

Seed laws:

Imposing agricultural apartheid

GRAIN

“Seed laws” is a very vague term. But if you worked at the UN Food and Agriculture Organisation (FAO) or in the Ministry of Agriculture of any so-called ‘developing’ country in the late 1960s, it probably had a fairly clear meaning for you. Back then, seed laws referred to rules governing the commercialisation of seeds: what materials could be sold on the market under what conditions. From the 1960s through the 1980s, agencies like FAO and the World Bank played a very strong role in getting developing countries to adopt seed laws. The main idea, officially speaking, was to ensure that only “good quality” planting materials reach farmers in order to raise productivity and therefore feed growing populations. However, the marketing rules, that the FAO and the World Bank effectively pushed, came from Europe and North America, the very place where the seed industry is in place. And the seed industry produces seeds by specialised professionals and no longer on the farm by farmers themselves. In no time, it should have been clear to anyone that these seed laws had very little to do with protecting farmers at all and a lot to do with creating conditions for the private seed industry to gain and control markets worldwide.

If we look at them today, seed laws are all about repression. They’re about what farmers can’t do.

They dictate what kind of seeds can’t be sold, can’t be exchanged and in some cases can’t even be used. All in the name of regulating trade and protecting food growers! In this sense, seeds laws go hand in hand with intellectual property rights (IPR) regimes like plant variety protection and patents. The two kinds of laws – marketing regulations and property rights – reinforce each other. In fact, depending on the situation, seed laws can be a lot worse. They ban farmers’ seeds from the market thereby creating a kind of agricultural apartheid in countries where they are strongly enforced. IPR-protected seeds already can’t be marketed except by those who own them. Seed laws tend to ensure that traditional varieties – seeds not produced by the seed industry and not protected by IPR – can’t freely circulate either. All you can officially buy are a few government-sanctioned ideotypes.

As you might guess, seed laws and IPRs were to a large extent borne of the same process, entwined together like a helical twist of DNA. In Europe, seed marketing rules drawn up after World War I were the origin of what became the Union for the Protection of New Plant Varieties (UPOV) Convention in 1961. In the US, the process was similar except that the US were much quicker to set up a plant patenting system in 1930. In both



cases, seeds were becoming a new business and a new “science” and the new class of plant breeders wanted legal ramparts to protect their profits and regulatory interests. That’s where you got the clamour for property rights, so they could stop other people from taking their newly bred roses and multiplying them on their own. And that’s where you got the push to set up marketing rules for the seed trade, which meant knocking out competition from farmers and agreeing on strict criteria to only allow the sale of so-called ‘improved’ or ‘high-yielding’ varieties.

Beyond that, Europe and the US diverged a bit. Europe took the path of state control, creating mandatory rules and checks and police forces to dictate every last detail about seed marketing, even if many of the operations have since been handed over to the private sector. In the EU, the system is obligatory. If you want to sell seeds at all, you must register your variety on a national list and get it certified. Certification involves proving that your variety is distinct, uniform and stable (yes, DUS, the same criteria as for plant breeders’ rights) and that it presents a real agronomic or technological advance over current varieties (except for vegetables). If you don’t do this, you’re not allowed to sell seeds of whatever variety you’re holding. The US adopted the same criteria and operations to enforce quality controls, but they left the system voluntary. That means that you don’t have to register and get certification if you don’t want to. The divergence ends there, however. Seed laws and plant breeders’ rights are so intimately entangled that often the same government agency and the same field technicians take care of both. It’s rare to find certified crop varieties that are not locked up with plant breeders’ monopoly rights as well.

The outcome of all of this has been a huge wipe-out of genetic diversity on the market and on the farm. It has also meant a gradual but steady disempowerment of farmers. Traditional varieties, traditional knowledge and traditional skills in breeding, selection and seed saving are all but gone from many farms of the industrialised world. Despite that, developing countries for the past 40 years have been pushed down the same path. A parade of lobbyists, consultants and development agencies have talked most of them into adopting either the European or the US system or some combination of the two.

Today’s horizon

Seed laws exist in most countries of the world today. In half the cases, varietal registration and certification are mandatory (the EU model) for

seed commercialisation. The DUS criteria are everywhere, and there are several international systems in place to facilitate and harmonise seed trade worldwide. However, commercial seed only represents a portion of what farmers actually sow. In developing countries, farmers – not the market, nor the state – directly supply about 70% of their seed needs. In Africa, it’s 90%. In Europe, it’s as low as 5% in Switzerland and as high as 50% in Germany. So despite the rules, farmers are still the world’s biggest seed suppliers. That doesn’t mean that seed laws are ineffective. But it does underscore how much further damage they can do.

Right now, seed laws are undergoing change in many parts of the world. That is why we decided to have a look at the situation for this issue of *Seedling*.

- In Asia and Latin America, the laws are being rewritten to accommodate new trends in the seed industry and the seed trade. This translates to increased integration with IPR legislation, new linkages to biosafety regulations to facilitate the marketing of genetically modified (GM) seeds and, in some countries, a scary shift towards Europe’s mandatory approach. In numerous countries, from Bolivia to India, farmers groups, social movements and NGOs are trying to get a grip on these new legal changes and sort out appropriate strategies to work around them.
- In Africa, seed industry hacks plus the US and some European governments are working hard to construct new regional seed markets based on new regional seed laws. Africa has perhaps least been hit by seed laws up to now, but these new regional systems could make life very tough for small scale farmers trying to build or reinforce local seed autonomy.
- In Eastern Europe, many countries are adopting the EU system in the name of harmonisation and eventual integration in the Union. In Western Europe, countries are struggling on the one hand to accommodate the biotech industry and the new policy of coexistence (between conventional, organic and GM agriculture) and on the other hand, ironically, pressure to create new legal space for traditional and local varieties. In many respects, Europe has been hardest hit by seed laws all these years and there are a lot of groups and activists working to pull crop diversity out of its economic and legal ghetto and into daily farming and food markets again.



The battlegrounds


In all of this, there are two main trends. For the most part, seed laws are going from bad to worse as governments and industry double their efforts to generate a captive clientele for corporate seeds. But there is also an emerging crack to loosen things up a bit and leave some space for farmers' seeds, meaning traditional varieties and farmers' selections. Often it boils down to proposals for separate catalogues or registration lists, an exemption from the DUS criteria and a waiving of the normal fees. In Europe, this is a big battle front right now. But Brazil has also legislated an opening for farmers' seeds, Malawi and Mozambique have been trying to give space to the results of participatory plant breeding with farmers or local varieties, Algeria is working in this direction, China has decided to leave farmers' seeds out of its new law, and India is facing a huge outcry against its current draft Seed Bill in terms of what it offers for farmers' materials.

What does all this mean? It depends on where you're coming from. From a general perspective, farmers would be a lot better off if official seed registration and certification were never mandatory in the first place, so that people could access the material they want and a much more meaningful supply as well. Also, too many of these laws prohibit the exchange among farmers of their own seeds. Whether or not such rules are implemented, this is an incredible denial of what should be a basic right. Then we come to the marketing issue and that is where it gets tricky.

Opening up official seed markets to traditional varieties and farmer seeds where they're currently closed could take us in two very different directions. One the one hand, it can provide an opportunity to strengthen local, farmer-controlled agriculture without the hassle of state repression and the systematic biases currently pushing farmers into one agricultural model controlled by big business and a small elite. However, for this to succeed, it requires some powerful political strategy work on the side of farmers about how to develop local seed supplies, how to work with consumers, traders and local government officials to really integrate local diversity into the food system, and how to defend these systems against both genetic contamination and the big corporate monopolists who may easily take advantage. It's not impossible, and there's a huge reservoir of interest and resources to move forward in this direction. But it does require a

sophisticated strategy and good organising, since the keys to success will surely revolve around decentralisation, real autonomy, local control, collective rights and strong cultural integrity of the food systems being supported this way.

On the other hand, opening official seed markets to local varieties could also open the floodgates to the mass destruction of local diversity, especially if people take on a highly capitalistic approach to setting up farmers' seed markets. This is a very real danger and it would go smack against any pretension of strengthening community livelihoods, community rights or farmer control. It amounts to creating farmer seed industries along the model of the conventional corporate seed industry. It doesn't take much to foresee the risk of further privatisation, monopolies and, ultimately, genetic uniformity that such an approach would lead to. The temptation to go down this path – whether by small entrepreneurs, farmers' associations, NGOs, cooperatives or why not Syngenta itself – is high, especially considering the growing worldwide demand for organic products, GM-free agriculture and community-supported local markets.

Farmer-controlled seed systems have to thrive if we are to have any hopes for autonomous, culturally meaningful and socially-supported forms of agriculture in our different countries. It may seem a given, with a whopping 70% of the developing world's seed supply coming from farmers today. Not at all. That 70% is increasingly vulnerable to full-scale absorption by the global seed industry as we've seen already happen in Europe, North America, Japan and Australia. That is the very agenda of the seed laws. At the end of the day, we can fight to support and build farmers' seed systems within or outside the laws, but we will never win within. The laws are made for the industry and at most can be relaxed to give farmers some legal breathing space. The real struggle, however, is the one on the ground, working to strengthen farmers' seeds systems and autonomy in action. 

This Seedling takes us through a number of experiences and brutal shifts going on with seed laws in different parts of the world today, in the hope of raising further debate and new ideas about how we can support truly autonomous and farmer-controlled seed supply systems. As a complement, we plan to upload many seed laws from the South to the GRAIN website. Visit www.grain.org/go/seedlaws.

