ANALYTICAL MAPPING
OF LEGAL AND POLICY INSTRUMENTS AND ACTORS
IN SEED GOVERNANCE IN NIGER
NO FOOD SOVEREIGNTY WITHOUT SEED SOVEREIGNTY

FULL REPORT

IN COLLABORATION WITH
SWISSAID
FiBL
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Niger is a vast country in West Africa covering an area of 1,267,000 km². It is populated by about 22 million people, the majority of whom are women and young people. About 87% of its population derives its livelihood mainly from agriculture and livestock. The country’s farmers have recognised expertise in the cultivation of millet, sorghum, cowpeas and onions, which cover more than 95% of the agricultural area, with an almost exclusive use of a wide variety of traditional farmers’ varieties.

The State of Niger is also among the good students in terms of ratification of international and regional legal instruments for the protection of human rights in general, and the rights of farmers/peasants in particular. It is one of the 122 UN member states that voted ‘Yes’ to the adoption of the UN Declaration on the Rights of Peasants and Other Rural Workers, Article 19 of which enshrines, in detail, the right of peasants to seeds. It has also ratified the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGFRA), which guarantees farmers, among other things, the right to save, use, exchange and sell seeds without hindrance. This means that everything predisposes the State of Niger to opt for a greater protection of peasant/traditional/community seed systems on which the food security of more than 80% of its population largely depends.
However, it must be noted that, in recent years, Niger, like most West African countries, has embarked on a series of reforms resulting in the enactment of various legal and political instruments tending to promote «conventional» or «industrial» seeds to the detriment of local, peasant, traditional seeds; and this, under the impetus, if not the obvious diktat of the seed powers and industries of the North. As a result, local peasant seeds are increasingly caught in a kind of legal «doldrums». Visibly under pressure from outside, southern states such as Niger are enacting trade rules, particularly favourable to the seed industry, which take back with the left hand what human rights rules give to peasants with the right hand.

To preserve farmers’ seeds from this logic of commodification, it is important to work towards the following recommendations:

1. Working to deconstruct the discourse tending to stigmatise peasant/local seeds: This involves designing and implementing promotional actions on the importance and usefulness of peasant seeds, deconstructing prejudices and preconceived ideas; this implies producing and disseminating evidence from various serious studies that prove the virtues and assets of agroecology, peasant seeds, etc.

2. Inform and sensitize farmers and farmers’ organizations on farmers’ rights and the stakes of the reforms underway in ECOWAS member countries: This involves making farmers aware of their fundamental rights as well as the means to claim them and assert them, both at national and international levels. It is also necessary to conduct information campaigns on the misdeeds of the current reforms in the seed sector in Niger.

3. Review the composition of the National Seed Committee to include farmers’ organizations and the TIRPAA focal point: This involves lobbying the government to increase the participation of farmers’ organizations in this body.

4. Revising community and national texts to remove provisions that criminalise the marketing of local seeds: This is to advocate for a better preservation of farmers’ rights to produce, use, exchange and sell their seeds, without any risk.

5. Make a citizen’s watch on seeds in West Africa: The aim is to strengthen citizen’s vigilance through a citizen’s control mechanism of public action in this field.

6. Create spaces for dialogue and convergence between farmers’ organizations on seed issues and farmers’ rights: this involves creating/strengthening multi-actor spaces for prospective reflection, alliance building and synergy of actions between POs/CSOs/NGOs and research institutions in the seed sector.

7. Investigate international, regional and sub-regional bodies to ensure that the fundamental rights of peasants are upheld: this involves exploiting the possibilities/opportunities offered by national and international human rights protection mechanisms to promote and protect the rights of peasants/farmers.

8. Invest in agroecology to realise the right to food and food sovereignty: This recommendation is part of the implementation of the State’s international obligations arising from Articles 2 and 11 of the ICESCR, which commit the State of Niger, like any other State Party, to «take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the right to food by all appropriate means, including particularly the adoption of legislative measures {...}». This is also the meaning of articles 153 and 146 of the Niger constitution, which require investment in agriculture and livestock to promote and achieve food sovereignty; however, there can be no real food sovereignty without seed sovereignty, given that for peasants, seed selection and multiplication, as well as the conservation and renewal of cultivated biodiversity, are inherent to agricultural production. Advocacy in this sense is therefore more than necessary.
INTRODUCTION

Covering a vast area of 1,267,000 km², Niger will have a population of around 22 million in 2020, the majority of whom are women and young people. It is a country where three quarters of the food is produced by small farmers who use only a quarter of the available land and water resources. The majority of them select and produce their own seeds in their fields, since time immemorial. They practice a peasant agroecology with regular exchanges of seeds with their neighbours to renew their diversity. Nigerien farmers have internationally recognised expertise in the cultivation of millet, sorghum, cowpea, onion, which cover more than 95% of the agricultural area (FAOSTAT 2016) with an almost exclusive use of a large diversity of traditional peasant varieties. Nearly 7,000 samples of this diversity from Niger’s peasant farmers, including 83% of millet and sorghum, are stored as genetic resources in the cold rooms of ICRISAT’s international research centres’ gene banks to be made available to breeders worldwide.

In addition, Niger is party to most of the international legal instruments that protect human rights in general and the rights of peasants, such as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the conventions on biodiversity. The country is also among the 122 UN member states that voted «Yes» to the adoption of the UN Declaration on the Rights of Peasants and Other Rural People (hereafter UNDROP) on 17 December 2018. It is also one of the few countries in West Africa to have explicitly enshrined the right to food in its constitution and food sovereignty. A priori, everything predisposes the State of Niger to opt for a greater protection of peasant/traditional or community seed systems on which the food security of more than 80% of its population largely depends.

Unfortunately and against all odds, it has been observed since 2012 that this country has undertaken a series of reforms tending to promote «conventional» or «industrial» seeds to the detriment of local, peasant, traditional seeds. This unfortunate trend is not specific to Niger. It is part of a wider dynamic of implementation of a community regulation adopted in 2008 on the Harmonisation of Rules Governing Quality Control, Certification and Marketing of Plant Seeds and Seedlings in the ECOWAS region, under the impetus and even the diktat of external state and economic/financial powers. However, it is widely accepted that «the use of industrial, improved or genetically modified seeds cannot meet the needs of peasant agroecology. Industrial seeds are too expensive. They are selected and produced in large quantities for distribution over very large areas and cannot be adapted to each local terroir» (Via Campesina, September 2016).

To better understand the dynamics of this visibly anachronistic process, the AFSA, SWISSAID and FIBL consortium deemed it useful to conduct a study to map out the legal and political instruments as well as the actors playing a direct or indirect role in the seed sector in Niger.

This study was carried out by a consultant identified in the field. The methodology used to prepare this report combined individual interviews with key informants and research-analysis of relevant documents on the subject. It was conducted considering the coexistence, now in this country, of two seed systems whose elements and characteristics deserve to be studied in order to grasp their essence. On the one hand (I), the peasant/traditional or community seed systems and, on the other hand, the conventional, ‘formal’ or industrial seed system. Both systems will be studied below, highlighting the legal, policy and institutional framework.

\[2\] Art 12: «Everyone has the right to adequate food»;
\[3\] Art 146: «public policies must promote food sovereignty».
\[4\] AFSA and GRAIN (2014): CHALLENGING THE LAND AND SEED LAWS, Who is pulling the strings of change in Africa?
I. TRADITIONAL, CUSTOMARY, PEASANT SEED SYSTEM, DOMINANT IN PRACTICE, BUT MARGINALISED

In truth, without being named as such because it seemed self-evident, the seed system has always been peasant; it is self-evident in the sense that «for millennia, the selection and multiplication of seeds, as well as the conservation and renewal of cultivated biodiversity, have remained intrinsically linked to the work of agricultural productions» of which the peasant is a central, almost exclusive actor. However, it is the gradually hegemonic advent of the industrial seed system that has made the need for such a baptism necessary: «farmers’ seeds».

Roughly speaking, it is accepted that «the peasant seed system is about local or farmer seed and involves two activities: seed multiplication and varietal selection that are carried out simultaneously on the same plot at harvest time» (Prof. Irina Vekcha).

Characterising what it means in Niger involves an examination of both the legal instruments and the actors involved.

1.1. Mapping the normative framework involved in protecting farmers’ seed rights

The legal protection of peasants and their seed system combines an international dimension and a national dimension. Both form the legal corpus for the protection of the fundamental rights of peasants, including the right to seed, to food and to food sovereignty.

1.1.1. International normative framework, a strong recognition of farmers’ rights to seeds

There are many international legal instruments that contribute to the protection of peasants’ rights. Most of them are legal instruments under international human rights law (IHRL), in that they aim to protect the dignity of the human being, «without distinction of any kind, such as race, colour, sex, language, religion, political or

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6 This notion implies the regional (ECOWAS and African) and universal (UN system and others) level
other opinion, national or social origin, property, birth or other status\textsuperscript{9}. We cannot list them all here. However, for the purposes of this study, we can confine ourselves to the main legal instruments of reference that form the international legal basis that all defenders and promoters of peasants’ rights must know and appropriate to serve as legal arguments and «tools\textsuperscript{8} of peasants’ struggles for a common future. Among the said international legal instruments, the following should be noted

(I) The United Nations Charter or San Francisco Charter of 1946: This is the founding text of the United Nations (UN). It is also the founding treaty of human rights, for it is through this charter that the peoples of the United Nations proclaimed their faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small (preamble). Articles 55\textsuperscript{9} and 56\textsuperscript{10} of the said Charter constitute, among others, «the normative seat of human rights. Therefore, subsequent legal instruments can be considered either as an authoritative interpretation of these relevant provisions of the San Francisco Charter or as codification instruments\textsuperscript{11}.

(II) The International Bill of Human Rights: This term includes the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) and the 1966 International Covenant on Civil and Political Rights (ICCPR). The first two explicitly enshrine, among others, the right to an adequate standard of living and the right to food (art 25 UDHR and art 11, ICESCR); while the latter guarantees to all, the right to self-determination (art 1 common with ICESCR), the right to information (art 19), and to participate in public life (art 25), either directly or indirectly. These rights imply, for peasants, the right to participate in the definition and implementation of public policies that may affect them, including seed policies. These instruments imply many other rights such as the right to life, to health, to education, the right of peasants to an effective remedy before the competent institutions to assert their rights and obtain compensation in case of violation, etc.

(III) The African Charter on Human and Peoples’ Rights (ACHPR) of 1981: Unlike the above-mentioned instruments, which are binding on the international community, the ACHPR is binding only on African states. It includes almost all the human rights recognised in the above-mentioned universal instruments. In addition, it enshrines other important collective rights such as the right to development, the right to a healthy environment and the right to natural resources. Article 21 of the ACHPR states: «Peoples have the free disposal of their natural wealth and resources. This right shall be exercised in the exclusive interest of the people. In no case may a people be deprived of it [...]». This means that in case of spoliation of peoples’ seed resources, it is possible to refer to national (jurisdictions or National Human Rights Commission (CNDH)) and regional (ECOWAS Court of Justice, African Court or Commission on Human and Peoples’ Rights) institutions.

(IV) The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) of 2001: Its preamble is rich in considerations, recognitions and strong statements in favour of the recognition and protection of the farmers’ seed system. It states, inter alia, (I) «that the conservation, exploration, collection, characterisation, evaluation and documentation of plant genetic resources for food and agriculture are essential for the achievement of the goals of the Rome Declaration on World Food Security and the World Food Summit Plan of Action, and for sustainable agricultural development for present and future generations, and that the capacity of developing countries and countries with economies in transition for these tasks should be urgently strengthened; that (II) «plant genetic resources for food and agriculture are the essential raw material for crop genetic improvement, whether through farmer selection...» (II) «Plant genetic resources for food and agriculture are

\textsuperscript{9} This non-discrimination clause is included in all human rights treaties.
\textsuperscript{8} Read Coline Hubert, The UN Declaration on the Rights of Peasants: A tool for a common future, CETIM. PUBLICETIM N°42, Geneva 2019. 208 pages
\textsuperscript{9} The solution of international economic, social, health and related problems, and international cultural and educational co-operation: c. Universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.
\textsuperscript{10} According to Article 56 of the Charter: “Members undertake, with a view to achieving the purposes set forth in Article 55, to take joint and separate action in cooperation with the Organisation.
\textsuperscript{11} Ibrahim Dori, the implementation of the right to food in Niger, Master II thesis in international law and human rights, ISDIH 2019.
the essential raw material for the genetic improvement of crops, whether through farmer breeding..., conventional plant breeding methods or modern biotechnology, and play an essential role in adapting to ecological changes and unpredictable shifts in human needs»; that (III) «issues concerning the management of plant genetic resources for food and agriculture are at the intersection of agriculture, environment and trade, and are convinced that there should be synergy between these sectors.

The ITPGRFA is one of the first international legal instruments not only to explicitly recognise the historical, present and future importance of farmers’ seeds, but also to recognise the centrality of these resources to the sustainable realisation of the right to food, and to enshrine/explain specific farmers’ rights in this area.

Three (3) key articles are directly relevant to the protection of the seed system and farmers. These are articles 5, 6 and 9 of the ITPGRFA. But it is mainly article 9 that is dedicated to the rights of farmers.

Although it may, at first sight, give the impression of relaxing the legal content of the protection it offers through the phrase «subject to national legislation», which may be interpreted, by some, as granting a wide margin of manoeuvre to the Governments of the States Parties, Article 9 of the ITPGRFA commits States to «take measures to protect and promote Farmers’ Rights» (Art. 9.2). Under this article, Farmers’ Rights include, but are not limited to, «the protection of traditional knowledge relevant to plant genetic resources for food and agriculture» (Art 9.a), «the right to participate equitably in the sharing of benefits arising from the utilization of plant genetic resources for food and agriculture,» (art 9.2.b); and «the right to participate in decision-making at the national level on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture,» art 9.2.c).

In fact, the so-called flexibility is only apparent, as paragraph 9.3 of the same article unequivocally states that «nothing in this Article shall be construed as limiting the rights that farmers may have to save, use, exchange and sell farm-saved seed or propagating material. It follows that farmers have the full right to save, use, exchange and sell farm-saved seed or propagating material. No national law should intervene to limit or prohibit the full and effective exercise of these rights. In other words, national laws that tend to criminalise the marketing of seed that is not registered in the national or regional catalogue should be interpreted as not including farmers’ seed in this prohibition. And that farmers’ seed should be lawfully saved, used, exchanged and marketed, without any risk related to its nature as farmers’ seed.

(V) The 2018 United Nations Declaration on the Rights of Peasants and Other Rural Workers (hereafter UNDROP): This is the first international legal instrument exclusively dedicated to the rights of peasants. UNDROP is not to be understood as a soft law instrument, without binding value, but rather as an interpretative statement of other binding human rights treaties in the sense of helping to read and adapt them to the specific needs of peasants and other people working in rural areas, as full members of the «human family». This meaning is clear from the preamble of the UNDROP, which begins by recalling «the principles proclaimed in the Charter of the United Nations» and then goes on to refer to/enumerate by name almost all the international legal instruments relating to human rights. Through its preamble, the authors of this important text referred to both instruments of general human rights protection such as the International Bill of Human Rights and other treaties of categorical human rights protection.

Article 19 of this declaration is exclusively dedicated to the consecration and interpretation of what the right of peasants to seeds means.

1. Peasants and other persons working in rural areas are entitled to the right to seeds, in accordance with Article 28 of this Declaration, which includes :

b. The right to protection of traditional knowledge relating to plant genetic resources for food and agriculture ;

c. The right to participate equitably in the sharing of benefits arising from the use of plant genetic resources for food and agriculture;

d. The right to participate in decision-making on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture;

e. The right to save, use, exchange and sell farm-saved seed or propagating material.
2. Farmers and other people working in rural areas have the right to perpetuate, control, protect and develop their seeds and traditional knowledge.

3. States shall take measures to respect, protect and fulfil the right to seed of farmers and other persons working in rural areas.

4. States shall ensure that farmers have access to sufficient quality seed at the most appropriate time for planting and at an affordable price.

5. States shall recognise the right of farmers to use their own seed or other local seed of their choice, and to decide which crops and species they wish to grow.

6. States shall take appropriate measures to support farmers’ seed systems and promote the use of farmers’ seed and agrobiodiversity.

7. States shall take appropriate measures to ensure that agricultural research and development incorporates the needs of farmers and others working in rural areas and that farmers and others working in rural areas participate actively in the setting of priorities and the conduct of research and development, taking into account their experience, and shall increase investment in research and development on crops and orphan seeds relevant to the needs of farmers and others working in rural areas.

8. States shall ensure that seed policies, plant variety protection and other intellectual property laws, certification systems and seed marketing laws respect and consider the rights, needs and realities of farmers and others working in rural areas.

Art 19 The United Nations Declaration on the Rights of Peasants and Other Rural Workers.

This important declaration on the rights of peasants, structured around 28 articles, is closed by a safeguard clause, which has the appearance of a warning and a cautionary note, which makes it quite clear that «nothing in this declaration may be interpreted as diminishing, altering or nullifying any rights that peasants and other persons working in rural areas and indigenous peoples already have or may acquire in the future» (art. 28.1) and finally that national laws must be consistent with international human rights obligations», (art 28.2).

Another interesting aspect of this declaration is that it
has taken care to define the term «peasant» to which it attributes rights in the following terms: «A peasant is any person who carries out or seeks to carry out, alone or in association with others or within a community, small-scale subsistence and/or market-oriented agricultural production that relies heavily, but not necessarily exclusively, on family or household labour and other non-monetary forms of work organisation, and who has a special relationship of dependence and connection to land», art 1er, UNDROP. An interactive interpretation of this statement with the ITPGRFA requires that ‘peasant’ and ‘farmer’ are interchangeable and strictly synonymous terms, and that it is inadmissible to describe their seed system as ‘informal’; for it has a solid legal basis, deriving both from custom and international human rights law.

Having examined the place of the peasant seed system in international human rights law, we now turn to the protection of the peasant seed system in the national legal framework.

1.1.2. National normative framework, insufficient or even residual protection

While Niger’s constitution places international treaties above laws12, Niger’s legislator tends to disregard them, particularly around human rights. Indeed, if it is true that traditional peasant seed systems have existed for thousands of years and that they benefit from a strong international normative protection, it must be noted, unfortunately, that the place given to them in the national normative framework is only very marginal and residual. In any case, its importance is very much «underestimated»13 in laws and regulations as well as in policy instruments; to the point where this majority and historically oldest peasant seed system is sometimes referred to as «informal».

According to the law N°2014-67 of November 5, 2014, supplementing the regulation c/reg.4/05/2008 on the Harmonization of the Rules Governing the Quality Control, Certification and Marketing of Plant Seeds and Propagating Material in the ECOWAS region, farmers’ seeds are referred to as «traditional varieties» which it defines as «plant material selected in situ over decades by the populations», (art 1er). These traditional varieties constitute a national heritage. They are managed in the interest of the nation and in accordance with the international conventions ratified by Niger, (art 4). These traditional varieties are distinguished from «created varieties which are the property of breeders».

Article 9 of this law also provides for the creation, at the Ministry of Agriculture, of (i) a national catalogue of plant species and varieties (CNEV) to register approved seeds and (ii) a ‘register of traditional varieties of Niger’. However, after verification, this register has not yet been created, whereas the CNEV exists even if it is not up to date.

In view of its title and content, this law, as well as the subsequent application texts, is clearly designed to govern conventional seeds. Traditional seeds are only dealt with incidentally. However, a cross-reading of this law with the 2008 ECOWAS Seed Regulation, the 2012 National Seed Policy (NSP) and the 2018 National Strategy to Support Community-Based Production Systems for Improved Seeds, can help to identify signs of serious threats to the exercise of farmers’ rights, in particular their right to save and sell/market their seeds. The stated vision of this strategy is to bring «community-based seed production systems to fully master all quality seed production techniques, to comply with the regulations in force, to be financially viable and to contribute 50% of the overall quantity of certified seed produced in the country»14. It has seven (7) strategic objectives namely (I) to improve access of community systems to basic seeds and fertilizer, (II) to ensure better support and advice, better information and better training of community systems, (III) to ensure better organization of community systems of quality seed production and to train and inform these actors, (IV) guarantee the best conditions for effective certification of seed production, (V) find solutions to the problems of seed storage and packaging infrastructures, (VI) put in place mechanisms enabling FOs to sell their seeds at appropriate times and at remunerative prices and (VII) and enhance CPT15, CPR16, CFJA17 and CRMS18 to produce more quality seeds19.

12 Article 171 of the Niger Constitution.
14 National Strategy, p.31.
This strategy, whose development process is supported by USAID, is in line with the certification logic, in the sense of the ECOWAS community regulation; it specifies, moreover, that «quality seed means certified seed», page 5.

Indeed, Article 70 of the ECOWAS regulation announces the prohibition of marketing seeds of varieties not registered in the catalogue in these terms: «only seeds of varieties registered in the West African Catalogue of Plant Species and Varieties shall be marketed at the regional level»; while the 2014 law provides for criminal sanctions of up to two (2) years imprisonment and a fine of one million (1,000,000 FCFA) against those who, among other things, «produce seeds without a professional card, commercialise seeds without approval, produce or commercialise seeds or any other plant genetic material not registered in the official seed catalogue». This penal repression is part of the government’s reinforcement, under the influence of neoliberal forces, of the «formal system that benefits from incentives and state support»20. «Incentives, support and assistance from the state as well as control activities will be developed in favour of the formal system» announced the NSP already in 2012, two years before the adoption of this repressive law.

The combined effects of the ‘informal’ characterisation of farmers’ systems and the criminal sanctions against the marketing of seed of non-catalogued varieties are unfortunate in that they tend to saddle farmers’ seed with unfavourable prejudices to the extent that, in the long run, they are tipped from informality to illegality.

1.1.3. Mapping of the actors in the field

In contrast to the conventional seed sector, which separates seed production activities and actors from those of food production, traditional farmer seed systems integrate both functions. This means that farmers are the main actors alongside state institutions for the supervision of the rural world.

Traditionally, the actors as well as the farmers’ seed systems are as diverse as they are varied, depending on the types of crops and the terroirs. They are organised horizontally by producers who have been selecting, multiplying and exchanging varieties for generations according to rules of use that they themselves define.

From the point of view of actors and scope of activities, a certain mutation can be observed with the advent of new actors who, without being farmers as such, are also far from being considered as ‘industrialists’. We thus speak of the community system which includes activities concerning very small seed enterprises, village seed groups, informal seed supply systems and other local seed systems supported by associations and NGOs.

Among the state or inter-state actors involved in this field, we can note the administrative apparatus of the ministry in charge of agriculture and livestock, research institutions such as INRAN, ICRISAT, the national ITPRGFA focal point, technical and financial partners, etc., each of which, according to their competences and sensitivities, participate in the life and reinforcement of peasant and community seed systems.

The actual examination of the interactions between actors will take place after dealing with the conventional or formal seed framework.

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20 Centre for Technical Development.
21 Rural Development Centre.
22 Training centre for young farmers.
23 Regional Seed Multiplication Centre
24 op.cit. p.32.
II. A FORMAL SEED SYSTEM STRONGLY FOCUSED ON THE INDUSTRIAL MARKET

Everything indicates that this system is increasingly attracting the attention of various influential actors, given the observation of a significant profusion of standards and tools favourable to the commodification of seed resources. The year 2008 was not only marked by a profound crisis in the international system; it was also a turning point in the rush of large industrialists to exploit the land and seed resources of the African continent. The West African normative field is, for the moment, a privileged field of observation of this rush of industrialists for ‘green gold’.

2.1. Mapping a growing normative framework

Looking at the prodigious development of the legal framework for conventional seed, it is clear that West Africa is in the crosshairs of the industrial seed market.

2.1.1. International normative framework focusing on the interests of breeders/inventors

At the level of the international legal framework relating to seeds, four (4) main legal instruments draw our attention in that they are likely to apply to West African States including Niger. They are notably

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 1994 and revised in 2017: This treaty is part of the legal corpus of the World Trade Organisation (WTO). Article 27 of this treaty establishes the principle, subject to certain conditions, that «a patent may be obtained for any invention, whether for a product or a process, in all fields of technology, provided that it is new, involves an inventive step and is capable of industrial application». It also leaves open the possibility for States «to exclude from patentability a) diagnostic, therapeutic and surgical methods for the treatment of persons or animals; b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties by patents, by an effective sui generis system, or by a combination of these two means.

The Bangui Agreement Establishing an African Intellectual Property Organisation, Act of 14 December 2015: The original agreement of the same name dates back to 1977 before being revised in 1999 and again in 2015. At the
same time as it created the African Intellectual Property Organisation (OAPI), this agreement also includes annexes that may concern seed resources. These are mainly Annex I which deals with patents, Annex V on trade names, Annex VI on geographical indications and Annex X which regulates the protection of plant varieties. The incredible feature of this agreement is that it considers that the 17 original member states and any other state that may accede at a later date are, by this very fact, committed to «accede» almost automatically to all other international and regional treaties in force in this field (Preamble, Bangui Agreement) such as the UPOV conventions. The original member states of this agreement are Niger, Benin, Burkina Faso, Côte d’Ivoire, Guinea, Guinea Bissau, Mali, Senegal, Togo, Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea, Mauritania, Chad and the Union of Comoros. In addition, this Bangui agreement takes up the quintessence of the UPOV conventions. And on 10 July 2014, OAPI marked its accession to the 1991 UPOV convention. A real conventional mess!

The International Convention for the Protection of New Varieties of Plants of 1991: this follows on from the 1961 Convention, revised in 1972 and 1978. This convention can be considered as a pioneer of international treaties on plant breeding, in that it organizes the rules relating to the conditions for the grant of a breeder’s right, the issuance of a plant variety certificate (VOC) and the scope of the rights attached to it. It is practically the first to establish the five (5) criteria-conditions for the grant of a plant variety certificate (PVC), namely (i) novelty, (ii) distinctness, (iii) uniformity and (iv) stability, in its chapter III. It confers on the breeder rights over the developed variety for a long period which «shall not be less than 20 years», art 19. The scope of the rights in question and the exceptions to them are determined by articles 14 and following of the Convention. With a few nuances, the substance of this convention is included in both the Bangui Agreement (Annex X) and the ECOWAS Regulation.

The regulation c/reg.4/05/2008 on the Harmonisation of the Rules Governing the Quality Control, Certification and Marketing of Plant Seeds and Propagating Material in the ECOWAS region: This text is part of the legal arrangements in the same ideological vein as the above-mentioned conventions. As a community regulation, it has supranational legal authority.

The common feature of these international legal instruments is that they seek, through various legal subterfuges, to separate the activities of seed production/marketing from those of food production, with the obvious aim of confining farmers to the sole activity of food production. And subsequently to guarantee the private market sector the exclusive ownership and trade of seed resources. The only small consolation prize that is claimed to be reserved for peasants/farmers consists in leaving a certain margin to States to «restrict the breeder’s right in respect of any variety in order to allow farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety».

It should be noted that protection of plants by a sui generis system such as the plant variety certificate (PVC) would not exclude the application of patent law to this field. This is also apparent from the normative content of Article 2 of the Bangui Agreement and Article 27.3b of TRIPS. However, the VOC differs from the patent «on plant varieties» in its subject matter and the scope of the rights it confers on its holder. The duration of their validity is almost the same, over 20 years.

The PVP protects only new varieties of plants and not their breeding processes. The PVP is not about a «genotype» but about a «phenotype». «It does not protect the genetic information itself but the specific combination of genes resulting in the new variety»21; whereas the patent grants full exclusivity to its holder with the possibility «to prohibit the use of the transgenic plant without its authorisation, including for experimental purposes»22.

The above indicates the existence of legal cracks in the possibilities of introducing GMOs/LMOs into this area. Vigilance must therefore be reinforced.

2.1.2. National normative framework organizing the conventional seed sector in Niger

The national legal framework is essentially composed of laws and regulations for the domestication of international standards relating to industrial seeds. How can it be otherwise when one notes that the main foreign organisations that forcefully promote, accompany in a very interested way, if not dictate the process of transposition...
of these international standards, are from countries such as the USA and France. The former (USA) is the world’s largest exporter of GMOs and second largest exporter of seeds, while the latter (France) is the world’s largest exporter of seeds (Bob Brac, 2016). This is enough to grasp the spirit of the reforms underway in West African countries, including Niger.

Civil society organisations denounce this kind of legal crossfire, the ultimate aim of which is to allow ‘foreign investors’ to get their hands on Africa’s green gold; it being understood that these types of reforms are also being carried out in the land and fertiliser sectors.

Specifically in the field of seeds, Niger adopted a law in 2012 that is in line with the ECOWAS regulation. The Nigerien legislator took care to exclude genetically modified organisms (GMOs) from the scope of this law (Art 3). Its purpose is not only to set the technical and financial rules relating to the control and marketing of seeds, but also to determine the instruments and bodies for the management of the conventional seed system. It is completed in this undertaking by a package of regulatory acts (decrees and orders).

From these texts, the following main instruments and bodies can be identified:

Plant Breeders’ Rights and Certificates (PBRs): This is the title issued to protect a new plant variety. It confers rights on the breeder called plant breeders’ rights (PVR). For this to happen, the new variety must be registered as a result of a long and costly process of verification and control, in the laboratory and in the field, of the D.H.S. (Distinctness, Homogeneity and Stability) and V.A.T. (Agronomic and Technological Value) criteria. In Niger, this control is carried out by seed inspectors under the Direction du Contrôle et de la Certification des semences (DCCS). It has a total of only about 50 agents in 2020 against about 77 in 2019. The law (art 11) specifies that the protection afforded by the PVP «does not affect the right of farmers to use the variety for food production purposes, nor the right to use the variety for research and training purposes».

National Catalogue of Plant Species and Varieties (CNEV): While it is noted that the national catalogue of plant species and varieties was developed and published in Niger in 2010 and then revised in 2012, its legal basis seems to have been established, a little later, by the order of 16 September 2014 establishing it. According to this decree ‘the CNEV is an official document that contains the list of all species and varieties registered in Niger’ (art2). In principle, this list is transmitted by the National Seed Committee (CNS) to the West African Seed Committee (COASEM) to be registered in the West African Catalogue of Plant Species and Varieties (COAFEV), in accordance with Article 9 of the Community Regulation. Unfortunately, the CNEV has not been updated since 2012. However, it is noted that out of the 135 varieties listed in the 2016-2018 COAFEV, eleven (11) varieties come from the Niger list. These are mainly six (6) millet varieties, two (2) maize hybrids, one (1) sorghum hybrid and two (2) cassava varieties.

Professional card and approval for the marketing of plant seeds and seedlings: The exercise of seed production and/or marketing activities is conditioned by obtaining an approval and a professional card. «No one can market locally produced or imported certified seeds and seedlings without the approval of the Minister of Agriculture», art 2 of the joint order N*2014/MAG/EL/MF of 11 November 2016. The duration of the approval is three (3) years, renewable.

Various financial conditions: The registration of varieties in the various catalogues, the approval procedures, obtaining a professional card for the production and marketing of seeds, as well as the control and certification operations give rise to the payment of various fees. For example, the cost of obtaining approval is set at 75,000 CFA francs for wholesalers and 25,000 CFA francs for retailers, the certification fee per service varies between 15,000 CFA francs per hectare for rice and 3,000 CFA francs for other cereals, etc.

Seed Sub-Sector Support Fund (SSF): This is provided for in the 2014 law. According to articles 21 of this law and 8 of the joint order (Ministries of Agriculture and Finance), the various amounts collected for penalties, under the single registration fee, the certification fee and the obtaining of approval are fully paid into the FASS account. The function of this fund is not yet clearly specified, as the law to determine its mission and operation has not yet been adopted. However, the various costs mentioned above, in particular taxes and fees, continue to be collected by the DCCS and paid to the national treasury in return for rebates for the collecting agents, in this case the sworn inspectors of the official seed control and certification service.
2.2. Mapping of the main actors involved in the governance of the seed sub-sector in Niger

The governance of the seed sub-sector obviously calls for the interaction of several bodies and actors that need to be specified. It is not possible, within the framework of this study, to address them all. But the most significant and relevant are the following:

The National Seed Committee (CNS): This is the consultative body whose mission is to assist the Ministry of Agriculture in the implementation of the National Seed Policy and the ECOWAS regulation on seeds. It ensures, as such, the respect and the application of the rules and standards of production, quality control, certification and marketing of plant seeds and seedlings, to issue opinions and advice, to make proposals on all questions relating to seeds, in particular to the organization, the update and the publication of the CNEV. It also ensures collaboration and exchange of information between national actors of the seed sector on the one hand, and between the SOCCS and its peers in the ECOWAS region on the other hand, etc. It is therefore an important body. When it was created in 2014, it was chaired by the Director General of Agriculture, but with the 2018 reform, it is now headed by the Deputy Secretary General (SGA) of the Ministry in charge of Agriculture. It is composed of about twenty members, mainly from state bodies, except for three representatives of the Association of Private Seed Producers of Niger (APPSN), a representative of the National Network of Chambers of Agriculture (RECA), and three representatives of the inter-professional organisations (IP) of the plant sectors (rice, cowpeas and onions). There are practically no farmers’ organisations on this committee as such. Its existence is, moreover, only formal; for it has not met for more than two years, due to a lack of resources and certainly of political will; whereas normally it is supposed to meet at least twice a year, not forgetting the possibility of extraordinary meetings.

The official seed control and certification structure (SOCCS): Its establishment is provided for by the ECOWAS regulation. In Niger, it is the Direction du Contrôle et de la Certification des semences (DCCS) which ensures this function. It is envisaged, in the long run, to transform it into a National Agency for Seed Control and Certification. It is the linchpin of seed control and certification. However, it cruelly lacks the human, technological, financial and material resources necessary to accomplish its mission. Such an under-equipment of this strategic state service is

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23 PSN, op. cit. p.36.
24 Ibidem.
a source of concern if it is not a «choice» to prepare the ground for a possible partial or total privatization of this service. This is a legitimate concern in view of the provisions of Article 28 of the ECOWAS regulation which suggests the possibility of control of certified seeds by a «private body».

Research institutions: According to the authors of the NSP, ‘activities related to breeding and varietal improvement’ are the responsibility of national research bodies such as the National Institute of Agronomic Research of Niger (INRAN) and the Faculty of Agronomy, and international bodies such as ICARISAT. «However, the private sector will be encouraged in this area»\(^2\). In practice, national research institutions suffer from underfunding, due to the disengagement of the state in this area; and everything suggests that the (re)funding of research is not on the government’s agenda. In any case, there is nothing in the national seed policy or elsewhere to give us any hope. On the contrary, it is a logic of construction of an «attractive climate for private investors» that is observed in this field and many others, with multiple grants of exemptions and other facilities; with all that this implies as a risk of «biopiracy».

The private seed sector: It is clearly stated in the National Seed Policy that «the private sector is involved in the production of both basic and commercial or certified seeds, in advisory support, conditioning and processing including collection, drying, cleaning, sorting, grading, sanitary treatment, bagging, labelling and storage of seeds; it is also involved in the marketing of seeds, including import, export and distribution, etc. The private sector can also conduct research, either directly or in partnership, to «create and select new high-performance varieties» that is observed in this field and many others, with multiple grants of exemptions and other facilities; with all that this implies as a risk of «biopiracy».

The West African Committee on Community Plant Seed and Seedlings (COASEM): This is a regional body whose establishment is provided for by Article 10 of the 2008 Community Regulation. Its attributions, organization and functioning are determined by the implementing regulation 01/06/2012. Its mission consists in «assisting the commission in the implementation of the regulations in force on quality control, certification and marketing of seeds, in order to contribute to the development of the seed sector in the member states». Within the framework of this mission, its mandate is, among others, to define the technical requirements for the preparation of registration dossiers and to ensure collaboration and exchange of information between the official seed control and certification services in the Member States. COASEM’s members include representatives of the National Seed and Plant Committees of ECOWAS Member States, one from each Member State; while representatives of regional producers’ organisations can only attend the meetings of this body as observers depending on the issues to be discussed.

The rural code system, a ‘forgotten’ actor in seed governance?

\(^2\) PSN, op.cit. p.36
\(^3\) Ibid.
Since 1993, Niger has had a law\textsuperscript{25}, the purpose of which is to ‘set the legal framework for agricultural, forestry and pastoral activities’; it applies, among other things, to natural resources, including ‘plant resources’\textsuperscript{26}. This text has the merit not only of declaring that ‘rural natural resources are part of the common heritage of the Nation. All Nigeriens have an equal right to access them without discrimination based on gender or social origin’; but also, and above all, it provides for a multi-stakeholder institutional mechanism from the national level down to the village level, via the intermediate administrative entities (regions, departments and communes). Better still, this law states quite clearly that ‘the rights that are exercised over natural resources enjoy equal protection, whether they result from custom or written law’. This means that farmers’ seeds enjoy at least the same legal protection as other seeds, naturally because custom is universally recognised as a source of law in its own right. Its merit also lies in its so-called holistic approach to natural resources.

However, in practice, this mechanism has been self-limited to land issues in the sense of agricultural and pastoral land. And the current reform clearly seems to forget/deny it or keep it away from seed governance actors in Niger. Such a denial deserves to be corrected. A parallel reform is also underway in this area. It can serve as an opportunity to integrate the issue of farmers’ seed protection at the heart of rural natural resource management.

\textsuperscript{25} Ordinance N°93-015 of 2 March 1993 fixing the guiding principles of the rural code.
\textsuperscript{26} Art 2.
III. THE SPECIFIC CASE OF THE BIOSAFETY POLICY AND LEGAL FRAMEWORK


At the national level and in application of the above-mentioned international legal instruments, Niger has adopted law n°2019-48 of 30 October 2019 establishing the fundamental principles of biosafety.

The main purpose of this law is to «create a legal and institutional framework to prevent, reduce or eliminate potential, actual or proven risks associated with the use of modern biotechnology and its products. It is therefore adopted to regulate «the development, import, export, transit, contained use and handling, release or placing on the market of a LMO and/or its products that may have adverse effects on the environment, in particular on the conservation and sustainable use of biological diversity, and on human and animal health», Article 2; but it does not apply to pharmaceuticals derived from Modified Living Organisms (LMOs).

This law does not prohibit «the development, import, export, transit, contained use, release or placing on the market of LMOs and/or their products»; but requires «any natural or legal person who wishes to develop, import, export, transit, release, contained use or place on the market a Genetically Modified Organism (GMO) or a product thereof or a Modified Living Organism (LMO) and/or a product thereof«, to «submit a written request to this effect to the National Competent Authority referring to the information available in the Biosafety Clearing-House of the Cartagena Protocol» and obtain «prior informed consent».

In case of «introduction of a living modified organism and/or its derived product, in violation of the provisions of the present law and its implementing texts», heavy criminal penalties are foreseen which can go up to twenty (20) years of imprisonment.

To ensure the application of this law, the establishment of a National Competent Authority (NCA) is planned. However, its establishment is not yet effective.

In any case, it should be emphasised that one of the strong points of this law, if any are to be found, is that it allows anyone who so wishes to seek redress for himself or herself or for any other victim(s) of violations of this law, in these terms: «Any natural or legal person, group of persons, public or private organisation shall be entitled to file a complaint or petition for redress of a violation or threatened violation of any of the provisions of this Act, including provisions relating to damage to the environment, biodiversity or human and animal health, or to socio-economic conditions, in the interest of that person or group of persons, in the interest or on behalf of a person who is, for practical reasons, unable to bring such proceedings, in the interest or on behalf of a group or class of persons whose interests are adversely affected, in the public interest, in the interest of the protection of the environment or of biodiversity.

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27 Art 4.
28 Art 6.
29 See Chapter II of the law, art.48 et seq.
IV. CONCLUSIONS AND RECOMMENDATIONS

The year 2008 marks a decisive turning point in terms of neo-liberal inspired reforms in the seed sub-sector in West Africa, through the regulation c/reg.4/05/2008 on the Harmonization of Rules Governing Quality Control, Certification and Marketing of Plant Seeds and Propagating Material in the ECOWAS region. The choice of this type of legal instrument to initiate these types of reforms on such a sensitive and vital subject denotes a strategic option to put the people and the national representation in a sort of fait accompli; it being understood that contrary to the «solemn treaty», the adoption of «regulation» does not require the prior authorization of the parliament (National Assembly); it is a prerogative of the Council of Ministers of the ECOWAS Community. It can therefore be exercised, far from public opinion, the media and the political opposition of the countries concerned. Although it comes from a body with little legitimacy or democracy, a regulation, on the other hand, has a very strong legal authority and a practically surgical operating force (art 12 of the revised treaty/ECOWAS): supremacy over national laws and direct applicability.

In the Nigerien context, there has since been an avalanche of measures combining policy (2012), law (2014), strategy (2018) and many other regulatory acts (decrees and orders); all these measures tend, for the most part, to pave the way for the conventional seed system; while the peasant/traditional/community seed systems on which the food security of about 80% of Niger’s population has depended for thousands of years, do not benefit from the attention they deserve. Therefore recommendations should be made to reverse this serious trend:

1. Stop the stigmatisation of farmer/local seeds: Two major facts symbolise this stigmatisation. Both are false. The first is the use of the word «informal» to describe farmers’ seeds, and the second is that farmers’ seeds lack quality and yield. But these are just prejudices and preconceptions. Farmers’ seeds are not «informal». They have strong legal protection that is well anchored in the customs of communities. These customary rights are also recognised and protected by important international legal instruments such as the ITPGRFA, the International Bill of Human Rights, the UN Declaration on the Rights of Peasants, including in some national laws and policies. And «traditional local varieties of sorghum and millet often give higher yields under peasant agro-ecological conditions than

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21 A regulation is not a treaty: its adoption is not subject to the treaty formalism that requires a little more publicity before it enters into force;
introduced improved varieties”\(^2\). It is also clearly stipulated in the constitution (art 171) that treaties that have been duly ratified have a higher authority than laws. The member organisations of the agroecology platform (AE Raya Karkara) can carry out this action of communication, production and dissemination of evidence in this sense. Alternative Espaces Citoyens (AEC) and the Réseau des Journalistes pour l’eau et l’assainissement (REJEA), both members of Raya Karkara, can carry out this communication action through radio and television broadcasts, documentary films, advertising spots, etc.

2. Inform and sensitise farmers and farmers’ organisations on farmers’ rights and the challenges of ongoing reforms in ECOWAS member countries: Some local leaders of farmers’ organisations have only limited knowledge of the international legal framework on farmers’ rights. They also do not have a good understanding of the instruments relating to plant variety certification, patents and other mechanisms and their concrete implications on the rights and future of peasants. This lack of knowledge of legal arguments tends to create an asymmetry of argumentative power between the leaders of farmers’ organisations and policy-makers; this imbalance needs to be corrected through information and awareness-raising activities among farmers’ leaders to help them appropriate the agreed language and the human rights-based approach. Here, the association Alternative Espaces Citoyens can carry out training, information and awareness-raising activities for farmers on their fundamental rights, as well as on the issues at stake in the policies and regulations in the seed sector, and even beyond. It has internal expertise and extensive experience in this area; it was this organisation that led the advocacy that resulted in the constitutionalising of the right to food and food sovereignty in Niger in 2010. It is also in the process of advocating for the adoption of a national law to define the concrete conditions for the implementation of the right to food in accordance with the constitution and international human rights law, etc. It can run workshops/seminars to train the leaders of peasant organisations to improve their knowledge of the fundamental rights of peasants, the mechanisms for their protection, global issues, advocacy strategies, etc.

3. Review the composition of the National Seed Committee to include farmers’ organizations and the ITPGRFA focal point: The NSC is an important national body for the conduct of national seed policy. At the present stage, it does not include farmers’ organizations as such, especially those in the cereal crop sub-sector. The participation of the president of the National Network of Chambers of Agriculture (RECA) would not be sufficient. Such participation may have the merit of providing FOs with information on the evolution of laws, policies and practices in the field. The participation of the ITPGRFA Focal Point aims to ensure the presence of a potential strategic ally, an official who is aware of the State’s international obligations to protect peasants’ rights, including their rights to seeds, which include «(a) the right to protection of traditional knowledge related to plant genetic resources for food and agriculture ; (b) the right to participate equitably in the sharing of benefits arising from the use of plant genetic resources for food and agriculture; (c) the right to participate in decision-making on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture; (d) the right to save, use, exchange and sell farm-saved seed or propagating material. Here, the Raya Karkara platform is the appropriate group to bring this advocacy to the Government, in particular to the Minister of Agriculture, because it is he who issues the decree on the subject. The farmers’ organisations that are members of the Raya Karkara Platform, such as the Niger Farmers’ Platform (PFPN), the Mooriben Federation and FCMN Niyya, are the best suited to make this plea. They are sufficiently representative in this area.

4. Revising community and national texts to remove the provisions tending to incriminate the marketing of local seeds: The content of article 70 of the WECARD regulation and of the seed law (art 16 and following) constitute the main points of vigilance; because their provisions, otherwise interpreted, are likely to threaten, in the long run, the free marketing of peasant seeds, which is however guaranteed by customs and traditions, the ITPGRFA and the United Nations declaration on the rights of peasants and other persons working in rural areas. It is therefore important, to remove any ambiguity, to revise them to

\(^2\) Bob Brac, op.cit. p.31.
specify that farmers’ seeds are not concerned by such a ban, on the sole grounds that they are not registered in the catalogues. No farmer should be concerned by the mere fact of using, saving and selling farmer seed not registered in any catalogue. The clarification must therefore be explicitly stated. To achieve the desired revisions, advocacy in this sense is aimed at both the national and regional levels. At the national level, the target authorities are the Government and the National Assembly; they are the two powers that concurrently have the prerogatives to initiate laws; and it is only the National Assembly that has the power to adopt new laws and/or revise existing ones, as is the case here. The Raya Karkara platform is better suited to carry out advocacy work in this regard at the national level. On the other hand, the possibility of involving the Network of Farmers’ and Producers’ Organisations of West Africa (ROPPA) at the regional level should be explored; as a regional organisation, ROPPA has the possibility of taking part in COASEM meetings and doing the necessary lobbying in this respect. The national organisations can also lobby the ministers in charge of agriculture as well as the presidents of the National Seed Committees, who are also members of COASEM, a regional body that monitors the application of the community regulation and can make suggestions to the Council of Ministers of the community; the ECOWAS regulation is adopted by the ECOWAS Council of Ministers in charge of agriculture. The ECOWAS regulation is adopted by the ECOWAS Council of Ministers of Agriculture. It is therefore necessary to go through them to obtain its revision. They are therefore the targets of advocacy, as are the Heads of State and Government.

5. The avalanche of reforms underway at the national and regional levels is not without threat to the rights of peasants/farmers, particularly in terms of seed, land and other resources. The highly legal dimension of these reforms is likely to complicate the situation for farmers’ organisations and the rural world, which are ill-prepared for such a test. It is therefore important to consider setting up a citizens’ watchdog, aware of the rules, techniques and issues at stake, in order not only to monitor developments in this area very closely, but also to provide appropriate arguments to alert and fuel advocacy and social mobilisation.

In concrete terms, it is a question of identifying structures and people in the different countries who should be given a mandate to monitor and document the evolution of the situation in this field on various levels of legal and political instruments, actors and the concrete situation, etc. Ideally, this mechanism should combine lawyers, agronomists, geneticists and others; in any case, people who have good expertise on the issues of peasants’ rights, peasant and conventional seeds, including GMOs. It is therefore a question of providing a fund, a provision in this sense. The Raya Karkara Platform, in collaboration with COASP/BEDE, has begun to think about this. It is therefore necessary to discuss this to find a better articulation. BEDE has a great deal of experience in this field, which it has developed on a European scale, and which can serve as a source of inspiration here. It is important to decompartmentalise interventions and to reinforce as much as possible a good synergy between actors sharing relatively the same vision.

6. Create spaces for dialogue and convergence between farmers’ organisations on seed issues and farmers’ rights: The need to safeguard farmers’ rights from the logic of commodification of natural resources requires that actors in the field pool their strengths and intelligence. This means building synergies of action to create a balance of power capable of influencing local, national, regional and international bodies, which have become the main places where decisions are taken, and standards and policies are issued. National spaces are increasingly becoming frameworks for the implementation of decisions taken elsewhere. Consequently, civil society organisations, in particular farmers’ organisations, must explore the possibilities of reorganising themselves to consider this trend towards the delocalisation and deterritorialization of decision-making bodies, through the establishment of spaces for collective reflection and convergence. These spaces of dialogue and convergence must be created at local, national and regional levels. They must be open to public research institutions. The Raya Karkara Platform is an example in this sense that needs to be strengthened and refined, as it brings together major schools such as the Institut Pratique pour le Développement Rural (IPDR de Kolo) and public universities; INRAN and ICRISAT still need
to be associated to establish a dialogue between FOs, research institutions, CSOs/NGOs on the issues of promotion and protection of farmers’ seeds and farmers’ seed systems. The data produced by the monitoring system will also help to feed the reflections of the multi-stakeholder framework. The meetings can be semi-annual or annual (the periodicity can be determined by mutual agreement). They will be an opportunity to discuss public policies, legal instruments, the state of research, the real needs of farmers, and to identify advocacy themes and strategies, etc. These forums can also serve as a place to build consensus on what is meant by «quality seeds». Alternative Espaces Citoyens has been organising a national seminar every year since 2016, bringing together peasant leaders and peasant organisations around the themes of the right to food, food sovereignty, public financing of the agricultural and livestock sectors, etc. And the Peasant Platform organised the first edition of the Peasants’ Week in 2020. These two initiatives can be used as a lever to explore the possibility of synergy and openness to other relevant actors on a national scale. Similar physical or virtual meetings can be envisaged at the regional/ECOWAS level.

7. Investigate international regional and sub-regional bodies to ensure that the fundamental rights of peasants prevail: To increase the chances of having their causes heard, those of safeguarding the fundamental rights of peasants/farmers from the logic of the market and industrialists, peasant organisations can explore the possibility of involving national and regional human rights protection bodies, through the mechanisms of reports and strategic litigation. For example, the National Human Rights Commission (CHDH) has one representative of peasant organisations and two representatives of women’s and human rights associations; when well briefed, they can be used as levers to get this institution to integrate the specific rights situation of peasants into its periodic reports that it presents each year to the National Assembly; international bodies can also be involved, both at the regional level (ECOWAS Court of Justice, African Court and Commission on Human and Peoples’ Rights) and at the international level (United Nations committees, the Human Rights Council, etc.). These bodies have the advantage of being inclined to prioritise human rights over international trade and investment rules.

Here Alternative Citizen Spaces can carry out the advocacy, in that it has a good knowledge/mastery of the national, regional and international mechanisms of protection of human rights; it has a good collaboration with the National Commission of Human Rights; it can also help to make alternative reports that the agroecological platform Raya Karkara can carry, as well as to raise the strategic litigation, if necessary, etc.

8. Safeguarding traditional knowledge, investing in agroecology to realise the right to food and food sovereignty: Current reforms in the seed sector in West Africa, and in Niger in particular, are anachronistic in that they tend to promote an industrial agricultural system whose «serious flaws» are widely recognised and documented, including by the UN human rights system. Therefore, to fulfil their international obligations regarding the right to food, states are urged to «invest in agroecology and traditional knowledge». Agroecology avoids the use of hazardous biochemicals and pesticides, supports the local food movement, protects small-scale farmers, including women, and small-scale fisheries, respects human rights, strengthens food democracy and promotes traditional knowledge and culture, preserves environmental sustainability and promotes healthy eating. This new direction is clear from the findings of the UN Special Rapporteur on the Right to Food in a report presented to the Human Rights Council in 2020 entitled: «Analytical reflection on food systems, food crises and the future of the right to food»

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33 https://undocs.org/fr/A/HRC/43/44.
ANALYTICAL MAPPING OF LEGAL AND POLICY INSTRUMENTS AND ACTORS IN SEED GOVERNANCE IN NIGER

V. BIBLIOGRAPHY

Legal instruments
Charter of the United Nations or San Francisco Charter of 1946;
Universal Declaration of Human Rights 1948;
International Covenant on Civil and Political Rights (ICCPR) 1966;
International Covenant on Economic, Social and Cultural Rights of 1966;
International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) 2001;
United Nations Declaration on the Rights of Peasants and Other Rural Workers 2018;
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 1994 and revised in 2017;
International Convention for the Protection of New Varieties of Plants of 1991;
ECOWAS (2008): Regulation c/reg.4/05/2008 on the Harmonisation of the Rules Governing the Quality Control, Certification and Marketing of Plant Seeds and Propagating Material in the ECOWAS Area, 41 pages;
ECOWAS (2012): Implementing Regulation 01/06/2012 Relating to the Terms of Reference, Organisation and Operation of the West African Plant Seed and Seedlings Committee of the Community, 11 pages;
Cartagena Protocol on Biosafety to the Convention on Biological Diversity of 2000;
Regulation N° 03/2007/CM/UEMOA of 6 April 2007 on the establishment of a Regional Biosafety Programme;
Regulation N° 007/2007/CM/UEMOA of 6 April 2007, on Plant, Animal and Food Safety in the WAEMU;
Constitution of 25 November 2010 of Niger;
Law N°2014-67 of 5 November 2014 supplementing Regulation c/reg.4/05/2008 on the Harmonisation of Rules governing the Quality Control, Certification and Marketing of Plant Seeds and Propagating Material in the ECOWAS region;
Law n°2019-48 of 30 October 2019 establishing the fundamental principles of biosafety;
Order N°121 of September 16, 2014, Portant création, attributions, organisation et fonctionnement du Comité National des Semences Végétales et Plants;
Order No. 123 of 16 September 2014 establishing the administrative documents in the framework of the control and certification of seeds of plant species and plants;
Order N°124 of September 16, 2014, Adopting the technical regulations relating to the rules governing the quality control and certification of seeds of plant species and seedlings in Niger;
Order N°214 of November 11, 2016, on the rules governing the obtaining of approval for the marketing of plant seeds and seedlings;
Order N°186/MAG/EL/DGA of 24 October 2016 amending and supplementing Order N°074 appointing seed inspectors;
Joint Order N°215/MAG/EL/MF of 11 November 2016 fixing the rates and modalities of payment and collection of taxes and fees within the framework of control, certification and marketing of plant seeds and seedlings;

Policy instruments and other official documents
Ministry of Agriculture (2012) : THE NATIONAL SEED POLICY (NSP), 45p;
Stratégie Nationale d’appui aux Systèmes Communautaires de production des semences améliorées, August 2018, 56 pages;
Stratégie Nationale de Biosécurité au Niger, November 2019, 73 pages; 
Economic and Social Development Plan (ESDP 2017-2021), 199 pages; 
Ministry of Agriculture and Livestock, First national report on the state of biodiversity for food and agriculture in Niger, December 2017; 
UN/Human Rights Council (HRC 2020), Analytical reflection on food systems, food crises and the future of the right to food, Special Rapporteur on the right to food, April 2008; 
Guy Kastler, Les semences paysannes: situation actuelle, difficultés techniques, besoin d’un cadre juridique, 4p. 
Regional Training Workshop in Africa organised by the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) from 29 July to 1 August 19, in Dakar, Senegal, statement by participating CSOs; 
RECA, Violet de Galmi, seeds from around the world in Niger’s shops, Briefing note, March 2013; 
JINUKUN, Baseline study on seed management mechanisms in francophone West African countries, case of Niger, November 2017, 42 pages; 

Articles, books, reports and statements

Rose-Marie Borges, patents and plants: what is at stake? International Journal of Business Intelligence, 2013/1.vol.5/pages 9 to 23; 
Riccardo Bocci & Véronique Chable, Farmers’ seeds in Europe: challenges and prospects, April 2008; 
Guy Kastler, Les semences paysannes: situation actuelle, difficultés techniques, besoin d’un cadre juridique, 4p. 
Regional Training Workshop in Africa organised by the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) from 29 July to 1 August 19, in Dakar, Senegal, statement by participating CSOs; 
RECA, Violet de Galmi, seeds from around the world in Niger’s shops, Briefing note, March 2013; 
JINUKUN, Baseline study on seed management mechanisms in francophone West African countries, case of Niger, November 2017, 42 pages; 
CROPS4HD (Consumption of Resilient Orphan Crops & Products for Healthier Diets) is an international collaborative project of three NGOs co-financed by the Swiss Agency for Development and Cooperation and the Global Programme for Food Security (SDC GPFS). Under the overall coordination of Swissaid, it started in 2021 and will run for ten years. The collaborators of CROPS4HD are SWISSAID, FiBL (Research Institute of Organic Agriculture) and AFSA (Alliance for Food Sovereignty in Africa). The project deploys its potential and leverage to influence global policy frameworks to adopt farmer seed systems (FSS) as an important pillar for food security and agrobiodiversity. AFSA, which is in charge of the advocacy component, is a broad alliance of civil society actors involved in the struggle for food sovereignty and agroecology in Africa. Its members represent small-scale farmers, pastoralists, hunter/gatherers, indigenous peoples, faith-based organisations and environmentalists from across Africa. It is a network of networks, currently with 37 members operating in 50 African countries.