



# La Via Campesina

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## Farmers' rights and the International Seed Treaty La Via Campesina's analysis and proposals

### I. Farmers' rights to change the agricultural model

Farmers' access to a diverse range of peasant seeds and their right to keep, use, exchange and sell farm seeds is the first condition necessary for changing the current agricultural model to one of small agroecological farms that prioritise supplying the local markets. As shown by the report published last June by the **International Panel of Experts on Sustainable Food Systems** (IPES-Food<sup>1</sup>), this change of model is the only sustainable answer to food, health, social, environmental and climatic crises, which are becoming increasingly serious. A change of public policies is required, mainly of those concerning farmers' rights to seeds.

The right to protect traditional and modern peasant knowhow with regard to seeds is indispensable when faced with their destruction by industrial property rights.

The right to equitably shared profits has become an illusion aimed at facilitating biopiracy. Large multinational seed companies must begin by unconditionally reimbursing the huge debt they have amassed by pillaging peasant seeds in all countries.

Farmers' participation in decision making must not be reduced to a few minor concessions granted to those who bow to pressure from the industry and accept decisions already made.

**In developing countries** three quarters of the available food is produced by small-scale farmers, who use only a quarter of the available land and water resources<sup>2</sup>. Most of them select and produce their own seeds in their own fields with the aim of improving their local adaptation. They regularly exchange with their neighbours in order to renew their diversity. These peasant seed systems evolve slowly. Today they are being weakened by the acceleration of climatic change and the worldwide circulation of pathogens that are the result of market globalisation and of the ecological imbalance caused by disappearing biodiversity and ever increasing economic crises and conflicts. Access to peasant seeds originating from elsewhere becomes indispensable for accelerating local adaptation to peasant seeds, strengthening their resilience and progressing from subsistence farming to agroecological peasant farming. But seeds originating from elsewhere are not locally adapted: they cannot replace local seeds. They must be introduced in small quantities, observed, moulded to suit the new environment, selected and multiplied locally in order to adapt to the local ecosystems without causing an imbalance. This work must be enriched by transmission from peasants to peasants of knowledge associated with each new seed and by the exchange of peasant and scientific knowhow resulting from recent collaborative field selection experiments.

Resorting to genetically improved or modified industrial seeds is often presented as simpler and more efficient than peasant selections. They cannot however respond to the needs of peasant agroecology. Industrial seeds are too

1 [http://www.ipes-food.org/images/Reports/UniformityToDiversity\\_FullReport.pdf](http://www.ipes-food.org/images/Reports/UniformityToDiversity_FullReport.pdf)

2 <https://www.grain.org/fr/article/entries/4960-starved-of-land-small-scale-farmers-feed-the-world-with-less-than-a-quarter-of-all-the-available-agricultural-land>

expensive. Given that they are selected and produced in large quantities in order to be diffused over very large areas, they cannot be adapted to each local territory. As they are aimed at industrial monocultures for exportation to the global markets, they cannot be adapted to the diversity of local food producing crops. Even when they are distributed free of charge, they still require heavy mechanisation and several highly expensive toxic chemical inputs. Peasants should nevertheless be able to freely use and multiply those of them which have one or two characteristics that which be of local benefit in order to select and adapt them to their local agricultural ecosystem.

**In countries where the industrial farming model dominates**, local seeds have disappeared from the fields. Some of them have been conserved in public seed banks. These old local seeds often give poor results when used as they are: apart from the loss of vitality resulting from prolonged refrigeration, they lack several dozen years of regular adaptation to agricultural ecosystems. However they constitute the only possible selection basis for the development of agroecological peasant farming. Industrial seeds are not adapted for this purpose. For these new peasant selections in industrialised countries, access to knowledge acquired as a result of collaborative selection experiments initiated in developing countries is as important as access to seed banks.

## **II. Why is the International Seed Treaty an important space for farmers' rights?**

### **II. 1) World seed governance.**

The International Seed Treaty is the only world governance seed space within the UN which remains under State control. Housed inside the FAO, it complies with the following rules:

- multilateralism and consensual decision making. Although this gives each member an occasionally excessive power of veto, it also stops the most powerful members from taking direct control;
- the participation of peasant organisations, civil society, of research and industry, purely as observers, without the right to full participation in debates such as the FAO's Committee on World Food Security.

The other spaces, such as the UPOV, the WIPO, the CGIAR (research) are directly linked to the interests of industry and do not offer a space for farmers to take part in decision making. The CBD deals with GMOs and synthetic biology, but delegates anything related to phylogenetic resources to the International Seed Treaty.

### **II. 2) Essential missions for farmers.**

As part of its missions, the International Seed Treaty should guarantee:

- facilitated access<sup>3</sup> to all seed biodiversity conserved in fields and gene banks;
- sustainable use of those seeds;
- respect for the rights of farmers to conserve, use, exchange and sell farm seeds, to protect their traditional knowledge, to participate in equitable profit sharing and in decision making on a national level.

## **III. Why does the International Seed Treaty only partially fulfill its missions?**

### **III. 1) The International Seed Treaty and the UPOV against peasants' rights and patents**

The International Seed Treaty was set up firstly to respond to the needs of the industry of countries that favour the UPOV patent. All industrial seeds have been selected by using peasant seeds as a resource. In order to safeguard their « phylogenetic resources » whilst making them disappear from the fields and favouring their one improved variety, the industry has made states and research institutes responsible for collecting and conserving them in public germoplasm banks. For more than ten years, access to these banks has been under the governance of the International Seed Treaty. But this facilitated access is only permitted for the purposes of research, selection or education. States may therefore refuse peasants access to these seeds on the pretext that they use them for commercial purposes by selling their harvests. They can also limit farmers' rights, and even take them away. Responsibility for exercising them is in fact conferred on governments by the International Seed Treaty « *at the discretion and convenience of the measures of national laws* ». It is in this way that the member nations of the UPOV prohibit farm seeds or impose royalties on them and limit seeds' access to the market to the only varieties that can be protected by a Certificate of Vegetable Acquisition (COV). That is why they impose COV DHS<sup>4</sup> standards on the certification of seeds and on official seed variety catalogues. Peasant seeds that do not conform to these standards thus exit the market and are enclosed in germoplasm banks which are inaccessible to peasants.

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3 This access is not completely free, but depends on the condition that it is used for research and selection for food and agriculture, patenting the resource in its received form is not permitted and sharing the benefits received from exploitation of the received resource is mandatory.

4 Distinction, Homogeneity and Stability

Finally, the International Seed Treaty authorises the beneficiary to access a Multilateral<sup>5</sup> System resource to claim intellectual property rights of the resource, provided that that property right does not limit the use of the resource for the purposes of research and selection. In this way it authorises the COV's protection of resources, which limits or prohibits the use of farm seeds by farmers. On the other hand it prohibits the same claim of intellectual property by a patent because that limits use to research or selection. For the same reason it makes payment to the Treaty's Fund for Sharing Benefits compulsory in the event of a patent being required for a product resulting from a Multilateral System resource, but optional in the event of a COV requirement.

### **III. 2) The limits of the International Seed Treaty**

The International Seed Treaty is comprised of a mere 140 out of 193 UN member countries, with some very significant absences in terms of conservation of phylogenetic resources, such as the United States, China, Russia, South Africa, amongst others... With some minor exceptions, the resources of the Multilateral System resource are all available together with other public or private collections, notably to the USA, and are accessible without patent restrictions or commitments to the Treaty's Fund for Sharing benefits. Companies that deposit patents can easily find the resources they need elsewhere. In the absence of any kind of control, it is impossible to check whether companies that sell new seeds having used the resources of the Multilateral System have fulfilled their commitments. The result: the Fund for Sharing benefits has never received a single payment resulting from one of the multiple accesses granted since it has been set up and only deposits very small revenues paid directly by a handful of states. On the other hand, numerous member nations have not deposited their national collections in the Multilateral System, or have only deposited a tiny fraction of them, which nevertheless does not prevent them from benefitting from the contributions of other countries.

### **IV. The revolt of developing countries**

Although it is only developed countries lacking in biodiversity that have seed companies that reap the benefits, developing countries from which most of the Multilateral System's resources have come are still waiting to receive their share of the Fund for Sharing benefits. Peasant and civil society organisations present in the Treaty's governing body meetings and developing countries have often denounced its dysfunctional practices. In 2013, the conclusion of the Nagoya Protocol urged developed countries (Europe, North America, Australia, Japan) to demand the extension of the Multilateral System to species such as soya or tomatoes, which are not currently included<sup>6</sup>. The Protocol imposes, for each exchange of resources pertaining to these species, the preliminary conclusion of a bilateral consent and shared advantages agreement. The industry believes that this obligation is not applicable, given the very large number of exchanges (sometimes several hundred) and of different origins which may separate the first accessions of the acquisition of a new commercial seed. Whilst acknowledging the advantages of a possible extension of the Multilateral System, developing countries have conditioned all discussions to be geared towards this issue of improving the functioning of the Treaty, partly the part concerning shared benefits, and partly concerning sustainable use, i.e farmers' rights.

For the past three years a work group of the Treaty has been working on improving the functioning of the Multilateral System. But the discussions run counter to the need to maintain an attractive system in order to avoid circumvention. Which means: « if industry has to pay, it will go elsewhere for its needs and the System will become useless». The announcement that the USA may join the Treaty could change the situation if that leads to the depositing of American collections. But that would not lead to the depositing of the private collections of multinational companies and would also strengthen, following in the steps of Japan, who joined in 2013, the camp of developed countries who are refusing all mandatory payments.

The obstruction of two developed countries (Canada and Japan) has impeded the reaching of all important decisions with regard to farmers' rights following the last meeting of the governing body in 2015, despite the pressing demands of the large majority of countries present. Only an agreement for support of a Treaty Secretariat, proposed by Indonesia, to organise a « Global consultation » on the issue – which will take place from 27 to 30 septembre in Bali – was reached.

### **V. The reverse side of patents.**

The recent evolution of genetic sequencing techniques and bio informatics will from now on make it possible to require patents not just of a plant, or of parts of a plant of which it is possible to find the origin, but of its genes, or « genetic

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5 The « Multilateral System of facilitated access and shared benefits » includes all the resources made available by the contracting parties in the International Seed Treaty

6 Annexe 1 of the Treaty gives the list of the 64 cultivated species covered by the Multilateral System

information »<sup>7</sup>, which can be contained in a large number of different plants. Which does not prevent the protection of these patents from extending to every plant containing that genetic information and expressing the characteristics of interest associated with its function. The multinational seed companies therefore have no more need for access to the physical grains conserved in the Multilateral System. They only need access to dematerialised information about their genetic sequences and their characteristics of interest. The international programme DivSeek was set up with financing from the World Bank in order to make this information freely available on the internet. All that is therefore necessary is to be sufficiently proficient in calculating electronic research engines to link these parameters in order to create new patentable « genetic information » out of them which can be integrated into new commercial seeds. Therefore :

- the industry may patent the genetic information contained within the entire resources of the Multilateral System which will consequently risk losing all its multilateral characteristics and becoming privatised. The new techniques of genome modification will allow them all to produce the said patents ;

- the industry no longer needs to have access to the physical seeds in the Multilateral System. It does however need to have access to information on characteristics of interest of these seeds and of related wild plants. The peasants alone possess this information, particularly when it concerns new characteristics arising from adaptation to climatic changes and new plant pathogens. The industry is consequently prepared to contribute to the Fund for Sharing benefits, but only on condition that the money will be used for researching the information and resources that it needs and that have not yet been collected;

- multiplying patents carries the risk of obstructing all innovation. In response to this risk, the three large companies are in the process of fusing or negotiating cross licences amongst themselves. Medium sized companies are demanding a new multilateral exchange system and obligatory licencing rights<sup>8</sup> for patents. For that reason it is setting up private patent clubs which evade all public governance to replace the Treaty's Multilateral System.

## VI. What can still be expected from the Treaty in this new situation?

### La Via Campesina's Proposals

#### VI. 1) The protection of seeds and of peasant knowhow

Patents on genetic information announce the death of the International Seed Treaty and the control of all resources by a handful of multinational companies. But the vast majority of researchers, seed companies and member nations of the Treaty are not sufficiently versed in the genetic engineering tools which are indispensable to the production of these patents, or do not have patent portfolios that are sufficiently prestigious to allow them to remain independent. They need to retain access to the seeds conserved in the Multilateral System in order to feed their research and/or their national seed industries. They do not want to feed the biopiracy of resources which they have supplied to the Multilateral System. When the Treaty's Governing Body discovered the existence of Divseek in Rome in 2015, it decided to investigate how to go about ensuring that access to dematerialised genetic information contained within the resources of the Multilateral System does not constitute a circumvention of non patenting obligations and of shared benefits. It has not yet come up with a solution.

Peasants who select and produce their own seeds also need a regulated world exchange system, far removed from the threat of biopiracy: must they for that reason entrust their seeds and their knowledge to the collections of the Multilateral System? As the Treaty texts stand now (article 6. 2 of the ATT<sup>9</sup>), there is nothing to stop anyone gaining access to these seeds and to the genetic information and associated knowledge, from demanding a patent accompanied by a research exception<sup>10</sup> such as the new European unitary patent and the German, French or Dutch patents. This patent will prohibit all agricultural cultivation of these seeds, including by the farmers who have supplied them, if they have not received a document certifying their donation, which is mostly the case. That is why the Treaty's Governing Body must :

- modify article 6.2 of the ATT to prohibit all « *right to intellectual property or other rights limiting access for research, selection, agricultural cultivation and commercialisation, of material provided under the present Agreement or to parts or genetic components, in the form received by the Multilateral System* » ;

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7 The legal notion of « genetic information » is much broader than the very imprecise notion of the « gène ». It also extends to all traits or characteristics of a plant, whether they be genetic or epigenetic, and do not require any precise description of genetic or epigenetic data from the moment in which it is hereditary and identifiable in one way or another (chemical parameters of a protein, resistance to a pathogen or a herbicide...)

8 An obligatory licence right prohibits the patent holder from refusing to sell it if someone requests it

9 The SMTA signed by each beneficiary of an exchange of phytogenetic resources resulting from the Multilateral System

10 A research exception authorises the free use of seeds covered by the patent for research and selection

- make obligatory (1) the excise of a receipt to every farmer who provides seeds and/or knowledge to the Multilateral System, and (2) the conservation by the third beneficiary party 11 of a duplicate of this excise containing the names and contact details of the farmers concerned.

## **VI. 2) Shared benefits or the reimbursement of the industry's debt**

As seen above, no payment mechanism linked to access will avoid circumvention of the Multilateral System. It is therefore necessary to set up another mechanism.

The industry sells farmers two types of seeds:

- the first type are freely reproducible with no restrictions. The industry has used peasant seeds to select them but leaves the farmers free to reuse the resulting harvest from the seeds they have been sold as seeds. This constitutes equitably shared benefits.

- the other type are not reproducible but are F1 hybrids, seeds protected by property rights (COV, patent, brands, club...). The Treaty does not have the competence to prohibit these restrictions. This competence is beyond government duties. F1 hybrids are demanded by certain markets and cannot be eliminated from one day to the next without risking a food shortage. But these restrictions suppress all non monetary sharing of benefits with farmers. The member countries of the Treaty are required by article 9 to apply « (farmers') *right to share benefits equitably* ». It would therefore be advantageous to entrust them with the payment to the Fund for Sharing benefits of a percentage of the sales of their non freely reproducible seeds. They should be free to collect the necessary funds according to the measures in their national legislation.

The Fund for Sharing benefits must not finance research institutions and other institutions devoted to collecting peasant seeds and knowhow and other genetic information aimed at facilitating the excise of patents. It must directly finance small peasant organisations that select, produce and conserve their seeds locally, the best peasant conservation field or long duration techniques – for example without electricity - researchers who collaborate in this collective work under the direction of these farmers and exchanges of associated peasant knowhow on a national and international level.

## **VI. 3) Farmers' participation in decision making**

Large-scale farmers are not the exclusive users of non reproducible commercial seeds which contribute to the conservation, renewal and sustainable use of phylogenetic resources. It is small- scale farmers who select and produce their own local seeds, mostly collectively. The participation of farmers in « *decisions on matters concerning the conservation and the use of phylogenetic resources* » must rest with the capacity for self organisation and self designation of their representatives by these small-scale farmers' organisations. It must be extended to the formulation of public policies concerning seeds on a national level, but also on a world governance level, particularly regarding the functioning of the Treaty's benefit sharing fund. Within the Treaty, this participation must be based on the participation model of food producers' organisations and of civil society in the FAO's Committee for Food Security.

## **VII. 4) Farmers' rights to conserve, use, exchange and sell farm seeds**

The Treaty has no rights to force governments to apply these rights in any specific way. It can, however :

- make an inventory of existing national laws that hamper or favour the application of these rights;  
- based on this inventory and with the participation of small.scale farmers' organisations defined above, draw up some voluntary guidelines for a good national or regional application of farmers' rights;

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11 The third party beneficiary is responsible for receiving and filing all the ATTMs and to ensure that the beneficiaries have fulfilled their obligations