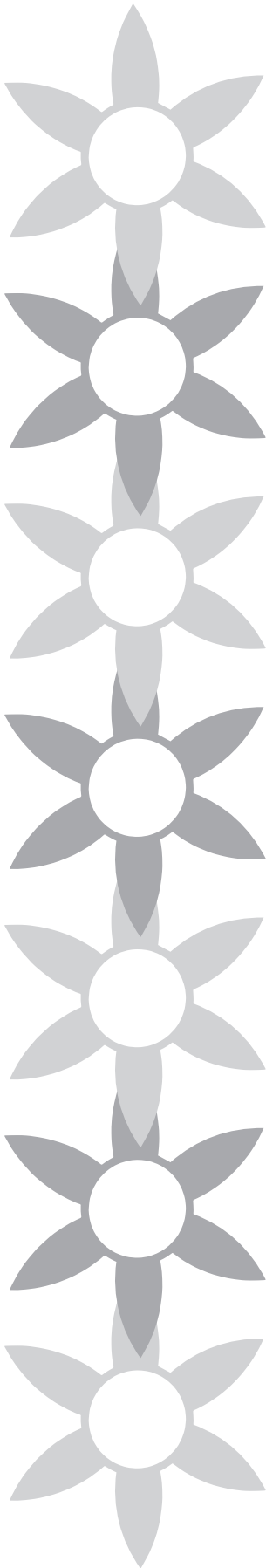
## Good for farmers, good for breeders?

UPOV-based legislation and other seed laws are often justified with the argument that they are good for farmers and for plant breeders, as well as for society as a whole. Farmers benefit, the argument goes, because these laws help to create a vibrant and competitive plant-breeding sector that produces high quality seeds that farmers can use. They also benefit because counterfeiting practices are eliminated and the available seeds are free of pests and diseases. Plant breeders benefit because, through clear intellectual property and other rules, they can make a return on their investment. And society as a whole gets new solutions to old problems, accessing new technologies and permitting progress.

None of these arguments hold true. If anything, the global race towards the privatisation of seeds has led to the creation of a monopolistic global seeds industry that increasingly dominates the world seed supply while threatening age-old local farmer seed practices that form the cornerstone for sustainable food production. It is criminalising farmers in the process.

The good news is that the world is starting to realise what's happening and what's at stake. Despite all their power, big companies and powerful governments pushing seed laws are not having an easy time. Popular opposition and resistance has surged around the world, and in many places popular movements have managed to stall and even repeal the new regulations. These struggles now need support and strengthening.





## Notes

- 1 <https://www.grain.org/article/entries/5142-seed-laws-that-criminalise-farmers-resistance-and-fightback>
- 2 <https://www.grain.org/article/entries/5153-infographic-seed-laws-around-the-world>
- 3 Model Seed Act for Southern Africa Countries. Southern African Seed Systems Development Initiative. USAID/RCSA. <http://www.seeds.iastate.edu/images/modelseedact.pdf>
- 4 Seed Law. Islamic Republic of Afghanistan. (Final Draft). <http://www.wipo.int/edocs/lexdocs/laws/en/af/af006en.pdf>
- 5 For an updated overview, see: "Trade deals criminalise farmers' seeds", GRAIN, November 2014, <http://www.grain.org/e/5070>
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- 46 A documentary on this case can be seen at [https://www.youtube.com/watch?v=kZWAqS-El\\_g](https://www.youtube.com/watch?v=kZWAqS-El_g)
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- 57 <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscar-de-documentos-legislativos/ley-de-semillas>
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GRAIN is a small international non-profit organisation that works to support small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems.