Symposium Introduction: Seed Sovereignty at Stake: Symposium on the Wathome & 14 Others v Kenya Plant Health Inspectorate Service and Another; Greenpeace Environmental Kenya & 2 Others Case

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The International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations (ITPGRFA) expressly recognizes farmers as central actors in the conservation and development of plant genetic resources for food and agriculture. Article 9 of the ITPGRFA provides that Contracting Parties, including Kenya, should take

measures to protect and promote farmers' rights, including through: (a) the protection of traditional knowledge relevant to plant genetic resources for food and agriculture; (b) participation in the equitable sharing of benefits arising from the utilization of plant genetic resources; and (c) participation in decision-making on matters relating to the conservation and sustainable use of plant genetic resources. Article 9 of the ITPGRFA also affirms that farmers may save, use, exchange, and sell farm-saved seed or propagating material, subject to national law and as appropriate.

Similar farmers rights provisions appear in Articles 24, 26 and 32 of the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (African Model Law), as well as in Articles 2 and 19 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). The United Nations Special Rapporteur on the Right to Food, Michael Fakhri, further draws attention to the significance of farmers' rights in his 2021 report, Seeds, Right to Life and Farmers' Rights, emphasizing how farmers' seed systems are critical to the full realization of the rights to life and food. These international provisions resonate strongly with the Constitution of Kenya, 2010. Section 43.1 (c) of the Constitution guarantees every person the right to be free from hunger and to have adequate food of acceptable quality. This provision can be interpreted to support agricultural practices that enhance the production of nutritious and accessible food. Importantly, Article 11 of the Constitution concretely recognizes culture as the foundation of the nation and mandates the recognition and protection of indigenous seeds and plant varieties and their use by Kenyan communities.

In contravention of the aforementioned international and constitutional provisions, Kenya's Seeds and Plant Varieties Act 2022 (SPVA), and the Seeds and Plant Varieties (Seeds) Regulations 2016 (SPVR) introduced revised regulatory requirements that restrict and criminalize the sale, sharing, and exchange of unregistered, uncertified and protected seeds, while simultaneously expanding the protection afforded to breeders of protected plant varieties. These revisions have significant implications for smallholder farmers, many of whom depend on informal seed systems for their survival, livelihood and household food security. The revisions moved Kenyan seed and plant variety systems closer to the commercial plant breeder-centered model of

the stringent International Convention for the Protection of New Varieties of Plants (UPOV). This shift occurred even though the realities of agricultural production in Kenya remain deeply rooted in age-long smallholder and community-based practices of seed saving, exchange, and reuse. The commercially available seeds protected by the SPVA and SPVR can only be used in one season. Therefore, the ban on seed saving, exchange and reuse is intended to lock farmers into the commercially produced seeds controlled by global multinational corporations.

It is against this backdrop that the High Court's decision in Wathome & 14 others v Kenya Plant Health Inspectorate Service & another; Greenpeace Environmental Kenya & 2 others (Interested Parties) [2025] KEHC 18166 (KLR) (Wathome case/case) assumes critical significance. The decision re-centers smallholder farmers within the seed and plant variety protection systems in Kenya and emphasizes that farmers' rights are not peripheral considerations but are integral to the protection of culture, right to food, food sovereignty and food security. In doing so, the judgment serves as a profound reminder of the dangers inherent in allowing plant breeders' rights to expand in ways that restrict or criminalize agricultural practices of farmers and farming communities.

The case is not proposing that plant breeders' rights should be rejected altogether, but that they must be carefully balanced with farmers' rights. A just and inclusive seed and plant variety governance system must, therefore, accommodate both breeders and farmers. Simply put, such a system ensures that the protection of breeders does not operate in ways that undermine seed saving, seed exchange, or farmers' autonomy over their harvests. The case offers important lessons for other African countries seeking to reconcile national agricultural realities with international legal commitments. In many of these countries, smallholder farmers produce a significant share of the food supply yet seed and plant variety protection laws frequently limit their agricultural practices. Although restrictive seed and plant variety laws are often defended on the basis that they primarily regulate commercial seed systems, in practice they have facilitated the expansion of formal seed sectors that rely heavily on imported inputs, while research and investment in sustainable agroecological agriculture remain marginalized.

Similar to Kenya, many of the seed and plant variety regulatory reforms in Africa have been promoted or financed by external actors who also increasingly advocate for biotechnological innovation, including genetic engineering and genetically modified crops. These initiatives are often driven primarily for profit, with little transparency or consideration of ecological, social, and livelihood implications. This critique is not an outright rejection of biotechnological innovation. Rather, it calls for transparency, careful evaluation, and context-sensitive law-making. Africa possesses vast arable land, fertile soils, and a large agricultural workforce. With meaningful investment in informed research that supports smallholder farmers, the continent has the capacity to generate resilient, nutritious, and culturally appropriate food systems without excessive dependence on imported inputs.

Crucially, the case brings to the fore the regime complex of seed and plant variety protection laws and demonstrates how fragmented governance frameworks can enable powerful actors to shape regulatory outcomes, often to the detriment of smallholder farmers. Although Kenya is a party to both the ITPGRFA and UPOV, its domestic legal framework is far more developed for the formal seed sector. As uncovered in the case, laws such as the SPVA and SPVR reflect UPOV-modelled plant breeders' rights. Conversely, equally detailed legal provisions to protect and operationalize farmers' rights as envisaged under the ITPGRFA remain underdeveloped in the country. In addition, while Kenya acceded to the 1978 Act of UPOV in 1999, which afforded greater latitude for farmers to save, reuse, exchange and sell seeds, it subsequently acceded to the 1991 Act of UPOV following sustained international pressure. The 1991 Act of UPOV entered into force for Kenya in 2016 and provides stronger protection for commercial breeders. Nevertheless, although civil society organizations alongside stakeholders, including the United Nations Experts in the Working Group on Peasants and Other People Working in Rural Areas celebrate the decision, the Kenyan government has expressed its intention to appeal the High Court's decision in its entirety. The Attorney General and the Kenya Plant Health Inspectorate Service (Kephis) have filed a notice to this effect.

As debates on seeds and plant varieties continue to evolve in Kenya, this symposium reflects on the case and its significance for the future of seed and plant variety protection in the country. In addition to this introduction, the Symposium comprises three contributions: Tom Kabau's "Kenya's Seeds Case:

The Enduring African Commons of Plant Genetic Resources," Wambugu Wanjohi's "Beyond Breeder Rights: Reclaiming Seed Sovereignty, Food Justice and Cultural Autonomy in Kenya," and Brian Kibet's "Whose Seeds, Whose Future? Seed Sovereignty and Farmers' Rights in Kenya." Kabau argues that the High Court's judgment is well-grounded in the realities of agricultural practice in Kenya and affirms the enduring character of plant genetic resources as part of the African commons. Wanjohi contends that the decision offers an opportunity for Kenya to design a seed and plant variety governance framework that balances the legitimate interests of plant breeders with the constitutional rights of smallholder farmers and rural communities. Kibet, while emphasizing the need for a legal framework that balances innovation with sovereignty, further argues that the case draws attention to broader concerns, including the expansion of genetically modified crops, the increasing reliance on toxic agrochemical inputs, and the ecological and health risks associated with pesticide-intensive agriculture.

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