

In Italy, eight of the 18 administrative regions have adopted their own laws on local genetic resources since 1997. These aim to protect and promote traditional plant varieties and animal breeds in local farming systems as the heritage of the region. Since 2000, when the regional law of Latium was adopted, they also establish collective rights over the local genetic heritage. Here *Seedling* interviews **Antonio Onorati** about this movement towards collective rights and strategy ideas for protecting farmers' seeds in Europe.

Collective rights over farmers' seeds in Italy

GRAIN: Tell us how the issue of collective rights was incorporated into Italy's regional laws on genetic resources.

Social organisations, including NGOs, pushed for these regional laws. We negotiated them with the regional parliaments and with regional ministers and all of that. But once adopted, they get managed and administered by the institutional machinery. It's the civil servant who takes the law and applies it, not us. And there's a whole range of problems that have come up with collective rights, because the bureaucrats don't understand them. When it comes to rights, they think "private property".

The law of Latium talks at the same time about genetic resources as heritage and property. Can you explain this?

The law is making a distinction between material goods and immaterial information. It's clear that

this sheep belongs to this fellow. And that pear tree to some other fellow. But the immaterial part, that is under collective rights. That means that the wood of the pear tree, it belongs to the owner, but the genetic information which gives the pear tree its characteristics, that belongs to the group.

You could translate the law as saying "While confirming the existence of private property rights over the registered plants and animals" – in other words, the wood of the pear tree in your backyard – "the heritage of these genetic resources belongs to the indigenous and local communities."

So when you say, "I have a pear tree that's 150 years old," that's fine, it fully belongs to you. And you can decide to cut it down. But the heritage – the information, the overall value of the genetic material – that doesn't belong to you. So before you cut it down, I can say, "Hang on, you can't cut it when you want because I need to take a cutting



first to multiply it and make a security backup.” That’s exactly how it works. This happened in my area. That’s what we mean by the genetic heritage being a collective right.

So the physical part is private property while genetic resources – the information, as you put it, the software – that belongs to the collectivity as a collective heritage. What does this amount to?

It amounts to two things. First of all, you can go to court if someone tries to patent anything using this material, for example a GMO. Secondly, you can go to court if someone tries to get a plant breeders’ right, like UPOV, on a variety. That means you block biopiracy and you block patents. Third, in fact, if you apply it well, you can establish an overall system of collective heritage rights over local farmer varieties in Italy. In this way, you create a possibility of access to genetic resources that is totally different from the privatisation way.

The fact that it’s a collective heritage means that access to the information is socially negotiated. That means it’s not free. It doesn’t belong to humanity, it belongs to someone. And that someone is a plural, collective someone. So if other farmers, or anyone else, want to access the material, they have to negotiate with these people.

Who are these collective rights attributed to?

That is a question we’re still working through. Where are these rights vested? In the mayorship? Among all the mayorships? In other public authorities? We’re saying, “No. Since there are organised local communities, you have to attribute the collective rights to them.” But then the civil servants say, “OK, but what form of organisation? We don’t have tribes in Italy!”

In Italian law, it is best to give the mayorship some kind of responsibility regarding collective rights, because collective rights that are placed in the hands of the mayorship cannot be annulled by any mayor. Because mayors do not make law. Only the sovereign State can define and take away rights in Italy. The regional authorities can intervene, but only in a limited way since they can be blocked. And since mayorships can’t make laws, they have no authority to sell or destroy what is protected by collective rights.

Italy has a range of collective rights on what is called *usi civici*, “civil use”. These are laws from the Middle Ages and the mayors can’t do anything about them. It’s only the regional and national

administration which can define and annul these rights. Even the case law in Italy says that these collective rights are permanent, because they were established in favour of “present and future generations”. Once the State recognises them, it cannot withdraw them because you can’t nullify the rights of people who at the moment don’t exist.

But you say the question of whom these rights belong to is not settled yet?

For the bureaucrats who have to implement this, it’s not. But there is very strong battle front led by NGOs and some political organisations, to get this settled, including with the support of a broader reference law at the national level. Even the industrialists seem to be in agreement with us in wanting to clarify, within the frame of Italian law, that farmer seeds are under collective rights and not intellectual property rights (IPR). As they put it, “Traditional varieties do not constitute a market for us and if we want the genes from those seeds, we can get them from the genebanks.” So it will be up to us to lead the fight if they start applying UPOV or any other kind of monopoly on these materials.

Having said that, under the law of Latium, from a formal legal viewpoint, it is clear: they belong to the collectivity. So Mr So-and-So, he has the beans and he sells his beans. But the immaterial part, “the genetic information”, that belongs to the collectivity. That means, very explicitly, that he cannot sell the information. It’s very clear.

Do these collective rights on the region’s genetic heritage constitute a collective monopoly right? Because you say that to get access, you have to discuss with the collectivity, negotiate. So the collectivity seems to have a monopoly.

No. Monopoly is a private right, it excludes others. Collective rights, by definition, are rights which don’t prevent or exclude. I’ll give you an example. You want to go and collect mushrooms on collective lands. The mushrooms belong to everyone, which means that anyone can ask if they want to pick some. The collectivity cannot say, “No, you, you’re not allowed because you’re not from around here.” The collectivity has to say what are the rules to pick mushrooms. Or take land itself. If a land area is under collective rights, then before building a hospital you have to negotiate with the collectivity that’s in possession of the land and is managing the rights. The collectivity can say, “Here, no hospital. Because we want to benefit from the woods and to build a hospital you’ll have to cut them down.” Or



The pros and cons of commercialising farmer seeds

How is the issue of the commercialisation of farmer seeds viewed and treated in Italy?

We don't have a big problem with this issue. Even the Italian Seed Industry Association and the Seed Bureau within the Ministry of Agriculture agree that there is no need stop the commercialisation of traditional seeds as long as these transactions never involve any kind of fiscal document. I cannot sell you 50 kilos of traditional durum wheat seed and give you a receipt for it. But I can go to my neighbour's house, get 50 kilos of durum wheat seed and give him two of my lambs, or pay him under the table, or give him seeds back from what I harvest. In Italy, you can do that, people are doing it, and no one has been stopped from doing it. At the European level a lot of people are saying "Oh, the small farmers! They're banned from exchanging seeds!" In Italy, that makes no sense.

The question we really need to confront is not who does farmer-to-farmer seed exchange, but whether we want to open up the possibility of a farmer seed market. What are we talking about there? What seeds? What market? You cannot go creating a market for farmer seeds within a context of liberalisation because you're going to take on a capitalist logic which we in Italy will not accept. We say, "Let us share things properly. It's fine that there are farmer breeders and farmer seed producers and that they can make a market with that. But that market needs to be defined apart from the mainstream market. It has to keep a local dimension and it should not hide a market of any semi-industrial nature."

And you achieve this with the notion of restricted quantities for commercialising farmer seeds?

Yes. And via the notion of territoriality: setting limits in terms of territories, for example at the level of the region or the province. The idea of setting restricted quantities is established in the national seed law of 2001, following the EU Directive 98/95/EC. You'll also find it in some of the regional laws. It's not a ceiling per crop per region, but a ceiling that limits each exchange. We cannot allow a person to sell 200 tonnes of seed, because that's an industry. We don't want traditional seeds to become the next business opportunity for the seed industry, like organic farming has become. The risk is there. We have to avoid monopolies at all cost. But we won't succeed if we just liberalise the market. But we will succeed if we set rules and negotiate in order to control the supply.

Are there any downsides to this approach?

One problem cropping up in Italy right now is that almost anything risks being called a "traditional" variety or a "farmer" seed or a "local" breed. And there can be negative ramifications of awarding these labels to products. For example, local sheep are valuable, especially for producing cheese. In my region, you'll find mini-herds of an old breed called *Sopravvissana* here and there. Forty-five years ago, there were 250,000 of these sheep and now there are only 2,000. This breed makes a particular milk with a fat content of 9%. With 2,000 heads, what are you going to do? You need at least 45-50,000 to undertake any serious cheese production within a regional economy. Otherwise, you're just running a zoo. And there we have a problem. The four men who own the 2,000 sheep say, "You pay us 350 Euros a head". Seven times the normal price! This is crazy. With the movement to take serious our genetic resources in the regions, we've created an added value for traditional breeds, we've created a market for their produce, and now we've created a monster. So we need some kind of public intervention to multiply the reproductive material. We can't leave this entirely in the hands of the farmer-to-farmer approach. I'm one of the people who wants to buy some of these sheep. I have 15 already, but the price is just out of this world. People are interested, even the corporations are interested, there's a geographic denomination supposedly available that could be used to market the products of this animal, and yet we're not getting anywhere. The 2,000 are not going to become 20,000 unless we spread them out to 20 herders who will multiply them and restabilise the breed.

But the herders need some kind of public support. "I can't make a gift of these sheep" they say. Which is true. The most productive sheep in Italy now - the *Sarda* - can give up to one litre of milk per day, while the *Sopravvissana* produces only one-fifth of a litre. The herders have made a conscious decision to keep the traditional sheep and they have a right to some kind of non-monetary compensation.



Sopravvissana sheep - in demand, but out of reach for farmers



a football field, that's the most common example. The collectivity will say, "Sure, make the football field. But we give you the land, you pay for it, you make money with it, and with the money you make you build a public garden for the children, near the nursery school." These are real examples.

With collective rights, there are administrators who take care of all this. They have to enforce these rights. Normally, it's the mayor's office. But sometimes the mayor is the first one to attack these rights. Say the mayor wants to build a football field for his buddies who voted him in. The first thing he does when he takes office is, instead of trying to get land from some private individual who might have voted for him, he looks at the collective lands and declares he's going to build a football field there. And people react and organise themselves again. There's a special court for all of these proceedings.

So under this collective rights regime for genetic resources, you can't prohibit access but you negotiate it, you make it conditional on something.

You can go so far as prohibiting, but it's not automatic. With collective rights, you must negotiate. Maybe yes, maybe no, but there has to be a negotiation. So there's no free or automatic access like you have under this "heritage of mankind" thing, where people can just come and take. Nor is there an automatic right to exclude, as you'd have with a monopoly right.

But can people exclude in the end?

It is possible. For instance, if you want access to make a genetically modified organism (GMO), the answer is no, full stop. This is foreseen in certain laws, such as the Ministry of Agriculture's Ministerial Decree of 5 March 2001.

What do you appeal to in order to do that? A collective interest against GMOs?

You appeal either to a collective interest or to an institution. So to really prevent access to collective lands, you have to prove that it's in the interest of the collectivity to prevent access. It's not gratuitous. You can't say, "No, because I say so." You have to arrive at something like, "No, because we want to keep and enjoy the woods."

And what if there is a conflict?

There is a special judge called the commissioner for collective rights to lands.

Is there an appeals procedure?

You can appeal at a higher level if there is a national framework law in place. But the commissioner has the same status as a final judge, so it's something that can take 20 years to resolve.

So it doesn't stop at the region? It can go all the way to the State?

You can appeal to the State Council under the law on civil use, but this matter is also handled by the commissioner. But right now Prime Minister Berlusconi is changing the national law on civil use because he wants to privatise, so he's presently removing powers from the commissioners. This is an example of the State intervening, as I was talking about earlier.

All of this sounds highly particular to Italy - your legal customs, traditions, organisation, etc.

No. The collective rights that we have in Italy also exist in Spain. There are some remnants in France, in Switzerland, in Belgium and even on the waters in the Netherlands. So that's not true. It's just that people have never worked seriously enough on this for ideological reasons. As it reeks of communism, people don't want to go near it. It's really a form of self-censure to say that it's difficult or that it won't pass and then take all sorts of shortcuts like "common heritage" or "free access", just letting it go and not organising anything. That's how you fall in line with the government position of Germany and UK. In the Seeds Committee of the European Union, they say, "This farmer-to-farmer stuff, farmer seeds, it's just tinkering and we don't need rules for this." This is very dangerous.

We have to be extremely careful about all proposals at the European level that end up taking us into the mainstream, like "genetic resources, heritage of humanity". Calling for the free circulation of seeds among small farmers in the EU, that's also dangerous if there is no negotiated framework. That hides the potential to build a farmer seed industry. Establish rules? Yes. But we must develop rules that do not take us into conformist solutions, including the slightest form of IPR. If we create registers, it's not any kind of register. We have to be precise. In building the European movement, I think everyone has to work, look in their own countries, see how it functions there, try to develop an appropriate legal base for local genetic resources. If we do this across Europe, it would be a huge step forward. Because we'd get rid of this stupid notion of "heritage of humanity". We'll get a lot further with the logic of collective rights, and the



underlying distinction between the material and the immaterial. And then we would find a lot of allies among indigenous peoples and among other countries where collective rights still exist.

But in practice, what happens when someone - be it a civil servant or a member of the collectivity - wants to sell, wants to destabilise the system?

It's written into the laws that in all cases there can be no patenting. You have to put up barriers. And you have to do it in the legislation, in a legal framework. That is why I am saying that the farmer-to-farmer approach has its limits. Because you have to intervene with a piece of legislation. You have to lay down that in all cases farmers' seeds cannot be privatised, that in all cases they must remain outside of any IPR system, that in all cases population dynamics must be maintained. This is much clearer for us now in Italy compared to when we first started with these laws - that this is a battle front. Even a system of collective rights has to confront these issues. A local community cannot do with collectively-held lands something that is against some other law at the national level.

But in so far as the public administration manages all of this, someone can come along and delete the law.

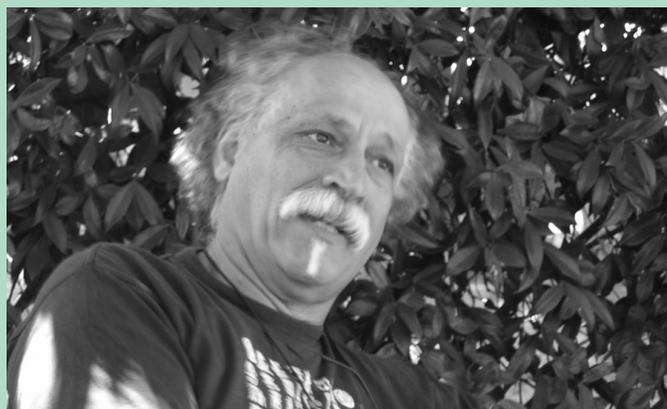
Of course. That's why we have to engage in institutional guerrilla work. The legal front of the battle should never be the exclusive front. Never. We have to be in the streets. We have to implement and develop our alternatives on the ground. But it's really fundamental that the institutional guerrilla work is part of the battles we lead, too. Otherwise, we're lost. We have to build fortresses with which we can defend ourselves when we get hit too hard. That's why I call this a guerrilla approach, this legal work. You occupy a legal territory, one on which you have some advantage and can take them by surprise. We have a capacity to do this that the administration doesn't have. That is precisely why in France the reaction from the government and the industry is so ferocious. They're in a state of hysteria about farmers' seeds in France. They send out controllers in charge of repressing fraud, they send out fiscal agents, they hide papers, they withhold information, it's just amazing. You don't see that in Italy.

We have to consolidate all these fronts and broaden our practices. In my view, the fundamental approach has to be population dynamics and widening our practices. That means bringing traditional varieties more and more into farming systems. That's why

I get fed up with organic farmers who use organic seeds that are not traditional varieties. When they use organic industrial seeds to get their organic certification, I find that ridiculous. To be certified organic, I would say that you have to first use appropriate genetic material, preferably produced on the farm and preferably a traditional variety or a population. If you can't do that, but only if you can't do that, then I would think that organic industrial seeds are okay. But they are in the process of the doing quite the opposite, because they want to build an organic seed industry. As if Novartis is not going to come along and buy them out. As soon as they establish a niche market for biodynamic or organic seeds of any size, the industrialists will come and eat them up.

Would you say then that these regional systems of collective rights over genetic heritage in Italy constitute IPR-free zones? Just like so many of Italy's regions have established GM-free zones?

Yes. That's the institutional guerrilla front tactics. You occupy a space, you create this IPR-free zone, you try to maintain it, to manage it, and you give yourself tools to defend yourself. It's quite like the GM-free zones. Of course, they can come and contaminate you. But if you do nothing, they will come and contaminate you even worse. And the regions, they evolve. Look, right now there are 11 regions out of the 18 in Italy that have some type of GM-free laws. Now that we have coexistence coming in, we'll see how they defend themselves. It's going to be a hell of a fight. 



Antonio Onorati is the President of Crocevia, an Italian development NGO that has long been supporting initiatives related to community control over plant and animal genetic resources in developing countries. Crocevia has been very much involved in the movement for collective rights in Italy. Apart from his day job, Antonio lives and works on his family's farm outside of Rome. He is also a founding member of the Board of GRAIN. The full interview can be accessed on the web at www.grain.org/seedling/?id=336

