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# The Right to Seeds: Custodianship, Enclosure and Resistance

Report of the UN Working Group on the rights of peasants and other people working in rural areas (A/HRC/63/26, 2026)

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Webinar *Bringing Innovation to Farmers: New Varieties, New Opportunities*  
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1

## THE RIGHT TO SEEDS

# UNDROP makes the right to seeds a human right



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- Adopted by the UN General Assembly in December 2018 (resolution 73/165)
- Article 19: the right to save, use, exchange and sell farm-saved seed
- ...and to protect traditional knowledge, share benefits and take part in decisions on seeds
- Mirrors farmers' rights in the International Treaty on Plant Genetic Resources (art. 9)

### ARTICLE 19(8)

*"States 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 and other people working in rural areas."*

*The report draws on submissions from States, civil society, peasants, Indigenous Peoples and researchers, and on consultations in Africa, Latin America and South-East Asia.*

Source: A/HRC/63/26, paras 19, 20 and 22; UNDROP arts 19(1)(d), 19(2) and 19(8); ITPGRFA art. 9.

2

2

## Seeds and plant varieties are linked through centuries of human knowledge, natural selection, and cultivation practices



Development Through Seed Saving  
Mass Selection and Local Adaptation  
Genetic Diversity  
Evolution of Variety Types

## Peasants and farmers are innovators

[https://eu-cap-network.ec.europa.eu/projects/practice-abstracts/seed-and-plant-varieties-what-are-differences-between-various-types\\_en](https://eu-cap-network.ec.europa.eu/projects/practice-abstracts/seed-and-plant-varieties-what-are-differences-between-various-types_en)

3

### TWO INNOVATION SYSTEMS

## Seeds have two innovation systems, not one



### Formal seed system

Breeders, companies and public research

**Protected by plant breeders' rights (UPOV)**

Exchange of genetic material



### Farmer-managed seed system

Domesticated crops; developed thousands of varieties over centuries

**Protected by farmers' rights (UNDROP art. 19; ITPGRFA art. 9)**

**Each system needs rights to keep innovating**

Source: A/HRC/63/26; UNDROP art. 19; ITPGRFA art. 9.

4

4



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## For fifty years, law has backed one system at the other's expense

The cost falls on farmers' rights — and on the right to food.

5

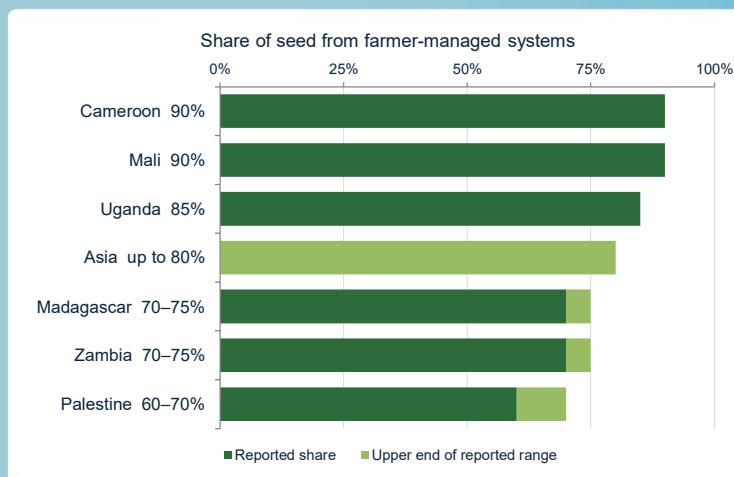
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### TWO INNOVATION SYSTEMS

## Farmer-managed systems supply most of the seed peasants use



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# 90%

of seed in Cameroon and Mali comes from farmers' own systems

Peasants are the primary contributors to agrobiodiversity — as the International Treaty recognises (art. 9.1)

Source: A/HRC/63/26, and the national sources it cites; ITPGRFA art. 9.1.

6

6

## TWO INNOVATION SYSTEMS

## Women are the principal custodians of seed



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Select seed and preserve genetic diversity



Assure seed quality



Manage household and community granaries



Pass knowledge and innovation between generations

### “Living guardians”

of the genetic heritage essential to agrobiodiversity and food security — as women are known in many regions

Source: A/HRC/63/26.

7

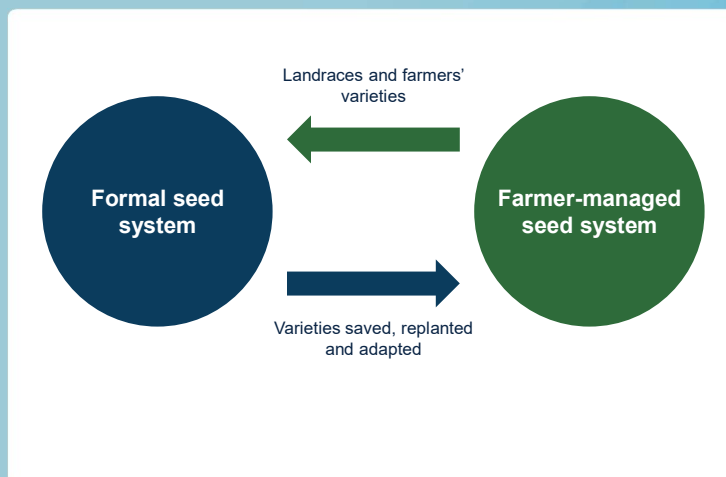
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## HOW FARMER-MANAGED SYSTEMS WORK

## The two systems have always traded material — and both gain



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- Breeders draw on farmers' landraces
- Farmers save and adapt seed of protected and unprotected varieties alike
- Most peasants use both systems: farm-saved seed, local markets, commercial seed

Source: A/HRC/63/26.

8

8

HOW FARMER-MANAGED SYSTEMS WORK

**Seed saving keeps varieties evolving in the field**

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**Nutrition**



**Cultural continuity**



**Lower input costs**



**Control over production**



**Climate adaptation**

*In situ conservation is a living process: seeds adapt to soil, pests and drought each season.*

Source: A/HRC/63/26.

9

9

HOW FARMER-MANAGED SYSTEMS WORK

**Farmers breed for traits the formal system often ignores**

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**Farmers select seed for**

Yield stability

Taste

Cooking quality

Fodder

Storage life

Pest resistance

Tolerance of drought, floods and erratic rain

**Participatory plant breeding:** farmers and scientists develop seed suited to local conditions.

**PALESTINE AND THE MIDDLE EAST AND NORTH AFRICA**

Seed is selected to survive low rainfall and drought.

**FRANCE**

Farmers grow heterogeneous wheat populations: plants that survive extreme heat pass their genes to the next cycle — breeding resilience without a laboratory.

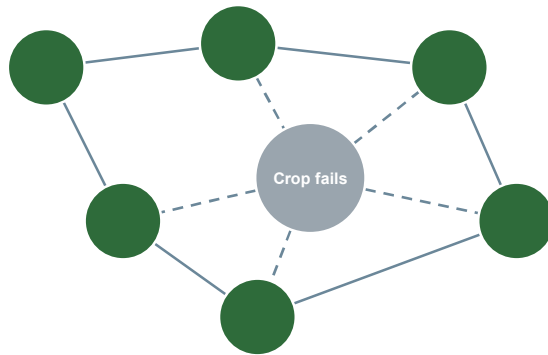
Source: A/HRC/63/26.

10

10

## HOW FARMER-MANAGED SYSTEMS WORK

## Seed systems are collective, not individual



The variety survives in neighbouring fields

Source: A/HRC/63/26.

- Seed cooperatives, clubs, fairs and festivals
- Exchange of seed and knowledge binds communities
- Exchange is insurance: if one crop fails, the variety survives in a neighbour's field

11

11

## WHERE PVP COLLIDES WITH FARMERS' RIGHTS

## UPOV 1991 narrowed what farmers may do with protected seed



| Activity                    | UPOV 1978               | UPOV 1991                                                                                                     |
|-----------------------------|-------------------------|---------------------------------------------------------------------------------------------------------------|
| Save and replant            | Understood as permitted | Optional exception only: own holding, "within reasonable limits", subject to breeders' "legitimate interests" |
| Exchange with other farmers | Understood as permitted | Requires breeder authorisation                                                                                |
| Sell                        | Not permitted           | Requires breeder authorisation                                                                                |
| Scope of protection         | Propagating material    | Extends to harvested material and, in some cases, derived products                                            |
| Derived varieties           | No such concept         | "Essentially derived varieties" limit commercialisation, including through selection as farmers practise it   |

 Restriction introduced or tightened by the 1991 Act

Source: A/HRC/63/26; UPOV Convention 1978 and 1991 Acts (1991 Act arts 14 and 15(2)).

12

12

## WHERE PVP COLLIDES WITH FARMERS' RIGHTS



## National laws turn traditional seed practice into an offence



### Plant variety protection laws

- UPOV 1991 requires “appropriate legal remedies for the effective enforcement” of breeders’ rights (art. 30(1)(i)) — not criminal penalties
- Some national laws impose heavy fines and prison terms



### Seed marketing laws

- Admit only registered, certified seed
- Diverse peasant varieties cannot meet uniformity and stability tests — they become “legally invisible”



### Industry-led enforcement and surveillance add to the pressure

Source: A/HRC/63/26; UPOV Convention 1991 Act, art. 30(1)(i).

13

13

## WHAT HUMAN RIGHTS REQUIRE



## When IP rules clash with the right to seeds, human rights prevail



IP regimes must be compatible with human rights obligations (CESCR, general comment No. 17, 2005)



UNDROP art. 2(4): States must interpret and apply international agreements consistently with their human rights obligations



The Working Group’s position: human rights prevail where IP and seed marketing laws conflict with the right to seeds

**Seeds — protected or not — are first the basis of the rights to life, food, health, culture and a healthy environment. Commerce comes second.**

Source: A/HRC/63/26, paras [ ]; CESCR general comment No. 17 (2005); UNDROP art. 2(4).

14

14

WHAT HUMAN RIGHTS REQUIRE

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## One size does not fit all: States should build sui generis systems

*"Refrain from implementing the 1991 Act ... and laws that restrict farmers' privilege to save, exchange and sell protected varieties, instead developing or strengthening sui generis seed systems suited to national agrobiodiversity and local farming realities."*

Working Group recommendation (c) to States



Niger and India need different rules from the Netherlands and Germany



TRIPS requires plant variety protection, not UPOV membership (art. 27.3(b))

**Two innovation systems. Two sets of rights. The right to food comes first.**

Source: A/HRC/63/26, recommendation (c); TRIPS Agreement art. 27.3(b).

15