

New seed laws are being introduced throughout Latin America. While government intervention in market processes continues to decline in the region, when it comes to seed legislation the states have been laying down some strict laws. These laws vary considerably between each country, but a universal theme that unites them is to provide better protection of private seed varieties developed by companies and sideline farmers' own seeds. In many cases, farmers' own seeds are, or will become, illegal.

Latin America: the mantra of privatisation

GRAIN

The processes of seed modernisation and commodification have a long history in Latin America. They were one of the many facets of the imposition of the Green Revolution in the region. The driving forces behind them were the national agricultural research systems, which arose and gained strength from the 1960s on, with heavy support from the US government and the Rockefeller Foundation.

A major share of the research programs focused on plant breeding. The role of these programs was to produce modern varieties of each country's most important crops, based on Green Revolution "quality" criteria, and to introduce them and promote their use within those countries. With the official aim of improving production and well-being for peasants, the countries also produced the so-called "seed laws," which

controlled by public authorities, and set enforceable quality standards,

b) controlled the entry of new varieties on the markets, by requiring they meet established agronomic criteria.

Seen with hindsight, plant-breeding programs and seed laws were strategic tools for the replacement of local varieties and to turn seeds into commodities which were not part of the farmer-seed exchange systems. Their impact was felt not only because farmers were interested in so-called improved varieties, but above all because governments and banks would only provide technical support and loans if certified seeds were used.

Since the 1980s, national plant-breeding programmes took various different routes. Some, like in Chile, were slowly dismantled. Others, like in Brazil, remained strong. But in all cases, the use and marketing of seeds produced by transnational

a) laid out rules for seed certification, based on seed production and reproduction requirements

¹ See for example, www.cimmyt.cgiar.org/research/economics/map/impact_studies/impactsmaize66_97/impactsla/pdfs/ImpactsLA_adoption.pdf



seed companies expanded progressively and by the late 1990s had become much of the region's major source of seeds.¹

The prevalence of international seed companies and the advance of intellectual property rights, mainly through the World Trade Organisation (WTO), led to more new seed laws. Since the 1990s, many Latin American countries joined UPOV or adopted UPOV-style legislation. Meanwhile, seed-certification programs enforced in previous decades became weakened, as rules for the marketing of new national and foreign seed varieties were relaxed.

Over the past four to five years, a new wave of seed laws has swept the region. In general, governments in Latin America have been pushing to simplify rules and laws to ensure that private business is able to sell unhindered. However, at least ten Latin American countries have approved laws or introduced bills to create or expand their national seed systems or institutes, which would enforce compulsory seed certification and registration; this is in addition to legislation on seed-related intellectual property rights and biosafety rules. With the partial exception of Brazil and Bolivia, the new laws were passed without any publicity and therefore without any reaction from those in the hardest-hit sectors: peasants, family farmers and indigenous peoples.

This article discusses key features of the new laws and their possible impact.

The regional situation

By March 2005, new seed-certification laws or regulations had been adopted by Peru², Paraguay, Uruguay, Brazil³ and Venezuela⁴, while bills or draft regulations are under discussion in Bolivia, El Salvador, Ecuador⁵ and Costa Rica. Mexico has had a similar seed law on the books since 1991⁶. In Bolivia, a bill was discussed and finally rejected by Congress due to the strong opposition from social organizations⁷. But a Ministerial Resolution of March 14, 2005 bypassed Congress and imposed compulsory registration. Chile, meanwhile, has begun studies to harmonise its law with those of the European Union.⁸

The form taken by the new laws varies considerably, yet they all share a clear convergence in their content. Peru's law, for example, was drafted in vague and ambiguous terms, but its subsequent regulations very clearly impose compulsory registration of varieties and the privatisation of seed certification. Venezuela put the compulsory registration of seeds

in the law itself, though it is rather ambiguous on the privatisation of the certification process. The Ministerial Resolution in Bolivia imposes both registration and privatisation. Our analysis must therefore consider both the laws themselves and their implementing regulations, many of which are still being drafted, meaning that the legal situation is in permanent evolution.

Sloppy work?

But, aside from form, the contents show significant similarities. One curious coincidence which arises upon a close look at all these legal texts is that nearly all of them reveal major gaps and inconsistencies. Venezuela, for example, never spells out which ministry will be responsible for enforcing the law. Peru's law states that seed producers "have the right" to be registered, while the regulation written a year later makes the registration of producers compulsory. Costa Rica's bill of law provides that the Board of Directors of the National Seed Office (to be created by the law), amongst other functions, should issue "plant breeders' rights property certificates," even though Costa Rica does not even recognise the existence of such rights.

The sheer volume of inconsistencies and gaps is too great to go unnoticed in a careful reading. Were they put in on purpose? Or do they merely show the ignorance or incompetence of the officials responsible for drafting these laws?

Seed agencies

Invariably, all the laws approved and bills in parliaments either create or expand a national seed agency. These seed agencies enforce the certification and registration of seeds and the registration of seed producers, breeders and dealers. In most cases, the seed agency can also make decisions on the release of genetically modified (GM) crops, though such decisions would be shared with other agencies. In practice, the new national seed systems decide what is acceptable as a seed and who can produce and market them. At the same time, however, the same laws and regulations provide that the agency must delegate at least part of its certifying and inspection functions to private organisations, whose only requirement is that they possess the technical skills and enough infrastructure to carry out such responsibilities. In many cases, the agency is given an 'autonomous' status, meaning that it must raise its own money and that, even when it carries out all the activities itself, it must charge market prices for the processes of registration and certification. So even when the new agency performs all the functions itself, it must behave like a private company.

² www.asesor.com.pe/proapa/leyes/186551.htm

³ www.uel.br/cca/agro/graduacao/disciplinas/serie4/producao_tecnologia_sementes.htm

⁴ <http://comunidad.vlex.com/pantn/lsemillas.html>

⁵ www.sica.gov.ec/censo/contenido/Semillas%20de%20la%20COSTA%20web.pdf

⁶ www.tareaweb.com/data/leyes/leyinfo/227/1.htm

⁷ www.semillas.org/documentos/rm04505.pdf and www.semillas.org/documentos/REGISTRO_20DE_20VARIETADES.pdf

⁸ www.sag.gob.cl/saveasdialog.asp?cod_cont=4228&bogus=Profesional_bioteecnologia_OGMs.doc



Brazil – Article 8

§ 1 The Ministry of Agriculture, together with the National Seed Registry, shall accredit natural and legal persons who meet the requirements established in the regulations of this Law, to operate as:

II – certifying agency of seeds and seedlings;

III – certifier of seeds or seedlings produced by said person;

Under the guise of creating a public authority responsible for seed quality, the laws are actually pushing for the privatisation of the state's regulatory and control activities. As a result, seed companies will decide themselves whether their seeds comply with quality standards and certification requirements, as long as they can afford the necessary equipment and staffing. They will even be able to enforce the same controls over other seed producers, an alarming proposition, considering that none of the laws provides the means to handle conflicts of interest within the private sector. So a private seed company could be both the producer of seeds and a certifying body. Here is a clear conflict of interest. Yet the law does not make any reference to how abuses of the system should be handled or monitored.

The obvious concern is what happens if Monsanto or Syngenta are accredited as seed certifiers? Will a government really be able to tell whether all self-certified seed actually complies with quality standards? What assurance will a small farmer have that the seeds he hopes to sell will not be rejected by a private certification laboratory financed by a major seed company? Why do the governments create powerful new institutions, only to turn around and farm out their regulatory functions to the very companies targeted by the regulations?

Whatever the answer, it is clear that the new rules fit precisely the desires of the transnational seed companies, as expressed for example in two motions approved in 1995⁹ by the International Seed Trade Federation, whose members include Pioneer, Monsanto, Syngenta and Bayer).

Compulsory registration and certification

Answers to the above questions gain greater relevance as we observe another common trait in the new regulations the compulsory registration of marketed seeds and the compulsory registration of seed producers multipliers and dealers. No one who is not registered may produce or sell seeds, and an unregistered variety may not be marketed. In some cases, this obligation is applied not only to the sale but also to the donation of seeds or even the non-monetary exchange of seeds among

farmers. Brazil is the only country that has created partial exceptions to this compulsory registration (see box opposite).

To be registered, the seed producer or dealer must have a university degree or be able to hire someone who does, as well as owning infrastructure. For a variety to be accepted in a seed registry, it must comply with a number of requirements that come with the law. So far, these requirements include a minimum percentage of seed purity and rates of germination, as well as compliance with UPOV-based DUS standard (distinctiveness, uniformity and stability). The first draft of the bill sent to the Bolivian parliament would have required that all seeds also comply with certification requirements, meaning that they are able to assure a specific and homogeneous genetic makeup, and that their production be carried out under extremely controlled conditions.

All seeds must be inspected. Seeds that are not up to standard will be outlawed. In most cases, it will be illegal to plant unregistered seeds, regardless of whether they comply or not with the standards. In some countries it will actually be illegal to transport unregistered seeds or seeds that are not in compliance with certification standards, even when they are exchanged as uncertified seeds.

Paraguay – Article 58

Seeds displayed for public sale or delivered to third parties for whatever purpose must be from a certified and/or inspected seed production system.

Venezuela – Article 21**Bolivia – Article 36 (Bill of law)**

It is forbidden to sell, donate, distribute and/or transport seeds that do not comply with this law and its resulting regulations.

Uruguay – Article 43

Directly or indirectly, these laws require that seed users be subject to control and inspections. In practice, this means that all farmers will be under control. In principle, the laws refer exclusively to marketed seed, but the definition of marketing is so broad, it includes donation and other forms of non-monetary exchange. In other words, all seed users can be inspected and, when inspected, must show an invoice of purchase, or prove that, if it was received as a donation, the seed was inspected, or prove that the seeds were produced on the farm. Authorities will also check that proprietary seed is not being used unless it is proved that it was bought in the market. Sanctions for the use of breeder-owned seeds include fines which, in Venezuela,



may be as much as US\$7,000. But farmers will also be inspected as potential illegal dealers. That is, if they keep seed for their own use without registering or officially testing it, they will be only be able to keep the seed for their own replanting, and the inspection will verify whether the amount saved is no greater than what the authority deems reasonable.

As we have seen, the region's historical experience is that, although the certification rules or standards created from the 1960s through the 1980s were not compulsory, governments and financial institutions required compliance with them for a farmer to be eligible for economic or technical support, thus turning seed certification into a major force for the substitution and disappearance of local varieties and for the erosion of peasant seed systems. Today the registration and certification of seeds is compulsory, whether a farmer gets support or not, meaning that even those peasants who wish to remain independent from official programs must comply with the new rules, with no way out under the law.

Compulsory registration of varieties, the requirements to be eligible for registration, and the compulsory quality standards for varieties amount to an efficient way to:

- Ignore and outlaw peasants' abilities and rights to produce seeds, since their lack of university degrees will keep them from being officially recognised as seed producers unless they accept and pay for supervision of their work by someone with a university degree. If they continue producing seeds, they will be considered outlaws. A local community will not be able to legally exchange seeds without the previous certification by government officials or a private entity that those seeds comply with the standards set by law;
- Control, outlaw and/or destroy peasant exchange systems, since even the non-monetary exchange of seeds is ruled by the new standards and requirements;
- Forbid the use of local varieties and landraces and even to destroy those varieties. Local varieties and landraces cannot comply with the homogeneity requirement. If they do, they will lose many of the very traits that make them so valuable and they will be considerably weakened. If the law cannot stop their use, the contraction of their genetic pool will no doubt lead to their decline.

Brazil's exemptions

In Brazil, Law Number 10711 (August 5, 2003) created the country's new National Seed and Propagation System. In contrast to seed laws approved in other countries, Brazil's contains some exceptions for local communities, indigenous peoples and their seeds. In particular, Article 8 stipulates that "Family farmers, land-reform settlers and indigenous people who multiply seeds or vegetative reproduction material for distribution, exchange or sale amongst themselves are exempt from enrollment in the National Seed Registry." Article 10 also adds that, "Enrollment in the National Cultivars Registry is not compulsory for any local, traditional or native cultivar used by family farmers, land-reform settlers or indigenous people."

Those exceptions were included in the Law as a result of resistance by peasant and civil-society organisations. No doubt they undermine the destructive potential of the new regulations, but they do not entirely neutralise the damage. First of all, the limited exceptions only apply to exchanges amongst small farmers and indigenous people and they only refer to the use of local seeds. Second, it is the authorities who will decide whether a seed is local or not, based on whether or not it is "substantially similar to commercial cultivars."⁹ A strict interpretation of the law implies that local communities, for instance, may not freely exchange seeds they have obtained from public breeding programs or which have been derived or adapted from another commercial variety. Moreover, the law at no point provides that local communities may exchange seeds saved from the harvest of a proprietary commercial variety, meaning that intellectual property laws will continue to be fully enforced on small farmers in Brazil. In other words, the exceptions may be a soothing, but the new law still makes things much worse than the historical absence of restrictions on the right to maintain local seed systems. Brazil has one of the world's largest potential seed markets and is a major target for transnational seed companies. It would therefore be naïve not to realise that they will do all their utmost to assure these limited exceptions are interpreted in the most restrictive manner possible.

Even so, the Brazilian law adds a provision which, particularly in historical terms, is of great interest: it is forbidden to restrict the use of local varieties in publicly-financed programs. If such a clause had been included in seed laws back in the 1960s and 1970s, we might now be seeing quite a different panorama in terms of agricultural diversity and the autonomy of local communities. Yet, once again, the law incorporated this protection in a very restrictive fashion, since it does not forbid private lenders from forcing farmers to use only commercial seed varieties.

⁹ The law adopts the following definition: "Local, traditional or native (crioulo) cultivar: a variety that has been developed, adapted or produced by family farmers, land reform settlers or indigenous people, with clearly determined phenotypic traits that are recognised as such by the respective communities and which, in the understanding of the Ministry of Agriculture and also considering socio-cultural and environmental descriptors, are not substantially similar to commercial cultivars."

Peasant seed systems will thus have very few chances for survival. To make things worse, if the enforcement agents are private organisations with a vested interest in selling seeds, the process will no doubt be even more destructive. The only legal recourse will be to actually become seed buyers.





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The 'leave nothing out' approach means that Venezuela's seed laws go so far as to include animal species

It is not by chance, therefore, that the law in Paraguay defines "farmers or [seed] users" as if they were synonyms:

Paraguay – Article 2

For the purposes of this law the following definitions shall apply:

- a) *Farmer or user: a natural or legal person who purchases or obtains seeds to sow or to plant;*

More than just seed quality

All the laws and bills, in their titles and justifications, claim to be aimed at protecting seed quality. The laws of Paraguay and Venezuela also have the explicit objective of protecting breeders' rights, as defined by the UPOV Convention. Although other laws and bills do not explicitly proclaim this objective, they do clearly provide that plant breeders' rights must be respected and some impose additional sanctions beyond those already established by existing plant variety protection laws. The first bill presented in Bolivia even created rules that meant a de facto adoption of UPOV-91 rules, although the members of the Andean Community are all members of UPOV-78. The intimate relationship between the new seed laws and stricter IPR protection is recognised, for example, in studies done by the government of Ecuador with support

from the World Bank, which conclude that new seed laws must be approved in order to avoid "the piracy of seeds [owned by companies]."

The protection of IPRs is not the only "extra" to show up amongst provisions of these new laws. Most of them also set rules for the registration and certification of GM seeds. While such rules are expressed as regulations or restrictions upon the release of GM crops, they actually amount to a de facto recognition that those crops may be authorised. The impact that this may have on other biosafety regulations involving GM organisms remains to be seen, but it does open the door for biotech transnationals to allege that the release of GM varieties has already been legally authorised. In other words, the new seed laws may force governments to accept GM crops.

All plants and then some

With the severe restriction (or the outright prohibition of) farmers seed systems coupled with ever-greater powers for transnational corporations, the wide scope of what flora (and fauna) is included in the new seed laws is all the more troubling. The basic principle seems to be "leave nothing out," and in many cases the coverage goes beyond all plant species to include microorganisms and as well. Venezuela goes so far as to include animal species. Paraguay is the only country to set forth a specific list of plant species brought under the control of the law, but this is merely a transitional step, indicating that the government may incorporate further species of its own volition, by decree.

Costa Rica – Article 2 (Bill of law)

The scope of application of this law comprehends seeds of all plant genera and species, including algae and fungi.

The actual impact of including such a wide scope of flora and fauna, once again, remains to be seen. In countries where the certification or control over seeds (defined in all cases as any reproductive material) is compulsory, the state (or those to whom the state delegates its functions) will have the power to obstruct not only to farming but also the use of medicinal plants, wild fruit and plants, fungi and algae.

This also means that the future not only of peasant seed systems will be left in the hands of the state or delegated companies. Companies and governments will also have the power to decide over many other aspects vital to the lives of rural communities and indigenous peoples such as medicinal plants, as well as other extractive activities. 

