

FIAN INTERNATIONAL BRIEFING

MARCH 2016

By Sofía Monsalve Suárez¹



The right to seeds and biological diversity

IN THE UN DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS

This briefing note on the right to seeds and biological diversity is part of a series of briefings published by FIAN International to feed into the negotiations on the draft UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.

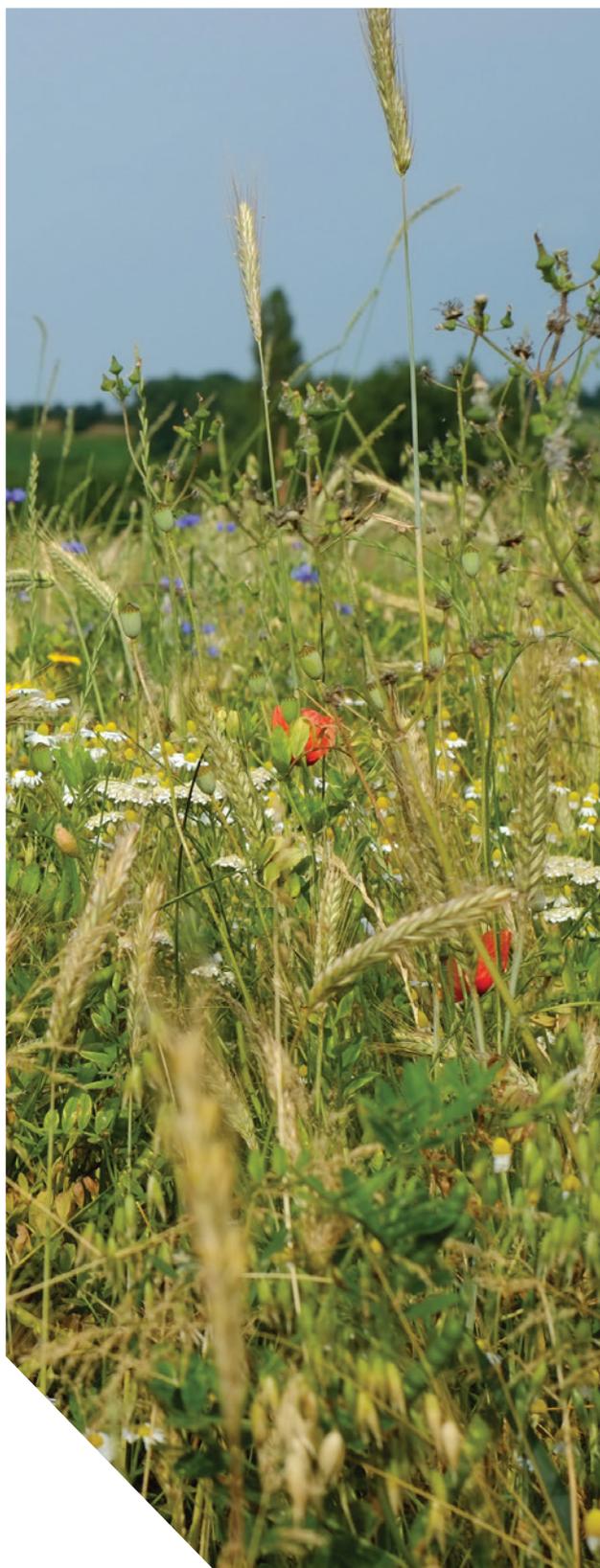
The series of briefings covers the following topics: states' obligations, the rights to sovereignty over natural resources, development and food sovereignty, rural women's rights, the right to food, the right to a decent income and livelihood, the right to land and other natural resources, the right to seeds and the right to biological diversity, and the right to water.

All briefings are available on our website <http://www.fian.org/>



¹ Sofía Monsalve Suárez is Secretary General of FIAN International. The author would like to thank Guy Kastler, Antonio Onorati, Christine Frison, Marc Edelman, Maryam Rahmanian and Karine Peschard, for their guidance and review of this briefing.

1. WHAT ARE THE RIGHT TO SEEDS AND THE RIGHT TO BIOLOGICAL DIVERSITY ?



Agricultural biodiversity, a highly threatened component of biodiversity, is a fundamental requirement for the realization of the right to adequate food, the right to health and the right to an adequate standard of living.

As defined by FAO and the Secretariat of the Convention on Biological Diversity (CBD):

“**Agricultural biodiversity** refers to the variety and variability of animals, plants, and micro-organisms on earth that are important to food and agriculture which result from the interaction between the environment, genetic resources and the management systems and practices used by people. It takes into account not only genetic, species and agro-ecosystem diversity and the different ways land and water resources are used for production, but also cultural diversity, which influences human interactions at all levels. It has spatial, temporal and scale dimensions. It comprises the diversity of genetic resources (varieties, breeds, etc.) and species used directly or indirectly for food and agriculture (including, in the FAO definition, crops, livestock, forestry and fisheries) for the production of food, fodder, fiber, fuel and pharmaceuticals, the diversity of species that support production (soil biota, pollinators, predators, etc.) and those in the wider environment that support agro-ecosystems (agricultural, pastoral, forest and aquatic), as well as the diversity of the agro-ecosystems themselves.”¹

Based on this definition, it can be further said that agricultural biodiversity embodies a dynamic relationship between people, plants, animals, other organisms and the environment, constantly evolving in response to changing conditions. Agricultural biodiversity can also be seen as the result of the interplay, across all ecosystems and over thousands of years, of cultural diversity and biological diversity. In this sense, agricultural biodiversity has been a key component of the food production systems developed by knowledgeable small-scale food producers, who currently provide food for more than 70 per cent of the world’s peoples and contribute to improve human health and well-being and to sustain the environment.²

The new advanced version of the draft UN declaration on the rights of peasants and other people working in rural areas (hereafter the draft Declaration) defines the **right to seeds** of peasants and other people working in rural areas as the right to conserve, use, maintain and develop their own seeds, crops and genetic resources, or those of their choice, as well as to save, store, transport, exchange, donate, sell, use and re-use farm-saved seeds, crops and propagating material.³

1 International Technical Workshop organised jointly by the Food and Agriculture Organisation of the United Nations and the Secretariat of the Convention on Biological Diversity (SCBD), with the support of the Government of the Netherlands 2-4 December 1998, FAO Headquarters, Rome, Italy. Available at <<http://www.fao.org/docrep/x2775e/x2775e03.htm>>

2 International Planning Committee for Food Sovereignty (IPC), Agricultural Biodiversity Working Group, Biodiversity for Food and Agriculture: the perspectives of small-scale food providers. Contribution to FAO’s report “State of the World’s Biodiversity for Food and Agriculture” (SoW-BFA). Thematic Study, November 2015. Rome

3 Article 22.2 and 22.3 of the new advanced version of the draft UN declaration prepared by the Chair of the Open-Ended Intergovernmental Working Group of the Human Rights Council. This article is largely based on the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) which in its preamble reads: “Affirming also that the rights recognized in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers’ Rights, as well as the promotion of Farmers’ Rights at national and international levels;” Article 9 spells out these rights.

It further defines that peasants and other people working in rural areas have the right to conserve, maintain and develop agricultural biodiversity, and the right to associated knowledge, including in crops and animal races (article 23.2). This includes, inter alia:

- the States' duty to protect peasants' seeds and livestock systems from genetic contamination, biopiracy and theft (article 23.3);⁴
- the right to maintain their traditional agrarian, pastoral and agro-ecological systems upon which their subsistence and the renewal of agricultural biodiversity depend (article 23.3);⁵
- the right to exclude from intellectual property rights genetic resources, agricultural biological diversity and associated knowledge and technologies that are owned, discovered or developed by their own communities (article 23.4);
- the right not to accept certification mechanisms established by transnational corporations (article 23.5);
- the right to be protected from measures threatening biological diversity and traditional knowledge, including forms of intellectual property that might adversely affect their traditional knowledge and use of genetic resources (article 23.7);⁶
- the right to participate in decision-making on matters related to the conservation and sustainable use of agricultural biodiversity (article 23.8)⁷

The following elements of these definitions ought to be highlighted:

4 With regards to genetic contamination, Article 16 and 17 of the Cartagena Protocol on Biosafety refer to the Parties' duty to prevent the adverse effects of living modified organisms on the conservation and sustainable use of biological diversity. With regards to bio piracy and theft, Article 6.2 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity refers to the prior informed consent or approval that is required to obtain from indigenous and local communities for accessing the genetic resources they control.

5 Article 5.1 of ITPGRFA reads : « Each Contracting Party shall, subject to national legislation, and in cooperation with other Contracting Parties where appropriate, promote an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and shall in particular, as appropriate: [...] c) Promote or support, as appropriate, farmers and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture; d) Promote in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, inter alia, the efforts of indigenous and local communities; » Moreover, article 6.2 specifies that «The sustainable use of plant genetic resources for food and agriculture may include such measures as: [...] c) promoting, as appropriate, plant breeding efforts which, with the participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties particularly adapted to social, economic and ecological conditions, including in marginal areas.»

6 Article 9.2 a of ITPGRFA reads : «The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including: [...] a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;» Article 8 – In situ conservation of the Convention on Biological Diversity also reads: "Each Contracting Party shall, as far as possible and as appropriate:[...] (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;"

7 Article 9.2 of ITPGRFA reads: «The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including: [...] c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture. »



Customary nature of these rights

Since the first cultivation of crops some 11,000 years ago, peasants have been conserving, using, saving, storing, and exchanging their seeds. The existence of peasant seed systems until today is a clear proof that peasants have been consistently following these practices over centuries and generations. Therefore the right to conserve, save, use, store and exchange seeds has the status of a pre-existing customary norm, particularly in the countries of the South.⁸

Collective nature of these rights

Peasant varieties and livestock keeper breeds are inextricably linked to a particular human community with its culture, its production system and the ecosystem it lives in. No variety exists without the community responsible for its selection and conservation.⁹ For this reason, peasant and rural communities have the collective right to continue sustaining their evolving relationship with plants, animals and nature. Peasant innovation in plant and animal selection is part of biodiversity's continuous evolution and shall therefore be especially protected and supported.

Holistic nature of these rights

Rights to seeds and biological diversity are closely intertwined with the right to land and natural resources (see briefing on the right to land and natural resources). It is self-evident that without land, pastures, forests, rivers, lakes, in other words, without the connection to a particular ecosystem and territory it is impossible to sustain an evolving relationship with plants, animals and other organisms.

Freedoms and entitlements

The rights to seeds and biological diversity contain both freedoms and entitlements. The freedoms include:

- the collective right to continue sustaining peasants' and rural peoples' evolving relationship with plants, animals and nature; as well as
- the right to be free from interference in the enjoyment of these rights including inter alia the right to be protected from
 - legal and de facto dispossession and destruction of peasants' seeds practices/systems;
 - genetic contamination, bio-piracy and theft;
 - measures threatening biological diversity and traditional knowledge.

⁸ Christinck, Anja and Morten Walløe Tvedt. 2015. The UPOV Convention, Farmers' Rights and Human Rights. An integrated assessment of potentially conflicting legal frameworks. Published by GIZ, Bonn

⁹ Brac de la Perrière, Robert Ali and Guy Kastler. 2011. Seeds and Farmers' Rights. How international regulations affect farmer seeds. Peasants Seeds Network, BEDE. P. 53.



The entitlements include:

- the right to conserve, use, maintain and develop peasants' own seeds, crops and genetic resources, as well as to save, store, transport, exchange, donate, sell, use and re-use farm-saved seeds, crops and propagating material;
- the right to maintain, create and develop seed practices/systems, autonomous agrarian, fishing, pastoral and agro-ecological systems and the knowledge associated to each of these systems upon which peasants' and other rural peoples' subsistence and the renewal of agricultural biodiversity depend;
- the right to legal recognition and effective protection of autonomous peasants' seed systems;
- the right to conduct their own research, selection and innovation in relation to seeds and agro-biodiversity;
- the right to participate in decision-making on matters related to the conservation and sustainable use of agricultural biodiversity.

Exercising these freedoms and entitlements give to peasants the right to exclude from intellectual property rights (IPR) based systems the genetic resources, agricultural biological diversity and associated knowledge and technologies that are owned, discovered or developed by peasant and other rural communities. Without the freedom to say no to the IPR based systems the exercise of the substantive freedoms and entitlements mentioned above would render meaningless.



2. WHAT ARE THE STATE'S OBLIGATIONS UNDER THESE RIGHTS ?¹⁰

States have the immediate obligation to **ensure** that these rights are exercised without discrimination. Therefore, States have to remove and prohibit all forms of discrimination affecting peasants' seeds systems, and their associated knowledge and fishing, pastoral and agro-ecological systems; and have the obligation to give special attention to the groups which have been traditionally discriminated such as women, Dalits, nomadic pastoralists, artisanal and small-scale fishers, landless peasants and workers, and all people using and managing seeds and agro-biodiversity in customary and informal systems, among others. Retrogressive measures in the enjoyment of these rights are prohibited.

States have the obligation to **respect** the rights to seeds and biological diversity. They have to refrain from interfering directly or indirectly with the enjoyment of these rights. This obligation includes, inter alia, the recognition and respect of (customary and informal) peasant seed systems, fishing, pastoral and agro-ecological systems and the knowledge associated to each of these systems; refraining from legally and de facto dispossessing peasants from their seeds, seed systems and associated knowledge; or from any other legal measure, practice or activity that destroy or arbitrarily impair existing peasant access to, use and management of seeds and agro-biodiversity.

States have the obligation to **prevent** third parties from interfering in any way with the enjoyment of these rights. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. This obligation comprises, inter alia, adopting the necessary and effective legislative and other measures to restrain and sanction, for example, third parties participating in bio-piracy and genetic contamination of peasant seeds. States have to ensure that the rules and mechanisms governing access to seeds and biological diversity do not operate in discriminatory ways or lead to concentrating control of seeds, propagating material, animal breeds and the like in few hands.

States have the obligation to **fulfil** the rights to seeds and biological diversity. They have to provide seeds in cases of emergencies and disasters and ensure that that planting material of sufficient quality and quantity are available to peasants that need them at the right time for planting. States must also ensure that peasants can access seeds held in public seed/gene banks/collections so that they can carry on their peasant-led selection and research.

States have the obligation to **support** peasants in their

¹⁰ This section is a further elaboration of the interpretative development done by the former Special Rapporteur on the Right to Food on how the state obligations with the right to food apply to the regulation of commercial seed systems and to the preservation and enhancement of informal or traditional farmers' seed systems. See De Schutter, Olivier, 2009. Seeds policies and the right to food: enhancing agrobiodiversity and encouraging innovation. Report of the Special Rapporteur on the right to food to the UN General Assembly. A/64/170. Paragraph 7.

efforts to reproduce old traditional seeds varieties no longer available on the market.

States have the obligation to **facilitate and promote** maintaining, creating and developing peasants' seed practices/systems, autonomous agrarian, fishing, pastoral and agro-ecological systems and the associated knowledge to each of these systems so that agricultural biodiversity can be maintained, fostered and/or restored. States must support peasants to conduct their own research, selection and innovation in relation to seeds and agro-biodiversity; and ensure that agricultural research and development is directed towards the needs of peasants and other people working in rural areas.

Finally, states have the obligation to adequately **involve** peasant and other rural people in decision-making related to the conservation and sustainable use of agricultural biodiversity.



Why is it important to recognize these rights in the Declaration?

- Because national and international legal frameworks on seeds, natural conservation and intellectual property rights are increasingly i) dispossessing peasants and other people in rural areas of their seeds; ii) destroying their collective peasant seed systems; iii) criminalizing peasants for exercising their rights to seeds.
- Because of the increasing concentration/monopolization of the formal seed supply systems
- Because of genetic erosion and the accelerated loss of agricultural biodiversity
- Because of the existence of a normative gap in international human rights law
- Because seeds and agricultural biodiversity have an inalienable character for peasants and other people working in rural areas
- Because the right to seeds and biological diversity is indispensable to ensure the human dignity of peasants, women and men, and other people working in rural areas.

Because national and international legal frameworks on seeds, natural conservation and intellectual property rights are increasingly i) dispossessing peasants and other people in rural areas of their seeds; ii) destroying their collective peasant seed systems; iii) criminalizing peasants for exercising their rights to seeds.

The national and international IPR protection laws are a legal framework conceived to protect the interests of the plant and animal breeding industries. The existence of this framework and the non-existence or the very weak protection of the rights and interests of peasants and other rural people represent an infringement of the human rights principles of equality and non-discrimination.¹¹

The IPR protection regime restricts traditional practices and seed management systems, severely impairing the right to conserve, use, maintain and develop peasants' own seeds, crops and genetic resources, as well as to save, store, transport, exchange, donate, sell, use and re-use farm-saved seeds, crops and propagating material. In many countries, peasant traditional or informal practices have been declared illegal, thus criminalizing these practices. Furthermore, the IPR protection regime is to a large extent responsible for facilitating bio-piracy and for dispossessing peasants from their seed systems and associated knowledge.¹²

¹¹ Tansey, G. and T. Rajotte (eds) (2009) *The Future Control of Food. A guide to international negotiations and rules on intellectual property, biodiversity and food security*. Earthscan.

¹² Braunschweig, Thomas and François Meienberg, Carine Pionetti, Sangeeta Shashikant. 2014. *Owning Seeds, Accessing Food. A Human Rights Impact Assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines. The Bern Declaration*. Zürich. GRAIN and La Via Campesina (2015) *Seeds laws that criminalize farmers: Resistance and Fight-back*. Available at <http://viacampesina.org/en/index.php/main-issues-main-menu-27/biodiversity-and-genetic-resources-main-menu-37/1783-new-publication-seed-laws-that-criminalise-farmers-resistance-and-fight-back>



Because of the increasing concentration/monopolization of the private seed industry

IPR protection regimes tend to create monopolies and to put those who benefit in a position to abuse their market power. Today, ten companies control more than two-thirds of global proprietary seed sales; ten companies control almost 90 per cent of agrochemical sales worldwide; and ten companies earn three-quarters of biotechnology industry revenue. Six of the leaders in seeds are also leaders in pesticides and biotech.¹³

There exist no international antitrust framework to prevent extreme concentration in the seed, livestock and fishing sector. The economic, social, political and environmental risks of a monopolized seed supply system are enormous. Strengthening the rights of peasants and their protection is an urgent step to ensure the decentralization of the world's seed supply systems.

Because of genetic erosion and the accelerated loss of agricultural biodiversity

Agricultural biodiversity is under severe threat. The industrial plant and animal breeding systems reward standardization and homogeneity, certainly putting on risk and affecting those variables that underpin the systems of biodiversity.¹⁴ The former UN Special Rapporteur on the Right to Food described this problem as follows: "All efforts have been put into the development of a limited number of standard, high-yielding varieties, so that barely more than 150 species are now cultivated; most of mankind now lives off no more than 12 plant species, with the four biggest staple crops (wheat, rice, maize and potato) taking the lion's share. It is estimated that about 75 per cent of plant genetic diversity has been lost as farmers worldwide have abandoned their local varieties for genetically uniform varieties that produce higher yields under certain conditions. In addition, genetic diversity within crops is decreasing. In 1992-1993 for instance, 71 per cent of the commercial corn crop in the United States came from six varieties, 65 per cent of the rice from only four varieties, 75 per cent of the potato crop came from four varieties, 50 per cent of the soybeans crop from six varieties, and 50 per cent of the wheat from nine varieties." This loss of agrobiodiversity is particularly problematic given the challenges posed by climate change for food security.

Because of the existence of a normative gap in international human rights law

The explicit recognition and protection of the rights to seeds and biological diversity in the current international human rights treaty framework refers only to the right of Indigenous Peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies

¹³ See ETC Group (2008) 'Who Owns Nature? Corporate Power and the Final Frontier in the Commodification of Life' Communiqué. Issue 100. See also UNCTAD (2006) Tracking the trend towards market concentration: The case of the agricultural input industry, United Nations Conference on Trade and Development secretariat.

¹⁴ See Ensor Jonathan, Practical Action (2009) The Schumacher Centre for Technology and Development, Biodiverse agriculture for a changing climate p.26. See also FAO (2010) The Second Report on The State of The World's Plant Genetic Resources for Food and Agriculture, by the Commission on Genetic Resources for Food and Agriculture, FAO. P.2

and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts as enshrined in UNDRIP. **Non-indigenous peoples have to take recourse through the human rights to food, health and culture to defend and claim protection for their rights to seeds and biological diversity.**

The protection provided by the right to food is limited.

The legal interpretation of the right to food leaves open whether people feed themselves through direct cultivation or through an income and food distribution system.

There is little legal interpretative work about which seeds and what kind of access to seeds and agricultural biodiversity people need in order to be able to adequately feed themselves through direct cultivation.

On the other hand, as in the case of the right to land¹⁵, States can claim that there are other means to satisfy the right to food other than through direct cultivation (e.g. via income and markets) so that people do not necessarily need seeds to realize their right to food.

As important as they are in advancing the realization of these rights, **the international recognition of the rights of peasants to seeds and biological diversity developed in the framework of the CBD and the ITPGRFA present important shortcomings:**

The CBD recognizes the vital role that women play in the conservation and sustainable use of biological diversity; and the close and traditional dependence on biological resources of many indigenous and local communities embodying traditional lifestyles. Nevertheless, **the CBD focuses mainly on equitable benefit sharing and does not provide a strong recognition of the collective rights of Indigenous peoples, peasants and other people working in rural areas to continue sustaining their evolving relationship with plants, animals and nature in a self-determined way.** Rather, **the CBD reaffirms the sovereign right of States to exploit their resources pursuant to their environmental policies without clarifying what are people's rights to these very resources vis-à-vis the state.**

ITPGRFA explicitly recognizes the right of farmers to save, use, exchange and sell farm-saved seeds and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture. ITPGRFA recognizes three substantial rights connected to this right: the right to protection of traditional knowledge relevant to PGRFA (art. 9.2 (a)); the right to equitably participate in benefit sharing (art. 9.2 (b)); and the right to participate in decision-making at national level (art. 9.2 (c)). **The wording of article 9.2 though is interpreted as leaving the realization of Farmers' Rights to the discretion of national governments.** The draft Declaration will clarify that States have an international obligation to recognize the rights of peasants to seeds and biological diversity which implies that they need to reform and improve their national legal frameworks in order to effectively recognize these rights. **By clarifying that this is an international human rights obligation, it will be also be clear that States carry national and extra-territorial obligations with regard to these rights. This means that States will also have to comply with the rights of peasants living beyond their borders for instance by not impairing the enjoyment of these rights as a result of bilateral or multilateral trade and investment agreements, or international development aid.** Given the primacy of human rights in the international legal order, existing international frameworks such as TRIPS and UPOV will have to be revised in order to recognize and respect the rights of peasants to seeds and biological diversity.

Besides the three substantial rights enshrined in article 9.2 of ITPGRFA and already reflected in the draft Declaration in Article 22 and 23, the draft Declaration should also recognize and protect other core elements of the rights to seeds and biological diversity not present in the draft yet. This includes:

- the right of peasants and other people working in rural areas to continue sustaining their evolving relationship with plants, animals and nature;¹⁶
- **the collective and holistic nature of these rights;**
- **the right to be free from interference in the enjoyment of these rights** including, inter alia, the right to be protected from legal and de facto dispossession and destruction of peasants' seeds practices/systems;
- the right to legal recognition and effective protection of autonomous peasants' seed and breed systems;
- And the right to conduct their own research, selection and innovation in relation to seeds and agro-biodiversity.

15 See briefing on the right to land and natural resources.

16 The principle of evolutive interpretation and the effectiveness principle call for interpreting existing human rights treaties in light of contemporary conditions. Studies in anthropology and rural sociology have highlighted the need to rethink the relationship between humans and seeds and agro-biodiversity. Besides the works already cited above, see also Philips, C. 2013. Saving more than seeds. Practices and politics of seed saving. Farnham, UK: Ashgate.

Because seeds and agricultural biodiversity have an inalienable character for peasants and other people living in rural areas

The identity of peasants, fishers, pastoralists, Indigenous peoples, rural workers and the social fabric of their communities are deeply intertwined with the seeds, plants, trees, animals, insects which they live with. Human rights are generally defined as inalienable rights, or as the rights without which humans would lose their character as humans. When peasant women lose their seeds, they lose their identity as peasant women; when a pastoralist community loses its animals, it loses its identity and pride as pastoralists and breeders. The fact that without living creatures and their ecosystems rural people would lose their specific identity as pastoralists, peasants, and Indigenous peoples means that the collective right to continue sustaining their evolving relationship with plants, animals and nature is inalienable to the rights-holders of this declaration. The recognition of seeds and biological diversity as human rights in international human rights law is grounded in the inalienable nature of these rights.

The spread of genetically modified seeds makes it difficult for communities to cultivate peasant varieties and to maintain traditional practices like seed saving and exchange, an essential part of their identity. 'The committee [CESCR] is concerned about cases in which the increased use of chemical pesticides and transgenic soya seeds in regions traditionally inhabited or used by indigenous communities have negatively affected these communities. It worries the committee that these communities find it increasingly difficult to apply their traditional farming methods, and that as a consequence, this may become an important obstacle to the access to safe, adequate and affordable food.'¹⁷

Because the right to seeds and biological diversity is indispensable to ensure the human dignity of peasants, women and men, and other people working in rural areas

Seeds and agricultural biological diversity are essential to the human dignity of peasants, small-scale fishers, pastoralists and Indigenous peoples.¹⁸ When they are not able to maintain their autonomous and evolving relationship with plants, animals and nature, they are vulnerable to oppression, discrimination and exploitation. In cases of dispossession and displacement, providing alternative systems of food provision is not enough to protect the human dignity of those affected. Seeds and the relationship with nature itself are therefore deeply intertwined with the human dignity of those living in rural areas.



¹⁷ E/C.12/ARG/CO/3 (CESCR, 2011) to Argentina.

¹⁸ The inherent dignity of all members of the human family is recognized in the Preamble and Article 1 of the 1948 Universal Declaration of Human Rights. Article 22 adds that every person is entitled to the realization of economic, social and cultural rights indispensable for his dignity.

What are the international legal sources supporting the recognition of these rights?

- The **International Covenant on Economic, Social and Cultural Rights** (ICESCR) (1966): Article 11 on the right to an adequate standard of living including food; Article 12 on the right to health and Article 15 on the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications.
- The **Convention on Biological Diversity** (CBD) (1993): Article 8j on respecting, preserving and maintaining knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity; and on the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.
- The **International Treaty on Plant Genetic Resources for Food and Agriculture** (ITPGRFA) (2001): Article 9 on Farmers' Rights to save, use, exchange and sell farm-saved seed and other propagating material; to the protection of traditional knowledge relevant to PGRFA; to participate in decision-making on matters related to conservation and sustainable use of PGRFA, and to the fair and equitable sharing of the benefits arising from the use of plant genetic resources for food and agriculture.
- The **FAO Right to Food Guidelines** (2004): Guideline 8D on genetic resources for food and agriculture highlighting States' duties to prevent the erosion of and ensure the conservation and sustainable use of genetic resources for food and agriculture, including, the protection of relevant traditional knowledge, the equitable participation in sharing benefits arising from the use of these resources; and the participation of local and indigenous communities and farmers in making national decision making.
- The **UN Declaration on the Rights of Indigenous Peoples** (UNDRIP) (2007): Article 31 on the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.
- The **Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity** (2014): Article 5 on fair and equitable benefit-sharing; Article 6 on access to genetic resources and the prior informed consent or approval that is required to obtain from indigenous and local communities for accessing the genetic resources they control; Article 7 and 12 on access to traditional knowledge associated with genetic resources.



Article 22 – Right to seeds

- 1. Peasants of all regions of the world have made, and will continue to make, enormous contributions to the conservation and development of plant genetic resources, which constitute the basis of food and agricultural production throughout the world.
- 2. Peasants and other people working in rural areas have the right to conserve, use, maintain and develop their own seeds, crops and genetic resources, or those of their choice. They also have the right to decide which crops to cultivate.
- 3. Peasants and other people working in rural areas have the right to save, store, transport, exchange, donate, sell, use and re-use farm-saved seeds, crops and propagating material. States should take appropriate measures to respect, protect and fulfil these rights.
- 4. States should take measures to respect, protect and promote traditional knowledge relevant to plant genetic resources.
- 5. States should respect, protect and promote peasant seed systems, and recognize the validity of peasants' seed certification systems.
- 6. States should take steps to ensure that planting material of sufficient quality and quantity are available to peasants that need them at the right time for planting, and for an affordable price.
- 7. States should ensure that agricultural research and development is directed towards the needs of peasants and other people working in rural areas. To this end, in accordance with Article 12.3 above, and in accordance with peasants' rights to participate in making decisions on matters related to the conservation and sustainable use of plant genetic resources, States should ensure that peasants' experience and needs are effectively reflected when priorities for agricultural research and development are defined.

Article 23 – Right to biological diversity

- 1. States recognize the enormous contribution that local, indigenous peoples and peasants of all regions of the world have made and will continue to make to the conservation and development of agricultural biodiversity, which constitutes the basis of food and agricultural production throughout the world.
- 2. Peasants and other people working in rural areas, individually or collectively, have the right to conserve, maintain and develop agricultural biodiversity, and their right to associated knowledge, including in crops and animal races. This includes the right to save, exchange, sell or give away the seeds, plants and animal breeds they develop. States shall recognize the collective use and rights to agricultural biodiversity and the right to associated knowledge established and managed by peasants and other people working in rural areas.
- 3. States shall ensure that peasants' seeds and livestock systems are protected from genetic contamination, biopiracy and theft. Peasants and other people working in rural areas have the right to maintain their traditional agrarian, pastoral and agro-ecological systems upon which their subsistence and their renewal of agricultural biodiversity depend.
- 4. Peasants and other people working in rural areas have the right to exclude from intellectual property rights genetic resources, agricultural biological diversity and associated knowledge and technologies that are owned, discovered or developed by their own communities.
- 5. Peasants and other people working in rural areas have the right not to accept certification mechanisms established by transnational corporations. They have the right to use certification mechanisms established or adopted by their governments. Guarantee schemes run by peasants' organisations with government support should be promoted and protected.
- 6. States shall ensure that peasants and other people working in rural areas are free to conserve and develop their knowledge in agriculture, fishing and livestock rearing.
- 7. Peasants and other people working in rural areas have the right to be protected from measures threatening biological diversity and traditional knowledge, including forms of intellectual property that might adversely affect their traditional knowledge and use of genetic resources.
- 8. Peasants and others working in rural areas have the right to participate in decision-making on matters related to the conservation and sustainable use of agricultural biodiversity.



CONTACT :

FIAN Belgium

Rue Van Elewyck, 35
1050 Bruxelles - Belgium
+32 (0)2 640 84 17
fian@fian.be - www.fian.be

FIAN International Secretariat

Willy-Brandt-Platz 5
69115 Heidelberg - Germany
+ 49 6221 65300-30
www.fian.org



With the
financial
support of

