

# “Free Trade” Agreements Are Criminalising Farmers’ Seeds for the Benefit of Multinational Corporations

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Global Research, November 18, 2014

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Theme: [Biotechnology and GMO](#)

What could be more routine than saving seeds from one season to the next? After all, that is how we grow crops on our farms and in our gardens. Yet from Guatemala to Ghana, from Mozambique to Malaysia, this basic practice is being turned into a criminal offence, so that half a dozen large multinational corporations can turn seeds into private property and make money from them.

But people are fighting back and in several countries popular mobilisations are already forcing governments to put seed privatisation plans on hold.

GRAIN has produced an [updated dataset](#) on how so-called free trade agreements are privatising seeds across the world.



Guatemala’s trade agreement with the US obliges it to adhere to the UPOV Convention. But popular resistance forced the government to repeal a national law passed for this purpose. (Photo: Raúl Zamora)

Trade agreements have become a tool of choice for governments, working with corporate lobbies, to push new rules to restrict farmers' rights to work with seeds. Until some years ago, the most important of these was the World Trade Organization's (WTO) agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Adopted in 1994, TRIPS was, and still is, the first international treaty to establish global standards for "intellectual property" rights over seeds.<sup>1</sup> The goal is to ensure that companies like Monsanto or Syngenta, which spend money on plant breeding and genetic engineering, can control what happens to the seeds they produce by preventing farmers from re-using them – in much the same way as Hollywood or Microsoft try to stop people from copying and sharing films or software by putting legal and technological locks on them.

But seeds are not software. The very notion of "patenting life" is hugely contested. For this reason, the WTO agreement was a kind of global compromise between governments. It says that countries may exclude plants and animals (other than micro-organisms) from their patent laws, but they must provide some form of intellectual property protection over plant varieties, without specifying how to do that.



Image right: In Costa Rica, the fight against the Central American Free Trade Agreement was very much a fight to prevent the patenting of the country's unique wealth of biodiversity and against UPOV – the Union for the Protection of New Plant Varieties. (Photo: Fighting FTAs)

Trade agreements negotiated outside the WTO, especially those initiated by powerful economies of the global North, tend to go much further. They often require signatory countries to patent plants or animals, or to follow the rules of the Geneva-based Union for the Protection of New Plant Varieties (UPOV) that provide patent-like rights over crop varieties. Whether in the form of patent laws or UPOV, these rules generally make it illegal for farmers to save, exchange, sell or modify seeds they save from so-called protected varieties.<sup>2</sup> In fact, in 1991 the UPOV convention was modified to give even stronger monopoly powers to agribusiness companies at the expense of small and indigenous farming communities. This 1991 version of UPOV now gets widely promoted through trade deals.

### Onslaught of FTAs

The North America Free Trade Agreement – signed by Mexico, Canada and the US, at about the same time TRIPS was being finalised – was one of the first trade deals negotiated outside the multilateral arena to carry with it the tighter seed privatisation noose. It obliged

Mexico to join the UPOV club of countries giving exclusive rights to seed companies to stop farmers from recycling and reusing corporate seeds. This set a precedent for all US bilateral trade agreements that followed, while the European Union, the European Free Trade Association and Japan also jumped on the same idea.<sup>3</sup>

A nonstop process of diplomatic and financial pressure to get countries to privatise seeds “through the back door” (these trade deals are negotiated in secret) has been going on since then. The stakes are high for the seed industry. Globally, just 10 companies control 55% of the commercial seed market.<sup>4</sup>

But for these corporations, that market share is still not enough. Across Asia, Africa and Latin America, some 70-80% of the seeds farmers use are farm-saved seeds, whether from their own farms or from neighbours or nearby communities. In these unconquered territories, the agribusiness giants want to replace seed saving with seed markets and take control of those markets. To facilitate this, they demand legal protections from governments to create and enforce corporate monopoly rights on seeds. This is where free trade agreements come in as a perfect vehicle to force countries to change their laws.

#### Latest trends

GRAIN has been tracking how trade deals signed outside the multilateral system are coercing countries to adopt the industry’s wish-list of intellectual property rights for seeds, and ratchet up global standards in that process, since 15 years. A recent update of our dataset shows that this trend is not letting up. In fact, there are worrisome signs on the horizon.

- The most important recent gains for Monsanto, Dupont, Limagrain and Syngenta – the world’s top seed companies – have come from new trade deals accepted by Latin American states. In 2006, the US (home to Monsanto and Dupont) closed major deals with Peru and Colombia forcing both countries to adopt UPOV 1991. The EFTA states (home to Syngenta) did the same in 2008 and the EU (home to Limagrain) in 2012.<sup>5</sup> In Central America, a similar pattern occurred. The US secured a very powerful Central America Free Trade Agreement in 2007, forcing all countries to adhere to UPOV 1991. EFTA did the same last year.



March Against Monsanto in Accra, Ghana – Under a clause included in an interim Economic Partnership Agreement concluded with the EU, Ghana’s government will have to negotiate rules on intellectual property, including traditional knowledge and genetic resources.

- An important step towards stronger proprietary seed markets was recently taken in Africa. After ten years of talks, Economic Partnership Agreements (EPAs) were concluded between the EU and sub-Saharan African states in 2014. Most of them “only” liberalise trade in goods for now, but also contain a commitment to negotiate common intellectual property standards with Brussels. The expectation is that those standards will be based on what the Caribbean states already agreed to in their 2008 EPA: an obligation to at least consider joining UPOV. This is significant because until now African states have been under no obligation to adopt UPOV as a standard, and actually tried to come up with their own systems of plant variety protection.<sup>6</sup> And while it’s true that African entities like the anglophone African Regional Intellectual Property Organisation (ARIPO) and the francophone African Intellectual Property Organisation (OAPI) are already joining UPOV, under the EU trade deals, countries themselves would be the ones to join. Further towards the horizon, Africa is harmonising within itself as its subregional trade blocs merge and unite to form a single continental free trade zone, supposedly by 2017. This is expected to bring with it an internal harmonisation of intellectual property laws across the continent, likely tightening the noose even further.
- The Trans-Pacific Partnership (TPP) agreement is possibly the scariest FTA under negotiation right now in terms of what it may do to farmers’ rights to control seeds in Asia and the Pacific. This is because the US, which is leading the talks with 11 other Pacific Rim countries, is playing hardball. Leaked negotiating text from May 2014 shows the US calling not only for UPOV 1991 to be applied in all TPP states but also for the outright patenting of plants and animals. We don’t yet know whether these demands will also appear in the Transatlantic Trade and Investment Partnership (TTIP) currently being negotiated between the US and the EU, as the text remains inaccessible to the public.
- While the extent of what has to be privatised expands, so do the penalties for disrespecting these norms. Under numerous FTAs, countries like the US require that farmers who infringe on these new intellectual property rights on seeds face punishment under criminal law instead of civil law. In some cases, like the recently concluded EU-Canada Comprehensive Economic and Trade Agreement (CETA), the mere suspicion of infringement could see a farmer’s assets seized or have their bank accounts frozen.<sup>7</sup>

Big battles heating up



Image right: Solidarity march in Melbourne, Australia: even Colombians far from home were shocked to learn how the US and EU trade deals have pushed Bogotá to criminalise farmers’ seeds. (Source: Erik Anderson/Flickr)

The good news is that social movements are not taking this sitting down. They are



becoming very active, vocal, bold and organised about this. In 2013, Colombians from all walks of life were shaken up when they saw firsthand how US and European FTAs could result in their own government violently destroying tonnes of seeds saved by farmers who did not know what the new rules were. The outrage, breaking out in the midst of a massive national agrarian strike, was so strong that the government actually agreed to suspend the law temporarily and re-examine the issue directly with farmers' representatives.<sup>8</sup>

In 2014, it was Guatemala's turn to be rocked when the general public realised that the government was pushing through the adoption of UPOV 1991 without proper debate because of trade deals like CAFTA.<sup>9</sup> People were furious that indigenous communities were not consulted as is required, especially when the purpose of the law – ultimately – is to replace indigenous seeds with commercial seeds from foreign companies like Monsanto or Syngenta. After months of pressure, the government backed down and repealed the law.<sup>10</sup> But – as in Colombia – this retreat is only temporary while other measures will be looked at. In yet other parts of Latin America, like in Chile and Argentina, new laws to implement UPOV 91, often dubbed “Monsanto Laws”, are also being intensely and successfully resisted by social movements.

In Africa too, waves of public protest are rising against the plant variety protection regimes which countries are now going into. In Ghana, a vibrant campaign is under way to stop the country from adopting UPOV 1991 legislation.<sup>11</sup>



September 2013 protest against FTAs: in Thailand, popular movements are resisting the possibility that talks over a free trade agreement between Thailand and the EU will result in UPOV being imposed on the nation's farmers. (Photo: FTA Watch)

Elsewhere, civil society networks like the broad based Alliance for Food Sovereignty in Africa are filing appeals to stop ARIPO from adopting UPOV-based legislation and joining the union.<sup>12</sup>

Corporate interest groups have pushed too far trying to privatise what people consider a commons. This is not limited to seeds. The same process has been going on with land, minerals, hydrocarbons, water, knowledge, the internet, even important microorganisms, like avian flu a few years ago or the Ebola virus today. People are fighting back to stop these things falling under the exclusive control of a few corporations or defence ministries. A good way to take part in this battle is to join the campaigns to stop important new trade deals like TTIP, CETA, TPP and the EPAs – and to get old ones like the US and European deals with Mexico, Central America, Colombia or Chile rescinded. Trade deals are where a lot of these rules do get written and that is where they should be erased.

For a closer look at the status of trade agreements that impose seed privatisation, download GRAIN's November 2014 dataset, "[Trade agreements privatising biodiversity](#)".

Going further

– GRAIN, "[Seed laws in Latin America: the offensive continues, so does popular resistance](#)", December 2013. (EN, ES, FR)

– Biodiversidad, "[Leyes de semillas y otros pesares](#)", September 2014. (ES only)

– Daily updates on trade deals at <http://bilaterals.org> or [@bilaterals\\_org](https://www.facebook.com/bilaterals.org) or <https://www.facebook.com/bilaterals.org> (EN, ES, FR)

Notes

1 "Intellectual property" is a government enforced monopoly right. It serves to ensure that people pay for the right to use something for a certain period of time, so that whoever invented it can recoup his or her investment. "Plant variety" means seeds which will grow into a specific kind of plant with specific characteristics.

2 Under the UPOV system, farmers can sometimes save seeds from protected varieties to use them again. It depends on which version of the UPOV Convention a country signs and whether the government exercises this option. Sometimes it is restricted to farmers' replanting the seeds on their own farm or to only certain crops or to payment of a licence. Under the patent system, it is simply illegal to use patented seeds without paying for them – even if a bird drops them onto your field!

3 EFTA is composed of Iceland, Lichtenstein, Norway and Switzerland.

4 ETC Group, "[Who owns nature?](#)", 2008.

5 Ecuador is also now negotiating with the EU, based on the text signed with Colombia and Peru.

6 For example, the Organisation of African Unity drafted its own model law on plant variety protection based on community rights.

7 See National Farmers' Union, "[CETA + Bill C-18 = too much power for seed companies](#)", June 2014.

8 GRAIN, "[Colombia farmers' uprising puts the spotlight on seeds](#)", September 2013.

9 Perhaps not very visible to the public eye was the 2013 EFTA-Central America FTA, which makes the same demands as CAFTA.

10 See EFE, "[Guatemala repeals plant breeder rights law](#)", 5 September 2014.

11 See the websites of [Food Sovereignty Ghana](#) and [Panafricanist International](#).

12 Alliance for Food Sovereignty in Africa, "[AFSA appeals to ARIPO, AU and UNECA for protection of farmers' rights & right to food](#)", 2 July 2014.

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