

# UPOV: THE GREAT SEEDS ROBBERY WHICH IS WHY WE MUST DEFEND THEM

**W**ithout seeds, there would be no agriculture. Peoples around the world understand this. Protecting seeds and providing access to them is a fundamental understanding that goes beyond cultures, ideologies, religions, and worldviews.

The idea that seeds must circulate freely is so profound that all national seed systems in place up to 1960 were built on the premise that stored seeds should be available to anyone who requested them. Even in the worst days of the Cold War, there was seed exchange between the United States and the Soviet Union.

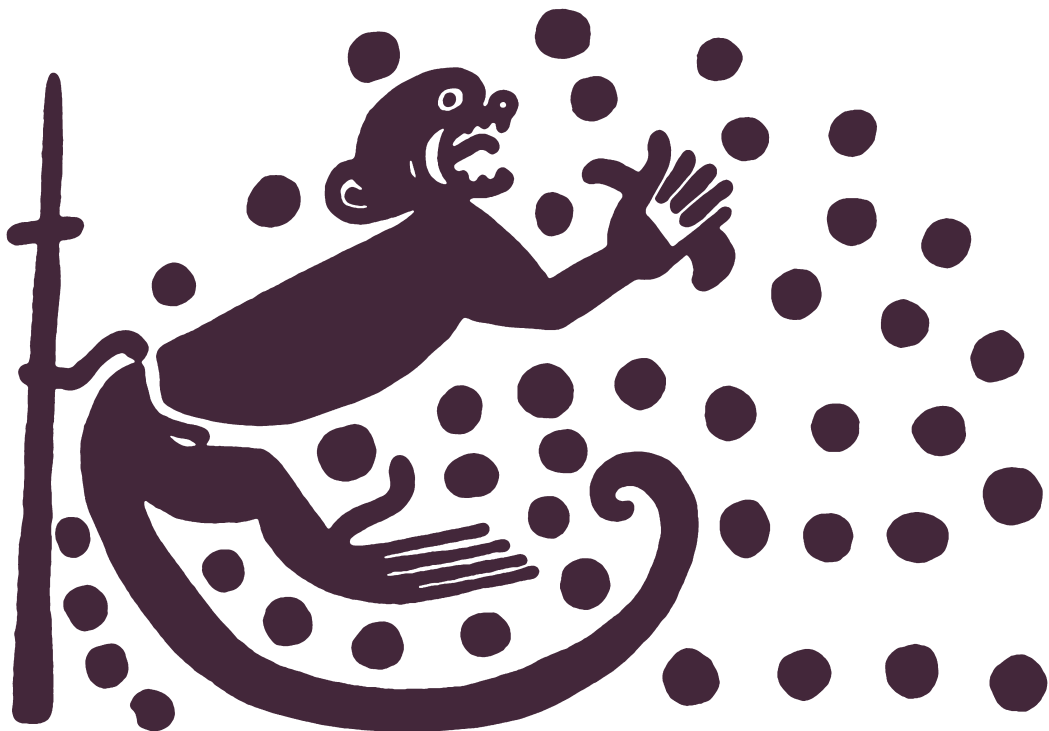


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Caring for and saving seeds for replanting is so fundamental and widespread among rural people that it became a daily collective task and a way to show deep respect and bonds between families, communities and peoples. The crucial importance of seeds is still reiterated in marriage ceremonies as a legacy for future generations; seeds were hidden as treasures in their hair by women escaping slavery; seeds have also been secured for future sowing during war and famine.

The free access and free use and exchange of seeds became central to cultural identities and to the expansion of agriculture around the world as well as for the capacity of peoples to secure food, medicine, clothing, and shelter. Up until only fifty or sixty years ago, any attempt to restrict these freedoms would have been considered absurd, an unacceptable attack, breaking the basic norms of a civilised coexistence.

However, in 1961 a Geneva-based intergovernmental organisation with only six-member States — the International Union for the Protection of New Varieties of Plants (UPOV) — gained attention when it published a document about the alleged “protection of varieties”, which was, in reality, a first attempt to privatise seeds and crop varieties.



The document was the initial version of the UPOV Convention. Through it, a small group of large international seed producers — mostly companies — granted themselves the right to appropriate plant varieties by excluding other people and communities from using them freely, despite the fact that peasants, farmers and indigenous communities are the ones who domesticated seeds and bequeathed them to humanity. Agriculture is interwoven in their lives.

Following the 1961 meeting, UPOV works exclusively and explicitly for the privatisation of seeds around the world, imposing “intellectual property rights” over plant varieties and enabling companies to monopolise them. UPOV calls this mechanism of privatisation “rights of the breeders of new plant varieties”.

Initially, the rejection of UPOV by people, organisations, and even many governments and agricultural entrepreneurs was so strong that for seven years not a single country agreed to ratify it; by 1968, only five had done so (neither the United States nor any Latin American or Caribbean country were among them). By the time its 1991 version was adopted, only twenty countries had signed on. In 1994, however, during the negotiations that led to the founding of the World Trade Organisation (WTO), it became mandatory for every member country to grant intellectual property rights over plant varieties, and UPOV suddenly grew to its current membership of more than 70 countries.

The UPOV Convention was promoted among developing countries as an expeditious and agile tool — “not as stringent,” it was said, as patents (which at that very moment were imposed on medicines and biotech products through the same negotiations). But it was clear from the outset that, although some might think these were “softer” than patents, the UPOV property rights imposed over crop seeds are a serious threat to independent peasant agriculture, farming communities and to biodiversity. They are as damaging as industrial patents.

The initial Convention from 1961 has been amended three times (in 1972, 1978, and 1991); each time advancing corporate rights and restricting what the rest of us are allowed to do with seeds. UPOV currently requires that all country members adhere to the 1991 version and write its clauses into national law.

Resistance against the privatisation of seeds promoted by UPOV continued, despite pressure at the WTO. But then, industrialized countries started to impose it through free trade agreements (FTAs), which reinforced the trend towards new regulations and



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norms (including intellectual property laws through plant breeder's rights and patents) that grant further privileges to corporations, while imposing restrictions, sanctions and harsher forms of punishment against peasants and farmers.

Thus, the United States has incorporated the obligation of joining UPOV 91 in all the FTAs it has signed. The European Union and Japan do exactly the same. Some of the latest FTAs, such as TPP-11 and T-MEC (or USMCA, the new NAFTA between Canada, Mexico and the US), only make things worse.

It is clear that those who negotiate these agreements regard peasants who save and exchange seeds as a nuisance to their global trade. Through plant breeders' rights, patents, registrations, certifications and contracts, large companies insist on shackling people who could and should be independent.

Today, the texts drafted by UPOV bureaucrats and industry representatives provide the ideological and legal backbone to all regulations and standards relating to seeds or "plant varieties", with a single script: eradicate, erode or disable independent agriculture in order to subject it to the whims of large corporate farmers and seed and agricultural input companies. These corporations see independent agriculture as unwanted competition. That is why they criminalise peasant communities' knowledge, techniques and practices.

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**Several changes were made from UPOV's 1978 version to the 1991 version**, in both form and substance, but they become visible only through close analysis.

Detailed below are some of the main forms of aggression that UPOV imposes on peasants and farmers which put an end to rules and agreements that have long been part of the history of humankind, or have been reached as a result of social struggles. Some aspects may vary from country to country, but, as a whole, they reflect the convention and the many laws of the UPOV system.

**I. The UPOV Convention allows the appropriation and privatisation of the results of age-old collective work.** Claiming ownership of a “modern” variety is equivalent to claiming ownership and authorship of a building because you painted the walls. We are talking about the work in progress of countless of peoples. It is undeniable that they are a common good.

Every crop known today is the result of work carried out by a diversity of peoples over generations. It is a collective work, something akin to the collective character of the unstoppable continuity of language. It is a collective conversation over millennia, in which people observe, select, practice multiple crossings, carry out field tests and make new selections. Not a single existing crop is the fruit of modern science. All attempts to create a new cultivated species through science have been a complete failure. The domestication processes that each crop requires are enormous. The ancestor of maize was just a small and fragile spike. Potatoes and tomatoes were poisonous plants. Many fruits were nothing more than small berries. Turning these wild plants into the sources of food and flavour that we know today has been the work of millions of families and communities of diverse peoples over thousands of years.

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Once “domestication” was achieved (when such crops were slowly transformed into something that belonged to households and was endeared and befriended), the peasants’ work continued, in terms of creating and adapting varieties for local growing conditions and culinary tastes. The differentiation between one variety and another is sometimes so profound that one can speak of races (as in maize), types (as in quinoa and rice), subspecies (as in cabbages) or even distinct species (as in wheat). The work involved in domestication and differentiation was significant and profound, changing the complex characteristics of the genetic structure of each species.

Far from the above, modern variety breeding is very simple and is restricted to crossbreeding and selection processes —which would be impossible if those who today claim ownership (companies or research centres) didn’t begin their research with the crop varieties developed by peasants and indigenous peoples that were provided to “breeders” without restrictions, freely, and in good faith.



**2. The UPOV Convention allows for the appropriation of peasant and indigenous varieties by granting ownership over discoveries.**

Those who defend UPOV 91 insist that there is no appropriation of peasant and indigenous varieties, because ownership is only granted over varieties that are new, distinct, uniform, and stable. Such an assertion is very far from reality.

Those who promote the UPOV 91 Convention say that it will not affect peasant seeds. However, Article 1 of the Convention defines a “breeder” as “the person who bred, or discovered and developed, a variety”. Yet, “discovering” a variety is “discovering” the fruit of others’ labour, as there are no agricultural plant varieties that exist exclusively from natural processes. Every plant variety is the result of human labour. With its definition of “breeder”, the UPOV 91 Convention allows for the appropriation of every peasant and indigenous variety that exists today, since all of them can be “discovered” by a non-peasant breeder or their employer, thereby

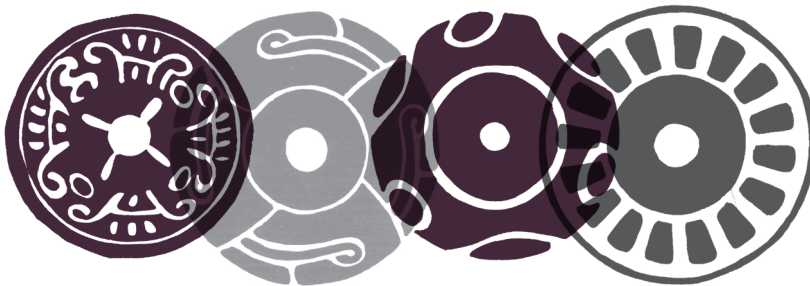
violating the right to enjoy a common good and encouraging the appropriation of other people's labours.

This appropriation means that individuals or companies can take seeds from peasants' fields, reproduce them, do some selection to homogenise them (this is what they call "developing"), and then privatise them as a variety they have "discovered".

A second provision of UPOV 91 allows breeders to extend ownership over a specific variety to any other varieties that are "similar" to the one they have privatised.

Using these two provisions, a seed company can take peasants' seeds from the field, make a simple selection, privatise it, and then claim ownership over all similar varieties. Peasant farmers will end up unable to use their own seeds unless they buy them or pay a royalty to the company that privatised them.

Proponents of seed privatisation further argue that peasant seeds cannot be privatised because no property rights can be granted over anything that is not "new" and "distinct", that is, over anything that existed before a property right was claimed.



What the Convention actually says is that nothing that has been "sold by or with the consent of the breeder", is "previously known", or a "matter of common knowledge" can be privatised. Thus, 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 – is still considered "new" and can be privatised. Statements like "previously known" or "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 officials. Therefore, something that is well known among farmers but not recognised by the industry or the authorities can be privatised as well. It is irrelevant for UPOV 91 whether a variety has been in peasant hands for generations and comes from the ancestral knowledge of communities or peoples.

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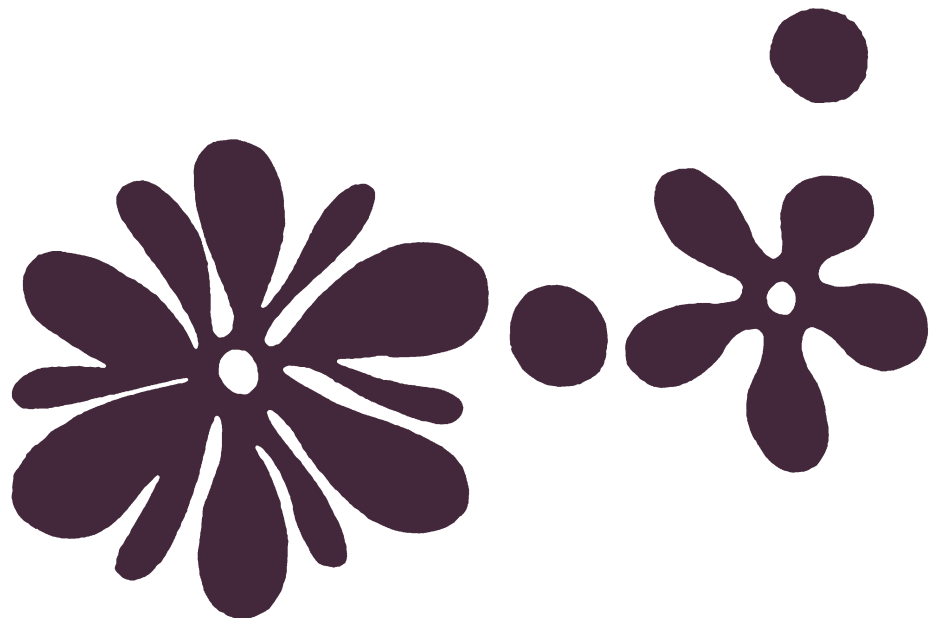
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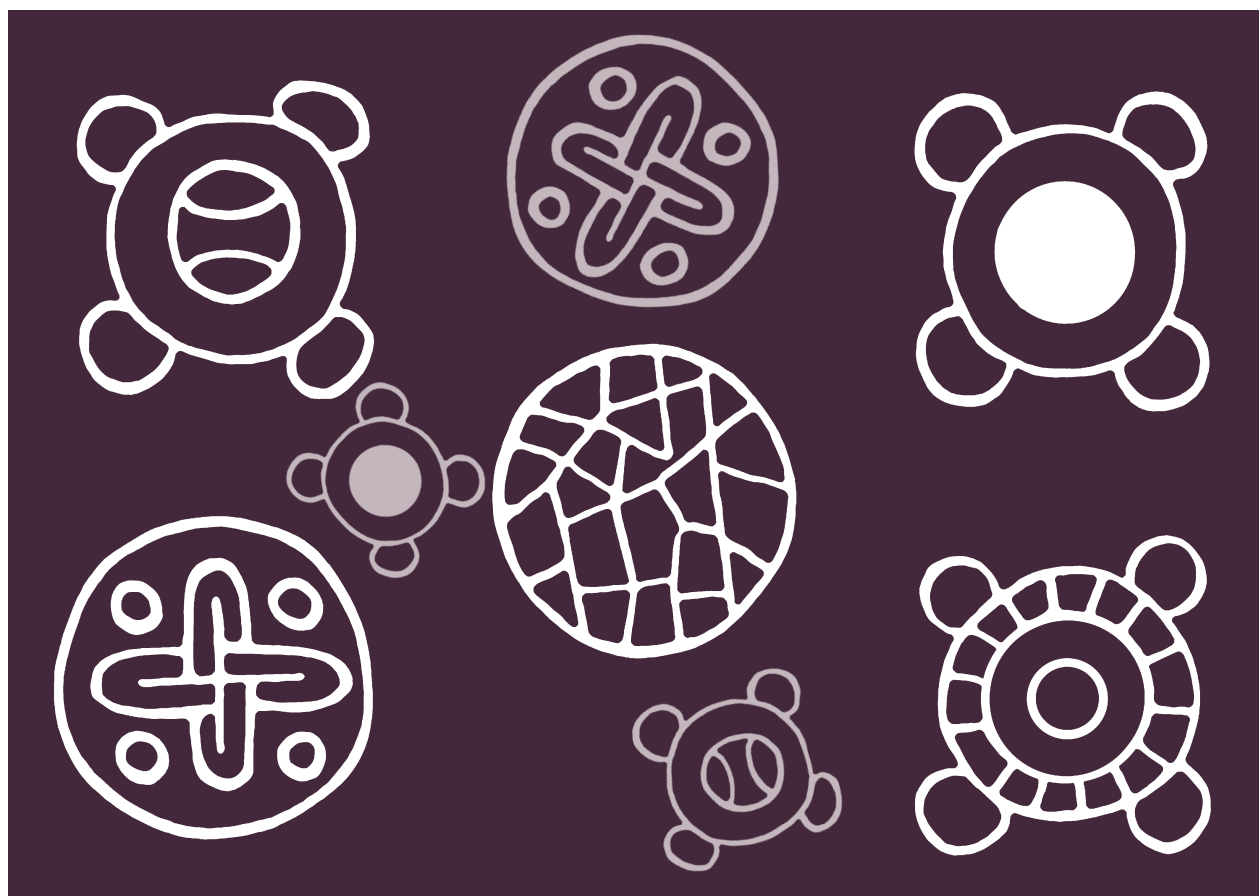
*Therefore, something that is well known among farmers but not recognised by the industry or the authorities can be privatised as well.*

This simply means that the privatisation proposed by UPOV (and its related laws) seeks to appropriate and prevent the use of local and peasant varieties (which in some legislations are called “basic”) and those varieties whose privatisation has expired. When rural communities continue to use these seeds, and others not known to private or State institutions, they will be required to prove where they come from. Since their origin cannot be proven (through mechanisms established by their own regulations), they can be qualified as “pirate”, which can lead to sanctions against those who use them, even if these seeds have been passed down to them by their ancestors.

**3. Once seeds are privatised, UPOV 91 and its related laws prohibit or restrict their use and exchange.** Granting companies or institutions property rights over “new” varieties of any plant species (wild, cultivated, medicinal, and increasingly fungi, bacteria and algae) means that only those companies or institutes may produce, reproduce, sell, export or import the variety which “they own”. If someone else wishes to do this, they will require permission from the company and must comply with conditions set out by it, such as paying a fee and/or royalty for keeping seeds for continued use in subsequent seasons. For farmers and peasants, this means:







- a) They can legally acquire the seed only if they buy it from a trading house that has authorisation to sell it from the company or institute claiming ownership of it.
- b) Their right to save the seed for the next season is restricted or prohibited altogether. In a few countries, farmers can reproduce and save a privatised seed variety of only certain crops for the next season, as an exception, but only if they use it in their own fields and often in quantities limited to the amount 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 fields, but only if they pay a royalty to the company that claims ownership. In short, even if you bought the seed the first time, if you want to re-sow it for your own use or to develop a new variety, you have to pay again. In a growing number of countries, no exceptions are granted to farmers, and hence reproducing a privatised seed and saving it for the next season is absolutely forbidden.
- c) Privatised seeds cannot be exchanged between peasants in any form, not even as a gift. Even when farmers and peasants

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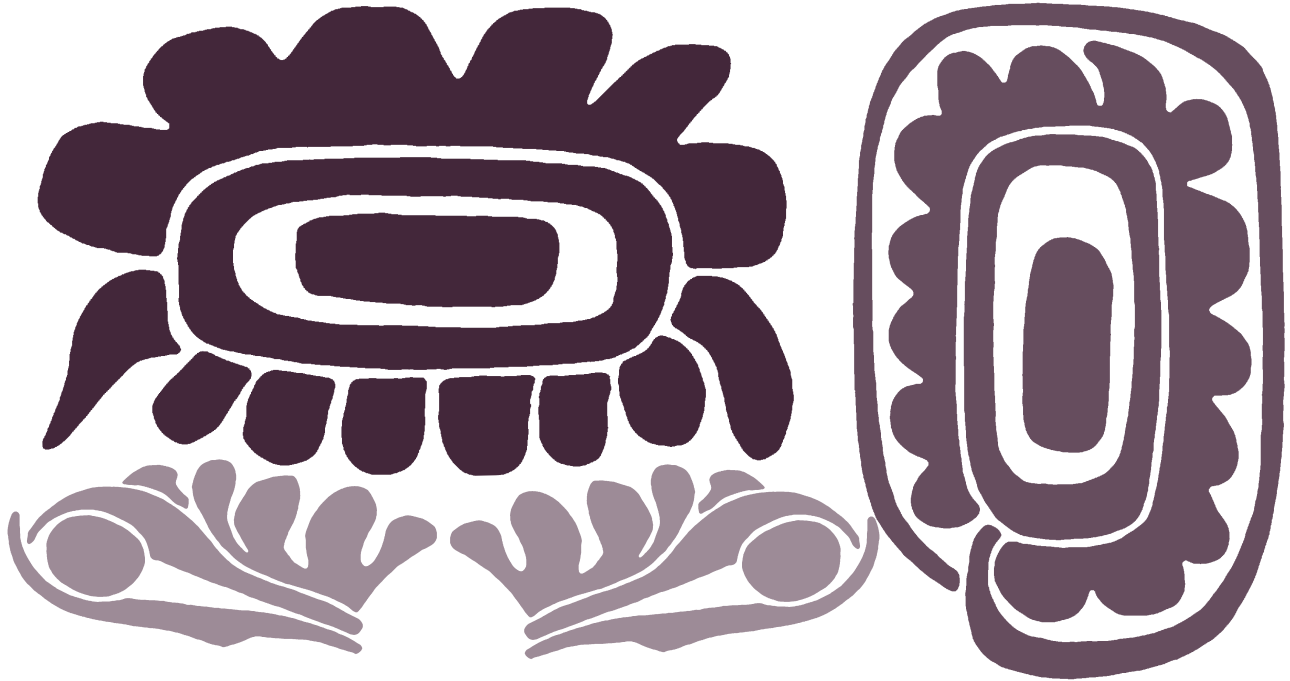
are allowed to reproduce and keep privatised seeds for the next season (with or without payment of royalties), they face an additional burden: they must inform government authorities and sometimes seed companies where and how many of these seeds will be sown. They must also accept inspections by public or private agents.

#### **4. Fines and imprisonment for saving and exchanging seeds.**

Along with mandating the privatisation of seeds, UPOV 91 – and the trade agreements that require its implementation – demand countries to “provide appropriate legal remedies for the effective enforcement of breeders’ rights”. In other words, they require countries to provide for penalties for possible infringements. Where UPOV 91 and its laws already operate, if farmers infringe these new regulations, even if that comes from continuing to do what they and their communities have done for generations, the penalties are becoming increasingly severe, depending on the laws of each country.

- a) Fines can be imposed for reproducing privatised seed and saving it for the next season; for keeping your own unlabelled or un-packaged seed, and more. The severity of the fines varies from country to country, but generally they are significant. They double if the offence is repeated, and the person fined can go to jail if the fine is not paid. In a growing number of countries, penalties include imprisonment, a fine or both. Prison terms can range from months to ten years.
- b) If a farmer or peasant uses privatised seeds without permission from the owner of that variety (for example if he or she obtained the seed from a neighbour, or bought seed one year and saved part of the harvest for use the following season), their crop can be seized and destroyed, as well as their harvest and the products obtained from their harvest. These penalties can be imposed even before the accused is actually convicted.
- c) Tools and machinery used to handle the crops or seeds can also be confiscated. Penalties can be imposed even before the accused is declared guilty.

To make things worse, UPOV allows patents to be granted over the same varieties that have already been privatised through UPOV rules. This will undoubtedly bring about wider and harsher restrictions and penalties.



**5. Guilty on suspicion.** If sanctions are severe, 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 a “reversal of the burden of proof”. Thus, the accusers do not need to provide strong evidence of infringement, while farmers or peasants must bear an increasing share of the burden of showing that they did not infringe the law. They must keep records of the seeds they use, buy and sell, and must accept inspections of their premises, fields and accounting books. This is in direct conflict with the Universal Declaration of Human Rights, which states that everyone must be presumed innocent until proven guilty.

With the new laws, it is possible to sanction or penalise farmers before they are proven guilty and in violation of all standards of due process:

- a. Farmers' houses and other buildings and vehicles in the fields can be searched without a court order, based only on suspicion.
- b. Searches may be carried out based on allegations that may not have been reported to the accused.

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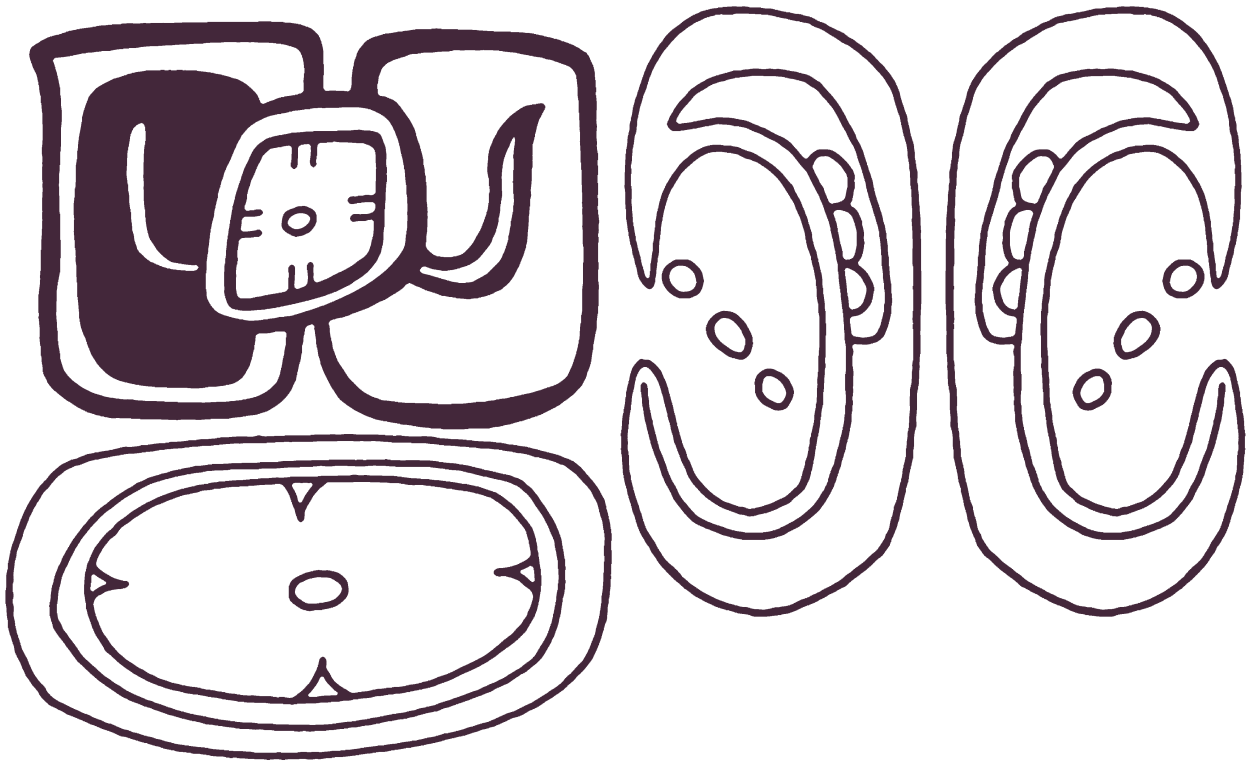
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- c. Crops, harvests and products obtained from harvested material can be seized or destroyed before a farmer is proven guilty, based only on suspicion.
- d. Accused peasants or farmers often have a very short time to gather the evidence of their innocence.
- e. There are cases where defendants are required to denounce others for "breaking the law."
- f. Searches and seizures may be carried out by or with the assistance of military forces.
- g. The power to act as inspectors or certifying authorities can be handed over to private entities or individuals, creating de facto private police forces. Much of this is justified on the grounds that the State does not have the resources to enforce these laws. In this way, seed companies can create police forces and also become inspectors of small seed producers or other competing seed companies, thus becoming both judge and jury.

**6. UPOV undermines traditional seed systems and prevents them from continuing to evolve, to be selected and improved.** Modernisation with commercial seeds and agrochemical inputs and mechanisation is the direct cause of the disappearance of millions of peasant families every year and the deterioration and fragilization of the food supply. UPOV 91 does not establish the rules of the game only for those involved in a certain path of agricultural production, such as the use of commercial or certified seeds. It is an instrument that forces peasant and indigenous families to follow the path of agricultural modernisation to the extreme, depriving





them of a common good that has allowed them to maintain themselves as food producers despite precarious economic conditions. UPOV 78 stated explicitly in Article 5.3 that “authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties”. With UPOV 91, such authorisation is now needed. In practical terms, this means that public breeding programs and farmers or peasants who develop new varieties will face increasing restrictions, or their initiatives for new varieties will be greatly hindered, made impossible or even persecuted and punished. Therefore, research on agricultural seeds and cultivars is also threatened by privatisation. Impact studies show that “protection” through plant breeders’ rights and patents on plant variety biotechnology events, leads to a huge drop in the sharing of information and germplasm. Moreover, UPOV regulations on “essentially derived” varieties discourage researchers, as they may be intimidated by the threat of transnational corporations accusing them of plagiarism, since the first protection covers all subsequent innovations developed from it.

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varieties and those who keep them alive and evolving. UPOV insists that those who do not wish to use privatised seeds do not have to do so and can maintain the freedom associated with their own seeds. Experience shows otherwise. Along with the UPOV Convention, for example, several countries-imposed systems of registry and certification affecting every variety, and today prevent European farmers from growing and selling varieties that have been in the hands of their families, communities, or regions for centuries. (See Cuadernos de Biodiversidad # 3). In other countries – like Mexico – the objective of the State is to ensure that privatised varieties become the large majority of varieties in use.

As demanded by UPOV and the World Intellectual Property Organisation (WIPO), additional complementary norms (like the above-mentioned registries, the so-called good agricultural practices, or the obligation of using specific inputs) and national policies (such as loans or technical assistance) force those who grow crops to sow privatised seeds. The result is that a right that is a fundamental practice of people to expand and improve agriculture – to freely use and exchange seeds – is being turned into a crime.



But the system of free use and exchange has forged relationships of coexistence that range from respect and peace between and within communities, to ties of support for those in need of help. On thousands of occasions, those affected by crop failure, bad weather, drought or plagues would not have been able to survive if the rest of the community or other communities had not provided them with seeds. The exchange of seeds is part of festivals, religious offerings and social norms, highlighting and strengthening the role of women and older people, who often excel at caring for seeds.

All this can be destroyed by UPOV, endangering the ways of living and working of peasant and indigenous communities. UPOV says that exchanging seeds is illegal. What will happen when a grandmother wants to give her best seeds to her granddaughter who is getting married, if those seeds are similar to some others? What will happen if a peasant wants to share a very good seed with his brothers, his best friend or his neighbour, but the seed is similar to a privatised one? What will happen with the exchanges that are part of religious festivals? Will they have to do it secretly, clandestinely? Will they do so, but making those who receive the seeds promise that they will not sow them to sell or exchange part of the harvest? What will happen if they sell the harvest? Will a family member, neighbour, or friend turn them in to the authorities?

UPOV rules and other associated regulations also exacerbate the erosion of biodiversity, because they impose the standard that only homogeneous and uniform crop varieties are acceptable. This is particularly dangerous for the most impoverished countries. The higher vulnerability of crops is often compensated with more chemicals or genetically engineered plants. Not only can peasants not afford to do this, but engaging in such practices is just one of the false solutions to the problem of crop profitability. Uniformity leads to crop loss and increased food insecurity.

**7. There is no obligation for any country to join UPOV.** The increase in their membership is due to lobbying, pressure and threats from rich countries for non-industrialised countries to adhere to the 1991 Convention. This pressure is exerted heavily through bilateral or regional free trade agreements. However, the resistance that thousands of organisations and communities have mounted has also had its triumphs, preventing such laws and

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regulations from going ahead or openly disobeying them when they are imposed.

Peasants around the world are understanding what is at stake. The big companies and powerful governments that support aberrations like UPOV, even with all their power, do not have it easy. Popular resistance is emerging everywhere. We must strengthen these struggles.



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**GRAIN, Red de Coordinación en Biodiversidad,  
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**With information from:**

GRAIN, UPOV 91 and other seed laws: a basic primer on how companies intend to control and monopolise seeds, October, 2015, <https://www.grain.org/en/article/5314>

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All our gratitude to **Bread for All** for making these booklets possible.

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