

SEED LAWS IN LATIN AMERICA

The offensive continues,
so does popular resistance



Thousands of people have marched in protest against seed laws in Chile. (Photo: GRAIN)

Introduction

The world's agribusiness corporations are pursuing their attempts to privatize and monopolize our seeds. Behind their efforts is a clear goal: to make the age-old practice of saving and breeding seeds into a crime and gain monopoly control over seeds. Latin America has not escaped these attacks.

Much of this corporate activity is being carried out under the aegis of an international convention known as UPOV, but not all of it – some Latin American governments have come up with farm-unfriendly provisions of their own devising, involving patents on biotechnology “events,” health standards, marketing standards, certification laws, various types of record keeping requirements, tax rules, the misnamed “good agricultural practices,” research programs, seed market establishment policies, and more.

Eight years ago we wrote, “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.”¹

If anything has changed since then, it is that privatization strategies have become more numerous, extreme, and ambitious. What the multinationals and the governments were not expecting was the level of the popular resistance that has emerged at the national and regional levels.

What is UPOV?

The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization with its head office in Geneva, Switzerland. UPOV came into being with the adoption of the International Convention for the Protection of New Varieties of Plants. The Convention was adopted in Paris in 1961 and was revised in 1972, 1978, and 1991. The mission of UPOV is, according to the organization, “to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for

the benefit of society.”² In UPOV-speak, “protection” means privatization.

The history of UPOV is that of an ongoing and apparently limitless expansion of seed company rights along with a concomitant shrinkage of farmers’ rights and freedoms. The original convention only granted property rights over varieties developed by the party requesting them; it granted little more than an exclusive right to market a private variety and did not establish specific sanctions. With its subsequent revisions, UPOV now grants monopoly rights over “discovered” varieties and the production, marketing, export and import thereof. In addition, it allows property owners to apply for the confiscation of crops, plantations, harvests, and products derived from the harvest. It even allows companies to file criminal complaints, which can lead to prison terms for farmers.

UPOV 91 is the version of the convention now being imposed around the world under the pretext of “protection.” However, it has been clearly demonstrated that UPOV 91 violates farmers’ individual and collective right to save seed for replanting and allows corporations to monopolize biodiversity. These provisions give the corporations total commercial control over seeds and knowledge that were once owned collectively by whole communities. A further menace represented by UPOV is that it accelerates the erosion of biodiversity by promoting varietal uniformity. This is tremendously risky because uniformity can lead to crop loss and greater food insecurity. Finally, seed privatization hinders research and the free flow of knowledge.

In Latin America and the Caribbean, the following countries are UPOV members: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Trinidad and Tobago, and Uruguay. Of these, only Costa Rica, Panama, the Dominican Republic, and Peru are currently applying UPOV 91.³

The bottomless pit of corporate ambition

The seed laws now being drafted amount to the wholesale application of UPOV 91 and in some cases go even further. For example:

a) They allow for the privatization of “discovered” varieties. Not only is this nonsensical from the standpoint of

1. “Seed laws: imposing agricultural apartheid,” GRAIN, 29 October 2005.

2. [UPOV](#).

3. [Ibid](#).

intellectual property law (only human inventions are patentable), it is absurd when applied to plant varieties, which are mostly the work of many human beings over long periods of time. In other words, the new laws allow companies or research institutes to take what does not belong to them: the indigenous plant varieties developed by farmers. This theft is facilitated by the absence of any provision in the laws that would prevent varieties shown to be already circulating in peasant agriculture from being declared “new.”

b) The theft becomes truly outrageous where new laws grant property rights over “similar” varieties as well, regardless of how long these have been in existence. In other words, UPOV laws legalize retroactive theft. One such clause, included in Resolution 970, put forward by Colombian Institute for Livestock and Agriculture (ICA), touched off a farmers’ strike that forced the government to withdraw the resolution.

c) Penalties for those who refuse to make sense out of this nonsense are significantly increased. Not only can seeds be confiscated, so can the crops, plantations, harvests, and products derived from them. The offences are summary in nature, meaning that complainants can avoid lengthy evidentiary proceedings and still obtain the confiscation of the materials in question. Practical experience provides good reasons to fear that the corporations will try to scare farmers and peasants who dare to rebel by hitting them with multiple complaints under these laws. The situation is exacerbated by the option for the corporations to file criminal complaints, which can result in jail terms for the farmers.

This is the heart of the UPOV laws. Some of them go even further: in the Chilean case, the law initially gave enforcement power to the seed companies, creating a de facto private police. The Argentine bill creates a mandatory registry of “seed users” – meaning anyone who grows food, for a living or otherwise.

And the UPOV laws themselves are only part of the story. Certification and marketing laws have been a central feature of seed privatization campaigns in Mexico and Colombia. Brazil has turned to marketing standards. In Argentina, the privatization of biotechnological “events” is making unfortunate headway, while throughout the Southern Cone, corporations are creating a parallel legal universe by forcing their customers to sign royalty-bearing private contracts. Almost everywhere we find credit and technical assistance policies being made contingent on the use of seeds produced by corporations or research institutes.

All these mechanisms work together towards a single goal: absolute corporate control over seeds.

Resistance is growing and spreading

But Latin America is also where citizens have successfully resisted many such attempts to take away their rights. It is here that the most committed resistance has been seen. The following is a rundown of ongoing popular and peasant campaigns that have been key to the defeat of these corporate machinations.

Chile

The UPOV offensive in Chile differs little from what is taking place in other countries. Various provisions facilitate the appropriation of local seeds by corporations and criminalize peasants’ use of their own seeds. Absurd situations are created in which companies registering any variety as their own can stop people from using varieties “similar” to it. And the threat of confiscation of seeds, crops, and plantations is among the new measures imposed on peasant families who dare to continue doing what they have always done.

What the corporations and the government did not expect was the societal reaction against these measures. The first act in the drama was the passage on first reading, in 2010, of the UPOV 91-compliant Seeds Act, this over fierce opposition by peasant organizations (especially ANAMURI and CLOC-VC) and civil society groups.

Despite this initial defeat, the organizations continued to raise public awareness of the dangerous aspects of the act. As a result of their efforts, by the time Chile joined UPOV 91, domestic opposition had become much broader and more vehement. A group of senators appealed to the Constitutional Court to declare Chile’s UPOV membership unconstitutional. This initiative too was unsuccessful, but public education efforts continued under the impetus of the widespread social mobilization that has taken place since 2011.

Today, rejection of seed privatization and the “UPOV 91” Act has become a broad-based national concern which has, so far, kept the bill from being passed. Under pressure from the US government, the right-wing government fast-tracked the bill, attempting to push it through before the opposition could react. This time, mobilization took place all across the nation and involved high-profile marches, Internet-based information campaigns, radio programs, TV interviews, information sessions in rural communities and universities, meetings with religious authorities, conversations and discussions with senators, and so forth.

The impact of all this mobilization work was to break the silence on the issue in Chile and to convince a

majority of senators (21 of 38) to vote against the bill. Faced with this new situation, the government withdrew the bill, intending to postpone voting until after the November 2013 elections, when a number of its senatorial opponents will have retired.

At time of writing, in early October, peasant and civil society organizations are continuing to mobilize to ensure that the bill goes down to defeat.

Argentina

The bill to amend the Seeds Act in Argentina is the fruit of active lobbying by Monsanto beginning in 2003. It was then that the company began to request “legal certainty” for its investments in GMOs. Since the government of the day was not receptive to its overtures, the company announced that it was withdrawing from the country and would not introduce new events. In its battle to collect royalties, Monsanto asked the European courts to stop whole shiploads of GE soybeans from departing for Argentina because Argentina refused to pay for the genes they allegedly contained. The courts threw out Monsanto’s claim.

At the end of the last decade, the government repeatedly announced that it was going to table a new Seeds Act in Congress, but it was only in 2012 that a radical change of official stance took place. In June 2012, President Cristina Fernández announced at the Council of the Americas that further to conversations with Monsanto, the company would be making new investments in the country, focusing on a GE corn processing plant in the Malvinas Argentinas district of the city of Córdoba.

A few months later, in a joint press conference, Minister of Agriculture Norberto Yahuar and Pablo Vaqueros, President of Monsanto Argentina, announced the approval and launch of a new genetically modified soy variety called “Intacta” (resistant to glyphosate and insecticide) and an amendment to the Seeds Act to protect investors “because of the high costs they incur.” A commitment was made to table the corresponding bill in Congress before the end of 2012.

Civil society organizations reacted immediately, and with even greater vehemence when it became known that the draft under discussion was being negotiated in secret by the Ministry of Agriculture with the large seed trade associations and landowners. The call to reject the Seeds Act amendments spread across society and was taken up by a great many associations. It led to a range of oppositional activities, mobilizations, presentations, and documents.

An analysis of the leaked draft, obtained by its opponents, showed that it includes amendments to the

existing act (dating from 1973) designed to incorporate nearly the entirety of UPOV 91 into domestic law.

The National Indigenous Peasant Movement, Friends of the Earth, and GRAIN started a petition campaign which, by late November, had garnered the support of more than 500 civil society organizations and 3500 individuals.

The document “10 motivos para luchar contra el proyecto de ley que pretende privatizar las semillas en la Argentina”⁴ reads as follows: “the bill does not protect knowledge or biodiversity; it merely promotes privatization and protects property rights to what is in fact the collective heritage of our peoples, especially the peasant and indigenous communities. In this way, it puts forward an unacceptable principle: that it is possible and acceptable to privatize knowledge and various life forms.” It continues: “This paves the way to further expropriation and privatization of agricultural and wild biodiversity in Argentina. The bill makes possible the greater privatization of Argentina’s genetic resources and native biodiversity by expanding so-called plant breeders’ rights. In addition, it makes illegal or gravely restricts practices that have existed since the beginning of agriculture: seed selection, breeding, improvement, saving, reproduction, and exchange based on the previous harvest.”

The document concludes with a call to “reject this bill, which represents a grave attack on every inhabitant of this country. Agriculture fulfills an eminently social function, that of sustaining and feeding the entire population. To jeopardize the food security and sovereignty of Argentina by granting new privileges to transnational agribusiness corporations is to take the road of surrendering our national sovereignty.”

Due to the broad-based rejection of the initiative, the bill never made it into Parliament, and its opponents claimed a partial victory. In the initial months of 2013, the Minister of Agriculture announced that the bill would not be sent to Congress in an election year. However, he soon announced (under pressure from Monsanto, it seems clear) that the bill would be submitted to Congress right after the elections.

In the meantime, Monsanto is keeping up its offensive by forcing people who buy the new “Intacta” RR2 soybeans to sign an “extended royalty” contract. Monsanto states on its web site for this variety⁵ that “growers wishing to opt, at their own discretion, to use soybean

4. [“10 motivos para luchar contra el proyecto de ley que pretende privatizar las semillas en la Argentina”](#), MNCI, CLOC-VC Argentina, GRAIN, AT, ACBIO, 2 October 2012.

5. Monsanto, [“Licencia de uso, Intacta rr2”](#).

seeds containing the Intacta RR2 technology must sign a limited-use license with Monsanto for the technology." This provision attests to a very peculiar understanding of the concept of discretion that verges on the illegal.

Argentine civil society continues to monitor these developments closely and to act accordingly. One important step is a blockade, spearheaded by the groups "Asamblea Malvinas Lucha por la Vida" and "Mothers of Barrio Ituzaingó Anexo," of the intended construction site for a Monsanto plant, which has been ongoing for three weeks.

Colombia

In April 2012, the Colombian Congress passed Bill 1518 adopting the International Convention for the Protection of New Plant Varieties, thus complying with its obligation to protect the interests of agribusiness corporations under the free trade agreement (FTA) with the United States.

Colombian civil society immediately denounced the fact that the law had been passed without regard for higher-order provisions and international legal frameworks which obligate the government to guarantee the rights of everyone under its jurisdiction and, more specifically, to preserve the country's food sovereignty and security.

According to Grupo Semillas and the "Semillas de Identidad" campaign, UPOV was ratified "without regard for the fundamental right of ethnic minorities to prior consultation," and its main goal is to achieve "the granting and protection of plant breeders' rights. The strategy begins by establishing a set of conditions that native and indigenous varieties cannot meet because their genetic improvement was the result of farmers operating according to entirely different principles from those of modern plant breeders. It continues by enacting provisions for the protection of [corporate] economic interests and essentially forces farmers to use these seeds at the behest of the transnationals."⁶

Based on this analysis, a number of organizations appealed to the Constitutional Court and, in December 2012, obtained a decision declaring Law 1518 unenforceable.⁷ In so doing, they halted the progress of UPOV 91, arguing that the government had failed to consult the indigenous and tribal peoples in regard to legislative or administrative measures affecting them directly, as required by Article 6 of Convention 169 of

6. "[Propiedad intelectual y patentes](#)", Grupo Semillas, 18 May 2012.

7. "[Colombia: Declarada inexecutable la 'Ley de Semillas'](#)", Biodiversidad, 12 December 2012.

the International Labour Organization (ILO). While the threat of UPOV's approval still looms, the consultation process required by the Court has yet to be put in place. This decision caused consternation on the part of the United States, which asserted in the media its entitlement to sue Colombia for losses caused by the Constitutional Court's decision to declare the unenforceability of Laws 1518 and 1520, since these laws were intended to bring the country into compliance with the FTA.⁸

During 2013, events related to peasant struggles put the fate of seeds back in the spotlight. A documentary film, *9.70: la historia de la semilla privatizada*,⁹ by the young director Victoria Solano, sent shock waves through Colombian society as people woke up to the impact of seed privatization.

Resolution 9.70 of the ICA (Colombian Institute for Livestock and Agriculture) dates from 2010 and is intended to control the production, use, and marketing of seeds. This resolution applies the concepts of intellectual property law to seeds and was passed as a requirement for approval of the US-Colombia FTA. "The documentary analyzes the impact of the resolution, focusing on the case of Campoalegre, a town in southern Colombia where it was applied. In 2011, the ICA went to the town and confiscated 70 tons of rice. It later returned with law enforcement officials, and ultimately dumped the rice into a landfill, claiming that it was illegal," said the filmmakers.

The powerful public impact of the documentary coincided with the beginning of peasant mobilizations on August 19, which shook the country. The peasants' rejection of Resolution 9.70 became a central component of their demands. As a result of these campaigns, Resolution 9.70 was "frozen for two years" – an immense triumph for Colombia's peasants and civil society organizations. However, the central demand of the people of Colombia has yet to be granted: the outright repeal of the resolution along with any attempt to impose UPOV 91 through other channels.¹⁰

Venezuela

In Venezuela, a bill to amend the Seeds Act is making its way through the legislative process and causing great concern among civil society organizations. The situation

8. "[Caída de leyes de obtentor y de Internet afectaría TLC](#)", Portafolio, 27 January 2013.

9. "[9.70, la historia de la semilla privatizada](#)", Clementina Producciones - Victoria Solano, 2013.

10. "[Resolución 970 del ICA: congelar, derogar y reconstruir de manera democrática](#)", Grupo Semillas, 9 June 2013.

there is complex because the initiative inaugurates an intellectual property regime even as it takes the salutary step of banning GMOs.

The GMO-free Venezuela campaign¹¹ has been monitoring this bill and has called for “a ban on transgenic seeds in the country, a ban on any type of intellectual property rights or patents over seeds, and an expanded debate over the bill with a view to building an appropriate legislative framework in conjunction with the revolutionary popular collectives and movements.”

The bill’s proponents have stated in public that it will ban GMOs in Venezuela, but the popular campaign has expressed concern in regard to the “language of the bill, which continues to recognize plant breeders’ rights, does not clearly define the mechanisms that will be used for surveillance and punishment of those who violate the transgenic seed provisions, establishes a strict oversight regime for indigenous or common seed, establishes sanctions that may result in the criminalization of traditional seed exchange practices, and still lacks mechanisms for public participation. We consider all these aspects to be issues of concern to the popular movement in the continuing debate over this bill.”

The commitment to a broad public debate and the intense mobilization on the part of Venezuelan social movements have opened up the political space necessary for amendments to be made to the bill so that it meets popular demands.

Mexico

With the entry into force of NAFTA, a sequence of laws were passed¹² – first the Plant Varieties Act (1996),¹³ followed by the Biosafety Act (2005)¹⁴ and the Seeds Act (2007)¹⁵ – whereby the Mexican legal system took a big step towards seed registration, certification, patenting, and privatization. It is a clear attempt to force farmers to use lab-created seeds and to criminalize the saving and exchange of native seeds, even though these practices have formed the basis of indigenous, peasant, and indeed the entire country’s food systems for millennia.

Although Mexico did not sign the 1991 version of the agreement, its Seeds Act of 2007 explicitly provides

11. [Campaña Venezuela Libre de Transgénicos](#).

12. [“Leyes para acabar con la agricultura independiente”](#), GRAIN, 14 April 2010.

13. [“Ley Federal de Variedades Vegetales”](#), SAGARPA.

14. [“Ley de Bioseguridad de Organismos Genéticamente Modificados”](#) (pdf), CONACYT, 18 March 2005.

15. [“Ley Federal de Producción, Certificación y Comercio de Semillas”](#) (pdf), Government of Mexico, 15 June 2007.

for the criminalization of native seeds by establishing arbitrary quality and “stability” criteria that essentially amount to the freezing of varietal traits in time. It is as if seed evolution itself is being outlawed, and farmers are being made accomplices to the crime.¹⁶

This law, along with the Plant Varieties Act of 1996 (enacted to comply with UPOV) and its regulation of 1998, paved the way for the privatization of plant varieties and breeding materials, as well as for-profit variety concessions and sales under regulations highly favourable to the corporations.

In 2012, a vast coalition of peasant and civil society organizations succeeded in halting the UPOV 91 amendments to the Plant Varieties Act. The amendments would have had the grave outcome of granting private breeders “monopolies to obtain exclusive profits from the sale of seeds and other plant material for up to 15 years, or 18 in the case of perennial ornamental, forest, or orchard plants – even when the plants they used to develop the new varieties are in the public domain.”¹⁷ Genetically modified organisms were included pursuant to the Biosafety Act, which was absurd “since GMOs are created by introducing genetic material from non-plant species.”¹⁸

The “reloaded” version of the Plant Varieties Act would have given a key boost to the Seeds Act of 2007 in that it would have inaugurated a seeds policy along with a search and seizure system for uncertified or unregistered seed – absurdly termed “pirate seed” for lack of an invoice, when these varieties have been saved and exchanged for at least 6000 years. The amendments to the Plant Varieties Act have been postponed, but it would be a mistake to suppose they have been abandoned.¹⁹

In the rest of Latin America and the Caribbean, the situation varies depending on whether or not an FTA has been signed with the United States. This is the case for Costa Rica and the Dominican Republic, which have had to change their domestic laws in accordance with CAFTA, and for Peru, which also has an FTA with the United States. As for the rest of the continent, while there are no active attempts to push through UPOV 91, the general pattern of industry influence over government continues, and we may well see a push for UPOV in the coming months (e.g., in Paraguay).

16. [“Leyes para acabar con la agricultura independiente”](#), supra note 12.

17. [“Mexican farmers block Monsanto law to privatize seeds and plants”](#), Occupy Monsanto, 14 June 2012.

18. [Ibid.](#)

19. [Ibid.](#)

Resistance bears fruit

In the context of the ascendancy of agribusiness in the region, it is surprising that resistance to corporate control of seeds has borne fruit in nearly every country where campaigns have been mounted.

- In Argentina, the draft of the Seeds Act being discussed in secret never emerged from the Ministry of Agriculture to be tabled in Parliament.
- In Chile, societal mobilization helped secure a majority of senators to vote against the “Monsanto Bill.”
- In Colombia, peasant mobilization put a temporary stop to Resolution 9.70.
- In Venezuela, there are firm commitments to keep the principles upheld by Hugo Chávez from being betrayed.
- And in Mexico, societal campaigning prevented the Federal Plant Varieties Act from being revised for compliance with UPOV 91.

This brings us to October 2013. We don't know what will happen in the coming months, but it's clear that these wins do not mean the battle is over. The social movements are well aware of the continuing challenges involved with coordinating activities, raising awareness, and finding new allies to fend off future attacks. If we are to defend seeds as a heritage for all peoples, nothing less will do. We must all continue to dedicate ourselves to the success of the Seeds Campaign of Via Campesina.



GRAIN is a small international non-profit organisation that works to support small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems. *Against the grain* is a series of short opinion pieces on recent trends and developments in the issues that GRAIN works on. Each one focuses on a specific and timely topic.

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