

RESEARCH BRIEF

THE RIGHT TO SEEDS IN AFRICA

KEY MESSAGES

- For over 10'000 years, peasants have freely saved, selected, exchanged and sold seeds, as well as used and reused them to produce food. Today, these customary practices remain essential to peasants' right to food, as well as to global food security and biodiversity. However, since the mid-1990s, the promotion of commercial seed systems and the strengthening of intellectual property (IP) over plant varieties and plant biotechnology at the World Trade Organization (WTO) and the International Union for the Protection of New Varieties of Plants (UPOV) have seriously undermined these customary practices and, consequently, peasant seed systems and agrobiodiversity.
- To respond to these challenges, the United Nations (UN) adopted in 2018 the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). The UN Declaration enshrines peasants' right to seeds in international human rights law. According to UNDROP, states shall "elaborate, interpret and apply relevant international agreements and standards to which they are party, in a manner consistent with their human rights obligations as they apply to peasants" (Art. 2.4). States shall also "support peasant seed systems, and promote the use of peasant seeds and agrobiodiversity" (Art. 19.6). And they shall "ensure that seed policies, plant variety protection and other intellectual property laws, certification schemes and seed marketing laws respect and take into account the rights, needs and realities of peasants" (Art. 19.8).
- The implementation of UNDROP represents a unique opportunity to redress the imbalance between, on the one hand, the lack of support for peasant seed systems worldwide, including in Africa; and, on the other, the massive support for commercial seed systems. This is essential for the protection of the lives and livelihoods of hundreds of millions of peasants. It is also in the interest of all, to ensure the rights to food and food sovereignty, preserve crop biodiversity, and tackle climate change.
- In 2018, the great majority of African countries voted in favour of adopting UNDROP, which is based on binding international human rights treaties. In accordance with the need to apply international instruments adopted by the UN General Assembly in good faith, and to give priority to human rights norms in international and national laws, reflected in UNDROP Articles 2.4, 15.5 and 19.8, the African Union (AU) and African states shall ensure that their regional and national laws and policies, as well as the international agreements to which they are party, do not lead to the violation but, on the contrary, to a better protection of the rights of peasants, including their right to seeds.

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INTRODUCTION

The United Nations (UN) General Assembly adopted the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) on 17 December 2018, with 121 states in favour, 8 against and 54 abstentions. Among African states, 48 voted in favour of UNDROP's adoption, only 3 abstained (Cameroon, Ethiopia and Lesotho) and none voted against.

It is important to note that, on the occasion of its adoption, the UN General Assembly called on all governments to disseminate the new UN Declaration and to promote universal respect and understanding thereof, without making any distinction on the basis of the votes of states. This reflects the fact that UNDROP is based on several binding international human rights treaty. It is also in conformity with the need for UN Member States to implement UN General Assembly resolutions in good faith.

Several UNDROP articles describe measures that states shall take to better protect peasants' right to seeds. These provisions recognize, inter alia, the rights to food, seeds and biological diversity, and define corresponding state obligations. They provide that states shall respect, protect and fulfill the right to seeds, and that they shall engage in international cooperation with the same purpose.

This Research Brief focuses on the steps that African states shall take to better protect the right to seeds. It opens with a presentation of the right to seeds in international law. It then explains why the right to seeds enshrined in UNDROP and states' obligations under international human rights law shall prevail over other international instruments, as well as national and regional laws and policies. Next, it presents the challenges to the protection of the right to seeds in current African policies, laws and regulations. Finally, it develops proposals for a better protection of the right to seeds in Africa.

THE RIGHT TO SEEDS

For over 10'000 years, peasants have freely used, saved, selected, exchanged and sold seeds, as well as used and re-used them to produce food. At the end of the twentieth and at the start of the twenty-first century, states affirmed these customary rights by adopting the Convention on Biological Diversity (CBD) and its Protocols, the International Treaty

on Plant Genetic Resources for Food and Agriculture (hereafter, Plant Treaty) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

In the Plant Treaty's Preamble, states affirmed that "the rights recognized in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material (...) are fundamental to the realization of Farmers' Rights, as well as to the promotion of Farmers' Rights at national and international levels." In Article 9, states recognized that the provisions of the treaty shall not be interpreted to limit "any rights that farmers have to save, use, exchange and sell farm-saved seed or propagating material." In adopting UNDRIP in 2007, states recognized the right to seeds in international human rights law for the first time, by recognizing indigenous peoples' right to maintain, control, protect and develop their seeds, and their ownership of these seeds (Art. 31).

In relation to the right to seeds, UNDROP builds on a number of binding international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention), the CBD and its Protocols, and the Plant Treaty. UNDROP also builds on UNDRIP, the Right to Food Guidelines adopted at FAO in 2004, and the reports presented by the UN Special Rapporteurs on the right to food.

UNDROP provides that states shall respect, protect and fulfil the key elements of the right to seeds, including peasants' rights to the protection of traditional knowledge, innovations and practices relating to seeds; to equitably participate in sharing the benefits arising from the use of seeds; to participate in the making of decisions on matters relating to seeds; and to save, use, exchange and sell farm-saved seed or propagating material (Art. 19.1 and 19.3). It also provides that states shall guarantee peasants' right to maintain, control, protect and develop their own seeds and traditional knowledge (Art. 19.2); ensure that seeds of sufficient quality and quantity are available to peasants at the most suitable time for planting, and at an affordable price (Art. 19.4); 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 (Art. 19.5); support peasant seed systems and agrobiodiversity (Art. 19.6); promote a system for the evalu-

African states voted massively in favour of UNDROP's adoption during the vote held at the UN General Assembly in 2018

Peasants have freely used, saved, selected, exchanged and sold seeds for over 10'000 years

ation and certification of peasants' seeds, with peasants' participation (Art. 11.3); and ensure that agricultural research and development integrate the needs of peasants, with their active participation (Arts. 19.7 and 25.3).

INTELLECTUAL PROPERTY AND SEED MARKETING

Most countries in Africa are members of the WTO, and therefore party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which came into force in 1995. The TRIPS Agreement provides that WTO members must protect intellectual property over plant varieties either by patents, by an effective sui generis system (a system of its own kind), or a combination of both (Art. 27). Importantly, the TRIPS Agreement exempts least developed countries (LDCs) from implementing the Agreement in view of their special needs and requirements, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base (Art. 66). Initially granted until 1 January

2005, this exemption has been extended until 1 July 2034, and may well be extended beyond. Out of the 46 LDCs worldwide, 33 are located in Africa. These countries are therefore exempted from implementing Article 27.3b.

A patent represents the most exclusive form of IP that can be granted. It gives the patent holder – in most cases, corporations – exclusive rights over plants and/or their components. When they use a patented product or process, peasants (like breeders), as licensees of the patent holder, are normally obliged to enter contractual agreements that prohibit them from saving, resowing or exchanging the seeds they buy from the patent-holder or its licensee.

Several countries have opted for granting IP over plant varieties through plant variety protection (PVP, also called plant breeders' rights), as opposed to patents. In doing so, some countries, such as Ethiopia, India, Malaysia and Thailand, have chosen to develop their own sui generis legislation to protect the right of peasants. For example, India – which is a member of the WTO and a state party to the TRIPS Agreement, but not a member of UPOV – adopted the Protection of Plant Varieties and Farmers Rights (PPVFR) Act in 2001. The PPVFR Act grants exclusive rights to plant breeders, but also guarantees farmers the right to save, use, sow, resow, exchange, share and sell farm produce, including seeds of PVP-protected plant varieties (Art. 39). Norway offers another interesting example, as it decided not to adopt a law in

2005 that would have reinforced PVP and allowed Norway to become a party to the 1991 Act of the UPOV Convention, on the grounds that it would have been detrimental to farmers' rights. In 2000, the Organization of African Unity (OAU) developed a sui generis African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (hereafter, African Model Law) to guide African countries in the development of farmers' rights and PVP legislation.

In implementing TRIPS Article 27.3b, other countries have adopted the model proposed by the International Union for the Protection of New Varieties of Plants (UPOV). The most recent act of the UPOV Convention (UPOV 1991) grants breeders 20 years of exclusive rights over novel, distinct, uniform and stable plant varieties. The uniformity

and stability requirements exclude farmers' varieties, which are by nature heterogeneous, dynamic and constantly evolving. While previous versions of the UPOV Convention already prohibited peasants

from selling protected seeds, the 1991 Act also prohibits them from exchanging these seeds. Peasants in a state that is Party to UPOV 1991 cannot save or reuse seeds of protected varieties, except on their own farms and only provided that their government has adopted an optional exception to this effect. Moreover, this exception must be "within reasonable limits" and safeguard "the legitimate interests of the breeder" (Art. 15). This means, for example, that it can be limited to certain crops or can be conditional on the payment of license fees.

In Africa, only seven countries have joined UPOV as member states. In addition, 17 countries are covered by UPOV 1991 indirectly through their membership in the African Intellectual Property Organization (OAPI). The African Regional Intellectual Property Organization (ARIPO) and some of the African trade blocks have also adopted PVP legislation based on UPOV 1991 even though they are under no obligation to do so. UPOV 1991 is also being introduced on the continent through regional trade agreements, and through US and EU trade policies that make foreign direct investment conditional upon strong IP protection.

In addition, most African countries and regional trade blocks have some form of seed marketing regulation in place, and there has been a strong push to harmonize seed marketing laws at the continental level. While seed marketing laws are distinct from IP, they are based on the same dis-

Least developed countries, 33 of which are located in Africa, are exempted from implementing TRIPS Article 27.3b on intellectual property and plant varieties

tinctiveness, uniformity and stability (DUS) criteria established for plant variety protection (PVP), and similar tests are used for both PVP applications and registration in seed catalogues. In addition, agricultural crops must demonstrate their value for cultivation and use (VCU) in order to be allowed on the market. Both sets of criteria are prohibitive for peasant seed systems. DUS criteria require a degree of homogeneity and stability not found in peasant varieties. Indeed, there is a trade-off between homogeneity/stability and adaptability/resilience. Peasant varieties are bred for intra-varietal diversity rather than homogeneity because this makes them less reliant on external inputs, more adaptable to their environment and more resilient in the face of changing conditions.

CONFLICTS BETWEEN INTELLECTUAL PROPERTY, SEED MARKETING AND THE RIGHT TO SEEDS

Intellectual property and seed marketing laws pose serious challenges to the realization of peasants' right to seeds. Indeed, the boundaries between peasant and commercial seed systems are fluid. In this context, commercial seed regimes severely restrict or, in some cases, prohibit peasants' right to use, save, exchange and sell farm-saved seeds. In some countries that have adopted laws compliant with UPOV 1991, peasants face civil and, in some cases, criminal sanctions for saving, reusing and exchanging farm-saved seeds of protected varieties.

These tensions are exacerbated in countries of the Global South, where a majority of the population is rural, and where the vast majority of seeds comes from peasant seed systems. In these countries, sui generis PVP systems adapted to local specificities are better suited to protecting the right to seeds enshrined in UNDROP. And yet, some states of the Global North continue to push for states of the Global South to adopt the UPOV 1991 model as if it were the only model for the regulation of IP over plant varieties.

Given the conflicts between peasants' right to seeds, on the one hand, and IP and seed marketing laws, on the other, there was a pressing need to strengthen the protection of the right to seeds in international law, including through the recognition of peasants' right to seeds in UNDROP.

THE PRIMACY OF HUMAN RIGHTS

In international law, in accordance with the UN Charter, international human rights instruments take precedence in the hierarchy of norms over other international instruments, such as those governing IP.

According to the UN Charter, the promotion and protection of human rights is one of the main purposes of the UN (Art. 1.3), and UN Member States pledged to take joint and separate action to promote universal respect for human rights (Arts. 55c and 56). The UN Charter also provides 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" (Art. 103). In the Vienna Declaration and Programme of Action, all UN Member States reaffirmed that the promotion and protection of human rights is the first responsibility of governments.

UNDROP strongly reaffirms the primacy of human rights, including peasants' right to seeds, over other international norms such as those protecting commercial interests. This is reflected in two UNDROP articles, which provide that states shall elaborate, interpret and apply relevant international agreements and standards to which they are party in a manner consistent with their human rights obligations as they apply to peasants (Art. 2.4); and that they shall ensure that seed policies, PVP and other IP laws, certification schemes and seed marketing laws respect and take into account the rights, needs and realities of peasants (Art. 19.8). Both these provisions reflect the fact that, as higher-order norms, human rights cannot be traded off or undermined.

On the contrary, international norms including trade agreements and national laws and policies must be adapted to ensure the ongoing protection of human rights.

UNDROP further stipulates that "Nothing in the present Declaration may be construed as diminishing, impairing or nullifying the rights that peasants and other people working in rural areas and indigenous peoples currently have or may acquire in the future" (Art. 28.1); and that the "exercise of the rights set forth in the present Declaration shall be subject only to such limitations as are determined

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Trade agreements and intellectual property instruments, as well as regional and national laws and policies, should not restrict, but on the contrary facilitate, the realization of the right to seeds

by law and that are compliant with international human rights obligations” (Art. 28.2).

In 2022, the Governing Body of the Plant Treaty recognized the need to take human rights, including UNDROP, into consideration in implementing the Plant Treaty’s Article 9 on farmers’ rights by adopting two resolutions. Resolutions 7/2022 emphasizes the need to promote new developments in international human rights instruments and declarations; while Resolution 14/2022 emphasizes the need to increase cooperation with international human rights bodies, including the Human Rights Council.

CHALLENGES TO THE PROTECTION OF THE RIGHT TO SEEDS IN AFRICA

The implementation of UNDROP, and in particular of the right to seeds, in African countries faces significant challenges due to Africa’s complex and fragmented seed and IP regimes.

First, a host of national and regional policies, laws and regulations related to intellectual property, seed marketing and biosafety impact peasants’ right to maintain, control, protect and develop their own seeds and traditional knowledge, as defined by UNDROP (Art. 19.2). Intellectual property regimes neither recognize nor reward peasant innovation systems. On the contrary, they hinder peasants’ breeding and selection work by limiting the use and circulation of protected traits and varieties. This is particularly problematic in a context where peasant seed systems are the main suppliers of seeds. The push for African countries to adhere to the 1991 Act of the UPOV Convention and to harmonize seed marketing laws and regulations at the continental level represent a direct threat to peasants’ right to maintain, control, protect and develop their own seeds. Finally, despite their ratification of the Cartagena Protocol, most African countries do not have fully operational biosafety legal frameworks that can protect peasant seed systems from genetically modified organisms (GMOs) contamination, which is all the more important given the new issues raised by genome editing technologies. In sum, existing intellectual property, seed marketing and biosafety laws and regulations do not guarantee peasants’ right to maintain, control, protect and develop their own seeds.

Second, the push to introduce a legal and regulatory framework designed for the industrial seed system (monoculture-based, chemical input reliant and intensive) in African countries encroaches on peasants’ right to save, use, ex-

change and sell farm-saved seeds enshrined in UNDROP (Art. 19.1d), as well as on their rights to rely either on their own seeds or on other locally available seeds of their choice, and to decide on the crops and species they wish to grow (Art. 19.5). On the contrary, current seed and IP laws and policies burden, and in some cases outlaw, the saving, use, exchange and sale of farm-saved seeds. They also restrict the diversity of locally adapted seeds that can be accessed by peasants on the market, by imposing strict certification rules for seed production, and by using DUS and VCU criteria to grant access to the seed market. Overall, IP and seed marketing laws neglect and disregard the rights, needs and interests of peasants.

Third, existing national, regional and international instruments in the area of the protection of traditional knowledge and benefit sharing are insufficient to adequately protect peasants’ seed systems and knowledge, as required by UNDROP. The disjuncture between IP laws, on the one hand, and legislation on the protection of traditional knowledge and ABS, on the other, is highly problematic. The global governance void in the regulation of Digital Sequence Information poses a direct threat to the realization of peasants’ rights to the protection of traditional knowledge and ABS.

A comprehensive and integrated approach is needed if the UNDROP provisions related to traditional knowledge and ABS are to be fully implemented.

Fourth, the AU, African regional IP organizations, and most African countries do not provide adequate opportunities for peasants and their organizations to participate in decision-making processes. Peasant organizations are often excluded from participating in major meetings and consultation processes in matters that directly affect their rights. African countries need to raise awareness of peasants’ right to fully participate in decision-making, give them formal seating in consultative groups, organize feedback mechanisms, and include them in stakeholder consultations. Crucially, peasant organizations need more support to effectively participate in these processes, especially compared to other stakeholders.

STATES’ OBLIGATIONS FOR THE IMPLEMENTATION OF UNDROP

As we have seen, international human rights instruments take precedence in the hierarchy of norms over other international instruments. In light of this, African states shall ensure that peasants’ right to seeds is not infringed, but respected, protected and fulfilled, when interpreting and im-

Intellectual property norms negatively impact the right of peasants to save, use, exchange and sell farm-saved seeds

plementing the international obligations they have already undertaken, including at WTO, WIPO and UPOV, and when elaborating new national and regional instruments. In doing so, they shall consult and cooperate in good faith with peasants, through their own organizations, before adopting and implementing international and regional agreements that may affect their right to seeds. African states and regional organizations shall also ensure that the trade agreements previously signed or under negotiation do not lead to violations of peasants' right to seeds. National and regional laws and policies that restrict the exercise of the right to seeds shall be amended to ensure consistency with the right to seeds in international law.

The AU and African states shall respect, protect and fulfill peasants' rights to seeds. This means, for instance, that they shall not adopt policies and regulations on seed marketing that impose stringent requirements as a precondition for the exchange or sale of peasant seeds. States that have regulations governing variety testing and registration, and seed production, certification and trade, shall ensure that the scope of these regulations is limited to commercial seeds and does not include peasant seeds.

The AU and African states shall take all necessary measures to ensure that non-state actors respect and strengthen the right to seeds. States shall address the detrimental impacts that plant-related patents have on peasants' capacity to source seeds and breeding material freely to develop varieties and populations adapted to their local conditions and sociocultural needs. States shall also prevent the risks arising from the development, handling, transport, use, transfer or release of living modified organisms, which requires a precautionary approach in the implementation of biosafety legislation.

The obligations to support peasant seed systems and to promote the use of peasant seeds entail the development of normative frameworks that allow peasant seed systems to exist, fully operate and thrive as production and conservation systems. Peasant seed systems must be out of the scope of rules and norms aimed at the commercial seed sector and ill-suited to the nature and logic of peasant seed systems. Instead, African states shall take positive steps to ensure the protection and promotion of peasant seed systems through the development of a national policy framework on peasant seed systems and agrobiodiversity. Any existing or upcoming seed-related legislation shall recognize and support the

role played by peasants in conserving and enhancing agrobiodiversity.

Pursuant to their obligation to protect peasants' right to traditional knowledge, innovation and practices, African states need to fully recognize the existence of such knowledge in the hands of peasants. The preservation and promotion of traditional agricultural techniques and innovations shall be fully integrated in African laws and policies. Such recognition needs to translate into measures that ensure that peasants and local communities are involved, that their prior informed consent has been obtained before accessing genetic resources and associated traditional knowledge, and that benefit sharing modalities are prescribed on mutually agreed terms.

Actions shall be taken to raise opportunities for peasants and their organizations, and to enhance their capacity to participate in decision-making processes in matters pertaining to seeds, including in the elaboration, interpretation and application of international agreements and standards, and of national and regional laws and policies. This requires addressing the imbalance in representation between peasants, on the one hand, and industry and other civil society actors, on the other.

The AU and African states shall ensure that agricultural research and development integrate the needs of peasants, by dedicating specific and consequential funding streams to research and development of neglected and underutilized crops, local varieties and seeds that respond to their needs. National authorities shall ensure and strengthen peasants' active participation in the definition of priorities and the undertaking of research and development of local crops, and neglected and underutilized crops, taking into account their experience in such research and development. They shall encourage equitable and participatory peasant-scientist partnerships, such as peasant field schools and participatory plant breeding.

CONCLUSIONS

For too long, peasant seed systems have been neglected and marginalized by laws, regulations and public policies geared toward the needs and interests of the corporate sector.

The adoption of UNDROP by the UN General Assembly is a powerful reminder that the rights to seeds and food must prevail over intellectual property and seed marketing laws and regulations. The Declaration provides a much-needed

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impetus to rebalance legal regimes governing seeds and plant genetic resources so as to fully implement peasants' rights. Peasants' rights and peasant seed systems go hand in hand, and are essential to building resilient food and agricultural systems that can adapt to a changing climate.

The Model laws developed by the AU represented a unique contribution to the development of comprehensive legislation integrating biosafety and the rights of peasants, farmers and local communities. Unfortunately, in the past two decades, the Model laws were largely sidestepped as African countries adopted increasingly stringent IP regimes and

seed marketing laws. A first and essential step toward the realization of peasants' right to seeds is to reverse this trend, and prioritize laws and policies that support and strengthen peasant seed systems and the right to seeds.

The comprehensive and inalienable nature of the rights enshrined in UNDROP, which encompass numerous policy fields and require the adoption of a systemic and holistic approach to law-making, makes it a powerful tool to better protect peasants' right to seeds and peasant seed systems in Africa – not only in the interest of peasants, but of society at large.

RECOMMENDATIONS

In accordance with UNDROP, and with the binding international treaties on which it is based, including the ICESCR, the International Covenant on Civil and Political Rights, the CEDAW Convention, the CBD and its Protocols, and the Plant Treaty:

- The AU and African states shall recognize the intrinsic value of peasant seed systems and the central role they play in preserving agrobiodiversity, realizing food sovereignty and responding to the challenges of climate change.
- The AU and African 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. They 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.
- The AU and African states shall respect, protect and fulfil peasants' right to seeds, including their rights to the protection of traditional knowledge, and to equitably participate in the sharing of benefits arising from the utilization of seeds. They shall recognize peasants' ancestral and innovative practices as traditional knowledge, and acknowledge their role in the conservation, sustainable use and dynamic management of crop diversity.
- The AU and African states shall support peasant seed systems, promote the use of peasant seeds and agrobiodiversity, and guarantee the right of peasants to maintain, control, protect and develop their own seeds and traditional knowledge.
- The AU and African states shall comprehensively review their normative frameworks so that peasants' seed systems are allowed to fully operate and thrive as sustainably-managed production and conservation systems in their own rights. Meaningful consultations should be held with peasant communities with regard to the crafting of appropriate policy and regulatory systems that protect, recognise and support peasants' seed systems and peasants' right to seeds, and ensure that these play a central role in ensuring food sovereignty at the local and national levels.
- The AU and African states shall establish mechanisms to ensure the coherence of their agricultural, biodiversity, economic, social, cultural and development policies with the realization of the right to seeds.

WOMEN AND THE RIGHT TO SEEDS

- The AU and African states shall take appropriate measures to eliminate all forms of discrimination against peasant women, to promote their empowerment and full participation, and to ensure that they enjoy the right to seeds without discrimination.

RIGHT TO PARTICIPATION

- The AU and African states shall consult and cooperate in good faith with peasants, through their own representative institutions or bodies, before adopting and implementing international agreements that may affect their right to seeds.
- The AU and African states shall ensure the full and meaningful participation of peasants in decision-making on matters relating to seeds. They shall also respect the establishment of independent and autonomous peasant organizations, addressing the existing imbalance of representation compared with more traditional civil society or industry actors. The AU and African states shall reject interest-driven and breeder-centric support in the form of capacity building and technical advice.
- The AU and African states shall ensure that agricultural research and development integrates the needs of peasants, with their active participation. They shall invest more in research and development of neglected and underutilized crops, local varieties and seeds that respond to the needs of peasants, and they shall ensure peasants' active participation in the definition of priorities and the undertaking of research and development. These varieties shall remain in the public domain and be made freely available to peasants.

SEEDS LAWS AND POLICIES, AND INTELLECTUAL PROPERTY

- The AU and African states shall ensure that peasants' right to seeds, as a human right enshrined in UNDROP, prevail over private and commercial rights.
- The AU and African states shall ensure that seed policies, PVP and other IP laws, seed marketing laws, and variety registration and certification schemes do not infringe on peasants' right to seeds as enshrined in UNDROP.
- The AU and African states shall conduct independent and participatory human rights impact assessments of public policies and laws related to seeds, including IP laws.
- The AU and African states shall elaborate, interpret and apply international agreements and standards in a manner consistent with the right to seeds. This implies that they shall, inter alia, ensure that the negotiation, interpretation and implementation of WIPO, WTO and UPOV instruments, as well as any other international agreement governing IP, do not violate, but on the contrary facilitate the realization of the right to seeds, including peasants' unrestricted and customary right to freely save, use, exchange and sell farm-saved seeds.
- African states that are among the LDCs are exempted from implementing the TRIPS Agreement until 1 July 2034, and should therefore not be pressured into implementing Article 27.3b on plant-related patents and PVP systems.
- The AU and African states shall ensure that the bilateral, regional and multilateral trade and investment agreements to which they are party do not lead to violations of African peasants' right to seeds.
- The AU and African states are under no obligation to become a party to the 1991 Act of the UPOV Convention, nor to implement UPOV 1991 standards of plant variety protection. Instead, they shall defend their right to use the policy space available under the TRIPS Agreement to design sui generis PVP systems better suited to the agricultural and socio-economic conditions prevailing in the region. To do so, they shall use the African Model Law and sui generis legislation developed by other countries as a baseline. In developing legislation, they shall keep in mind that IP is a policy tool and not an end in itself, and that a sui generis PVP regime must be supportive of human rights and relevant national policies on agricultural development, poverty eradication, rural development, food security, biodiversity and climate change.

- African countries that have contracted onerous UPOV 1991 obligations shall consider revoking their ratification to the extent that they depart from UNDROP and other international human rights instruments.
- The AU and African states shall address the impacts of plant-related patents on peasants' capacity to access seeds and breeding material freely to develop varieties and populations adapted to their local conditions and social needs. Regional organizations and African states shall consider incorporating an exception in their domestic patent laws allowing peasants to save, use, exchange and sell farm-saved seeds and propagating material obtained from cultivating plants covered by patents. AU and African states shall take legislative measures to ensure that private contracts cannot override farmers' right to seeds.
- The AU and African states shall protect peasants against biopiracy. This requires obtaining prior and informed consent for the use of their genetic resources and traditional knowledge, and effective modalities for the fair and equitable sharing of the benefits of such use, established on mutually agreed terms between peasants and those exploiting these resources.
- The AU and African states shall ensure that infringement of IP rights is not liable to criminal sanctions, but only to civil remedies, and burden of proof must lie with the injured party. These rights are private in nature, and losses incurred by eventual infringement can be compensated through monetary payments. Plant variety protection laws shall include provisions protecting peasants in cases of innocent infringement.

PHYTOSANITARY AND BIOSAFETY LAWS AND POLICIES

- The AU and African states shall take all necessary measures to ensure that non-state actors – such as private individuals and organizations, transnational corporations and other business enterprises – respect and strengthen the right to seeds. They shall prevent risks arising from the development, handling, transport, use, transfer or release of GMOs – both transgenic and genome edited – including by protecting peasant seed systems against the risks of GMO contamination.
- The AU and African states shall consider the impact of unnecessary, onerous and costly plant health regulations on peasants' right to seeds, while still ensuring human health and safety imperatives.

INTERNATIONAL AND REGIONAL COOPERATION

- The AU and African states shall promote the right to seeds at the UN and in the implementation of the CBD and its Protocols, the Plant Treaty, the Paris Agreement, UNDRIP and UNDROP.
- The AU and African states shall channel international development cooperation to support their efforts aimed at implementing the right to seeds. By doing so, they shall promote agrobiodiversity, support the strengthening of peasant seed systems and ensure peasants' full participation in the transition toward sustainable, resilient and just agricultural and food systems.

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Time for human rights-based seed policies (FIAN, 2022)

The Farmers' Rights Project

Defending Peasants' Rights

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