

## 7 Policy and legal environment

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Across the world, community seed banks operate in countries with diverse political regimes and policy and legal contexts. Our review of the literature indicated that, surprisingly, very little attention has been paid to analyzing the policy and legal environment in which community seed banks operate. This chapter aims to fill that gap. Our analysis is guided by a number of questions: Which policies and laws concerning conservation and management of crop diversity on farm and in situ affect the operations of community seed banks? How are they affected? What public policy interventions have supported the operation of community seed banks? Are community seed banks recognized and rewarded as an expression of farmers' rights? If so, are they legally protected? What kinds of policy instruments *could* be put in place, if none exist, to create incentives for community seed banks to maintain crop diversity and contribute to other ecosystem services derived from biodiversity in agricultural landscapes?

From the previous chapters, a number of key objectives for policies and laws that could support community seed banks have been suggested:

- Encourage the conservation and recovery of local plant species and varieties maintained by smallholder farmers and their communities.
- Value and reward farmers' collective efforts to safeguard agricultural biodiversity and associated cultural values and knowledge.
- Value and protect these local genetic resources and related knowledge.
- Maintain fair access to and availability of these resources (through proper access and benefit-sharing arrangements).
- Facilitate links between local and national and international efforts.
- Support farmers technically and financially to organize themselves, and strengthen their organizational capacity.
- Disseminate and promote the results realized by community seed banks.

The case studies offer a wide array of ways in which current policies and laws affect community seed banks, both positively and negatively. The various scenarios are summarized below. On the positive side, in recent years promising changes have been taking place in a number of countries, some of which have been mentioned in previous chapters. We believe that this positive trend will

likely continue and expand, given the potential of community seed banks as well as increasing awareness of this potential among key decision-makers and their interest in integrating community seed banks into the broader framework of policies, strategies and programmes.

### **On the positive side: from sympathy to support**

In Mexico (Chapter 42), community seed banks are receiving financial and technical support from the federal government; this support seems unique in terms of its size and scope. Nevertheless, the authors of the case study from Oaxaca (one of the pioneering states in which the support programme operates) argue that more could be done. Although community seed banks are now part of the national conservation system, they argue that public policy should support the in-situ conservation of genetic diversity in community seed banks by producers. This strategy would meet the challenges posed by climate change and transgenic materials. Legislation is also needed to protect farmers' biocultural resources. Community seed banks in Oaxaca should be part of a national strategy of in-situ conservation of the country's plant genetic resources. Creation of other community seed banks should be encouraged in Mexican states that are strategically located near indigenous and mestizo groups who are dealing with high levels of genetic diversity or threatened or endangered species.

In Nepal (Chapter 41), the national policy environment has become more favourable for community seed banks. The department of agriculture has mainstreamed community seed banks in its plans and programmes as a strategy to increase access to quality improved seeds and to conserve local crops. The recently amended national seed regulation has relaxed its requirements for registering local crop varieties making it possible for individual and organized farmers to register their locally bred strains.

With input from nongovernmental organizations (NGOs), Nepal's government pioneered a Community Seed Bank Guideline (2009), a comprehensive document developed to guide planning, implementation and regular monitoring of community seed bank activities. The guideline focusses on marginalized, subsistence, indigenous peoples and war-affected households, who often have poor access to seeds. It shares a clear vision and outlines strategies to coordinate and collaborate with various governmental and nongovernmental institutions; the complementary roles community needs to play; and a capacity-building and community empowerment plan. The guideline has been used by some government agencies to establish and support a number of community seed banks, but it has not been widely disseminated. Only the District Agriculture Development Office has the mandate to establish community seed banks and only 17 districts can establish them. So far, seven seed banks have been set up in seven districts. The strategy of the National Agricultural Genetic Resources Centre includes building a network of community seed banks as a key part of a complementary conservation strategy.

In 2014, Bhutan's National Biodiversity Centre followed Nepal's example by drafting a guide for community seed banks. The guide has six chapters that include definitions, objectives, functions, organizers and collaborators, scope and establishment and management guidelines. Wider dissemination of such guides might be of help to other governments interested in promoting seed banks.

The country with the most supportive policies and laws is Brazil (Chapter 39). Over the last few years, three Brazilian states (Paraíba, Alagoas and Minas Gerais) have approved laws aimed at providing a legal framework for existing community seed banks created and maintained by small-scale farmers' associations with the support of NGOs and sometimes local governments. In four other states (Bahia, Pernambuco, Santa Catarina and São Paulo), similar bills are being discussed in their legislative assemblies. A special community seed bank programme allows Paraíba's state government to buy seeds of local varieties for distribution among farmers and community seed banks. Previously, only certified seeds of improved varieties had been used for this purpose. This law has also allowed farmers to use seeds of local varieties to produce food and sell it to public schools and hospitals (through contracts with state government agencies). The state of Minas Gerais approved its community seed bank law in 2009. It established, for the first time, a legal definition of a community seed bank and offered some protection to farmers in terms of access and availability: 'a germplasm collection of local, traditional and creole plant varieties and, landraces, administered locally by family farmers, who are responsible for the multiplication of seeds or seedlings for distribution, exchange, or trade among themselves.'

## **Promising developments**

In a number of countries, there are signs that more supportive policies and laws are on the way. The case studies describing such promising signs include those in Mesoamerica (despite the negative conditions in Nicaragua; see below) and South Africa. In South Africa, the Department of Agriculture, Forestry and Fisheries (DAFF) considers community seed banks to be a means to strengthen informal seed systems, support conservation of traditional farmer varieties and maintain seed security at the district and community levels. The Departmental Strategy on Conservation and Sustainable Use of Genetic Resources for Food and Agriculture proposes, among other focus areas, both ex-situ and in-situ conservation of plant genetic resources for food and agriculture. DAFF is collaborating with Bioversity International to set up a small number of community seed banks in the country in selected regions of mainly smallholder farms (Chapter 43).

In Central America (Chapter 40), the recently developed Strategic Action Plan for Strengthening the Role of Mesoamerican Plant Genetic Resources for Food and Agriculture in Adapting Agricultural Systems to Climate Change makes community seed banks central. The plan was formulated in 2012–2013 with funding from the Benefit-Sharing Fund of the International Treaty on

Plant Genetic Resources for Food and Agriculture. Its development involved stakeholders from six countries in the region under the scientific guidance of Bioversity International's Regional Office for the Americas. The resulting plan, supported by the Central American Council of Ministers, is structured in thematic sections focussed on in-situ/on-farm and ex-situ conservation, sustainable use, policies and institutions. Each section outlines actions to be carried out over the next ten years (Chapter 40).

In Zimbabwe, there have been discussions on the need for a comprehensive farmers' rights legislative framework. The proposed framework will provide for the establishment of community seed banks interacting closely with the national gene bank and the South African Development Community Regional Gene Bank. Such cooperation has great potential in terms of strengthening conservation and sustainable use efforts at the national level (Chapter 38).

In Uganda, the community seed bank of Kiziba (Chapter 30) is registered at the district level as a seed-producing group and operates under various policies, principally under the draft national agricultural seed policy (2011) currently under review. The community seed bank also operates under the Seed and Plant Act (2006) which is the legal framework concerning the promotion, regulation and control of plant breeding and variety release, seed multiplication and marketing, seed import and export and quality assurance of seeds and planting materials. The Seed and Plant Regulations (2009) provide guidelines for enforcement of the act.

### **Contradicting policies**

Although only mentioned explicitly by the authors of the Rwanda case study (Chapter 27), but most likely also relevant in quite a number of countries, policies and laws sometimes contradict each other. In Rwanda, for example, the government has started to support the establishment of community seed banks in selected areas. However, the policy of land consolidation and growing a single priority crop has a negative impact on community seed bank activities because the local varieties of different crops cannot be grown freely by farmers. This is also hindered by the government's distribution of improved varieties of seeds and fertilizers to farmers under the crop intensification programme.

### **On the negative side: unsympathetic, no support, difficult to obtain support**

A number of countries make it difficult to establish and operate community seed banks. Some governments consider them 'competitors' of the government-controlled conservation system. Others are worried about community-based organizations at large.

For example, in China, current agricultural and biodiversity-related policies do not favour conservation by farmers and their communities, although in recent years some opportunities for local initiatives have been created (Song

and Vernooy, 2010). The negative environment is likely one of the reasons why, despite the enormous size of the country and its farming population, few attempts have been made to set up a community seed bank. In fact, the one described in Chapter 15 might be the first. Policies and laws at the provincial level have an effect as well. The Yunnan Provincial Protection Regulations for new varieties of registered horticultural plants and the Yunnan Agricultural Environmental Protection Ordinance mentioned by the case study authors have had a positive impact on conservation and agricultural biodiversity activities. However, awareness of the need to protect agricultural biodiversity on farm is weak in the country.

In Spain, the situation is not much different. The ‘Cultivate diversity. Sow your rights’ campaign in which the Spanish seed network participates (Chapter 36) demands a change in public policies related to the conservation and use of local varieties and local seed production. However, so far this long-term effort has not led to any concrete policy or legal changes.

Some countries, such as India and Ethiopia, do have farmers’ rights acts or provisions, which, in principle, are favourable towards community seed banks, but actual implementation may not be evident. In India, the community seed banks established by the National Board of Plant Genetic Resources are under its strong control and operate as mini-gene banks (Malik et al., 2013). One of the problems is that smallholder farmers are not allowed to produce and market seeds. In some cases, there are restrictive laws, such as a seed certification law, based on criteria related to distinctiveness, uniformity and stability that were developed for the formal seed system. In Nicaragua (Chapter 26), the lack of supportive conservation policies on native genetic resources combined with the promotion of a few varieties of staple grains by research and extension agencies has resulted in the loss of local varieties in recent decades. The case study from Bangladesh (Chapter 9) also reports this.

### **Community seed banks and recognition of farmers’ rights**

Andersen and Winge (2011) have pointed out that community seed banks contribute to the realization of farmers’ rights as defined by the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). They ensure a diversified supply of seeds adapted to local conditions; protect knowledge related to local varieties; reduce dependence on seed sources outside the community; promote the multiplication of seeds, sharing with other farmers and crop improvement activities; provide benefits through NGO sponsorship; and ensure access to seed reserves in times of stress.

As the case studies illustrate, all community seed banks fulfill at least one of these functions, but only a few do so by making explicit reference to farmers’ rights. For example, the authors of the Zimbabwe case study refer to the ITPGRFA and mention that support of community seed banks is a way ‘to experiment with the domestication of the ITPGRFA’ (Chapter 38). Zimbabwe

is one of the few countries where there have been discussions on the need for a comprehensive farmers' rights legislative framework.

Concerning legal protection, which supposedly comes with the protection of farmers' rights, the case studies offer a very mixed panorama from operating without any clear protection to formal forms of recognition, most notably acquired by functioning as cooperatives. This remains an area where more technical support would be welcome.

In its advocacy of community seed banks, Norway's Development Fund has argued that governments should establish or support community seed banks as part of their obligations to implement farmers' rights and other provisions of the ITPGRFA, such as sustainable use and conservation of crop genetic diversity. The Development Fund has also requested that parties to the ITPGRFA support the upscaling of community seed banks to reach as many farmers as possible, especially in marginalized areas (Chapter 35). These seem valid demands, but to date they have not received much attention or support from national governments, although the governments of some countries have begun to consider community seed banks more seriously (see, for example, the case studies of Mesoamerica and South Africa, Chapters 40 and 43).

### **Policy measures to support community seed banks**

National seed policies and related laws normally address seed production (multiplication), standardization, certification and commercialization; variety improvement, registration and release procedures; protection of intellectual property (often mostly concerning breeders' rights); technical support to the seed sector (research and extension services); and farmer organization. As such, they have an immediate impact on the operations of many community seed banks, particularly those that focus on providing access to and availability of seeds. Specific measures spelled out in policies and laws can offer concrete support to community seed banks, but, to date, more often than not, they have the opposite effect. In Zimbabwe, farmers are not allowed to sell farm-saved seed. In Mexico, legislation to protect farmers' genetic resources is still lacking, although community seed banks do receive technical and financial support from the government. In Nicaragua, various civil society organizations are campaigning for enactment of a legal framework to promote and protect seeds of local varieties.

Apart from those related to seeds, other policies and laws may be relevant. In Nepal, for example, the Agrobiodiversity Policy, first developed in 2007 and revised in 2011 and again in 2014, gives implicit credit to community seed banks through its focus on conserving, promoting and sustainably using agro-biodiversity; securing and promoting farming communities' welfare and rights to their indigenous knowledge, skills and techniques; and developing appropriate options for a fair and equitable sharing of benefits arising from the access and use of agricultural genetic resources and materials. Community seed banks have the potential to support the Nagoya Protocol by helping to ensure

benefit-sharing at the community level. However, a serious policy gap remains: support is needed for appropriate incentives based, for example, on a quality assurance system for community seed banks.

Policies and laws concerning cooperative development or farmer organization, more generally, can be a strong support for community seed banks. They could provide legal recognition and protection, technical and financial support, opportunities for the commercialization of seeds and other incentives, both monetary and non-monetary (e.g. prizes and awards), as well as opportunities to make farmers' voices heard at the national level. In a number of countries (e.g. Burundi, Mali and Mexico), community seed banks have acquired formal cooperative status giving them the chance to solidify and expand their operations.

Specific policies and laws concerning community seed banks are still rare. The most inspiring case is found in Brazil (as mentioned above), where three states have approved specific laws aimed at providing a legal framework for existing community seed banks and four other states are discussing similar bills. We can only hope that more countries will follow this example.

## References

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