

**Draft Intervention (12<sup>th</sup> May 2016)**  
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My presentation is focused on the Right to Seed, Article 22 of the Draft Declaration and linked to this right, the right of peasants to save, use exchange and sell seeds and other propagating material, the right to participate in decision making processes, the protection of traditional knowledge and the right to fair and equitable benefit sharing arising from the utilization of peasants' resources and associated knowledge.

These are not new issues. These elements are already recognized by the Preamble and Article 9 of the ITPGFA as being fundamental to the realization of farmers' rights.

They are also recognized in the context of realization of the right to food.

However implementation is weak. In fact these rights are increasingly being threatened and undermined.

It is widely acknowledge that small-scale farmers have made and continue to make enormous contributions to the conservation and development of plant genetic resources. This has been made possible only as farmers have freely saved, reused, exchanged and sold seeds/propagating material. In fact even today 80% of farmers rely on these practices to access seeds.

However these practices are increasingly under threat with the advancement of seed certification and marketing laws and intellectual property regimes that outlaw these practices.

For example when using PVP protected variety, the 1991 Act of the International Convention for the protection of new varieties of plants (also known as UPOV 1991), allows in certain circumstances farmers to save seed without payment of royalty, but it does not allow regular exchanges of farm-saved seeds or sale of such seeds among farmers even in small quantities.

In 2005 Malaysia submitted its PVP legislation to UPOV for assessment of conformity of the legislation with UPOV 1991.

Malaysia's PVP legislation allowed "any exchange of reasonable amounts of propagating materials among small farmers" and small farmers is defined as those having less than 0.2 hectares.

UPOV responded to Malaysia by calling for the deletion of this paragraph.

In the case of the Philippines, UPOV commenting on Philippines's PVP legislation noted among other things, that the exchange and sale of seeds among and between the said small farmers in their own land, as provided in Philippines' PVP legislation goes beyond UPOV's requirements and called for the Section to be amended.

One argument often put forward is that countries are not obliged to join UPOV 1991 and may opt for alternative sui generis systems for plant variety protection as this is allowed by Article 27.3(b) TRIPS Agreement.

While this may be the case, in reality there is significant pressure on countries to adopt the UPOV model. North-south trade agreements also make it obligatory for countries to join and implement the UPOV system. For instance the recently completed Trans Pacific Partnership Agreement (also known as TPPA) requires parties to ratify UPOV 1991. And these countries have to discontinue in relation to PVP protected varieties, the exchange and sale of seeds or propagating material.

On the issue of protection of traditional knowledge and equitable benefit sharing

Traditional knowledge is applied by farmers in the selection, preservation and storing of seed and is the basis for farmer seed system and crucial to achieving food security

However, the wealth of practices that farmers use and develop at the local level are often ignored and unacknowledged by seed policies and IP regimes. What is even more concerning are trends such as restrictions on saving, exchanging and selling protected seed which comes at the expense of farmers gradually losing their knowledge relating to seed selection and seed preservation.

Equally concerning are cases of misappropriation. In one case that we found that Seminis (a subsidiary of Monsanto) planted farmers' carrot seeds which it obtained from a farmers market in Turkey, and through a simple process of selection – introduced a new carrot variety over which it then obtained IP protection in the United States and Europe.

The right of farmers to participate in decision making processes especially concerning the formulation or development of seed policies and laws is imperative if small-scale farmers and their seed systems are to be supportive.

This right is mentioned in Article 9.2(c) of the ITPGRFA but evidence available suggests that implementation is lacking and where consultations do take place, they are often superficial in nature.

For example in at least two countries, the constitutional courts suspended the PVP legislation, which was based on UPOV 1991 following protests from civil society, peasant and indigenous communities over the lack of national consultation or debate as well as impact of the legislation.

Most recently the Africa Regional Intellectual Property Organization (ARIPO) has come under significant criticisms for adopting a regional Protocol on plant variety protection based on UPOV 1991 covering 19 sub-saharan african countries, 13 of which are least developed countries. Although civil society and peasant farmer organizations, repeatedly insisted that ARIPO be more transparent and inclusive, ARIPO Secretariat deliberately excluded them from most of the discussions.

What all of the examples show is that peasants' rights in particular the right to seed needs stronger protection in international law as well as in domestic law. Existing

legal instruments are clearly inadequate and implementation at the national level is weak. On the other hand, threats to the right to seeds has increased for example with strengthened IP regimes, seed certification and marketing legislations and trade agreements.

The drafting of UN Declaration represents a unique opportunity to strengthen the protection of farmers' rights to seeds and set benchmarks that are recognized and respected globally.

In this context, it is imperative for Article 22 on the Right to Seeds to include:

1. Peasants' right to save, use, exchange and sell seeds and propagating material and for States to take measures to realize this right.
2. States to take measures to protect traditional knowledge relevant to plant genetic resources.
3. Peasants' right to receive equitable benefit sharing arising from the utilization of their genetic resources and associated information and knowledge.
4. Peasant's right to participate in decision-making processes at all levels, (national, regional and international) in the formulation or development of policies and laws relevant to seeds including intellectual property legislation and linked to this their right to receive and seek information.
5. States to respect, protect and promote peasant seed systems.