


Reconciling Farmers' and Plant Breeders' Rights

Symposium on possible interrelations between the ITPGRFA and the UPOV Convention
Geneva, Switzerland - 26 October 2016

Bram de Jonge
Oxfam Novib; Wageningen University
The Netherlands



Sowing Diversity = Harvesting Security (SD=HS)





Photo: Sacha de Boer

- **Strengthening farmers' seed systems** (rights & technical) for food and nutrition security and climate change adaptation
- Vietnam, Laos, Myanmar, Peru, Zimbabwe: 150,000 HH, 50% women
- Low land paddy fields, high mountain altitude, semi-arid region, marginal & high potential areas
- 50 Partners/allies: CSOs, IPSHF, governments, universities, (inter)national research organisations, private sector
- Donors: Sida, IFAD, Netherlands Post Code Lottery, Dutch government +++

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Farmer Field Schools

Photo: Sacha de Boer



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Where has most support gone so far?

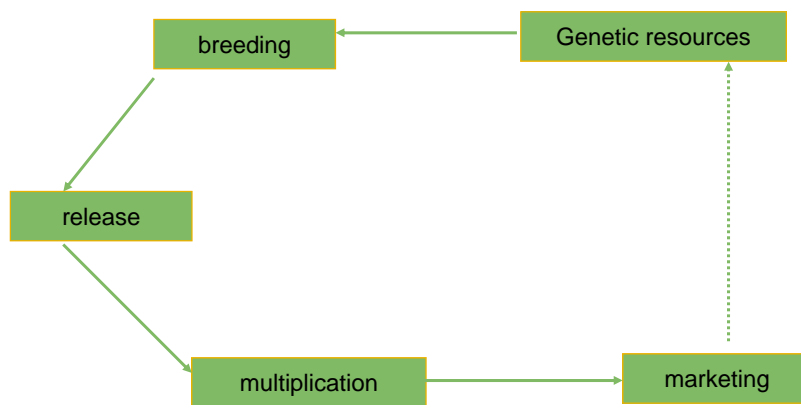


Figure: Louwaars & de Boef, 2012

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What about Farmer Seed Systems?

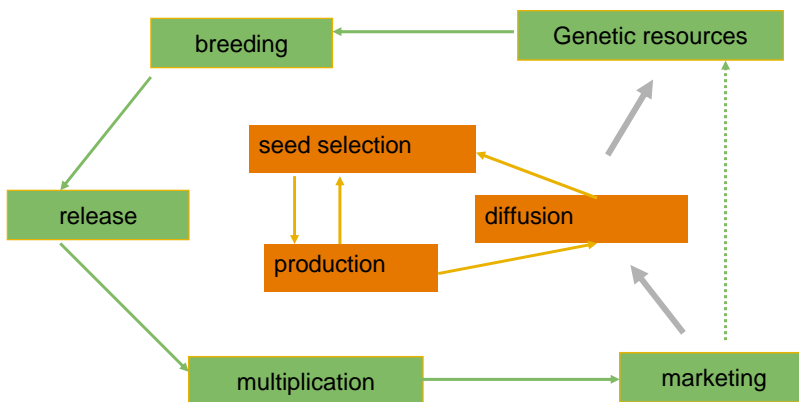


Figure: Louwaars & de Boef, 2012

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Where do smallholder farmers get their seeds from?

Source: McGuire & Sperling, 2016
www.seedssystem.org

9660 observations across six countries, covering 40 crops

- 51% from local markets
- 31% farmers own stock
- 8.6% from neighbours
- 7.3% from government / NGOs / UN
- 2.4% from agro-dealers

Observations from Kenya (UPOV member since 1999)

- 40% from local markets
- 36% farmers own stock
- 11.6% from agro-dealers
- 6% from government / NGOs / UN
- 5.7% from neighbours



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The Importance of Farmer Seed Systems

Farmer Seed Systems provide more than 80% of the total food crop seed used by farmers

→ **Seed Security**

→ **Food Security**

→ It is also the **main channel** through which smallholder farmers **access new improved varieties** from formal sector

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Focus Group on potatoes in Njabini, Kenya, April 2013

	Benefits	Drawbacks	Prefer.
Farm-saved seed	<ul style="list-style-type: none"> - Low cost - Known quality - Availability - Adaptability to land 	<ul style="list-style-type: none"> - Could be diseased - Yield decreases over time 	3
Neighbours' seed	<ul style="list-style-type: none"> - Availability - Known quality - Low cost - Small quantity available 	<ul style="list-style-type: none"> - Diseases - Mixed varieties 	4
Local market seed	<ul style="list-style-type: none"> - Cheap (\$12 for 50kg) - Readily available 	<ul style="list-style-type: none"> - Unknown source - Mixed varieties - Diseased 	5
Quality Declared Seed	<ul style="list-style-type: none"> - Disease-free - High yielding - Credit facility 	<ul style="list-style-type: none"> - Leads to indebtedness if crop fails - Expensive (Cost of seed + 12% interest) 	2
Certified seed	<ul style="list-style-type: none"> - Disease-free - High-yielding 	<ul style="list-style-type: none"> - Not available (40 km) - Expensive (\$29 / 50kg + transport cost) 	1

The Importance of Farmer Seed Systems

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→ **Maintains Agrobiodiversity** (in situ conservation)

→ Continues to **Create Agrobiodiversity**

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Community Seed Banks & Seed Fairs



Photo: Sacha de Boer

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Linking with (inter)national gene banks



Photo: FAO / ANDES

Participatory Plant Breeding

Photo: Hoang Huy



Farmer Seed Systems & Farmers' Rights

The use, exchange and selling on local markets of farm-saved seed forms the universal practice and **backbone** of farmer seed systems

- **Seed & Food Security**
 - **Maintains Agrobiodiversity** (in situ conservation)
 - Continues to **Create Agrobiodiversity**
- A KEY ASPECT OF **FARMERS' RIGHTS** AND THE ITPGRFA
- **MAIN INTERFACE** BETWEEN ITPGRFA AND UPOV

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ITPGRFA & UPOV

The use, exchange and selling on local markets of farm-saved seed forms the universal practice and **backbone** of farmer seed systems

UPOV 1991, Article 15.2:

*"..each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, **on their own holdings**, the protected variety.."*

- **UPOV's 'farmers' privilege' ≠ Farmers' Rights**

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ITPGRFA & UPOV

UPOV's Explanatory Note on Article 15.1.i:

*“the propagation of a variety by a farmer exclusively for the production of a food crop **to be consumed entirely by that farmer and the dependents of the farmer living on that holding**, may be considered to fall within the meaning of acts done privately and for non-commercial purposes. Therefore, activities, including for example “subsistence farming”, where these constitute acts done privately and for non-commercial purposes, may be considered to be excluded from the scope of the breeder's right, and farmers who conduct these kinds of activities freely benefit from the availability of protected new varieties.”*

(http://www.upov.int/edocs/expndocs/en/upov_exn_exc.pdf)

→ This interpretation of ‘private and non-commercial use’ is too narrow

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ITPGRFA & UPOV

The use, exchange and selling on local markets of farm-saved seed forms the universal practice and **backbone** of farmer seed systems

UPOV's Frequently Asked Questions:

*“UPOV Contracting Parties have the flexibility to consider, where the legitimate interests of the breeders are not significantly affected, in the occasional case of propagating material of protected varieties, allowing **subsistence farmers to exchange** this against other vital goods **within the local community**.”* (<http://www.upov.int/about/en/faq.html#Q30>)

→ This interpretation of ‘private and non-commercial use’ is too narrow

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ITPGRFA & UPOV

The use, exchange and selling on local markets of farm-saved seed forms the universal practice and **backbone** of farmer seed systems

The European Seed Association:

*“Subsistence farmers in developing countries however are **not prohibited to exchange** seed with or **sell** seeds to other subsistence farmers as according to the UPOV 1991 Convention the protection conferred by a plant breeders’ right does not extend to acts done privately and for non-commercial purposes.”*

(ESA Position on Plant IP Protection and Biodiversity, ESA_11.0049, 6 January 2011)

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Reconciling Farmers’ & Breeders’ Rights

Where do we draw the line??

Subsistence
Farming

Large-scale
Com. Farming



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Reconciling Farmers' & Breeders' Rights

Where do we draw the line??

Subsistence
Farming

Smallholder
Farming

Large-scale
Com. Farming



E.g.: Ethiopian draft PVP bill defines a smallholder farmer as **someone whose total earnings from sales of crops produced do not exceed the average household income**

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Reconciling Farmers' & Breeders' Rights

The line needs to be drawn!!

Subsistence
Farming

Smallholder
Farming

Large-scale
Com. Farming



Oxfam urges UPOV to establish a proper and explicit balance between Farmers' Rights and Plant Breeders' Rights in order not to obstruct the practice of seed exchange and trade amongst smallholder farmers

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Protection of Traditional Knowledge and Right to Equitably Participate in Benefit-Sharing (ITPGRFA, Article 9.2.a/b)

The UPOV Conventions do not include concrete mechanisms that secure compliance with ABS Regulations (CBD; Nagoya Protocol; ITPGRFA)

“UPOV does not allow any further or different conditions for protection”

→ One can still establish administrative measures to secure verification of compliance with relevant ABS requirements

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Reconciling Farmers' & Breeders' Rights

Protection of traditional knowledge and the right to equitably participate in benefit-sharing (ITPGRFA, Article 9.2.a/b)

Oxfam urges UPOV to facilitate and support the possibility for Member States to secure that Plant Breeders' Rights are only granted to applicants that can show compliance with relevant ABS requirements in order to prevent misappropriation of genetic resources and associated traditional knowledge.

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The Right to Participate in Making Decisions (ITPGRFA, Article 9.2.c)

Repeatedly, (prospective) UPOV members establish or upgrade their PVP laws 'behind closed doors' without a transparent and inclusive decision-making process.

Debate on PVP is often characterised by misunderstandings and mistrust amongst stakeholders

→ Constructive dialogue is the only way out

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Reconciling Farmers' & Breeders' Rights

The right to participate in making decisions (ITPGRFA, Article 9.2.c)

Oxfam urges UPOV to promote transparency and democratic accountability in its decision-making processes and that of its (prospective) members, and support the active participation of farmers.

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Conclusion: ITPGRFA & UPOV

Yes, there are important interrelations between UPOV & ITPGRFA, which need attention:

- The **use, exchange and selling on local markets of farm-saved seed** forms the universal practice and backbone of farmer seed systems, which need to be supported for
 - Conserving and creating **crop diversity**;
 - Reaching **seed & food security**
- Compliance with ABS requirements needs to be secured;
- Farmers have a right to be involved in decision-making

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Conclusion: ITPGRFA & UPOV

Yes, there are important interrelations between UPOV & ITPGRFA, which need attention:



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Reconciling Farmers' & Breeders' Rights

- *Allow and support smallholder farmers the full execution of their right to save, exchange and sell farm-saved seed of protected varieties;*
- *Allow and support Member States to implement measures in their PVP law that secure compliance with relevant (inter)national obligations dealing with the protection of traditional knowledge and benefit-sharing;*
- *Improve transparency and democratic accountability in decision-making processes on PVP laws at the national and international levels, including by promoting and ensuring the full and active participation of farmers.*

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Reconciling Farmers' & Breeders' Rights

- **This symposium**
- **Next steps:**
 - **Roadmap for further work on interrelations**
 - **Farmers need to be involved**

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Thank you!



Photo: Sacha de Boer

SOWING DIVERSITY =
HARVESTING SECURITY
www.SDHSprogram.org

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