

GENEVA ACADEMY Contribution to the Open Public Consultation on the Reform of EU Seed Marketing Rules

Towards a reform of EU seed marketing rules supportive of the implementation of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)

The UNDROP was adopted in 2018 by a large majority of the UN General Assembly.

When UNDROP was adopted, 23 EU Member States abstained, 2 voted in favour – Portugal and Luxembourg – and 3 voted against – Hungary, Sweden and the United Kingdom. In adopting UNDROP, the UN General Assembly called all Governments to promote its universal respect, without making any distinction based on States' votes; in conformity with the need for UN Member States to implement UN General Assembly resolutions in good faith.

UNDROP builds on several binding international instruments for EU Member States, including the ICESCR, the CEDAW, the CBD and its Protocols, and the FAO Plant Treaty. In international law, in accordance with the UN Charter, international human rights instruments take precedence in the hierarchy of norms over other international instruments, such as those protecting intellectual property rights (IPR).

The primacy of the rights of peasants, including their rights to food and seeds, over IPR is reflected in two UNDROP's articles, which provide that States shall elaborate, interpret and apply relevant international agreements to which they are party in a manner consistent with their human rights obligations as they apply to peasants (Art. 2(4)), and that they shall ensure that seed policies, plant variety protection and other IP laws, certification schemes and seed marketing laws respect and take into account the rights, needs and realities of peasants (Art. 19(8)). UNDROP also provides that States shall 'support peasant seed systems, and promote the use of peasant seeds and agrobiodiversity' (Art. 19(6)).

In the context of seed marketing rules, a concrete means to implement UNDROP consists in excluding peasant seed systems from the definition of seed marketing, and in strengthening their access to seeds by allowing peasant seeds but also seeds from locally adapted varieties (including those both included and excluded under current seed marketing rules) to be regulated and marketed under a self-standing regime. That is why we welcome current Option 2 of the reform proposals, to "create a specific EU framework for the exchange in kind between farmers of PRM and services restricting this activity e.g. to farmers belonging to an association/network". However, this framework should apply to all peasants, whether they choose to be members of an association or not.

To implement the right of peasants to save, use and exchange seeds (Art. 19.1(d) of UNDROP), the EU seed marketing acquis needs to consider these activities carried out by peasants as being outside of the scope of the legislation. Peasants should be allowed to save, use and exchange their seeds without mandatory variety or supplier registration, and without having to follow stringent seed production or labelling rules.

UNDROP also enshrines peasants' right to maintain, control, protect and develop their own seeds and traditional knowledge (article 19.2), which means that peasants' role in the development of new plant varieties or populations needs to be recognised by the EU seed marketing acquis. The reform should thus allow for a proportionate regime that allows peasants to sell the seeds and

other propagating material of varieties they have developed, ideally in a self-standing regime. In this light, a fair, impartial and appropriate system of evaluation and certification of the quality of peasant seeds should be established (Article 11.3 of UNDROP). The normative framework should be revised so that peasants' seed systems not only exist, but also fully operate and thrive as production and conservation systems, considering inter alia the potential detrimental impact of strict plant health regulations on peasants' right to seeds, and alleviate it.

According to UNDROP, the EU and EU Member States shall recognize 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 (Article 19.5). This means that the future reform needs to set the foundation to ensure that seeds of sufficient quality and quantity are available to peasants, at the most suitable time for planting and at an affordable price. Access to the seed market is today quite difficult in the EU for peasant communities or for actors who cater local varieties adapted to peasants' needs. To implement the rights of peasants to have access to the seed market and to a diversified seed market offer, the future reform should substantially review the market access regime for 'conservation varieties' and those with 'no intrinsic value for commercial crop production', so that the seed market also caters to the needs of peasants, offering them seeds from either uniform varieties or non-uniform populations adapted to local conditions, with adequate quality criteria (but no mandatory seed lot certification requirements), and labelling information that is relevant to them. The notification regime of organic heterogeneous material set out by Organic Regulation 2018/848 offers an interesting opportunity in that regard, but should be mirrored outside of organic certification requirements, which most peasants would not have access to in the EU.

Last but not least, UNDROP also provides that the EU and EU Member States shall ensure the full and meaningful participation of peasants in this reform process, but also in all decision-making procedures on matters relating to seeds (Article 19.1(c)). State obligations under UNDROP also call for the respect and support of the establishment and growth of strong and independent peasant organizations, addressing the existing imbalance of representation compared with more traditional actors of civil society or industry actors. We welcome the European Commission's efforts to include peasant organisations in this reform process, and wish to see them reflected in the policy and technical decision-making processes to be determined in the future, both at European and national levels.