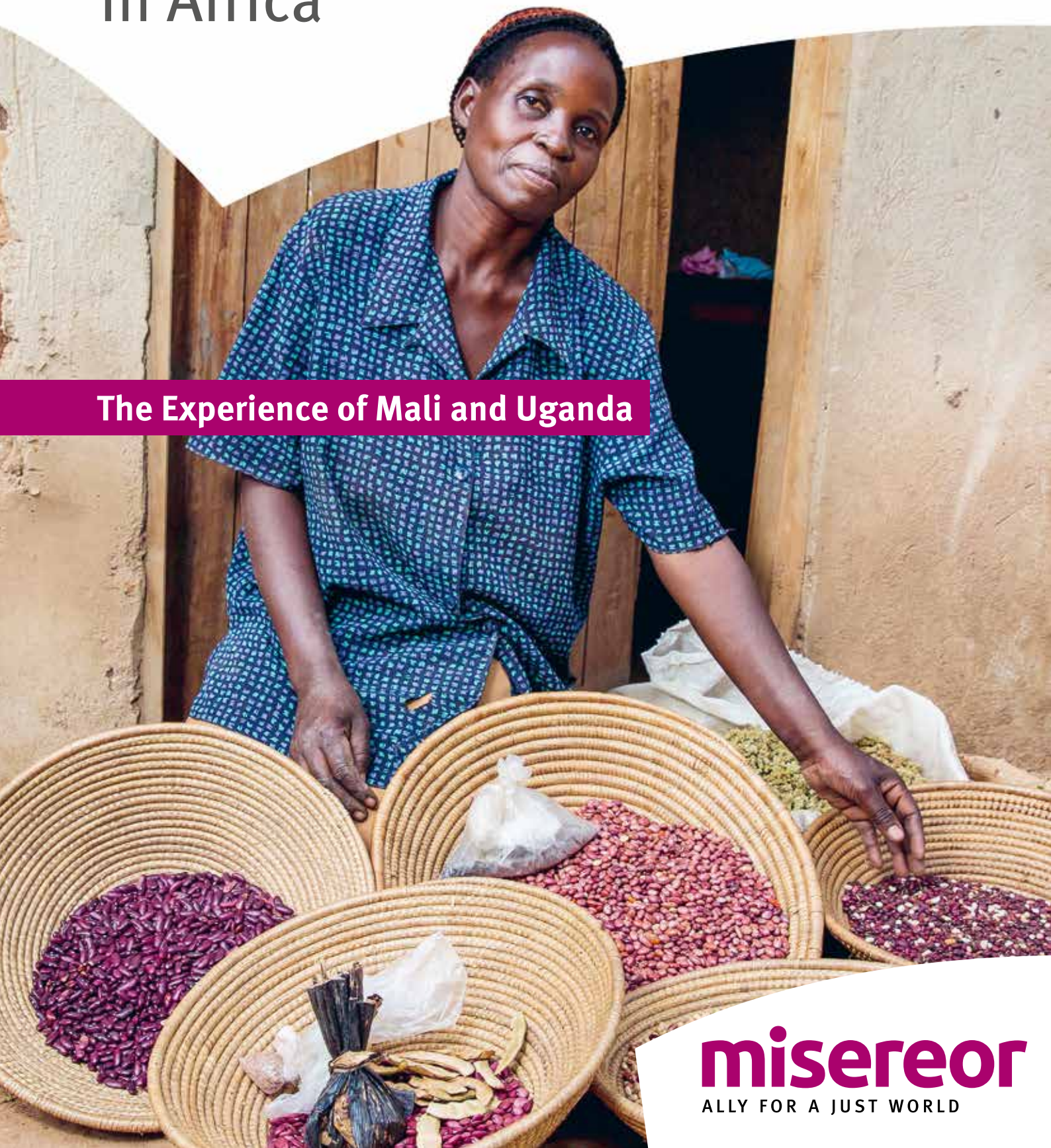


Towards Legal Recognition of Peasant Seed Systems in Africa

The Experience of Mali and Uganda



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Foreword

Legal recognition and strengthening of Peasant Seed Systems! This was one of the central demands formulated by farmers and civil society representatives from five West African countries during a seminar on seeds organised by Misereor in Dapaong, Togo, in 2019. Since then, African civil society has repeated this demand with increasing vehemence. To date, the legal framework conditions of most African countries only govern the “formal” seed sector. However, the latter still only covers the smaller part of the seed supply in Sub-Saharan Africa and often focusses on a limited number of commercially attractive crops like maize, rice and tomatoes. Meanwhile, Peasant Seed Systems (PSS) provide 80% to 90% of the seeds used.

PSS fulfil manifold functions: they preserve farmers’ crop varieties, develop them further through continual selection and thus gradually adapt them to agro-ecological environments and changing climatic conditions. Peasant seed networks play a key role in disseminating seeds and other planting material through sharing, exchange and marketing. This way, they contribute to biodiversity, ensure a steady influx of new genetic material and secure access to planting material, in particular for varieties neglected by the “formal” seed sector. PSS preserve diversity. In view of the escalating climate crisis which has led to changing growing seasons and unpredictable precipitation, this becomes ever more important. What is more, to many peasants their seeds mean more than just yields; it is their ‘precious and living heritage which must be preserved for future generations’.

Unfortunately, neither the crucial contribution of PSS nor the knowledge linked to them have found (legal) recognition as of yet. Regulations which ignore PSS or try to subject them to the same procedures and standards as the commercial seed sector threaten the multiple functions of PSS

and, hence, the food security of countries dependent on PSS. Frequently, peasant varieties fall through the cracks. One example is the attempt to apply the so-called DUS criteria when deciding on the registration of peasant varieties. In many African countries, testing the varieties according to these criteria is too expensive and not workable. The idea that varieties must be distinct, uniform and stable also specifically excludes the genetically diverse population varieties able to buffer climatic shocks due to their dynamic variation within one and the same variety.

How can the legal recognition of PSS and peasant varieties be achieved? This study aims at giving fresh impetus to the debate in a threefold manner: firstly, it provides an overview of the legal framework conditions with regard to PSS at the international level. Secondly, it analyses national legislation of countries (India, Brazil, Ecuador, Italy and Ethiopia) which have attempted to legally recognise peasant varieties or PSS. Thirdly, it presents two examples of countries (Mali and Uganda) where civil society actors advocate for the recognition of PSS.

We wish you a stimulating read.



Dr Bernd Bornhorst
Managing Director



Photo: Mellenthin/Misereor

Executive Summary

Long depreciated and marginalised by public policy, peasant seed systems (PSS) are increasingly being recognised for their true worth. By ensuring the preservation of agrobiodiversity and the production of seeds adapted to local agroecological conditions, PSS play an essential role in the transition to agroecological systems that are resilient to climate challenges, regenerative for ecosystems and that promote access to healthy food based on local production.

In recent years, a paradigm shift in peasants' right to seeds has taken place, spurred on by peasant movements. On the one hand, the right to seeds and agrobiodiversity was recognised in international human rights law with the adoption of the UNDROP Declaration in 2018. On the other, a consensus has emerged among peasant organisations and their allies around the fact that PSS must be recognised in their own right and must under no circumstances be subject to the same standards and legislative framework that govern commercial seed systems. In the wake of these developments, several countries have adopted laws and policies that recognise and protect the rights of peasants, in particular their right to seeds, and some – like Ecuador – have also begun to recognise PSS.

This study aims to deepen the debate on the issues surrounding the legal recognition of PSS in the African context, based on the experience of Mali and Uganda, which have both initiated processes for the recognition of PSS in recent

years as part of a review of their seed policies. Both countries have taken the first steps towards recognising PSS but much remains to be done to make this a reality. In Uganda, the National Seed Policy recognises a pluralistic seed system but remains firmly anchored in the productivist paradigm. Furthermore, it is not yet clear what legislation will govern PSS. The operationalisation of PSS recognition (known as the informal system) seems to be geared towards the policy on genetic resources for food and agriculture (GRFA), which has not yet been published. According to information gathered, this policy is anchored in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), a treaty that is essential but in itself insufficient to fully protect and support PSS. In Mali, peasant organisations and their allies have used the positive aspects of the seed law as a starting point from which to initiate a consultation process on the recognition of PSS. This process, known as *Semences Normes et Paysans-SNP* (which translates as “Seeds, Standards and Peasants”), is innovative and participatory, but the extent to which it will influence the country's seed policies and laws remains to be seen.

The study concludes that it is not so much the legal recognition of PSS that is the subject of controversy among peasant organisations and civil society in Africa but rather the terms for such recognition and the risks it may entail. Among the concerns frequently raised by peasant organisa-

tions are their loss of control over their seed systems, and the risk that registers will facilitate the biopiracy of peasant varieties. If the risks are adequately contained, however, recognition of PSS in laws and public policies offers a number of advantages, namely: clarification of the status of PSS, which will no longer be seen as an informal system; the possibility of obtaining public sector technical and financial support; the building of formal links between PSS and public research, particularly through participatory selection; and stronger protection of peasants' rights.

The study makes a number of recommendations designed to ensure that legal recognition results in genuine protection and support for PSS. First, PSS must be subject to a separate legal regime. Second, peasant organisations must be the main actors in the process of recognising and monitoring PSS. Third, recognition does not necessarily entail the registration of peasant varieties. However, if peasant organisations opt for a form of registration, this register must be decentralised and managed by peasant organisations themselves at local level. Fourth, it is essential to ensure that peasants are self-sufficient in seed quality assurance. Fifth, in addition to recognising PSS, it is vital to ensure the coherence of all seed-related legislation and public policies. ●

Though a paradigm shift from below has already taken place, the recognition of peasants' seed systems is still in its infancy in Africa

Photo: Mellenthin/Misereor



Acronyms and Abbreviations

ABS	Access and benefit-sharing	IFOAM	International Federation of Organic Agriculture Movements
AfCFTA	African Continental Free Trade Area	IRPAD	<i>Institut de Recherche et de Promotion des Alternatives en Développement</i> [Institute for Research and Promotion of Alternative Development]
AFSA	Alliance for Food Sovereignty in Africa	ISTA	International Seed Testing Association
AOPP	<i>Association des organisations professionnelles paysannes</i> [Association of Professional Peasant Organisations] (Mali)	ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
ARIPO	African Regional Intellectual Property Organization	NARO	National Agricultural Research Organisation (Uganda)
ASSEMA	<i>Association semencière du Mali</i> [Mali Seed Association]	NGO	Non-Governmental Organisation
BEDE	<i>Biodiversité, échanges et diffusion d'expérience</i> [Biodiversity, Exchanges and Dissemination of Experiences]	NSF	National Seed Fund
CBD	Convention on Biological Diversity	OAPI	<i>Organisation Africaine de la Propriété Intellectuelle</i> [African Intellectual Property Organization]
CNOP	<i>Coordination nationale des organisations paysannes</i> [National Coordinating Body of Peasant Organisations] (Mali)	PBR	Plant breeders' rights (also called PVP)
COASP	<i>Comité ouest africain des semences paysannes</i> [West African Peasant Seeds Committee] (Mali)	PGS	Participatory Guarantee System
COMESA	Common Market for Eastern and Southern Africa	PPVFR	Protection of Plant Varieties and Farmers' Rights Act (India)
DNA	<i>Direction Nationale de l'Agriculture</i> [National Agricultural Directorate] (Mali)	PSS	Peasant seed systems
DUS	Distinctness, uniformity and stability	PVP	Plant variety protection (also called PBR)
EAC	East African Community	QDS	Quality declared seeds
ECOWAS	Economic Community of West African States	REC	Regional economic community
FAO	UN Food and Agriculture Organization	RFSC	Regional Farmers' Seed Committees
GMO	Genetically-modified organism	RGS	<i>Red de guardianes de semillas</i> [Seed Guardians Network]
GRFA	Genetic resources for food and agriculture	SNP	<i>Semences, normes et paysans</i> [Seeds, Standards and Peasants] (Mali)
ICRISAT	International Crops Research Institute for the Semi-Arid Tropics	UEMOA	West African Economic and Monetary Union
IER	<i>Institut d'Économie Rurale</i> [Institute for Rural Economics] (Mali)	UNDROP	United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas
		UPOV	International Union for the Protection of New Varieties of Plants
		VCU	Value for Cultivation and Use

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1. Introduction

Having long been critical of African governments' seed laws and other initiatives, peasant organisations and their partners in civil society are increasingly expressing the need for concrete proposals aimed at promoting peasant seed systems (PSS), responsible for the vast majority of seeds used in African agriculture. These proposals include seeking official recognition of PSS in order to protect the right of peasants¹ to produce their own seeds, exchange them, sell them and carry out their seed activities autonomously.

Peasant organisations and civil society players, however, are not unanimous as to whether legal recognition of PSS at national level is the right strategy or whether it offers more risks than opportunities. At the last seed fair held in Benin in March 2023 on the initiative of the West African Peasant Seeds Committee (*Comité ouest africain des semences paysannes* – COASP), for example, the participants undertook to reflect further on the best solutions for protecting PSS but were unable to agree on the terms of recognition. On the other hand, the participants agreed that any legal option for protecting PSS must retain their control in the hands of the peasant communities that hold the rights to the seeds.²

The issue of the recognition and legal protection of PSS is all the more relevant as many African countries are in the process of revising their seed laws, and the African Union has embarked on a process of harmonising seed regulations at continental level in the context of the African Continental Free Trade Area (AfCFTA). Two draft policy instruments being developed by the African Union in the context of the AfCFTA have a direct impact on PSS: the continental guidelines for the harmonisation of regulatory frameworks for seeds, and the guidelines for the use of biotechnology. The draft versions of these two instruments have met with strong opposition from African civil society, which considers that the drafting process lacks transparency, that peasants' organisations are

Photo: Kopp/Misereor



The varieties grown by farmers vary from season to season, thanks to the diversity of varieties peasants can draw from

insufficiently involved and that the guidelines, in their current version, undermine peasants' rights and agricultural biodiversity.³

The debate on the recognition of PSS is also taking place against a backdrop of crisis in the industrial food system. The latter is a major emitter of greenhouse gases, and its dependence on chemical inputs leads to the degradation of soils and ecosystems, therefore contributing to climate change, the erosion of biodiversity and the emergence of infectious diseases. As extreme weather events and the COVID-19 pandemic have shown, the paradox is that the industrial food system, with its global production chains, is highly vulnerable to the crises it contributes

- 1 This report was originally written in French.
- 2 COASP, Conclusions générales de la foire des semences au Bénin [General conclusions of the Benin Seed Fair] (2023). On file with the authors.
- 3 ACB, *Guidelines for the harmonisation of seed regulatory frameworks in Africa: Call for African social movements to block the validation meeting* (2021).



Many peasants sow their own selected varieties that are well-adapted to local agro-ecological conditions and appreciated for their qualities

to bring about.⁴ There is hence a need to transform food systems and move towards agroecological systems that are resilient to climate challenges and regenerative for ecosystems, that promote access to healthy food based on local production, and that respect the rights of the people who are at the heart of this production, particularly women, who play an important role in PSS. PSS – which ensure the production of seeds adapted to local agroecological conditions and the preservation of agrobiodiversity – are an essential link in this new vision of agriculture and food systems, and their importance is increasingly being recognised.⁵

The aim of this study is therefore to deepen the debate on the issues surrounding the recognition of PSS in the African context, based on the experience of two countries – Mali and Uganda – which have both embarked upon PSS recognition processes in recent years as part of a review of their seed policies. In Mali, at the instigation of peasant organisations and civil society, the process known

as *Semences Normes et Paysans-SNP* (which translates as “Seeds, Standards and Peasants”) was launched in 2016, culminating in a Draft seed policy and action plan in 2021. In Uganda, the seed policy adopted in 2018 included for the first time the recognition of a pluralism of seed systems.

To carry out this study, we conducted a review of the literature, analysed the seed policies and legislative texts of various countries, and conducted interviews with key players in these

⁴ Jennifer Clapp and William G. Moseley, This food crisis is different: COVID-19 and the fragility of the food security order, *Journal of Peasant Studies* 47, vol. 7 (2020): 1393-1417.

⁵ Misereor, *Cultures autochtones en Afrique de l'Ouest: Opportunités pour l'amélioration des plantes de faire avancer la transition agroécologique* [Indigenous cultures in West Africa: Opportunities for plant breeding to advance the agroecological transition] (2022); AFSA and GRAIN, *The real seed producers* (2018); International Fund for Agricultural Development-IFAD, *Leçons apprises: Soutenir les systèmes semenciers paysans* [Lessons learned: Supporting peasant seed systems] (2018).



In recent years, some peasant movements have reclaimed the term “peasant” as a mark of expertise and pride

Photo: Schwarzbach/Misereor

processes in Mali and Uganda, namely peasants and members of peasant organisations, researchers, members of NGOs, and representatives of the public and private sectors (see list of interviews in appendix).⁶ Interviewees were selected on the basis of their expertise on seed issues in general, and on PSS in particular, as well as their involvement in processes for the recognition of PSS. To identify the key people to be interviewed, we also used the “snowball” sampling method, which involves asking interviewees to identify other key people. We conducted a total of 14 interviews (six in Mali and eight in Uganda) with 18 people, including six women and 12 men. All the interviews were conducted virtually, with the exception of one interview that used a written questionnaire. We conducted all the interviews together, in French in Mali and in English in Uganda, using a flexible interview guide adapted to each category of stakeholder, and which evolved in line with our knowledge and understanding of the situation and the issues.

A few comments on the terminology used in the study are in order. In Mali, as in West Africa, peasant movements have in recent years reclaimed the terms *peasant*, *peasant seed* and *peasant seed systems* as a mark of value, and a source of expertise and pride. These expressions were the subject of heated debate before being adopted in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (hereinafter the UNDROP Declaration).⁷ We are aware that the term *peasant* still holds pejorative connotations in some countries, as is the case in Uganda for example. In line with the UNDROP Declaration,

we have nevertheless preferred these expressions in this study unless referring to specific legal texts, where we remain faithful to the terminology used (for example, *farmers’ rights* in Indian law). By the same token, we favour the term *peasant seed systems*, even though this term is not widely used in Eastern and Southern Africa. In Uganda, seed policy refers to the *informal system*, while peasant organisations prefer to talk about *farmer-managed* or *farmer-led seed systems*. The term informal system is increasingly being rejected by peasant organisations around the world, who point to the fact that there is nothing informal about PSS – quite the contrary. These systems are governed by a logic and a set of rules which, although different from those regulating the commercial system. Finally, we use the term *commercial seed system* rather than formal or conventional.

The study is divided into four parts. Following this introduction, we take stock of the legal recognition of PSS at international and continental levels, in particular the UNDROP Declaration and its article 19 on the right to seeds, as well as the Legal Framework for the Recognition and Promotion of PSS and the Protection of Biodiversity, proposed by the Alliance for Food Sovereignty in Africa (AFSA). We then document five examples of countries that offer some legal recognition of PSS: Brazil, Ecuador, Ethiopia, India and Italy. The third section of the study is devoted to case studies of Mali and Uganda. We first present their respective legislative and regulatory frameworks for seeds, and then go on to explain the disjuncture between the legal frameworks and the reality on the ground; finally, we document the efforts and initiatives underway for the recognition of PSS. The fourth part draws conclusions and makes recommendations based on a comparative analysis of the two case studies, the experiences of other countries, and developments in the international legal framework. ●

⁶ It is not always easy to categorise interviewees, as they sometimes fit into more than one category, for example in the case of a university professor and researcher who also works for an NGO, or someone who works for an entity such as NARO Holdings Limited, which is the commercial arm of a government agency (NARO).

⁷ Marc Edelman, [What is a peasant? What are peasant-ries? A briefing paper on issues of definition](#) (2013).

2. The Status of the legal Recognition of PSS

2.1 Legal recognition of PSS at international and African levels

2.1.1 The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas

In 2018, the UN General Assembly adopted the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (hereinafter referred to as the UNDROP Declaration).⁸ This Declaration is legally non-binding but universal in scope, and forms part of the body of international human rights law. During the vote at the General Assembly, the vast majority of African countries voted in favour of adopting the Declaration. Indeed, out of 51 African countries, 48 voted in favour and only three abstained (Cameroon, Ethiopia and Lesotho). It should be emphasised that all countries are called upon to promote and implement the resolutions adopted by the General Assembly in good faith, irrespective of their vote.⁹

The UNDROP Declaration is based on international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which have been ratified by almost all African states.¹⁰ These two binding international treaties protect the right to food, which has been interpreted by UN experts as including peasants' right to seeds.¹¹

The Declaration is particularly relevant to this study because it reaffirms and clarifies the scope of peasants' right to seeds and the obligations of governments in this regard. In so doing, the Declaration firmly positions peasants' rights, including their right to seeds, as human rights that take precedence over other legal norms, such as those governing intellectual property and trade.¹²

In addition, the Declaration means that the protection mechanisms specific to human rights apply to the rights of peasants.¹³

The Declaration takes up and reaffirms certain key elements of the right to seeds established in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).¹⁴ The Declaration stipulates:

- The right of peasants to the protection of traditional knowledge relevant to these resources (art. 19.1a);
- The right to equitably participate in sharing the benefits arising from the utilisation of these resources (art. 19.1b);
- The right to participate in the making of decisions on matters relating to the conservation and use of these resources (art. 19.1c);

8 United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, [UN doc A/RES/73/165](#) (2018).

9 Karine Peschard, Christophe Golay and Lulbahri Araya, [The right to seeds in Africa](#), Geneva Academy (2023).

10 With the exception of Botswana, Comoros, Mozambique and South Sudan for the ICESCR; and Somalia and Sudan for CEDAW.

11 Olivier De Schutter, Seed policies and the right to food, [UN doc A/64/170](#) (2009); Michael Fakhri, Seeds, right to life and farmers' rights, [UN doc A/HRC/49/43](#) (2022); CEDEF, General recommendation N°34/2016 on the rights of rural women, [UN doc CEDAW/C/GC/34](#) (2016).

12 Christophe Golay, [The right to seeds and intellectual property rights](#), Geneva Academy (2017).

13 Christophe Golay, [The role of human rights mechanisms in monitoring the United Nations Declaration on the Rights of Peasants](#), Geneva Academy (2020).

14 Christophe Golay, Karine Peschard, Olivier de Schutter, Hilal Elver, José Esquinas and Michael Fakhri, [Implementing the International Treaty on Plant Genetic Resources for Food and Agriculture \(ITPGRFA\) in light of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas \(UNDROP\)](#), APBEBES and Geneva Academy (2022).

- The right to save, use, exchange and sell their farm-saved seed or propagating material (art. 19.1d).

However, the Declaration goes further in defining the right to seeds and the corresponding obligations of States. The Declaration provides that peasants have the right to maintain, control, protect and develop their own seeds and traditional knowledge (art. 19.2), and sets out a number of corresponding obligations for States, including that they must:

- take measures to respect, protect and fulfil the right to seeds of peasants (art. 19.3);
- ensure that seeds of sufficient quality and quantity are available to peasants at the most suitable time for planting and at an affordable price (art. 19.4);
- recognise the rights of peasants to rely either on their own seeds or on other locally available seeds of their choice, and to decide on the crops and species that they wish to grow (art. 19.5);
- take appropriate measures to promote and protect the traditional knowledge, innovation and practices of peasants, including those related to agroecological systems (art. 20.2).

With regard to seed-related activities, the Declaration notes that States shall:

- ensure that agricultural research and development integrates the needs of peasants and ensures their active participation therein (art. 19.7) and encourage equitable and participatory farmer-scientist partnerships (art. 25.3);
- take appropriate measures to promote the access of peasants to a fair, impartial and appropriate system of evaluation and certification of the quality of their products, with their participation (art. 11.3).

Finally, two articles of the Declaration are particularly relevant to this study:

- Article 19.6 makes explicit reference to *peasant seed systems*, and stipulates that States shall take appropriate measures to support PSS and promote the use of peasant seeds and agro-biodiversity;
- Article 19.8 stipulates that 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.

2.1.2 The legal framework proposed by AFSA for the recognition and promotion of PSS and the protection of biodiversity

Based on the observation that the legal system applicable to seed activities in Africa is focused on the commercial seed system, with negative impacts on PSS and peasants' right to seeds, AFSA took the initiative, in 2021, of proposing a legal framework for the recognition and promotion of PSS and the protection of biodiversity.¹⁵ This framework was developed following a participatory process involving peasants and their organisations, as well as their civil society partners in the different regions of Africa. One of the experiences that fed into this framework was the SNP process in Mali, one of the two case studies examined here.

According to AFSA, the introduction of an alternative system specific to PSS is necessary to overcome the various constraints faced by peasants and rural communities, who account for more than 70 % of the population in most African countries and who access seeds through PSS. The proposed framework applies to peasants' self-managed activities of seed selection, production, conservation, use, quality assurance and circulation within their networks and on local markets. The text gives clear legal content to the key aspects of PSS, namely: (i) their organisational and management framework; (ii) the rules for guaranteeing the quality of seeds in PSS; (iii) the rules setting the conditions for selecting, producing and marketing seeds in PSS; and (iv) the promotion of peasant participation in decision-making, and protection of peasant innovation and knowledge.

The PSS management framework ensures the organisation, coordination, management and development of seed activities in peasant-managed systems. It comprises the following elements:

- The consultation framework on PSS and biodi-

¹⁵ AFSA, [Proposed legal framework for the recognition and promotion of farmer managed seed systems and the protection of biodiversity](#) (2022).

iversity is a multi-stakeholder institutional framework the role of which is to implement the State's policy for the promotion of PSS, as well as to coordinate activities to monitor their development by making proposals for their improvement and strengthening.

- Regional Peasant Seed Committees (RPSC) are networks of peasants, associations, public bodies and researchers active in the field of agricultural biodiversity. Their role is to safeguard, dynamically manage, multiply and disseminate seed or genetic material registered in a regional peasant register. These committees, run by peasants, are decentralised frameworks for consultation and coordination. They are not intended to take the place of the grassroots peasant organisations and associations that preserve the varieties and produce the seeds.
- Regional Peasant Registers make it possible to identify the peasant varieties present in a given agroecological region in order to ensure greater traceability of the varieties in use in that region. Registration of varieties in the peasants' register is voluntary and free of charge. The register is organised and maintained by the RPSC on the basis of rules they define themselves.
- The National Seed Fund (NSF) aims to support peasants' seed activities and the management and sustainable use of agricultural biodiversity. The NSF is funded by the State, which is responsible for recovering the part of benefit-sharing due to it, as defined by various international treaties, conventions and protocols concerning biodiversity and genetic resources.

In order to guarantee seed quality in PSS, the AFSA framework leaves peasants free to collectively define and adopt rules aimed at ensuring this quality on the basis of criteria they themselves identify. These criteria may relate, for example, to germination capacity, sanitary quality, agronomic quality, organoleptic quality, or any other criterion deemed relevant by peasants according to their ecological and socio-cultural context. The text proposed by AFSA is based on the recognition of peasants' practices in the context of their self-managed seed systems. The aim is also to enable them to improve these practices with the support of other players, principally the State, through the coun-

The African network AFSA has presented a legal framework that provides guidance on the recognition of peasant seed systems



Photo : Mertineit/Misereor

try's scientific, agronomic, social and environmental research services. The aim of the text is not to define rules or standards but rather to provide a framework that will enable peasants to carry out their seed activities with the support of all stakeholders and in the common interest.

The AFSA framework sets out some elements of the quality assurance system that peasants could put in place. These include: a common vision; shared principles and values; trust; equality; transparency in setting criteria and determining penalties for non-compliance; and the possibility of defining these rules in a collectively agreed code of conduct or charter. This approach draws inspiration from the Participatory Guarantee System (PGS) developed by the International Federation of Organic Agriculture Movements (IFOAM), which defines it as "locally focused quality assurance systems [that] certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange."¹⁶

The central element of the AFSA framework concerns the selection, production and circulation of seeds in PSS. At this level, the framework

¹⁶ IFOAM Organics International, Participatory Guarantee Systems (PGS). Official definition (2008).

Peasants around the world actively contribute to the conservation of agrobiodiversity by selecting, (re-)producing and supplying seeds



Photo: Dorlächter-Sulzer/Misereor

reaffirms and protects peasants' practices with regard to the various seed activities. It states that: "The selection, production and multiplication of farmers' seeds take place in the farmers' fields and are not subject to any form of authorization or registration requirement, either for the seed or for the farmer carrying out these activities. They are done freely based on farmers' knowledge and practices and rules that farmers develop within their various collectives according to their habits and customs." The framework thus strengthens peasants' autonomy in seed production and distribution. This autonomy should reinforce the possibility for other peasants to have unrestricted access to the seed produced according to collectively agreed rules.

To guarantee this element of free circulation of seeds among peasants, the framework contains a provision on seeds circulation, defined as "any act undertaken by farmers to facilitate other farmers' access to seed, including dona-

tion, barter, sale, exchange, and any other form of collective use based on the movement of seed within farmers' networks." To protect these farming practices and ensure that they are not subject to any prohibition, the AFSA framework describes them as acts of "mutual aid or solidarity between farmers [that] do not constitute commercial transactions. As such, they cannot be prohibited, subject to registration for farmers, or give rise to the payment of a fee under any other legal provision in force in the country."

Other aspects of the AFSA framework that are no less relevant are: the protection of peasant varieties from contamination by genetically-modified organisms (GMOs); the promotion of peasant participation in decision-making and the protection of peasants' innovations and knowledge; PSS's contribution to the in situ conservation of agricultural biodiversity, as well as to the conservation of local knowledge in accordance with Article 8j of the Convention on Biological Diversity (CBD) and Article 20 of the UNDROP Declaration; and the issue of public gene banks whereby the framework provides for facilitated access for peasants on terms and conditions adapted to their needs and practices. In addition, the framework includes a section of definitions advocating a semantic break with the commercial system to avoid any confusion and ensure full autonomy for PSS.

2.1.3 Towards a paradigm shift

In recent years, peasant movements have spurred a paradigm shift with regards to peasants' right to seeds.¹⁷ On the one hand, the right to seeds and agrobiodiversity was recognised in international human rights law with the adoption of the UNDROP Declaration in 2018. On the other, a consensus has emerged among peasant organisations and their allies around the fact that PSS need to be recognised in their own right and must under no circumstances be subject to the same standards and legislative framework that govern the commercial seed system. As we will see in the following sections, some countries have developed and adopted legislation along these lines.

17 Karine Peschard and Shalini Randeria, "Keeping seeds in our hands": the rise of seed activism, *Journal of Peasant Studies* 47 no.4 (2020): 613-647.

2.2 Examples of national legislation favourable to PSS

The recognition of PSS has long been an important demand for peasants, their organisations and the civil society organisations that support them. In countries where laws or provisions favourable to PSS are in place, they are the result of struggles led by peasants and their allies. The latter have generally met with resistance from some proponents of the commercial system, who see any attempt to recognise PSS or the right to seeds as a threat to the commercial rights of plant breeders, or as a rejection of the supposed superiority of “improved varieties.”

To explore the issue of recognition in further depth, examples from a number of countries are given below. The aim is to analyse these examples and draw lessons that can be used as a basis for the recommendations arising from the study in terms of options to be considered in the context of the recognition of PSS in Africa.¹⁸

2.2.1 Brazil

Brazil does not provide full legal recognition for PSS. However, the Seeds Act and the Plant Breeders’ Rights Act contain important provisions concerning peasants’ rights and peasant seeds.

The Seeds Act adopted in 1977 gave no recognition to peasant seeds, which were considered “grain” under the terms of the Act. During the process of revising this law in the early 2000s, the varieties grown by family farmers, *assentados* of the agrarian reform¹⁹ and Indigenous people were given legal recognition. The Seeds Act adopted in 2003 defines local, traditional and Creole varieties as being:

developed, adapted or produced by family farmers, *assentados* or Indigenous people, with well-defined phenotypic traits that are recognised as such by the respective communities and which, according to the Ministry of Agriculture, and considering sociocultural and environmental descriptors, are not substantially similar to commercial cultivars.²⁰

The Seeds Act establishes that family farmers, *assentados* and Indigenous people who reproduce seeds or seedlings for distribution, exchange or

marketing among themselves are exempt from registration in the National Register of Seeds and Seedlings (art. 8.3), as well as in the National Register of Cultivars (art. 11.6).

The Seeds Act also stipulates that there should be no restrictions on the inclusion of local, traditional and Creole varieties in public seed distribution and exchange programmes developed in collaboration with family farmers (art. 48). This provision has served as the basis for a number of public programmes, including the National Plan for Agroecology and Organic Production and the Food Acquisition Programme, which support and finance seed houses²¹ as well as the acquisition and circulation of peasant seeds.

However, the Seeds Act imposes strict conditions on seed for “personal use”, that is, seed saved by the farmer for re-sowing. These seeds can only be sown on the farmer’s property the following season, and the quantity of seed that can be saved is stipulated in the national register of cultivars.²²

The Plant Variety Protection Act, adopted in 1997, recognises the right of farmers to save and plant seeds for their own use. According to article 10, a farmer (1) who saves and plants seed for his or her own use, or (2) who uses or sells the product of his or her plants as food or raw material (except for breeding purposes) is not infringing breeders’ rights. An exception is made for small rural producers, who may also reproduce seeds to give away or exchange, albeit only in the context of exchanges with other small rural producers.²³

It is worth pointing out that the first plant variety protection bills introduced in Brazil in the 1990s contained no reference to the rights of farmers. Peasant organisations and their civil society

18 The choice of countries was based on a number of criteria, including the authors’ prior knowledge, the desire to include examples from different continents, and the need to present approaches – and hence lessons – that were varied and complementary.

19 In Brazil, the term *assentado* refers to a peasant who has obtained land through agrarian reform, often following land occupations.

20 Federative Republic of Brazil, [Lei No. 10.711](#) (2003), art. 2, XVI.

21 In Latin America, peasant organisations prefer the term “seed house” to “community seed bank” because of the financial connotations of the latter.

22 [Lei No 10.711](#), Op. cit., art. 2, XLIII.

23 Federative Republic of Brazil, [Lei No. 9.456](#) (1997).

While Ecuador's Seed Act strengthens Indigenous and peasants' right to seeds, some provisions have been challenged

allies fought hard to secure the inclusion of provisions relating to farmers' rights in these two laws. The recognition of local, traditional and Creole varieties in the 2003 Seeds Act, in particular, was hailed as a victory by organisations representing family farming.²⁴ However, these organizations also recognise the limits of these provisions, in particular the fact that commercial seed remains the norm, and that local, traditional and Creole varieties are defined in relation to it, that is, as “not being substantially similar to commercial cultivars.”

2.2.2 Ecuador

In 2008, Ecuador adopted a new constitution institutionalising food sovereignty. Under the constitution, the State has a duty to promote the conservation and recovery of agricultural biodiversity and related ancestral knowledge, as well as the use, conservation and free exchange of seeds.

Following this, the government undertook to revise several laws to bring them into line with the new constitution. In 2016, Ecuador enacted a new law on intellectual property rights – known as the Ingenios Code – which replaced the 1998 Intellectual Property Law.²⁵ The regulations implementing the Ingenios Code were adopted in 2020.

Under the Ingenios Code, farmers may make personal use of, exchange or sell protected varieties within the traditional community agricultural sphere without the breeder's authorisation, provided that such actions are carried out on a non-profit basis. This provision in favour of farmers does, however, exclude fruits, ornamental plants and trees – sectors that are of particular interest to commercial breeders.

In 2017, Ecuador enacted a new Law on Agrobiodiversity, Seeds and the Promotion of Sustainable Agriculture (hereinafter the Seeds Act).²⁶ This law makes a clear distinction between so-called “conventional” (i.e. commercial) and “non-conventional” (i.e. peasant) seed systems. While the former is based on seed certification and is subject to State regulation, the latter has to be managed autonomously and collectively by the communities in a variety of ways. The Seeds Act guarantees the free use, production, promotion, conservation and exchange of peasant seeds, including Indigenous seeds (semillas nativas) and traditional seeds. The law also obliges the State to “preserve, produce, regenerate, conserve, revitalise, distribute, pro-



Photo: Harms/Misereor

mote and facilitate the sustainable use, free trade and consumption of agrobiodiversity and Indigenous and peasant seeds.” The Ingenios Code and the Seeds Act are “organic laws” which, in Ecuador, sit at the top of the hierarchy of laws, immediately after the constitution and international treaties.

Despite its progressive nature, the Seeds Act and its implementing regulations, promulgated in 2020, have formed the object of multiple challenges before the Constitutional Court. While most of the challenges concern the President's last-minute addition of a controversial provision authorising research on genetically-modified seeds and crops, the Seed Guardians Network (Red de guardianes de semillas-RGS) has lodged a more comprehensive challenge concerning 15 articles of the law, in particular the fact that subjecting peasant seeds to phytosanitary standards is in contravention of the State's obligation to guarantee their

24 Flavia Londres, *A nova legislação de sementes e mudas no Brasil e seus impactos sobre a agricultura familiar* (2006).

25 República del Ecuador, *Código orgánico de la economía social de los conocimientos, creatividad e innovación* (2016).

26 República del Ecuador, *Ley orgánica de agrobiodiversidad, semillas y fomento de la agricultura sustentable* (2017).



Ethiopia was one of the first countries worldwide to draw up sui generis legislation on the rights of communities, peasants and breeders

Photo: Dorifochter-Sulser/Misereor

free use, conservation and circulation. RGS also argues that the National Seed

Council set up under the Act should include representatives of peasant and Indigenous organisations as well as small-scale and organic producers. In the meantime, the implementing regulations for the Seeds Act were approved in 2020. RGS has criticised the regulation for adding restrictions to the circulation of farm-saved seed, for example by stipulating that farm-saved seed must meet phytosanitary standards and that it must be certified before it can be sold in the conventional system.²⁷

In 2022, Ecuador’s Constitutional Court handed down its decision in the appeal against the Seeds Act.²⁸ The Court declared the following unconstitutional:

- Article 56 of the law allowing the entry of transgenic seeds and crops for research purposes;
- The use of the term “certified” in the article of the law relating to the promotion of and incentives for sustainable seed production;
- The definition of “quality seeds”, since it did not take into account ancestral knowledge of agrobiodiversity and seed management, as required by the constitution.

The Court also determined that article 55.1 con-

cerning infringements would only be constitutional insofar as it applied to cultivars registered for the production of certified seed. In addition, the Court ordered the Advisory Council on Agrobiodiversity and Seeds to submit to the National Agricultural Authority a draft protocol for determining the quality of peasant seeds.

2.2.3 Ethiopia

In the early 2000s, Ethiopia was one of the first countries in the world to draw up sui generis (i.e. unique) legislation on the rights of communities, farmers and breeders. It incorporates elements of the CBD, the ITPGRFA and the African Model Legislation for the protection of the rights of local communities, farmers and breeders and for the regulation of access to biological resources (hereinafter African Model Legislation).

In 2006, the Ethiopian government adopted a Proclamation on Plant Breeders’ Rights (hereinafter PBR Proclamation). That same year, the government adopted a Proclamation on Access to Genetic Resources, Community Knowledge and Community Rights (hereinafter the ABS Proclamation). Finally, in 2013, the Ethiopian government adopted a Seed Proclamation to regulate the commercial sector.

The PBR Proclamation (2006) gave farmers the right to save, use, multiply, exchange and sell farm-saved seed or propagating material of protected varieties, with the sole limitation that they could not market it as certified seed (art. 28). When the PBR Proclamation was revised in 2017, the provision on farmers’ rights was amended.²⁹ Under the revised law, small-scale farmers and pastoral communities (as opposed to “farmers” previously) “have the right to save, use, exchange and sell farm-saved seed of any variety on the non-commercial market.” In addition, “any farmer or pastoral community has the right to save and use farm-saved seed of any variety of food crops and other species that directly support [their]

²⁷ See (in Spanish) [Constitutional Court ruling that seed law restricting the free use, conservation and circulation of farmers’ seed and certification requirements are unconstitutional](#) (2022).

²⁸ Constitutional Court of Ecuador, [Sentencia 22-17-IN/22 y acumulados](#) (2022).

²⁹ Federal Democratic Republic of Ethiopia, A Proclamation on Plant Breeders’ Rights, [Proclamation No. 481/2006](#); and [Proclamation No. 1068/2017](#).

livelihoods.” The non-commercial market is defined as any trade in seeds between small-scale farmers, pastoral communities and their cooperative societies. This provision is in line with the UN-DROP Declaration, which defines peasants’ rights as the individual and collective rights of small-scale farmers and pastoral communities. It is also consistent with the concept of “seeds circulation” defined in the AFSA framework as covering the sale of seed and any act enabling peasants to facilitate other peasants’ access to seed – which the framework describes as an act of “solidarity between farmers” that cannot be prohibited by law.

The ABS Proclamation, for its part, recognises the collective rights of local communities to their genetic resources and community knowledge.³⁰ It provides for the right to give prior informed consent and the right to share benefits. The ABS Proclamation thus requires commercial breeders to disclose the origin of the genetic material in their applications. Ethiopia is one of the few countries where, under plant breeders’ rights legislation, proof of access in accordance with the provisions of the ABS legislation is a prerequisite for the granting of a plant variety certificate. This requirement is an important step towards protecting peasants’ rights to varieties and preventing biopiracy. It also enables peasants to share in the profits from the commercial use of cultivars developed from peasant varieties. It should be noted, however, that patent law does not provide for a similar disclosure requirement for the granting of a patent.

The Seed Proclamation, adopted in 2013, regulates the commercial sector, including the registration and certification of varieties.³¹ The proclamation explicitly excludes the use of farm-saved seed from within its scope, as well as the exchange or sale of farm-saved seed between small-scale farmers and agropastoralist communities. This means that these practices are not banned and that peasants can pursue them as long as they remain non-commercial.

It is also important to note the adoption of the Strategy for the Development of a Pluralistic Seed System in 2017.³² This strategy proposes supporting the three main seed systems operating in the country, namely the informal, formal and intermediate systems, and promotes complementarity

between each system’s components. Without proposing a legal framework specific to PSS, unlike the other two systems, the strategy provides for a series of measures to improve them, in particular:

- strengthening collaboration between peasants, research centres and gene banks in order to reintroduce lost varieties, select locally-adapted varieties and improve access to germplasm for variety selection;
- increasing the dissemination of local varieties through innovative marketing networks (seed fairs, field days, open markets) and investment in community gene banks, including the allocation of funds for genes from access and benefit-sharing agreements;
- establishing a national seed supply system during emergencies, including the creation of a national seed reserve, the creation of an independent institution to lead seed security assessments and interventions, and the strengthening of emergency seed quality control measures;
- improving knowledge, skills and infrastructure in order to strengthen the production and management of good quality seed by peasants;
- building a bridge between the informal and formal systems through: (i) the involvement of peasants, agricultural research and regulators in the participatory development and dissemination of varieties to ensure the adaptability of varieties to peasants’ needs; (ii) the strengthening of links between farmers and gene banks by compensating for efforts to manage local genetic diversity through a genetic diversity fund.³³

Despite its relevance, the strategy is struggling to be put into practice. PSS continue to be marginalised and the planned measures to promote them

30 Federal Democratic Republic of Ethiopia, A Proclamation on Access to Genetic Resources and Community Knowledge and Community Rights. [Proclamation No. 482/2006](#).

31 Federal Democratic Republic of Ethiopia, A Proclamation on seed. [Proclamation No. 782/2013](#).

32 Teshome Hunduma Mulesa et al., [Pluralistic seed system development: A path to seed security?](#) *Agronomy* 11, no.2 (2021), 372.

33 Fund financed by revenues from access and benefit-sharing (ABS) projects under international conventions and agreements (CBD-Nagoya Protocol, ITPGR-FA). This fund is struggling to get off the ground.

have not yet been implemented.³⁴ These measures are nonetheless relevant to this study and could contribute positively to the debate on the recognition of PSS.

2.2.4 India

Under pressure from civil society, India drew up sui generis legislation on plant breeders' rights at the turn of the 21st century. Farmers' rights are recognised in the very title of the Act – The Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act) – and a chapter is devoted to the rights of farmers.³⁵ A government agency set up in 2005 is responsible for implementing the law.

One special feature of Indian law is that farmers are recognised as breeders in the same way that public and private plant breeders are. There are two options for registering peasant varieties. Like public and private breeders, peasants can register their new varieties and obtain plant variety certificates. This option, however, is problematic for a number of reasons. First, peasants have to pay relatively high administration costs. What's more, their varieties are subject to the same tests as commercial varieties, even though these criteria (distinct, uniform and stable) are totally inadequate for peasant varieties. Alternatively, peasants can register their varieties in the category of extant varieties, defined as 1) those that have been traditionally cultivated and developed by peasants in their fields, or 2) those that are wild relatives or local varieties of a variety about which peasants have collective knowledge (Art. 21). In this case, peasants are exempt from paying administrative costs. However, it has been shown that peasants derive no economic benefit from registration. In fact, unlike commercial hybrid varieties, where there is an incentive for peasants to buy seed every year, peasant varieties can be saved and re-sown without any reduction in yields.³⁶

India is one of the countries that fully recognises the right of a farmer to save, use, sow, resow, exchange, share or sell seed, including seed of protected varieties, and the produce of the harvest, "in the same manner as he was entitled to before the commencement of this Act" (Art. 39 iv). Farmers can therefore sell seed of a protected variety on the sole condition that it is not labelled as such. This provision is generally interpreted as meaning that farmers can sell seeds, even protected seeds,

India is one of the countries that fully recognise farmers' right to save, use, (re)sow, exchange, share or sell farm-saved seeds



Photo: Kopp/Misereor

informally but that they cannot compete with plant breeders and seed companies by selling under a brand name.

In addition, Indian law includes a number of innovative provisions relating to farmers' rights. For example, farmers cannot be held liable for infringing breeders' rights if they can demonstrate that they did not know the variety in question was protected. This provision is designed to protect farmers who are unaware of the Plant Variety Protection Act. In addition, seed companies are obliged to inform farmers of the expected yield of their varieties, and farmers are entitled to compensation if the seed does not produce as advertised.

³⁴ Mulesa et al., op. cit.

³⁵ Republic of India, *The Protection of Plant Varieties and Farmers' Rights Act, 2001*.

³⁶ N.S. Gopalakrishnan, *Problems with the Indian Plant Varieties Regime. Farmers' rights – A myth or reality?*, Spicy IP (2018).



In India, almost 20 years after its introduction, a revised seed law has still not been passed and is the object of ongoing public discussions

Photo: Kopp/Misereor

seeds and comply with minimum limits for germination, physical purity and genetic purity. The bill provoked an outcry and amendments were made in 2010 based on the recommendations of the Standing Committee on Agriculture.³⁷

In 2019, the government tabled a new version of the bill.³⁸ Although the most glaring inconsistencies between the PPVFR Act and the draft Seeds Act were dealt with, the draft still contained several shortcomings from the point of view of the right to seeds and peasants' rights. Several of the committee's recommendations were not adopted, including 1) broadening the scope of the definition of farmer to include those who save seed varieties; 2) ensuring permanent representation of farmers on the committee responsible for implementing the seed regulations; 3) regulating the price of seeds; 4) providing a mechanism for opposing the registration of a new variety that could harm the environment or on other valid grounds; and 5) including an obligation to disclose the origin or parentage of a variety in order to prevent the biopiracy of peasant varieties. At the time of publication of this study, almost 20 years after the Seeds Bill was introduced in 2004, it had still not been adopted.

The law also includes provisions for benefit-sharing. Farmers who participate in the conservation of genetic resources and their improvement through selection are entitled to receive benefits through the National Genetic Fund. When registering varieties, private and public breeders must declare whether they have used genetic resources conserved by Indigenous people or farming communities. Indigenous people and farming communities are entitled to benefits and can file claims with the National Genetic Fund when they believe that genetic resources from their communities have been used without their authorisation. Any person, government agency or non-governmental organisation may submit an application on behalf of a community.

In 2004, a Seeds Bill was introduced to replace the 1966 Seeds Act. The stated aim of this bill was to create a regulatory environment conducive to the growth of the seed industry, and it was in many ways at odds with the PPVFR Act. In particular, the bill required farmers to register their

2.2.5 Italy³⁹

Italy's regional laws are an important example globally of the protection and development of agricultural biodiversity. They represent a first in terms of legislation at national and European level as part of the implementation of the ITPGRFA. Italy's regional laws are based on the country's constitution, which authorises the regions to legislate in the field of agriculture.⁴⁰ In addition, the Italian law implementing the ITPGRFA expressly states that the regions are the main actors responsible for implementing the treaty.⁴¹

37 Karine Peschard. Farmers' rights and food sovereignty: critical insights from India. *The Journal of Peasant Studies* 81 no.6 (2014), 1085-1108.

38 [The Seeds Bill, 2019](#).

39 This section is adapted from: Enrico Bertacchini, [Regional legislation in Italy for the protection of local varieties](#). *Journal of Agriculture and Environment for International Development* 103, no.1-2 (2009), 51-63.

40 See Article 117 of the Italian Constitution.

41 Italian Republic, [Legge 101 del 6 aprile 2004](#).

In Italy, it is the regions' duty to safeguard the plant genetic heritage by involving multiple stakeholders and their expertise

The aim of regional laws is to safeguard and strengthen the heritage of indigenous genetic resources, particularly those threatened by erosion. In some cases, only animal breeds and plant varieties of agricultural interest are considered while, in others, the protection and enhancement of resources extend to forest resources. The definition chosen for indigenous varieties and breeds is quite flexible and is adapted to changes in local farming patterns. According to the law, indigenous varieties cover:

- those originating from the region;
- those which, although not native to the region, have been cultivated there for a long time – for example, more than 50 years;
- those that originated in the region and are no longer present there but are preserved elsewhere.

In the Italian context, regional laws recognise indigenous varieties as the “collective heritage of local communities” and, in some cases, provide for the regions to be identified as responsible for managing indigenous genetic resources.

In the Italian regional context, a number of instruments and mechanisms are used to safeguard and promote indigenous varieties and breeds:

- The establishment of a free, voluntary regional register for species, breeds, varieties, populations, cultivars, traditional varieties and clones. The regional register is essential for identifying the varieties present in the region and giving them a precise and indisputable identity;
- The establishment of scientific and technical committees to assess the information sheets on the varieties and breeds included on the regional register;
- The establishment of a network of key actors for the conservation and safeguarding of registered varieties. This network is made up of farmers, associations, public and private bodies, researchers, universities and gene banks. The conservation and protection network is responsible for safeguarding, multiplying and disseminating registered genetic material in accordance with current legislation;
- The recognition of local communities as the

administrators or managers of resources, or the region itself as guarantor and manager of this heritage.

In addition, regional laws do not allow for any form of individual exclusive rights to varieties. Unlike in India, the natural or legal person who proposes registering a variety will not obtain any exclusive rights over the variety. In contrast, inclusion on the register and access to the resource increases the collective benefits for the community as a whole in terms of conserving and promoting the heritage of indigenous genetic resources.

Some regional laws also regulate the use of indigenous genetic resources in order to create new varieties. Members of the conservation network who wish to apply for plant breeders' rights over a new variety derived from a variety listed in the register must request prior authorisation from the region or structure responsible for managing the resource.

A second tool for conserving and improving indigenous varieties is the right of “administrator” farmers and network members to exchange seeds locally, without any form of monetary compensation. This recognises the importance of peasants' practices, which contribute to variety innovation and the ongoing adaptation of varieties to the land, as recognised by the ITPGRFA.

With the option of regional laws, Italy is completing its legal framework on genetic resources by



Photo: dpa picture-alliance



The various legislative models analysed offer different options as to how to secure peasants' right to seeds in Africa

Photo: Dorit Richter-Sulzer/Misereor

giving a clearer and better-defined legal status to indigenous varieties and, at the same time, providing incentives to encourage the conservation and enhancement of these varieties.

2.3 Conclusions

In some of the cases presented here, notably Ecuador, the legal framework has only recently been introduced and it is too early for us to be able to analyse its scope and impact on PSS. In contrast, the Indian legal framework, introduced over 20 years ago, has been the object of numerous analyses. India has been a forerunner in recognising and providing a legal framework for the rights of peasants. One of the strong points of the PPV-FR Act is that it fully and unambiguously protects the right of peasants to save, use, sow, resow, exchange, share and sell seeds, including seeds from protected varieties, as well as the produce of their harvest, in the same way as before the Act came into force. However, including peasants in the plant variety protection model in the same way as public and private breeders does not seem to have had any significant impact on peasants, or to have helped promote PSS. Indeed, since the plant variety protection system is designed to reward a certain type of innovation focused on yield and profit, it does not help to promote the conservation of agricultural biodiversity and peasant innovation for their intrinsic value but only indirectly, insofar as they can contribute to so-called formal innovation.⁴² It is precisely for this reason that many peasant organisations, in India and else-

where, are now defending a separate legal framework for PSS.

The strength of the Brazilian legislative framework lies in the fact that it recognises peasant varieties (known as local, traditional and Creole varieties) as varieties in their own right; that it has opened up gaps in legislation aimed at exempting these varieties from commercial seed requirements; and that it has created public programmes to support the peasants and organisations that are producing and developing these varieties.

The model developed in Italy, for its part, is notable for its recognition of plant genetic resources as a collective heritage of local communities, and for its decentralised approach, which delegates authority over these resources to the regional level.

As for Ethiopia, it is one of the few countries to have sought to develop a cohesive legal framework, for example by incorporating obligations to disclose the origin of genetic resources into the plant variety law. Ethiopian legislation recognises the collective rights of local communities over their genetic resources and community knowledge, and protects peasants' right to seeds.

Finally, although it is too early to know what impact it will have on the rights of peasants and their seed systems, the approach adopted in Ecuador is innovative on several levels. First, because it enshrines peasants' rights, and the right to seeds and agrobiodiversity, in the constitution and in organic laws; second, because the laws stipulate the State's obligations in this area; and third, because the law stipulates that PSS must have their own legal framework, based on autonomous and collective management by the communities in a variety of ways.

All these elements converge towards a legal framework adapted to PSS that breaks with the standards and rules set by the laws governing the commercial seed system. They provide a good basis for thinking about how PSS should be recognised in the African context. As we shall see in the next section, countries such as Mali and Uganda are following suit, each with a logic specific to its own context. ●

⁴² For a more detailed analysis of this argument, see Karine Peschard, *Farmers' rights and food sovereignty: critical insights from India*, *Journal of Peasant Studies*

3. Situation of PSS in Mali and Uganda

In Mali and Uganda, as in most African countries, long-established PSS coexist alongside a commercial seed system introduced in the 1990s. Despite the efforts and resources invested in promoting the seed industry, PSS remain largely dominant. In Uganda, according to an in-depth study carried out between 2016 and 2018 in preparation for the development of the National Seed Policy, PSS are responsible for 87% of seed supply.⁴³ Estimates vary between 70% and 90% for Mali.⁴⁴ It is important to note that the percentage varies significantly from one crop to another. In Uganda, for example, PSS produce around 46% of maize seed but almost all bean, sorghum, cassava and pearl millet seed.⁴⁵ In both countries, it is PSS that ensure food security and the preservation of agricultural biodiversity.

These two systems – PSS and the commercial seed system – are fundamentally different. The commercial system is based on a formalised framework of standards and rules laid down at sub-regional level and transposed to national level. In contrast, PSS are organised horizontally by producers who have been selecting, multiplying, exchanging and selling varieties for generations according to rules that they themselves define.⁴⁶

This does not mean, however, that the two systems coexist in a vacuum – quite the contrary. On the one hand, the great diversity of seed varieties conserved and improved by peasants is considered to be a national heritage that is used to feed public variety selection programmes. On the other, peasants obtain seeds from seed distributors or through public programmes, and in turn save and select them.

This part is divided into three sections. First, we present the legislative framework governing seed systems in Mali and Uganda. We then explain the gap between the legal framework, based on a commercial model that is in practice marginal, and the reality on the ground, where PSS are dominant. Finally, we look at the processes in which the vari-

ous players have engaged in recent years to give PSS a degree of legal recognition, in an attempt to identify both the progress made and the obstacles encountered.

3.1 Legislative and regulatory framework for seeds

The laws, regulations and policies that have a direct impact on PSS can be grouped into three main categories: seed marketing laws, plant variety protection laws and biosafety laws.

3.1.1 Seed marketing legislation

Seed marketing laws marginalise PSS, and sometimes even prohibit them, by imposing standards and rules on all seeds that are not appropriate to them. These include compulsory registration of varieties in the catalogue; compliance with distinct, uniform and stable criteria; and compulsory certification of seeds, based on standardised norms, by an official control and certification service.

43 Interview with Chris Muwanika, referring to the study conducted as a prelude to the development of the 2018 seed policy.

44 See Harouna Coulibaly, Didier Bazile et Amadou Sidibé, Modelling seed system networks in Mali to improve farmers seed supply, *Sustainable Agriculture Research* 3, no.4 (2014), 18-32; Johann Bonnand et coll., *Guide de référence du secteur semencier du Mali. Projet de développement intégré du secteur semencier au Sahel*, ISSD/Sahel (2022) ; Steven Haggblade et coll., *Revue du système semencier au Mali*, Feed the Future Innovation Lab for Food Security Policy, Research Paper 11 (2015).

45 Gloria Otieno et al., *How policies influence small-holder farmers' access to and use of plant genetic resources in three East African countries* Bioversity International (2023), 10.

46 Misereor, *Understanding farmers' seed management practices. Practice Guide* (2022); see also: Misereor, "Cultures autochtones" [Indigenous cultures], op. cit.

In Mali and Uganda, peasant seeds predominate by far, supplying 70–90% of total seeds planted in Mali, and 85% in Uganda



Photo: Schwarzbach/Misereor

The seed laws in force in Uganda and Mali were revised in 2006 and 2010, respectively.⁴⁷ In Uganda, the law was revised with the aim of attracting foreign investment in the seed sector.⁴⁸ In Mali's case, this involved adapting national legislation to new sub-regional standards for the harmonisation of rules governing quality control, certification and the marketing of seeds and seedlings among member countries of the Economic Community of West African States (ECOWAS),⁴⁹ as well as to the Agricultural Orientation Law adopted in 2006.⁵⁰

The laws in force in Mali and Uganda introduce rules that draw inspiration from seed laws first developed in Europe. Their aim is to regulate the trade in seeds through strict control of four aspects of seed-related activities: variety creation and dissemination; quality control and certification; seed production and multiplication; and marketing and distribution. Although these rules are distinct from plant variety protection laws, they are based on the same set of criteria.

With regard to the creation and distribution of varieties, Malian and Ugandan laws stipulate that breeders must register with the national control and certification service. The varieties developed must be distinct, uniform and stable (DUS) and have some value for cultivation and use (VCU).

A certification process is in place to check whether a variety meets these criteria and, if so, to register it in the official catalogue (called the National List of Varieties in Uganda) that has been set up for their compulsory registration.

For quality control and seed certification, a specific department has been set up by the State, or under its supervision, to take charge of these functions centrally. Certification is granted when inspection and control are satisfactory, and seeds certified in this way can be marketed. As a result, seed is only authorised for commercialisation when it is certified. The certification system used in Mali and Uganda is that of the International Seed Testing Association (ISTA).

As far as seed production and multiplication are concerned, Malian and Ugandan laws recognise that any natural or legal person who has received approval may produce seeds (art. 5 of the Malian law and art. 3 of the Ugandan law). Seed is classified into three categories: (i) pre-basic seed; (ii) basic seed; and (iii) certified seed. The first and second categories are produced by breeders or under their control. Only approved seed producers are authorised to produce certified seed. Multiplication must take place in seed fields that are subject to standards, and non-compliance with these standards may result in the non-certification of seed from the field concerned.

In both Mali and Uganda, the seed system has been liberalised but the State continues to play a major role in seed production and distribution through public bodies such as the National Agricultural Directorate (Direction Nationale de l'Agriculture-DNA) and the Institute for Rural Economics

47 Republic of Mali, *Loi N° 10-032 du 12 juillet 2010 relative aux semences d'origine végétale* and Republic of Uganda, *Seeds and Plant Act, 2006*. For an overview of the legislative framework in Mali and Uganda, see also: Otieno et al., *op. cit.*; and Ronnie Vernooij et al., *op. cit.*, *Policies, laws and regulations in support of farmer-managed seed systems: still a long way to go*, ISSD Africa, Alliance of Bioversity International and CIAT (2023).

48 Astrid Mastenbroek, Geoffrey Otim and Bonny R. Ntare, *Institutionalizing quality declared seed in Uganda* *Agronomy* 11, no. 8 (2021), 4.

49 ECOWAS, *Regulation C/REG-4/05/2008 of 18 May 2008*.

50 Republic of Mali, *Loi N°2006-045/AN-RM Portant Loi d'Orientation Agricole* (2006).

(Institut d’Economie Rurale-IER) in Mali, and the National Agricultural Research Organisation (NARO) in Uganda. These structures are responsible for overall coordination of the seed system, as well as for making seeds available to peasants and other players involved in seed multiplication and distribution, such as cooperatives, seed farmers and seed companies.

With regard to seed marketing and distribution, the law distinguishes between the status of seed producer and distributor. Distributors are required to declare their activity and obtain approval by registering on the list of authorised distributors. The variety of seed being marketed must be listed in the catalogue and the seed must be certified by the inspection and certification body.

Once registered, the variety is authorised for production and its seed can be marketed⁵¹ on the national territory as well as in a given region, given the laws adopted by the regional economic communities (RECs) of which Mali and Uganda are members. Varieties produced in Mali can thus circulate freely among the 15 ECOWAS member countries⁵² and those produced in Uganda can be sold in the seven countries of the East African Community (EAC)⁵³ as well as in the 21 member countries of the Common Market for Eastern and Southern Africa (COMESA).⁵⁴ However, the variety must be registered in the common catalogue of varieties at the level of each REC.

In Uganda, it seems that the 2006 Seeds Act may be revised in 2024, together with the national seed strategy, in order to incorporate the significant changes to seed policy introduced over the past two decades.⁵⁵ The same applies to Mali, which will have to revise its Seeds Act once the new seed policy has been adopted in order to take account of the recognition of PSS.

3.1.2 Plant variety protection legislation

Plant variety protection laws have a direct impact on PSS since they restrict peasants’ rights to save, replant, exchange and sell seed from protected varieties.

Mali has introduced intellectual property for new varieties through the African Intellectual Property Organization (*Organisation Africaine de la Propriété Intellectuelle*-OAPI), of which it has been a member since its creation in 1977. Together with the European Union, OAPI is one of the two inter-

governmental member organisations of the International Union for the Protection of New Varieties of Plants (UPOV), under the 1991 Act of the UPOV Convention (hereinafter UPOV 91).⁵⁶ When the Bangui Agreement establishing OAPI was revised in 1999, Annex X on the protection of plant varieties was adopted, and this has been directly applicable as national law in Mali and the 16 other OAPI countries since 2006.⁵⁷ Malian legislation therefore establishes a plant variety protection system that complies with UPOV 91.

Uganda, meanwhile, introduced intellectual property for new varieties in 2014 with the adoption of the Plant Variety Protection Act.⁵⁸ As in Mali, this law is based on the 1991 Act of the UPOV Convention. Uganda is not a member of UPOV. However, the country is a member of the African Regional Intellectual Property Organization (ARIPO). Unlike OAPI, ARIPO is not an institutional member of UPOV. However, the Arusha Protocol on the Protection of New Varieties of Plants, adopted by ARIPO in 2015, is based on the 1991 Act. This protocol will come into force once four countries have ratified it (as of 2023, only two countries had

51 Marketing is defined in the *ECOWAS Regulation* (article 1) as “the sale, conservation for sale, sale offer or any kind of session, supply or transfer, with a view to commercial transaction, of seeds or plants, with or without remuneration.”

52 The ECOWAS member countries are: Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

53 The EAC member countries are: Burundi, Democratic Republic of Congo, Kenya, Rwanda, South Sudan, Uganda.

54 The COMESA member countries are: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia, Zimbabwe. For more information on the COMESA regional text, see: COMESA, *Seed Trade Harmonization Regulations* (2014).

55 Interview with Chris Muwanika.

56 The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organisation that actively promotes intellectual property rights over new plant varieties, or plant breeders’ rights. There are currently two versions of the UPOV Convention, and countries are signatories to either the 1978 Act or the 1991 Act.

57 OAPI, *Revised Bangui Agreements, Annex X on the Protection of New Varieties of Plants* (1999).

58 Republic of Uganda, *The Plant Variety Protection Act, 2014*.

done so). It should be noted that Uganda is under no obligation to adopt UPOV 1991 standards since it is not a UPOV member, and ARIPO member countries (unlike OAPI) are free to decide whether or not to adhere to the various protocols. Uganda is also a member of the EAC, an economic bloc with seven member countries. The EAC has developed a draft law on seeds and plant varieties that is also modelled on UPOV 91.⁵⁹ This bill had not yet been enacted in June 2023.

Under the UPOV system, a plant variety certificate confers exclusive rights over a new plant variety on its holder, with consequences for the use of the variety by third parties, including peasants. To avoid these consequences, in particular the obligation to obtain the breeder's permission or to pay them compensation, an exception – known as the “farmer's privilege” – has to be provided in the law.⁶⁰

In Uganda, the implementing regulations for the Plant Variety Protection Act have been drawn up but have not yet been adopted due to controversy around the provisions on farmers' rights. The national strategy published in 2015 anticipated that a new PVP law would include intellectual property rights over traditional varieties as a benefit-sharing tool, but the new national strategy published in 2018 no longer refers to such provisions.⁶¹ The law was therefore still not in force when this study was published. However, a revised version of the implementing regulations has been submitted to the Attorney General for a legal opinion, which suggests that their adoption may be imminent.

3.1.3 Biosafety legislation

It is also important to take account of biosafety laws when analysing texts with an impact on PSS, because of the risk of contamination of peasant varieties by genetically-modified varieties and the possibility of patent protection for these varieties. In 2008 and 2012 respectively, Mali and Uganda passed biosafety laws regulating the various applications of biotechnologies, including in agriculture.⁶² Mali is also affected by the Regional Biosafety Regulation adopted by ECOWAS in 2020,⁶³ and will have to readjust its legal framework in the light of this new text. The existence of biosafety legislation means that interested parties can carry out activities involving genetically-modified (GMO)

varieties. These varieties can be registered in the catalogue and authorised for cultivation once they have complied with the conditions set out in the Biosafety Act.

As of the start of 2023, there had still been no use of such varieties in open environments since the laws were passed in the two countries. In Mali, 15 years after the law was passed, there has been no request to introduce GMO varieties. The only activity for which a request for authorisation has been made is that concerning experiments in a confined environment (laboratory) on transgenic mosquitoes as part of the Target Malaria project,⁶⁴ which also involves Uganda and Burkina Faso. On the other hand, in 2021, the Ugandan President refused to sign the bill on the regulation of genetic engineering, citing problems of food and seed sovereignty.⁶⁵ Uganda currently has an extensive programme of research and confined field trials for GMO crops, including disease-resistant potatoes, cassava and bananas; vitamin A-enriched bananas and cassava; insect-resistant cotton; and drought-resistant rice.⁶⁶

As we end this overview of seed laws in Mali and Uganda, two major observations can be made. The first is that the legal framework in place is designed for commercial seed activities and does

59 For a critique, see: ACB, Concerns with the draft EAC Seed and Plant Varieties Bill, 2018 (2019).

60 For more information on the UPOV system in Mali and the OAPI region, see: Mohamed Coulibaly et al., A dysfunctional plant variety protection system: Ten years of UPOV implementation in francophone Africa, APBEBES and BEDE (2019).

61 See Republic of Uganda, Uganda National Seed Strategy, 2014/15 and 2019/20 (2015), 5 and 25; and Republic of Uganda, National Seed Strategy, 2018/19 and 2022/2023 (2018).

62 Republic of Mali, Loi n°08-042-AN-RM du 1er décembre 2008 relative à la sécurité en Biotechnologie en République du Mali; Republic of Uganda, The National Biotechnology and Biosafety Bill (2012).

63 Regulation C/Reg. 04/09/2020 on the prevention of biotechnological risks in the ECOWAS region. In file with the authors.

64 For more information, see Target Malaria Project (website). The project has been widely criticised by African and international civil society. See, for example: Irina Veksha, Burkina Faso – The Target Malaria project continues despite irregularities, Inf'OGM, (2022).

65 Andrew Adem, Genetically Modified Organisms (GMO) have no place in our food systems in Uganda and Africa, ESAFF (2022).

66 Ibid.

not include any specific provisions adapted to PSS. The second is the significant gap between the legal framework in place and the reality on the ground, marginalizing what is in fact the dominant system. Without recognition and support, PSS cannot realise their full potential, and this has major implications for food security, agricultural biodiversity and peasants' rights.

3.2 The gap between the legal framework and the reality on the ground

The players interviewed acknowledge that the current laws are out of step with the reality on the ground. Uganda's seed law makes no mention of PSS (called "informal systems") and includes provisions that could be interpreted as a ban on the use of seed from these systems. Article 9 of this law stipulates that all imported and domestic varieties must undergo a test before being registered on the National List of Varieties and in the EAC Common Catalogue. Article 12 adds that all seeds offered for sale must be correctly labelled and stamped in accordance with the specifications set out in the regulations. In the absence of a specific law on PSS, these provisions threaten peasants' seed practices. The 2018 seed policy provides for a revision of the legal framework to take account of the recognition of pluralistic seed systems. It appears from the survey conducted as part of this study that the text that will cover PSS will be a policy on genetic resources for food and agriculture (hereinafter referred to as the GRFA policy), which will be discussed in more detail in the next section.

As for Mali's seed law, it excludes peasant seeds from its scope by placing them in the nation's heritage under the age-old guardianship of local populations. The law stipulates that traditional varieties constitute a national heritage and must be managed in accordance with the international conventions signed and ratified by Mali (art. 4). The law adds that the State shall ensure the preservation of traditional plant genetic resources as national heritage with a view to conserving biological diversity and protecting the interests of local populations (art. 17), and that no seed of a traditional variety may, for research purposes, leave the national territory without the prior authorisation of the Ministries responsible for Research, Forestry, Trade and Agriculture (art. 18). Article

19 specifies that the benefits derived from the exploitation of traditional plant genetic resources must accrue to the local populations, who have been the users and custodians of these resources for centuries, in accordance with current regulations. PSS do not, however, benefit from any other form of recognition or support from the State.

In short, despite the openings in the Malian law and the pluralistic approach of Ugandan policy, PSS remain marginalised in the official framework for managing the seed system. And yet the commercial system is struggling to function, despite a legal framework in line with international standards and the efforts made by governments with the support of international partners. In fact, this latter system covers only 15% to 20% of the seeds used in the two countries, a situation that has remained the same for over 20 years.⁶⁷ It is ill-suited to the national context and highly restrictive for the State, both technically and financially.⁶⁸ In short, despite the liberalisation of the seed sector, the private sector is unable to gain a foothold. The public sector, namely IER in Mali and NARO in Uganda, is still very much involved in plant breeding, as well as in the production and distribution of seeds to peasants. In Mali's case, this has led some observers to say that the system is still "under construction"⁶⁹ or that it is "in transition".⁷⁰

The reality is that PSS remain largely dominant despite their marginalisation in legislation and public policy. They are better adapted to the realities of peasants and better able to ensure seed and food security. Several interviewees emphasised that the resilience of peasant farming is dependent upon PSS. Thanks to their intra-variety diversity, peasants' varieties are better positioned to adapt to variations in climate, unlike "improved" varieties, which have a narrow genetic base and are more vulnerable to extreme climatic events. According to several of the actors interviewed, PSS need to be promoted and supervised in order to improve seed security and, consequently, food security in African countries.

67 Mastenbroek, Otim and Ntare, *op. cit.*; Bonnand et al., *op. cit.*, see also H. Coulibaly et al., *op. cit.*

68 M. Coulibaly et al., *op. cit.*

69 Interview with Oumar Niagando.

70 Steven Haggblade et al., *op. cit.*



The laws in Mali and Uganda are based on European seed laws, but peasants want them to be adapted to their own realities

Photo: Grossmann/Misereor

In Uganda, according to the latest census, 68% of farmers are small-scale producers.⁷¹ In Mali, this increases to 75%.⁷² Most of the food produced by these farmers comes from peasant seeds. As Chris Muwanika observes:

“It’s they who feed the nation. The official seed system can’t meet the needs of all Ugandan farmers. Companies only concentrate on highly profitable commodities such as hybrid maize and vegetable seeds – this is where they invest their resources.⁷³ For food security crops and traditional crops such as millet, you won’t find these seeds at the distributors. I think it’s important to recognise [peasant seeds] but also to regulate them”.

3.3 Towards legal recognition of PSS

3.3.1 Mali: the “Seeds, Standards and Peasants” process

The revision of Mali’s seed law in 2010 marked some progress in the legal recognition of PSS and peasants’ rights. The provisions on traditional varieties were welcomed by Malian peasants but they wanted to better understand the implications and examine the possibilities open to them in order to explore the positive options that could ensue. As a result, three peasant organisations put forward the idea of a collective debate on the subject to their technical partners, with a view to identifying the actions required for the official rec-

ognition of peasant varieties and peasants’ rights. These organisations were the Association of Professional Peasant Organisations (*Association des organisations professionnelles paysannes-AOPP*), the National Coordinating Body of Peasant Organisations (*Coordination nationale des organisations paysannes-CNOP*) and the West African Peasant Seeds Committee (*Comité ouest africain des semences paysannes-COASP*). The two partners approached were the Institute for Research and Promotion of Alternatives in Development (*Institut de recherche et de promotion des alternatives en développement-IRPAD*), and Biodiversity, Exchanges and Dissemination of Experiences (*Biodiversité, échanges et diffusion d’expériences-BEDE*).⁷⁴

A process called “Seeds, Standards and Peasants: Building a multi-stakeholder consultation framework on the regulatory framework for seeds and the rights of small-scale producers in Mali” (hereinafter referred to as the SNP process, following the French acronym) was thus launched in 2016 with the aim of setting up a dialogue that would lead to a consensual legal framework protecting the rights of Malian peasants to their seeds. The process was based on three main pillars: legal research and analysis, training and consultation with peasants, and multi-stakeholder dialogue. Research and analysis of legal texts made it possible to highlight the issue of peasants’ rights in Mali’s seed legislation, and to document foreign laws in order to present examples of protection of these rights and recognition of PSS. The results of the research and analysis were used in the peasant consultations as a form of training, but also for dialogue and collective reflection among peasants, lawyers and other stakeholders, in order to establish a shared understanding of the texts and identify clear options for the recognition of PSS and peasants’ rights. By the end of

71 Interview with Chris Muwanika.

72 Jean-François Bélières, *Les agricultures familiales du monde: le Mali* [Family farming around the world: Mali] CIRAD (2013).

73 In Uganda, for example, 80% of seed from the commercial sector is hybrid maize seed. Interview with Erick Kizito.

74 BEDE was dissolved during the COVID-19 pandemic because it could no longer continue to support peasant organisations in their efforts to achieve food sovereignty.

the peasant consultations, the three organisations that initiated the process had reached a common position on the options to be defended and the key messages to be conveyed. The multi-stakeholder consultation stage could thus begin.

The multi-stakeholder consultation was organised in September 2017 as part of a workshop that brought together all the stakeholders in the Malian seed system, namely: the Ministry of Agriculture and the Ministry of Scientific Research, the National Agricultural Directorate, the IER, the control and certification service (i.e. the seed laboratory), NGOs, the three peasant organisations conducting the initiative, the Mali Seed Association (*Association Semencière du Mali-ASSEMA*), international research structures present in Mali,⁷⁵ and the focal points for the international agreements on biodiversity (CBD and ITPGRFA). International participants from southern and eastern Africa, Venezuela, Italy and Nepal were also invited to share their experiences and present the seed laws in their respective countries and regions.

By the end of the workshop, a multi-stakeholder consultation framework had been established with the aim of “ensuring that peasant seeds and farmers’ rights are recognised in national legislation and implemented”.⁷⁶ The consultation framework was chaired by the Ministry of Agriculture and its secretariat provided by the CNOP, with a monitoring committee responsible for coordination. The establishment of the framework coincided with the launch of a review of Mali’s seed policy with the support of the UN Food and Agriculture Organization (FAO). The consultation framework took this opportunity to engage in advocacy. It met with the team of consultants recruited for the assessment of the seed system in order to share the vision resulting from the SNP process, much of which was taken into account in the assessment report. For the policy development phase, the consultation framework produced a contribution note containing its proposals. The relevant elements highlighted in this note are:

- Recognition of PSS as a fully-fledged component of the Malian seed system alongside the conventional commercial system;
- The opportunity that the Malian government has, through this recognition, to fulfil its international commitments under the ITPGRFA and the CBD, as well as guarantee a diversity of

choices for Malian peasants in the interests of the country’s food security and sovereignty;

- Dedication of a chapter or thematic area of the seed policy to PSS, in order to set out the broad guidelines for their recognition and the principles governing it, to be further developed in the seed law;
- Recognition that peasants have the freedom to create rules for access, use and circulation of peasant varieties within their networks, communities or other collectives through which they decide to self-organise, as well as the freedom to guarantee the quality of these seeds and varieties themselves;
- Recognition of the rights enshrined in the ITPGRFA, notably the right to save, use, exchange and sell seeds; the right to participate in decision-making in the agricultural sector, in accordance with the law on agricultural guidance; and the right to participate in the sharing of benefits derived from the use of resources from their seed systems and for which they have given their prior informed consent;
- Transformation of the consultation framework into a monitoring body for PSS, which could guide the State in the support it provides.

During the SNP process, CNOP participated through La Via Campesina in the negotiation of the UNDROP Declaration, which the initiators of the SNP process also followed. When they finalised the contribution note in January 2018, the draft declaration was already available, and the consultation framework drew on some of its elements to strengthen the note. For example, the definition of the word *peasant* was reproduced verbatim to clearly identify the rights holders and the seed system targeted by the various actions.

The process of revising the seed policy has taken longer than anticipated due to political

75 Examples include the World Vegetable Center (World-Veg) and the International Crops Research Institute for the Semi-Arid Tropics (ICRISAT).

76 IRPAD and BEDE, Rapport final de l’atelier multi-acteurs de concertation sur la reconnaissance des semences traditionnelles/paysannes et des droits des agriculteurs dans la législation semencière au Mali [Final report of the multi-stakeholder consultation workshop on the recognition of traditional/peasant seeds and farmers’ rights in seed legislation in Mali] (2017). On file with the authors.

instability and the country's fragile security situation. It should also be noted that the consultation framework expressed its dissatisfaction with the version submitted by the team of consultants and asked that the document be re-considered in the light of public policy documents in the agricultural sector. The Ministry of Agriculture, through the DNA, agreed to this request and a more consensual revised version formed the object of a validation workshop in March 2022.

The final draft seed policy submitted to the government was significantly influenced by the SNP process and its content took into account many of the peasants' concerns, as peasant organisations acknowledged at the validation workshop. The document now has to be approved by the government in order to become the new seed policy in force in Mali. The next step will be to adapt the legal framework to the new policy, which will require a revision of the 2010 seed law or the drafting of another law devoted to PSS. This last option seems to be the one favoured by the initiators of the SNP process, who at the start of 2023 began to re-mobilise to advocate in favour of adopting the policy and preparing the content of the law.

3.3.2 Uganda: towards a pluralistic seed system

In Uganda, a review of the seed policy launched in 2014 has led to the recognition that the seed system is a pluralistic one. The policy adopted in 2018 states that: "Given the pluralistic seed system provided under this policy, government will review the existing legislation and regulations to ensure all the systems are covered with relevant and effective regulatory instruments." The term *pluralistic* is defined as "encompassing all stakeholders in the spirit of equity and fairness".⁷⁷

However, the National Seed Policy and strategy make no reference to PSS or farmer-managed seed systems. Rather, both texts recognise the existence of two seed systems: the formal system and the informal system. The formal system is defined as "the chain of activities involving research and development, multiplication, processing, quality control and certification." The informal system is defined, in contrast to the formal system, as "the chain of seed production and marketing involving farmers who save seed from harvest to planting, occasionally selling or exchanging seed with



Photo: Bachmann/Misereor

How peasants' knowledge and seed systems can be recognised and valued is the subject of discussion in Africa

other farmers, but without any mechanical processing, testing or labeling (as opposed to the formal system)".⁷⁸

According to the actors interviewed, the concept of a pluralistic seed system reflects a political will to recognise and offer legal protection to three types of seed systems: the formal system, quality declared seeds (QDS) and the informal system. The formal system is governed by the Seeds Act 2006 and its implementing regulations, adopted in 2017. The QDS system is regulated by the QDS regulations adopted in 2020. As for the informal system, it is not yet regulated but it forms the object of a policy on genetic resources for food and agriculture (GRFA policy), which has been under development for several years and had not yet been adopted by the time of publication of this study.

Formal system – The formal system refers to the commercial seed system. Uganda had 44 officially registered seed companies in 2023, including both domestic and foreign companies (such as SeedCo, based in South Africa). These companies produce and distribute their seeds in Uganda and throughout the COMESA region. The legal framework governing the formal sector has been described in section 3.1 above.

QDS – In contrast to Mali, where a QDS pilot project was not followed up,⁷⁹ Uganda has set

77 Republic of Uganda, Ministry of Agriculture, Animal Husbandry and Fisheries, *National Seed Policy (2018)*, VII.

78 *National Seed Policy*, Op. cit.

79 Interview with Samba Traoré.



Quality declared seeds may increase access to seeds but they do not contribute to protect and promote peasant seed systems

Photo: Schwarzbach/Misereor

up a QDS system based on FAO principles.⁸⁰ The seed strategy defines QDS as “seed produced by a registered seed producer (individual or a group of farmers) from basic-seed and [which] conforms to the minimum standards for variety purity and germination”.⁸¹ The QDS system is designed to enable market-oriented farmers, organised in associations or cooperatives, to register as seed producers. Farmers obtain basic seed from public plant breeding programmes (NARO). The seed they produce must meet the same standards of purity, germination and moisture content as commercial seed. The two main differences between the two schemes are that 1) QDS are subject to a maximum of two field inspections, as opposed to a minimum of three for certified seed, and 2) inspections are carried out by a district agricultural officer rather than a national inspector, which reduces the costs

of certification. In return, QDS can only circulate within the boundaries of the district.⁸²

The aim of the QDS system is therefore to decentralise seed production and improve farmers’ access to seeds at community level. In other words, this system offers farmers’ cooperatives the opportunity to participate as seed producers in a semi-formal seed system.⁸³ However, only varieties registered in the national catalogue of varieties can be propagated under this system. In short, the QDS is a form of “relaxed formal system” that may help to improve access to seeds but does not help to implement the right to seeds, or to protect and promote PSS, because it does not permit the distribution of peasant varieties.⁸⁴

Informal system – The third system – referred to as the “informal system” but, for the purposes of this study, what we refer to as PSS – should be governed by the draft GRFA policy. This project was the object of regional-level consultations during which the various stakeholders – including peasant organisations – were able to participate in the formulation and validation process before the draft was forwarded to the Ministry of Agriculture. Civil society representatives stressed that NARO had been open to considering their comments and concerns, but others pointed out that the participation of peasant organisations remained limited, and that the process would benefit from increasing their involvement.

The draft GRFA policy has not yet been made public and has to undergo a further round of consultation before being adopted. According to information obtained, this policy is based on the

80 FAO, [Quality Declared Seed System](#) (2006).

81 [National Seed Policy](#), Op. cit., VIII.

82 Mastenbroek, Otim and Ntare, op. cit.

83 It is important to note here that these cooperatives may also be involved in the commercial system. They must, however, comply with the rules and standards of this system and produce certified seed that they can also distribute to the peasants who are members of their networks. The major difference with QDS is that the standards are lower in the latter and the geographical distribution area is reduced. In Mali, peasant cooperatives produce and sell certified seed of improved varieties registered in the catalogue.

84 Farm Africa, [Quality Declared Seeds: Addressing challenges in access to quality seeds for smallholder farmers](#) (2022); AFSA, [Mapping seed-system policies, frameworks, mechanisms, and initiatives in Tanzania and East Africa](#) (2022).



Close and continuous participation of peasants in the development of legislation is essential to its acceptance and successful implementation

approach recommended by the ITPGRFA. As far as farmers' rights are concerned, and as provided for in the national strategy, this could involve setting up a system enabling farmers to register their varieties on a national list of varieties. In fact, a workshop along these lines was organised in December 2018.⁸⁵ The workshop report made a number of recommendations aimed at developing a system that would allow farmers to register their varieties in a centralised register, and to produce and distribute them in a system similar to the QDS system.⁸⁶ As we will see in section 4, this approach is controversial and has been rejected by many peasant organisations elsewhere in the world.

The draft GRFA policy had still not been adopted by the time this study was published. According to one of the experts interviewed, this is due to disagreements over aspects relating to peasant rights, in particular with regard to the ownership, maintenance and sharing of peasant varieties.⁸⁷ These issues are key aspects of PSS and peasant rights and are being hotly debated, not only in Uganda but elsewhere.

In conclusion, it should be noted that although the national seed strategy recognises a pluralistic seed system, it remains firmly anchored in the productivist paradigm: "The vision of the National Seed Policy is a competitive, profitable and sustainable seed sector where farmers access affordable quality seed and planting materials".⁸⁸

3.4 Conclusions

Although there are parallels between the processes underway in Mali and Uganda for the recognition of PSS, the approaches and legislative frameworks differ significantly. In both countries, it was the revision of the seed policy that provided a gateway to the legal recognition of PSS. In Mali, the initiative came from civil society in a bottom-up process. In contrast, in Uganda, the initiative came from the government, although efforts were made to make the process inclusive. When the process starts from the grassroots and is driven by peasants, there is a greater chance that the decisions and conclusions will reflect their concerns. At this level, the success of peasant action depends on the ability of peasants and their allies to mobilise, analyse and advocate.

While Mali and Uganda have taken the first steps towards recognising PSS, much remains to be done to make this recognition a reality. Uganda recognises a pluralistic seed system, which is an important first step. However, the GRFA policy, which is intended to provide a framework for PSS in Uganda, has still not been adopted.

85 Tobia Recha, Chris Muwanika, Gloria Otieno and Bram de Jonge, [Report of the International Workshop on Registration of Farmers' Varieties](#) (2018).

86 See [Report of the International Workshop](#) op. cit. 22-23. See also Otieno et al., op. cit., 29.

87 Interview with Chris Muwanika.

88 [Uganda National Seed Strategy 2014/15-2019/20](#).



In view of the progressive erosion of agricultural biodiversity, the preservation of peasant varieties is a key concern of the peasant communities

Photo: Dorflichter-Sulser/Misereor

participation of peasant organisations, who initiated and led the process, and whose recommendations have been incorporated into the draft policy.

In the Ugandan context, PSS are still referred to as the “informal system.” This terminology is not benign, and the expression is increasingly rejected by peasant organisations around the world. “Informal” is, in fact, a disparaging term that does not reflect the fact that these systems are long-established and governed by their own rules. Moreover, this terminology takes all the credit away from peasants for having maintained and dynamically developed the biodiversity in its natural environment. Starting from the premise that a system is informal when requesting recognition would be tantamount to accepting that its method of organisation will change to something “formal” once recognition is granted. This would lead to an upheaval in farming practices and in the way peasants are organised, based on their habits and customs and the collective rules they have developed. This is precisely the essence of the system, and one that peasants want to see recognised and protected. These were the arguments used by Malian peasants as part of the SNP process to demand the use of the term “peasant” instead of “informal.” Terminology was the object of a series of discussions during the process, both in the national language *Bamanan Kan* and in French, with the aim of reaching a consensus on the terms used, namely “peasant variety or seed” rather than “local or traditional variety or seed”; “peasant seed system” rather than “informal seed system”; and “peasants’ rights” rather than “farmers’ rights”.

If the processes that have been initiated are to lead to full recognition and protection of PSS, it is crucial to go beyond traditional consultation processes. Setting up a multi-stakeholder consultation framework in which peasant organisations play a central role, as in the SNP process in Mali, seems to be a promising way of maintaining dialogue and reaching decisions by consensus. The terms of recognition still need to be discussed within such a framework but the ITPGRFA, the UNDROP Declaration, the legal framework proposed by AFSA and the lessons drawn from the analysis of national laws favourable to PSS all provide solid grounds. ●

Furthermore, the approach advocated by Uganda through the GRFA policy is based on farmers’ rights as defined in the ITPGRFA. The latter is an important tool but is insufficient in itself to achieve full legal recognition of PSS. The ITPGRFA recognises the contribution of farmers and their right to seeds but makes no reference to PSS more broadly. The international legal framework has evolved since the adoption of the ITPGRFA in 2001, in particular with the adoption of the UNDROP Declaration in 2018, and any legal recognition of PSS must take account of all these instruments. As the Indian experience shows, the possibility of peasants registering their varieties as commercial breeders do is of little benefit for the peasants themselves and does little to promote agrobiodiversity or support PSS as a whole.

While Uganda adopted a new National Seed Policy in 2018, Mali had still not adopted its new seed policy by the time this study was published. However, the seed law in Mali has already paved the way by devoting certain provisions to peasant varieties and peasants’ rights (that is, the “rights of local populations”, themselves the “age-old guardians” of these varieties), as well as referring to compliance with international conventions signed and ratified by Mali. The approach advocated in Mali by the SNP process, if implemented in national policy and possibly in the seed law, could extend to full recognition of PSS through a special legal system adapted to them. It should be noted that the SNP process is based on the full

4. Conclusions and recommendations

It is not so much the legal recognition of PSS that is the subject of controversy among peasant organisations and civil society in Africa as the terms for such recognition and the risks it may entail. These two questions are closely linked, since it is the modalities of recognition that can prevent these risks. Two concerns frequently cited by peasant organisations are their loss of control over their seed systems and the risk that registers will facilitate the bio-piracy of their varieties.

If the risks are adequately contained, recognition of PSS in laws and public policies offers several advantages, namely: clarification of the status of PSS, which will no longer be seen as an informal system; the possibility of technical and financial support for PSS from the public sector; the building of formal links between PSS and public research through participatory selection; and the strengthening of the protection of peasants' rights. The following recommendations are not exhaustive but provide elements to ensure that the recognition of PSS results in their genuine protection and promotion.

4.1 The need for a separate legal system for PSS

Food and environmental crises reinforce the need for a paradigm shift towards full recognition of the right to seeds as a fundamental human right, and of PSS as seed systems in their own right. African countries, which voted overwhelmingly in favour of adopting the UNDROP Declaration, should incorporate the Declaration into national legislation so that it has the force of law.⁸⁹ As demanded by peasant organisations, PSS should have their own legal status. Such a system must be based on the UNDROP Declaration and the ITPGRFA. The AFSA legal framework, the African model law and national laws favourable to PSS offer avenues for setting up such a system.

4.2 Peasant organisations as key players

It is essential to strengthen the participation of peasant organisations and civil society in the process of recognising PSS. This participation should

Thanks to peasants' dedication, in many African countries, village (in situ) seed banks are on the increase and play a crucial role in conserving agrobiodiversity

Photo: Dorföchter-Sulser/Misereor



⁸⁹ See the example of Colombia: [La Via Campesina, Colombia supports the United Nations Declaration on the Rights of Peasants and other people working in rural areas \(2022\)](#).

Women play an important role in agricultural production as well as in seed management. This should be reflected in the seed policy.

not be limited to traditional forms of representation, such as sitting on committees or taking part in public consultations. Following the example of the SNP process, peasant organisations must play a leading role in these processes. The SNP experience in Mali has shown that, when peasant organisations are genuinely involved in processes that they themselves initiate and steer, this can help change the terms of the debate and move towards full recognition of PSS.

An institutional framework adapted to the needs of peasants, and which gives them a central role, is also needed to support and monitor PSS. The example of the national consultation framework and the regional farmers' seed committees proposed in the AFSA framework can serve as a source of inspiration for setting up such structures. In Mali, the SNP process has made it possible to set up a similar framework, and this structure has been involved in lobbying for a revision of the seed policy. Peasants have asked that this framework form the institutional anchor for the recognition of PSS, as a forum for exchange and decision-making support. Such an approach seems appropriate for PSS.

It is worth noting here the implementation difficulties observed in regional or local committees such as the land commissions in certain West African countries, notably Burkina Faso, Mali and Niger.⁹⁰ Despite the relevance of these committees, their effectiveness is limited by the lack of support measures and funding. This should serve as a wake-up call to all those involved in PSS, including the State, and encourage them to find more flexible and appropriate mechanisms for the functioning of the regional committees or consultation frameworks that will run PSS at regional and local levels.

4.3 Recognition of the role of women in the seed system

Women play an important role in agricultural production in general, and in seed management within PSS in particular. It is essential to promote their role and their rights within PSS in terms not only of access to seeds but also of participation in decision-making. Both seed policies and gender equality policies should take this aspect into account. The National Gender Policy adopted in Mali in 2011 stipulates that all women have the right to active and participatory citizenship and to equitable access to productive resources, including



Photo: Mellenthin/Misereor

seeds, for agricultural production nationwide.⁹¹ Moreover, we need to ensure that such measures are implemented and do not go unheeded.

4.4 Registration of peasant varieties

The registration of peasant varieties is a controversial issue. This is a possible, but not essential, dimension of the recognition of PSS, and one that must be decided by peasant organisations themselves. If registers are set up, they should not be

90 Mohamed Coulibaly, Rapport d'évaluation sommaire de la gouvernance de la tenure au Burkina Faso, VGGT+10 Initiative, WHH, ILC, FAO et GIZ [Summary Assessment Report of Tenure Governance in Burkina Faso, VGGT+10 Initiative, WHH, ILC, FAO and GIZ] (2022). Forthcoming; Mamadou Koumaré, *Gouvernance foncière et respect des us, coutumes et traditions au Mali: Cas de la commune du Mandé* [Land governance and respect for habits, customs and traditions in Mali: case of Mandé commune], African Journal on Land Policy and Geospatial Sciences 5, no. 2 (2022); Sitou Lawali, Marc Mormont and Boubacar Yamba, *Gouvernance et stratégies locales de sécurisation foncière : étude de cas de la commune rurale de Tchadoua au Niger* [Governance and Local Strategies for Land Security: case study of the rural commune of Tchadoua in Niger] vertigO 14, no.1 (2014).

91 Republic of Mali, *Politique Nationale Genre* [National Gender Policy] (2011), 65.

Legal guarantees are important, but they must be accompanied by public policies that support peasant seed systems

centralised at national level, as is the case with plant variety catalogues in the commercial system. These registers should be managed by peasants at local level, for example in agroecological regions. The AFSA framework and Italy's regional laws offer avenues for decentralised, community-managed registration, with the aim of documenting and identifying peasant varieties.

4.5 Peasant autonomy in seed quality assurance

Unlike the commercial system, which is organised in a linear fashion – from variety selection to planting, via seed multiplication and distribution – PSS operate in a circular fashion among peasants who are both producers and users of seeds, the community, peasant networks and local markets. Recognition of PSS presupposes that peasants have the full freedom to define the rules and standards that can guarantee the quality of seed they put into circulation in PSS. Several models exist but the one that seems to give peasants most autonomy and inclusiveness is the Participatory Guarantee System.

Such a model does not exclude support from other players such as PGS trainers and researchers, particularly in the context of collaborative research. The specific legal system for PSS should include provisions that give peasants the autonomy to organise quality assurance in accordance with their needs and with the technical and financial support of other stakeholders.

4.6 Consistency of laws and public policies on seeds

Finally, it should be remembered that legal guarantees are important but that they must be accompanied by public policies that support PSS. A positive legal framework is in place in some countries but, in practice, other laws and public policies favour certified seeds protected by intellectual property and this undermines PSS. In conclusion, the UNDROP Declaration is very clear about the primacy of the right to seeds as a human right. Governments must consequently ensure that seed policies, variety protection and other intellectual property laws, certification systems and seed marketing laws respect and take into account the rights, needs and realities of peasants. ●



Photo: Schwarzbach/Miserereor

Appendix

I. List of interviews

Interview	Name	Position	Date
1	Harriet Nakasi	National Coordinator, Advocacy Coalition for Sustainable Agriculture (ACSA Uganda)	28/02/23 & 06/03/23
	Eustace Sajjabi	Managing Director, Agency for Integrated Rural Development (AFIRD) & Chair of the Board, ACSA Uganda	
	Florence Nassuuna	Programme Manager, Policy and advocacy	
2	Geoffrey Otim	Manager, Seed systems and policies Integrated Seed and Sector Development (ISSD Uganda)	14/03/23
3	Assétou Kanouté	Member of the Board of Directors, <i>Association pour le Développement des Activités de Production et de Formation (ADAF/Gallé)</i> & Professor (retired), <i>Institut Polytechnique Rural (IPR)</i>	14/03/23
	Diakité Bourama	PROFEIS project Coordinator, ADAF/Gallé	
	Samba Traoré	Agronomist-researcher (retired), <i>Institut d'Économie Rurale, Mali</i>	
4	Chris Muwanika	Managing Director, NARO Holdings Ltd., Uganda	15/03/23
5	Oumar Niangado	Researcher, Chair of the Board of the University of Ségou, Former Director of the <i>Institut d'Économie Rurale, Mali</i>	21/03/23
6	Oumar Koumaré	Seeds Officer, Association des organisations professionnelles paysannes (AOPP), Mali	22/03/23

Interview	Name	Position	Date
7	Catherine Kiwuka	In situ curator, Phylogenetic Resources Centre, National Agricultural Research Organisation (NARO), Uganda	22/03/23
8	Julie Matovu	Organic farmer and consultant, Freshveggies PGS, Uganda	23/03/23
9	Anne Berson Dena	Organiser, <i>Jardins de Hambe</i> & Member of the <i>Comité ouest africain des semences paysannes</i> (COASP), Mali	24/03/23
10	Kizito George Mulindwa	Coordinateur, Projet intégré de sécurité alimentaire et de commercialisation, CARITAS Diocèse de Lugazi, CARITAS Ouganda	28/03/23
11	Mamy Soumaré	Professor at the <i>Institut d'Économie Rurale</i> & Associate researcher at the University of Social Sciences and Management in Bamako, Mali	28/03/23
12	Andrew Adem	Programme coordinator, Seed and agrobiodiversity, Eastern and Southern Africa Small-scale Farmers' Forum (ESAFF), Uganda	31/03/23
13	Erick Kizito	Director, Participatory Ecological Land Use Management (PELUM), Uganda	03/04/23
14	Dioncounda Camara	Head of Seed Laboratory (LABOSEM) and seed expert, Mali (Written questionnaire)	06/04/23

II. Flexible interview guides

Mali

- What do you see as the main problems affecting the seed sector in Mali?
- What impact do current seed laws and regulations have on PSS and their resilience in the face of contemporary crises (COVID-19, climate change, etc.)?
- Can you explain the background to the SNP process?
- Were you involved in this process? If so, how?
- What is your overall assessment of this process? What aspects of the process could be improved?
- What kind of involvement did peasants have in the process?
- Has the process already had any tangible impact?
- What place do PSS have in the current legal framework?
- How do PSS support agroecological production and food sovereignty?
- Do you think that PSS should be legally recognised?
- If so, do you think PSS should receive public funding?
- The seeds policy has been under review for several years. Could you tell us what the situation is?
- Is a revision of the seed law on the agenda?
- Mali is a member of ECOWAS. How does this influence its seed policy?
- Mali is indirectly party to the 1991 UPOV Convention through OAPI. How does this influence its seed policy?
- What do you think of the African Union's initiative to harmonise seed laws at the continental level within the framework of the AfCFTA?
- Mali voted in favour of the UN Declaration on the Rights of Peasants. Do you think the Declaration, and in particular article 19 on the right to seeds, is relevant in the Malian context? Can the Declaration feed into and strengthen the SNP process?

Uganda

- What do you think are the main problems affecting the seed sector in Uganda?
- What impact do current seed laws and regulations have on PSS and their resilience in the face of contemporary crises (COVID-19, climate change, etc.)?
- Can you explain the process that led to the adoption of the National Seed Policy in 2018?
- Were you involved in this process? If so, how?
- What is your overall assessment of this process? What aspects of the process could be improved?
- The seed policy refers to pluralistic seed systems. What do you understand by pluralistic seed systems?
- Has the seed policy had any concrete repercussions?
- Are there any plans to revise the current seed legislation?
- What role do PSS play in the current legal framework?
- How do PSS support agroecological production and food sovereignty?
- Do you think that PSS should be legally recognised?
- If so, do you think PSS should receive public funding?
- Uganda is a member of the EAC and COMESA. How does this influence its seed policy?
- What do you think of the African Union's initiative to harmonise seed laws at the continental level within the framework of the AfCFTA?
- Uganda voted in favour of the UN Declaration on the Rights of Peasants. Do you think the Declaration, and in particular Article 19 on the right to seeds, is relevant in the Ugandan context?

