Commentary on the draft proposal for the establishment of a native seeds registry in Costa Rica

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Introduction

Costa Rican seed law requires that varieties are appropriately registered and that they meet specific technical requirements before they can be commercialized. In practice, this implies that the seeds sold by farmers – known nationally as ‘native’ (nativas) or ‘local’ (locales) seeds – could not be legally commercialized in the either formal or informal markets if they are not registered with the National Seeds Office.

With the objective of promoting the conservation and use of local varieties and making it legal for farmers to trade and sell seeds, proposals have been made to modify the legal framework regarding variety registration in Costa Rica. These proposals are part of a broader effort to support the conservation and sustainable use of plant genetic resources and for the implementation of farmers’ rights. They are also consistent with, and motivated by, Costa Rica’s obligations pursuant to the Food and Agriculture Organization’s (FAO’s) International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), especially with respect to articles 5, 6 and 9 regarding conservation, sustainable use and farmers’ rights.

Costa Rican legal framework for the commercialization of seeds

Costa Rican legislation regarding seeds is varied and has undergone several changes over time. Among them, the following may be mentioned:

- Law No. 6289 of December 4th, 1978, and its amendments (Seeds Law): The National Seeds Office is created as an entity associated to the Ministry of Agriculture and Livestock; among whose functions are included the registration of several categories of seeds. The Office will not authorize the commercialization of a seed variety not compliant with the respective regulations and not properly registered. The production, processing and commercialization of seeds without observing that which is declared in the Law and its regulations, will be considered an infraction of the Law. Conditions of registration are: stability, uniformity, distinctiveness and
agronomic value or proved use (valor comprobado).\textsuperscript{5} The traditional DUS requirements and one additional condition of agronomic value or proved use are those to be fulfilled by the varieties.

- The Regulation of the Seeds Law was approved by Executive Decree No. 12.907-A of July 7th, 1981, published in La Gaceta, No. 180 of September 21st, 1981. In the Regulation are reaffirmed some provisions contained by the Law related to the obligation to register the seeds before its commercialization.\textsuperscript{6} The commercialization of seed varieties not registered in the Registry of Commercial Varieties is considered an infraction of the Law.\textsuperscript{7} The Registry of Commercial Varieties was reformed – responding to different reasons and for several purposes – but the obligations to register the seed varieties at said registry before commercializing them was retained. The procedures and requirements for the registration of commercial varieties do not represent major technical or legal impediments to registering varieties that come from participatory plant breeding programs. In the past different varieties of bean have been registered (\textit{Gibre y Curré}, both red grains), obtained through this mode of genetic enhancement.\textsuperscript{8}

- Regulation for the Import, Export and Commercialization of Seeds; issued by the National Seeds Office (not published as an Executive Decree). This Regulation was published in La Gaceta, No. 73 of April 18th, 2005. It reaffirms the obligation to register as set out the Seeds Law (following the same conditions for registration) and regulates the requirements for the national commercialization of the seed (as well as for the import and the export of seeds).

- The Executive Decree No. 32.487-MAG (La Gaceta, No. 146 of July 29th, 2005): This Decree emphasizes the authority of the National Office to establish regulations to ensure that every imported seed complies with the quality standards of the seed reproduced in the country, regardless of whether the seed is commercialized or not.

- The General Regulation for the Certification and Quality Control of Seeds, approved by the Board of Directors of the National Seed Office in Session No. 599, on December 9th, 2009. This provision regulates the process of certification through the different categories of seeds and their quality control.

- Additionally, there are some Central American technical regulations about this matter, such as the RTCA 65.05.34:06, Central American Regulation for the Production and Commercialization of Certified Seeds of Soybean and Basic Grains. This technical regulation contains provisions for the registration of seeds intended to harmonize requisites and conditions for the registration of commercial varieties among the different Central American countries\textsuperscript{9} as part of the efforts to establish a Central American Custom Union. However, the regulation does not provide the conditions for registration, but leaves them to be determined according to the laws of each country (as described earlier for Costa Rica).

- Finally, the Law for the Development, Promotion and Encouragement of the Organic Agricultural and Livestock Activity, No. 8591, published in
La Gaceta, of August 14th, 2007; recognizes the concept of native, local or traditional seeds (section j), in the following manner,

Seeds corresponding to cultivated and developed varieties by local farmers and communities. Regardless of their origin, they are adapted to agricultural practices and local ecosystems. They are regulated by what is provided in article 82, and following articles, of the Biodiversity Law; Law No. 7788 of April 30th of 1998.¹⁰

Law No. 8591 also provides that:

The State through the competent authorities, will promote, encourage and protect the right of the people and of the agricultural organizations to access, use, trade, multiply and save native seeds with the intention of preserving the native genetic heritage in benefit of current and future generations of organic growers. The Ministry of Agriculture and Livestock shall ensure the compliance of this provision, in accordance with that has been established in the Convention on Biological Diversity, approved by the Law. No. 7416 of June 8th of 1994 and the Biodiversity Law, Law No. 7788 of April 30th of 1998.¹¹

Law No 8591 provides a justification for amendments to the current variety and seed registration regimen in Costa Rica to promote, encourage and protect farmer’s rights with respect to trade native seeds.

Draft proposals

Background of the draft proposals

At the end of the last decade, the FAO sponsored a number of projects in Costa Rica to improve seed law related to quality control, registering process, and so on. The National Seed Office also, by its own volition, wanted to amend the national legal framework to provide appropriate recognition of the farmers’ practice to exchange and commercialize seeds in informal markets. This approach was also consistent with the national legal framework in place regarding the conservation and sustainable use of traditional or native varieties, as well as the country’s obligations under the ITPGRFA and the Convention on Biological Diversity.

Under the policies and laws described in the preceding section, no traditional or local varieties have been ever registered in Costa Rica, because they could not fulfill the legal requirements. On the other hand, there has also never been an administrative or criminal sanction against anyone for commercializing the seed of native or local varieties. Nonetheless, it was considered desirable to reform to the applicable laws to expressly recognize the legal right to commercialize these kinds of seeds.

Initially, the strategy was to include the amendment as part of a broader reform of the regulation (No. 12.907-A of 1981) passed under the Seeds Law.
However, due to some comments received from other national ministries (especially those in charge of the issuance of technical regulations), a decision was taken to include the modifications into a new regulation (called the Technical Regulation for the Registry of Commercial Varieties) that would replace the 2005 regulation.

**Main content**

In relation to the issue of native varieties, the Draft Technical Regulation for the Registry of Commercial Varieties contains a provision that reads:

The registration in the Registry of Commercial Varieties could have the following exceptions, subjected to previous evaluation by the National Seeds Office:

- **Local, traditional or native varieties:** for these varieties, the National Seeds Office will **provide a database, where interested parties might include** information about these materials, as a mechanism of support in the conservation of plant genetic resources and allowing to officially cataloguing them as known genetic resources.

  For this purpose the following information shall be provided:

  I. Person, community or organization.
  II. Name of the variety.
  III. Origin of the variety (if it’s known).
  IV. General morphological description allowing identification of the variety.
  V. General features of the variety (agronomic or culinary characteristics; or known properties).
  VI. Geographical distribution (locations where the variety is distributed).

The draft regulation also proposes to modify the concept of seeds commercialization in the following manner:

**Seed Commercialization:** the offering for sale, the possession for sale, the sale and any other commercial operation (cession, delivery or transfer) with purpose of commercial exploitation; of seeds to third parties, for remuneration or not. Excluded from this definition are: the delivery of seed samples with research purposes, the cession or exchange among farmers of local, traditional or native seeds.

The main purpose of the reform is to create a legal space for the sale of seeds of native varieties (mostly in informal markets) through two complementary mechanisms: (1) creating an express exception to the obligation of registration before commercialization and replacing that obligation with a voluntary registry
pursuant to alternative criteria; and (2) excluding from the legal definition of seed commercialization the exchange of native, traditional or local seeds among farmers. This last mechanism on its own would not, in principle, allow the exchange of farmer’s seeds in open markets or to persons who cannot be considered as farmers. However, the two parts read together seems to support this possibility.

Pending challenges

The proposed technical regulation constitutes an important step forward to support the farmer’s rights under the ITPGRFA by providing a legal basis for the commercialization of native or local seeds. However, the proposed reform if approved, still presents some potential shortcoming and challenges:

- The exception to register native seeds – as it is written in the proposal – leaves to the discretion of the National Seeds Office to allow their commercialization (article 12 of the draft technical regulation indicates that the exceptions are subjected to previous evaluation by the National Seeds Office), which – at least theoretically – could lead to the prohibition and restriction of the commercialization of this kind of seeds if the national authorities so decide (based on technical and other reasons).
- The database created by the proposal – with the purpose of improving the existing information to support the conservation of plant genetic resources – is for voluntary use of the farmers, which does not guarantee that this information will be effectively obtained and used for conservation and other goals. Although the proposed regulation does not mention it expressly, this registry should be public due to the general Costa Rican laws concerning access to information (including environmental information). In the past, efforts to create a similar system for the registration of traditional knowledge under the Biodiversity Law encountered the opposition of some indigenous and local communities on the basis that the registered information would need to be public.
- Finally, despite the interpretation offered earlier regarding a whole reading of the proposed technical regulation, the fact that the definition of commercialization excludes exchanges among farmers could lead to the interpretation that sales made by farmers to nonfarmers are outside the scope of the exception of the definition of commercialization.

Other complementary reforms

In addition to the proposed technical regulations, there is also a draft proposal for a new Seeds Law being promoted by the National Seeds Office which is under discussion at the Agricultural Affairs Commission of the Legislative Assembly. The proposed new Seeds Law has the explicit objective of promoting the conservation and use of plant genetic resources, the promotion of food
security and the achievement of environmentally sustainable production. However, the proposal does not include the development of new criteria for the commercialization of native or traditional varieties.

It is proposed that the National Seeds Office should be appointed as the national competent authority on plant genetic resources for food and agriculture (PGRFA), in accordance with Costa Rica’s obligations under the ITPGRFA. Until recently, no national competent authority for the implementation of ITPGRFA had been appointed. The main mandate of the national competent authority will be to ensure, coordinate, promote and guide the conservation and sustainable use of these resources. It is also proposed that the National Commission on Plant Genetic Resources (CONAREFI for its acronym in Spanish) should be created (now its legal basis is only an executive decree), which will integrate all the relevant sectors and will act as an advisor entity to support the National Seeds Office, including in the implementation of the ITPGRFA.

Conclusion

These reforms (both the draft technical regulations and the Draft Seeds Law) aim to consolidate a long-standing practice related to the sale of native or local seeds in informal markets.

Most importantly, they propose the creation of a voluntary registration system where farmers could register their native seeds, with the aim of increasing the information on plant genetic resources and improving their conservation and sustainable use, and to legalize at least some forms of exchanges of those seeds between farmers and possibly their commercialization. This effort is complementary to the provisions on plant genetic resources included in the proposed Draft Seeds Law.

It is not at all clear if these proposed policies will be accepted and implemented. However, in the meantime, they represent concrete efforts to promote farmers’ rights in the country.

Notes

1. There is no official data concerning the size of the informal markets of seeds.
3. Article 15.
5. Described in article 56 of the 2005 Regulations.
6. Article 74 and following articles.
7. Article 85.
8. PITTS Technical Report of the Gibré and Carré varieties for inclusion in the Register of Commercial Varieties of the National Seed Office, November 2006. However, the fact that two varieties have been registered does not necessarily mean that there are others varieties developed through participatory plant breeding out that were not registered because they do not satisfy the criteria for registration.
9. In the process of the Central American Customs Union in the field of seeds, there are two main objectives: the harmonization of the registration of commercial varieties and
of the regulations of quality control (seed certification, verification of quality standards, etc.). Therefore, several technical regulations have been adopted in the framework of the Central American Customs Union essentially with the purpose of facilitate the mutual recognition of national registries or to harmonize requisites and conditions for the registry of seeds.

10 Law No. 8591, article 5j.
11 Law No. 8591, article 20.
12 Article 12.
13 Article 2.
14 As established in the Constitution and the General Public Administration Law.
15 Article 82.