

RESEARCH BRIEF

THE RIGHT TO SEEDS IN EUROPE

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. But the protection of intellectual property rights (IPR) over seeds at the World Trade Organization (WTO) and the International Union for the Protection of New Varieties of Plants (UPOV), and the promotion of commercial seed systems have posed serious challenges to the protection of these customary practices, and to the maintenance of peasant seed systems and agrobiodiversity.
- In the European Union (EU) and EU Member States, seed laws and regulations have been designed to cater to the needs of the agricultural industry, and the rights of peasants have been largely neglected. Peasant seed systems and traditional knowledge have not been recognised, and therefore not adequately supported. European seed diversity has suffered a drastic decay in recent decades, largely as a result of a normative framing that disregards the needs and realities of peasants. National seed catalogues and the EU Common Catalogue have been designed to promote industrial seeds and agriculture standards, largely excluding peasant seeds. Due to strong IPR regimes, peasant seed saving, exchange and selling have been outlawed, or severely restricted in the EU. This has discouraged, and in some cases hindered the continuation of peasant agriculture.
- To respond to these challenges, among others, the United Nations (UN) General Assembly adopted in 2018 the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), in which peasants' right to seeds is recognized. According to UNDROP, states shall, inter alia, '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). They 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).
- UNDROP's implementation represents a unique opportunity to rebalance the lack of support given to peasant seed systems worldwide, Europe included, compared to the support given to industrial seed systems in recent decades. This is essential for the protection of the lives and livelihoods of hundreds of millions of peasants, as well as the interest of all in the preservation of crop biodiversity.
- In 2018, the European Parliament (EP) called for EU Member States to support UNDROP's adoption, and the European Economic and Social Committee called on European institutions and EU Member State governments to actively support UNDROP in all future work leading up to its realization. Following these calls, and 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's Articles 2.4, 15.5 and 19.8, the EU and EU Member 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 violations, but to a better protection of rights of peasants, including their right to seeds.

OCTOBER 2021 | CHRISTOPHE GOLAY AND FULYA BATUR

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, by a vote of 121 states in favour, 8 against and 54 abstentions. During this vote, 23 EU Member States abstained, 2 voted in favour – Portugal and Luxembourg – and 3 voted against – Hungary, Sweden and the United Kingdom.

It is important to note that the UN General Assembly, when it adopted UNDROP, called 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 during this adoption; in conformity with the need for UN Member States to implement UN General Assembly resolutions in good faith.

Several UNDROP's 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 the EU and EU Member States shall take to better protect the right to seeds. It starts with a presentation of the protection of the right to seeds and intellectual property in international law, as well as of their inherent tensions. 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. It follows with a contextual presentation of the challenges to the protection of the right to seeds in European law, and develops proposals to better protect the right to seeds in the EU and EU Member States.

THE RIGHT TO SEEDS

For over 10,000 years, peasants have freely saved, selected, exchanged and sold seeds, as well as used and reused them to produce food. At the end of the twentieth and 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 (ITPGRFA) and the UN

Declaration on the Rights of Indigenous Peoples (UNDRIP).

In ITPGRFA'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 its article 9, they recognized that 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'. UNDRIP adopted in 2008 also recognized indigenous peoples' right to maintain, control, protect and develop their seeds and property over these seeds (Art. 31).

In defining the right to seeds, UNDROP has built 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), the CBD and its Protocols, and the ITPGRFA. It has also built on UNDRIP, the right to

food guidelines adopted by states at FAO in 2004 and the reports presented by the UN Special Rapporteur 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 peasants' seed systems and agrobiodiversity (Art. 19.6); promote a system for the evaluation 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 SEEDS

Binding international treaties also protect intellectual property over seeds. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement), adopted at the World Trade Organization (WTO) in 1994, provides that WTO members must protect intellectual property over plant varieties either by patents, or by an effective *sui generis* system (a system of its own kind), or a combination of both (Art. 27).

While some countries have protected IPR over plant varieties through patents, most countries have chosen to grant breeders' rights. In doing so, a few countries, such as Ethiopia, Malaysia, the Philippines or India, have chosen to develop their own *sui generis* systems, through which they protect both plant breeders' and peasants' rights. The 2001 Protection of Plant Varieties and Farmers Rights Act in India for example protects plant varieties and breeders' rights as well as peasants' rights to save, use, sow, re-sow, exchange, share and sell farm produce, including seeds of varieties protected by plant breeders' rights. Norway offers another interesting example, as it decided not to adopt a law in 2005 that would have reinforced the protection of breeders' rights – and allow Norway to become a member of UPOV 1991 (instead of UPOV 1978) – because it would have been detrimental to the existing protection of peasants'/farmers' rights in the country. In 2000, the African Union developed an African Model Law for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources, to guide African countries in protecting both breeders' and peasants'/farmers' rights.

In implementing TRIPS' Article 27.3.b, a number of countries have adopted the model proposed by the International Union for the Protection of New Varieties of Plants (UPOV) and its Convention (UPOV Convention). Developing countries that have adopted this model have usually done so as part of a trade agreement with the EU, the United States, Japan or the European Free Trade Association (EFTA).

The first version of the UPOV Convention was adopted in 1961 by six Western European countries and it entered into force in 1968. It was then revised in 1972, 1978 and 1991. Since 1999, new members are obliged to become parties to UPOV 1991. Today, more than 70 states are members of UPOV, and two-thirds of them have ratified the 1991 Act.

Members include all large commercial powers with the notable exception of India. The EU has been party to the UPOV Act of 1991 since 2005, and has operated a plant breeders' rights system that covers the territory of its Member States since 1994.

The UPOV Convention protects the rights of plant breeders who have developed plant varieties that are new, distinct, uniform and stable (Art. 5.1). The novelty criterion does not mean that the plant variety was not already known or used (by peasants, for instance). Rather, it means that the variety was never commercialized in the formal market, or listed in an official seed catalogue. The uniformity and stability requirements imply that the UPOV Convention cannot offer any protection to peasant varieties, which are inherently unstable and in permanent evolution.

UPOV 1991 grants breeders at least 20 years of rights over novel, distinct, uniform and stable plant varieties (Art. 19). If previous versions of UPOV already prohibited peasants from selling protected seeds, the 1991 Act also prohibits them from exchanging these seeds. Peasants in State Parties of UPOV 1991 cannot save or reuse seeds of protected varieties, except on their own farms, in a limited fashion and with due regard for the 'legitimate interests of the breeder', and only provided that their government has adopted an optional exception to this effect (Arts. 14 and 15).

TENSIONS BETWEEN INTELLECTUAL PROPERTY AND THE RIGHT TO SEEDS

IPR pose serious challenges to the protection of peasants' right to seeds. While these property rights may not interfere

when peasants use only peasants' seeds and fully operate in peasant seed systems – a situation that states shall support

in implementing UNDROP's Article 19.6, especially when designing seeds marketing legislation, which can directly encroach on peasant seed systems – tensions appear when they use farm-saved seeds from varieties or plants protected by intellectual property. In some countries that have adopted laws compliant with UPOV 1991, peasants face civil and, in some cases, even criminal sanctions for saving, reusing and exchanging farm-saved seeds from commercial varieties, i.e., 'for conduct that should be deemed legitimate and which is functional to society's interest in a sustainable agriculture and the attainment of food security'.¹

¹ R. Andersen, 'Some Considerations on the Relation Between Farmers'

These tensions are exacerbated in developing countries, where peasants make up a majority of the agricultural population. In such countries, sui generis systems of plant variety protection adapted to local specificities are better suited to protecting the right to seeds enshrined in UNDROP. Yet states of the Global North continue to put the UPOV 1991 model forward in their collaboration with developing countries, as if it were the only model for the protection of intellectual property relating to seeds.

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 protecting IPR.

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 55.c and 56). The UN Charter also provides that '[i]n 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). It is also relevant to mention that 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.

The primacy of human rights over commercial interests protected through IPR is reflected in two UNDROP's 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, 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). These two provisions reflect the fact that as higher order norms, human rights do not have to be

Rights, Plant Breeders Rights and Legislation on Variety Release and Seed Distribution', Input Paper for the Second Meeting Ad Hoc Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture, Rome, 2–3 March 2015.

adapted to trade agreements and national laws and policies. On the contrary, it is trade agreements and national laws and policies that must be adapted to ensure the ongoing protection of human rights.

CHALLENGES TO THE PROTECTION OF THE RIGHT TO SEEDS IN EU LAW

UNDROP's implementation in the context of the EU brings about significant challenges, especially due to UNDROP's holistic approach to the right to seeds.

First and foremost, EU instruments challenge peasants' right to maintain, control, protect and develop their own seeds (UNDROP's Art. 19.2). They do so through stringent IPR, in the form of patents awarded by the European Patent Office and national offices, and plant variety protection titles awarded by the Community Plant Variety Office. Neither of these instruments recognize or reward the peasant

innovation system. They may on the contrary lead to peasants' dispossession of their own seeds, and hinder peasants' breeding and selection efforts by limiting the use of patented genetic

information and protected varieties. Peasant seeds might be covered by patent claims on genetic information, specified qualities of plants, or products derived from technical or microbiological processes, without their knowledge, dispossessing them from the complete ownership and control of their own seeds. Patents also have broad claims, especially in the life sciences, and give "absolute product protection", extending exclusive patent rights to multiplied plants or seeds if they have the same characteristics.

On the other hand, the EU has arguably one of the strongest biosafety regulatory frameworks, which guarantees peasants' right to main and control their own seeds and protects peasant seed systems from contamination with genetically modified organisms (GMOs). Not only do GMO's or products containing a GMO need to undergo specific environmental risk assessment, risk management and monitoring processes, and provide for adequate traceability and labelling, before they can be cultivated or put on the market in the EU, but measures are also taken to address cross-fertilization and crop contamination between GM and non-GM crops. As a process-based biosafety framework which upholds the precautionary principle, the EU legal framework has been quite an efficient gatekeeper

to protect the rights to seeds as enshrined in UNDROP.

Secondly, EU law poses challenges to peasants' right to the protection of traditional knowledge (UNDROP's Arts. 19.1a, 19.1.b, and 26). In sharp contrast with the protection given to IPR, the elements of the right to seeds that relate to traditional knowledge and benefit sharing are poorly protected in the laws and regulations of the EU and EU Member States.

Although all EU Member States have ratified related international instruments related to "access and benefit-sharing" ("ABS") on genetic resources, EU law does not recognize peasant communities as holders of traditional knowledge, and their role in the conservation or sustainable use of crop diversity is not formally recognized in policies and actions at EU or

national level. They are thus not yet compensated for the maintenance and management of crop genetic diversity

they hold in trust. The EU has developed one of the most complete compliance regimes in developed countries concerning user's obligations under the Nagoya Protocol, but with little benefits for the protection of peasants' traditional knowledge. Most EU Member States have chosen not to require prior informed consent for access to resources found on their territories, while countries that have done so tend to exclude genetic resources of domesticated or cultivated species, and very rarely recognize the existence of traditional knowledge in their sovereign territory. In parallel, national genetic resources policies and biodiversity action plans rarely recognize the contribution of peasant organizations in the conservation, sustainable use, and dynamic management of biodiversity.

IPR in the EU fail to protect peasants' seeds and knowledge from misappropriation as required by UNDROP, even though disclosure requirements start being utilized. In the EU patent system, the assessment of novelty through the "state of the art" theoretically encompasses peasant innovation but remains difficult to link in practice. In the EU plant variety protection system, the novel nature of a variety is not checked against peasant seeds that have not been formally marketed, except if they are deemed of "common knowledge", checked against reference collections available to testing authorities, which rarely include peasant varieties.

Thirdly, peasants' right to participate in decision-making on matters relating to seeds (UNDROP's Arts. 10, 11, and 19.1c) needs more support in the EU legal and

political order, although strong social movements and EU institutional reforms have allowed peasants to reclaim more space in the EU decision-making processes. EU law and institutional practice provide opportunities for peasants and their organizations to participate in decision-making processes, giving them formal seating in consultative groups, organizing feedback mechanisms and stakeholder consultations. But when peasants participate in the formal EU legislative train, their weight and capacity remain quite limited when compared to conventional or industry farming and civil society organizations.

Finally, some of the major challenges posed by EU law relate to peasants' rights to save, use, exchange and sell their seeds (UNDROP's Art. 19.1d), and to access locally available seeds of their choice (UNDROP's Art. 19.5).

Strict IPR regimes in the EU heavily impact the right of peasants to save, use, exchange and sell farm-saved seeds, through the extensive prerogatives awarded to both patent and plant variety rights holders. Although both regimes contain provisions on the so-called "farmers' privilege", this only allows peasants the right to save and use seeds falling under patent claims or the seeds of protected varieties in their own farms and does not permit the exchange or the sale of such seeds. In the EU plant variety protection regime, farmers using their "privilege" can also be required to compensate the title holders, although certain Member States do not require royalty payment for farm-saved seeds.

EU seed marketing rules, which govern the criteria for seeds to access the market have wide-scoped consequences on peasants' rights. They encroach on peasant seed systems, outlawing or burdening the saving, use, exchange and sale of peasant seeds. Regulating trade aimed at the commercial exploitation of plant varieties, EU seed marketing rules are transposed quite differently in EU Member States. Some consider any exchange or circulation of seeds as marketing, subjecting all peasant seed systems to mandatory pre-marketing registration of varieties and/or operators, and to strict seed production rules. In other countries, the contours of seed marketing point towards peasants' right to seeds, allowing the exchange and sale of seeds outside of seed marketing legislation. They restrict the diversity of locally adapted seeds that can be accessed by peasants on the seed market, as breeders catering to low input, agroecological or organic conditions have difficulties to register their varieties.

Strict intellectual property rights regimes in the EU heavily impact the right of peasants to save, use, exchange and sell farm-saved seeds

By using the same DUS criteria used to grant IPR to allow access to the seed market, by additionally requiring proof of satisfactory agronomic value for agricultural crops, and by imposing strict seed production rules through mandatory seed lot certification in certain crop species, EU seed marketing laws largely neglect and defy the rights, needs and interests of peasants, even if they have been progressively asserted as derogations to the general rules.

Civil society organizations have been sued for selling seeds not registered in the official seed catalogues. Exceptions to the mainstream regime exist, allowing for the marketing of “conservation varieties”, and “varieties with no intrinsic value for commercial crop production”, but their administrative and technical constraints do not truly allow peasants to access the seed market, or ignite the much-needed change towards market diversification. The new EU Organic Regulation, which will enter into force on 1st January 2022, offers a new opportunity for peasants to access the seed market, to sell their own seeds, and to be presented with a seed offer adapted to their local conditions, as preconized by UNDROP, but only under organic certification.

Besides seed marketing rules, EU plant health rules, which aim to protect the common market against harmful pests and diseases, also have important detrimental effects on the right of peasants to save, use, exchange and sell farm-saved seeds. They put considerable administrative burdens on all movements of seeds when viewed as vectors of pests and require substantial financial and human resources. All professional operators, including peasants, need to be registered with authorities, establish traceability and pest risk management plans, while movement of seeds needs to be accompanied by plant passports. The rules contain very few exceptions that can provide breathing space for peasants, for example on direct sales of seeds or plants to the final consumer.

Current EU seed marketing laws largely neglect and defy the rights, needs and interests of peasants

The EU and EU Member States shall develop normative frameworks, including on seeds marketing, that allow peasants’ seed systems to exist, fully operate and thrive as production and conservation systems

EU MEMBER STATES OBLIGATIONS IN UNDROP’S IMPLEMENTATION

UNDROP provides that EU and EU Member States shall ensure the consistency of international agreements, national or regional laws, and policies with the right to seeds. When elaborating international instruments, and when interpreting and implementing the international obligations that they have already undertaken, including at the WTO and UPOV, they shall ensure that peasants’ right to seeds is not infringed, but respected, protected and fulfilled. They shall also consult and cooperate in good faith with peasants, through their own organizations, before adopting and implementing international agreements that may affect their right to seeds. All EU laws, regional and national policies that challenge the protection of, or restrict the exercise of, the right to seeds shall be amended.

The EU and EU Member States shall respect, protect and fulfill peasants’ rights to seeds. They shall avoid creating obstacles to peasant seed systems and adopt a definition of seeds marketing that does not integrate them into the realm of stringent requirements of variety or supplier registration and seed production rules. They shall also ensure that non-state actors respect and strengthen the rights of peasants, addressing the detrimental impacts that patents on plants have on peasants’ capacity to source seeds and breeding material freely to develop varieties and populations more adapted to their local conditions and social needs.

The EU and EU Member States shall support peasant seed systems and promote the use of peasant seeds and agrobiodiversity. They shall develop normative frameworks that allow peasants’ seed systems to exist, fully operate and thrive as production and conservation systems, and must not regulate peasant seed systems by unfit or disproportionate rules.

The EU and EU Member States shall protect peasants' traditional knowledge, innovation and practices, and their right to ensure equitable benefit sharing, by recognizing the existence of such knowledge in the hands of European peasants, adopting measures to ensure that the prior informed consent or approval and involvement of peasants and their communities are obtained before access to seeds and benefit sharing modalities are prescribed in mutually agreed terms.

The EU and EU Member States shall ensure peasants' participation in decision-making processes in relation to seeds, by addressing the imbalanced representation that more traditional actors of civil society or more resourceful industry actors benefit from compared to peasants in the elaboration, interpretation and application of international agreements and standards and of national and regional laws and policies.

The EU and EU Member States shall ensure that agricultural research and development integrate the needs of peasants, with their active participation, by dedicating specific and consequential funding streams to research on and development of orphan crops, local varieties and seeds that respond to the needs of peasants, strengthening peasants' participation in the definition of priorities and encouraging equitable and participatory peasant-scientist partnerships.

CONCLUSIONS

The normative framework of the EU and EU Member States on seeds has largely contributed to the fast development of European industrial agriculture and the increase in food production post-World War II. Nonetheless, these laws and regulations have largely neglected peasant systems and have contributed to the critical genetic erosion of seed diversity and associated traditional knowledge in the continent, by championing crop uniformity and ex-situ seed banks.

UNDROP has been adopted to rebalance power relations in rural areas and to guarantee that states protect the rights of peasants who have been long left out of regional and national policies. Its implementation is key to redressing distortions of laws and policies that have negatively affected European peasants and non-industrial farming systems as well as the rural environment and seed diversity. The comprehensive nature of UNDROP, touching upon numerous policy fields and requiring the adoption of a systemic and holistic approach to law-making that isn't confined to separate technical units, makes it a powerful tool to better protect peasants' right to seeds and to promote a more democratic governance of biological and seed diversity in Europe.

RECOMMENDATIONS

In accordance with UNDROP, and with the binding international treaties on which it is based, including ICESCR, CEDAW, the CBD and its Protocols, and the ITPGRFA:

- The EU and EU Member States shall take appropriate measures to eliminate all forms of discrimination against peasant women, to promote their empowerment and to ensure that they enjoy the right to seeds without discrimination.
- The EU and EU Member States shall promote the right to seeds at the UN and in the implementation of the CBD and its Protocols, the ITPGRFA, UNDRIP and UNDROP.
- The EU and EU Member 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 protecting IPR, do not violate, but facilitate the realization of the right to seeds, including peasants' right to save, use, exchange and sell farmed-saved seeds. In the UPOV system, the EU shall change its approach to the notion of "private and non-commercial use", re-assess the farmers' privilege and the breeders' exception in light of peasants' right to save, exchange and sell farm-saved seeds or propagating material. In the European Patent Convention System, the EU shall support recent developments regarding exclusions on patentability, and ensure that patent claims do not extend to native traits.

- The EU and EU Member States shall ensure that free trade agreements to which they are party do not lead to violations of the right to seeds of European peasants or peasants in other countries. This implies that they shall, inter alia, stop promoting the 1991 Act of the UPOV Convention when negotiating free trade agreements. Instead, they shall encourage developing countries to use the possibilities offered by TRIPS to design sui generis systems of plant variety protection.
- The EU and EU Member States shall engage in international development cooperation to support efforts of developing countries aimed at implementing the right to seeds. By doing so, they shall, inter alia, promote agrobiodiversity and the use of peasants' seeds, support the strengthening of peasants' seed systems and ensure peasants' participation in the design of these.
- The EU and EU Member States shall consult and cooperate in good faith with peasants, through their own representative institutions, before adopting and implementing international agreements that may affect their right to seeds.
- The EU and EU Member States shall establish mechanisms to ensure the coherence of their agricultural, economic, social, cultural and development policies with the realization of the right to seeds. For example, the reform of the Common Agricultural Policy should include provisions and conditionality requirements that support and protect peasants' right to seeds and seed systems.
- The EU and EU Member States shall ensure that seed policies, plant variety protection and other intellectual property laws, seed marketing laws, variety registration and certification schemes respect and take into account the rights, needs and realities of peasants. In reforming existing norms, they should avoid creating barriers to peasants' seed systems and adopt a definition of seed marketing that does not include peasants' seeds in the realm of strict variety registration or supplier requirements and seed production rules. They should allow the marketing of peasants' seeds within an autonomous regime, and promote peasants' participation in its formulation. They should also develop an appropriate and proportionate regime for the marketing of seeds from locally adapted varieties, not linked to the criteria for obtaining intellectual property rights (distinctness, uniformity and stability).
- The EU and EU Member 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 also 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 EU and EU Member States shall respect, protect and fulfil peasants' right to seeds, including their rights to the protection of traditional knowledge relevant to seeds, 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, adequately compensating them for its maintenance and adaptation in a multi-layered European strategy on genetic resources where they would find representation.
- The EU and EU Member 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. They shall modify their normative framework so that peasants' seed systems not only exist, but also fully operate and thrive as production and conservation systems. They shall for instance consider the impact of strict plant health regulations on peasants' rights to seeds, and alleviate their detrimental effects. They shall also promote a fair, impartial and appropriate system of evaluation and certification of the quality of peasant seeds, and promote peasants' participation in its formulation.

- The EU and EU Member States shall take all necessary measures to ensure that non-state actors that they are in a position to regulate, such as private individuals and organizations, and transnational corporations and other business enterprises, respect and strengthen the right to seeds. They shall, inter alia, prevent risks arising from the development, handling, transport, use, transfer or release of GMOs, including by protecting peasants against crop contamination. They shall also address the detrimental impacts that patents on plants have on peasants' capacity to access seeds and breeding material freely to develop varieties and populations adapted to their local conditions and social needs.
- The EU and EU Member States shall ensure the full and meaningful participation of peasants in decision-making on matters relating to seeds. They shall also respect and support the establishment and growth of strong and independent peasant organizations, addressing the existing imbalance of representation compared with more traditional actors of civil society or industry actors.
- The EU and EU Member States shall ensure that agricultural research and development integrate the needs of peasants, with their active participation. They shall, inter alia, invest more in research on and development of orphan 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.

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Dr. Fulya Batur founded [Kybele](#) in 2020 in order to provide training and consultancy services in all fields related to international environmental law, but more specifically on topics linked to seeds and biodiversity. Kybele stands for the ancient Phrygian goddess of fertility and wild nature in ancient Anatolia. Just as its eponym, the consultancy aims to build capacity in the crop diversity movement, generating and spreading knowledge on the importance of preserving and using biodiversity, especially crop biodiversity, sustainably.

SELECTED REFERENCES ON THE RIGHT TO SEEDS IN EUROPE

[Practical Manual on the Right to Seeds in Europe \(full study\)](#)

[The Right to Seeds and Intellectual Property Rights](#)

[The Right to Seeds and Food Systems](#)

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[ECVC, Incorporating Peasants' Rights to Seeds in European Law](#)

[The History of Farmers' Rights: A Guide to Central Documents and Literature](#)

[United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas](#)

[International Treaty on Plant Genetic Resources for Food and Agriculture](#)

[First Report to the UN Human Rights Council of the UN Special Rapporteur on the Right to Food, Michael Fakhri](#)

[Reports on Seeds presented by the Former UN Special Rapporteur on the Right to Food, Olivier De Schutter](#)

[The Farmers' Rights Project](#)

[Farmers' Right to Participate in Decision-making – Implementing Article 9.2 \(c\) of the International Treaty on Plant Genetic Resources for Food and Agriculture](#)

[International Contradictions on Farmers' Rights: The Interrelations Between the International Treaty, Its Article 9 on Farmers' Rights, and Relevant Instruments of UPOV and WIPO](#)

[CETIM Training Sheet on the Right to Seeds](#)

[FIAN International Peasant Briefing on the Rights to Biodiversity and Seeds](#)

[Right to Food and Nutrition Watch: Keeping Seeds in Peoples' Hands](#)

[Seeds and Farmers' Rights: How International Regulations Affect Farmer Seeds](#)

[Implementing the Nagoya Protocol: Comparing Access and Benefit sharing regimes in Europe](#)

[Implementation of the Nagoya Protocol in the EU and Germany](#)

[Traditional Knowledge in the European Context](#)

[Seed Legislation in Europe and Crops Genetic Diversity](#)

[Legal Aspects of Seed Trade and Exchange in the Baltic States and Denmark from Seed-savers Point of View](#)

[Seeds in the New EU Organic Regulation 2018/848](#)

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SUPPORTING UNDROP'S IMPLEMENTATION/ THE RIGHT TO SEEDS IN EUROPE

In 2018, the UN General Assembly adopted UNDROP. After having provided academic support to UNDROP's negotiation for ten years, the Geneva Academy project on the rights of peasants promotes UNDROP's implementation, through publications, conferences, expert seminars, and training courses. Another Geneva Academy project focuses on the protection of the right to seeds in Europe.

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