

OWNING SEEDS, ACCESSING FOOD

A HUMAN RIGHTS IMPACT ASSESSMENT OF PLANT VARIETY PROTECTION



QUICK READ

RESEARCH

- *Ex ante* human rights impact assessment (HRIA)
- Case studies in six communities in Kenya, Peru and the Philippines
- Assessing possible consequences of plant variety protection systems based on UPOV 91 model
- Focus on the right to food of small-scale farmers in developing countries

FINDINGS

- Negative impact on the functioning of informal seed system → adversely affecting the right to food
- Traditional knowledge unacknowledged by government institutions → adverse impact on farmers'/minority/women's rights, biodiversity, right to food
- Lack of impact assessment and participation when PVP laws are drafted and implemented
- HRIA confirmed as a valuable and flexible approach to assess human rights impact

RECOMMENDATIONS

- Governments: be mindful of the needs of the most vulnerable groups and the right to food when drafting and implementing PVP laws, by undertaking HRIA, ensuring transparent and participatory processes, and identifying necessary accompanying measures
- Technical assistance providers: encourage *sui generis* PVP laws that are evidence-based and mindful of specific development needs
- Civil society organisations: raise awareness of potential human rights impact and get involved in policy processes related to PVP laws

The expansion of intellectual property rights on seeds might well restrict small-scale farmers' practices of seed saving and exchange in the informal seed system, thus limiting access to protected seeds and putting farmers' right to food at risk. Developing countries considering the introduction of plant variety protection (PVP) regimes, and industrial countries putting pressure on developing countries to do so, need to assess these impacts.

Why Use HRIA for PVP?

Agriculture in most developing countries is characterized by small-scale farming that relies heavily on the informal – rather than the formal or commercial – seed system. The informal seed system is the basis for farmer livelihoods as well as national food security in these countries. PVP laws based on the 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV 91) reduce the effectiveness of this informal seed system by restricting farmers' rights, and disrupting traditions of seed management and sharing. Potentially, this leads to severe consequences, particularly for the most vulnerable groups: small-scale and women farmers. Therefore, UPOV 91-like PVP laws can have negative impacts on the enjoyment of human rights – particularly the right to food – of those groups.

In this context, the lack of information about these impacts needs to be addressed, particularly because many developing countries are considering (often under pressure) joining UPOV 91. For evidence-based decision making, governments in developing countries need to know how UPOV 91-based PVP laws might affect farmer communities and the development of their agricultural sector. This will give governments the opportunity to design their PVP systems in a way that is most suited to their needs and realities. This is the basis of a report¹ – the first of its kind – on a human rights impact assessment of UPOV 91-based PVP laws. This factsheet summarizes the report.

METHODOLOGY: APPLYING HRIA

Looking Through a Human Rights Lens

The strength of the study lies in the use of a human rights lens to look at PVP regimes. HRIAs are a rather new policy tool, and they differ in three important ways from other types of impact assessments:

1. They are firmly rooted in legal norms.
2. They focus on poor, vulnerable or otherwise disadvantaged groups whose human rights are most likely to be at risk. (It is important to note that from a human rights perspective, it is not acceptable to make vulnerable groups worse off in a trade-off for an aggregate or sectoral positive impact.)
3. The very process of carrying out these assessments must respect human rights through an inclusive process. The methodology for the HRIA on UPOV has been based on former research and experience by academics, NGOs and UN human rights bodies.

Related to the methodological approach, four main lessons can be drawn from the study. First, being selective early on in the process, on a narrow set of human rights and policy elements, is key to the success of the exercise. Second, HRIAs are iterative processes implying some degree of procedural flexibility. Third, the HRIA will have to rely extensively on expert judgments beyond the findings of the field studies. Fourth, involving field researchers at an early stage of the process and closely assisting them during data gathering is critical to aligning information needs with information collection.

Case studies: The Philippines, Kenya and Peru

To collect empirical evidence on the potential impact of UPOV 91-like PVP laws on the right to food, field research was carried out in six communities in Kenya, Peru and the Philippines. All of the case studies are *ex ante*, since the current PVP systems in the countries concerned are either not in line with UPOV 91 (the Philippines), has only been

amended recently (Kenya), or has not yet been enforced (Peru). By definition, an *ex ante* HRIA analyzes the **potential** consequences of intellectual property in agriculture. The field studies were carried out by experienced local research teams. They reviewed the relevant country-specific literature, held consultations with a wide range of actors, and conducted key informant interviews and focus group discussions with specific farmer groups.

RESEARCH FINDINGS: HUMAN RIGHTS ASPECTS OF PVP

Generally, the research has shown that the informal seed system is by far the primary way for small-scale farmers to access seeds. Varying between communities and crops, the case studies documented that the informal seed system covers up to 98% of seed demand (e.g. for potatoes in Peru and Kenya). Additionally, there is an important interaction between the formal and informal sectors, whereby seeds from the formal sector are integrated into the informal sector by seed saving, exchanging and selling of farm-saved seeds. This means that small-scale farmers also access seeds of improved and PVP varieties through the informal seed system, even if the seeds are in some cases protected by plant breeders' rights. Thus the informal seed system also facilitates access to improved seeds.

UPOV 91 and Access to Seeds through Informal Channels

If implemented and enforced, UPOV 91 could negatively impact the functioning of the informal seed system. Its restrictions on the use, exchange and sale of farm-saved PVP seeds would severely affect the positive linkage between the formal and informal seed systems, and make it harder for resource-poor farmers to access improved seeds. Moreover, selling seeds (including those protected by PVP laws) is an important source of income for many farmers. From a human rights perspective, restrictions on the use, exchange and sale of protected seeds could therefore adversely affect the right to food, as seeds might become either more costly or harder to access.

«From a human rights perspective, restrictions on the use, exchange and sale of protected seeds could adversely affect the right to food, as seeds might become more costly, harder to access, or of less good quality. They also could affect the right to food, as well as other human rights, by reducing the amount of household income which is available for food, healthcare or schooling.»

Research report: Owning Seeds, Accessing Food, 2014

1 You can download the full report for free at www.evb.ch or order a print version at info@evb.ch (12 CHF).

COMPARISON OF INPUT COSTS FOR CULTIVATING A LOCAL MAIZE VARIETY AND A COMMERCIAL RR MAIZE VARIETY IN LAMLIFEW, PHILIPPINES (FOR 1 HA, IN PHILIPPINE PESOS)

Input cost	TINIGUIB (LOCAL VARIETY) (NOT PVP-PROTECTED)		RR MAIZE (PVP VARIETY) – ACCESSED THROUGH INFORMAL SEED SYSTEM		RR MAIZE (PVP VARIETY) – ACCESSED THROUGH FORMAL SEED SYSTEM
	Farm 1	Farm 2	Farm 1	Farm 2	
Seed*	1,125	900	3,600	2,400	9,700–10,400
Fertilizers (N, P, K)	1,500	4,400	15,000	8,800	8,800–15,000
Herbicide (Roundup)	–	–	1,400	1,800	1,400–1,800
Manual weeding	5,250	3,000	–	–	
Total input costs	7,875	8,300	20,000	13,000	19,900–27,200

* It is important to note that the two households studied access RR seed through informal channels, as is generally the case in Lamlifew. However, if the total seed cost was calculated using the price at which seed companies actually sell their seed, the cost of RR maize seed (for one hectare) would be PhP9,700 and PhP10,400 respectively. To calculate the total input cost including seeds from the formal seed system, the whole spread of costs regarding the other inputs has been taken into account.

Traditional Knowledge Related to Seed Management

Traditional knowledge is applied by farmers in the selection, preservation and storage of seeds. It is the basis of local innovation and *in situ* seed conservation. Women's knowledge is of particular relevance to local seed and food systems, especially in the Andean region. However, the wealth of practices that farmers use and develop at the local level goes largely unnoticed and unacknowledged by government institutions. From a human rights perspective, restrictions on traditional practices and seed management systems adversely impact farmers' rights, cultural rights, minority rights, indigenous peoples' rights, women's rights, as well as biodiversity and the right to food.

Seed Choice, Risk and Household Budgets

Restrictions on the use, exchange and sale of farm-saved seeds might lead to fewer options for farmers, who then become increasingly dependent on the formal seed sector. Improved varieties, however, often require more inputs compared to local farmers' varieties, pushing up production costs. In the case of varieties protected in line with UPOV 91, seed costs drive up production expenses even further. From a human rights perspective, higher production costs pose a risk to cash-strapped farmers by destabilising their household budget. This could negatively impact a range of human rights, by reducing the amount of household income available for food, healthcare or education.

Issues of Concern When Implementing PVP Laws

Apart from the above findings, the study identified additional issues of concern that should be taken into account when developing and implementing PVP laws. The case studies documented a lack of information and participation of small-scale farmers and other stakeholders in the process of adopting and reforming PVP-related laws. In addition, there has not been an assessment of the likely impacts

of these laws. This is inconsistent with the state's human rights obligations to ensure adequate information on, and participation in, public policy-making. Furthermore, there have been indications that several UPOV-related provisions could undermine other public interest policies and processes by negatively impacting the state's ability to comply with other international legal obligations (for example under the Convention on Biological Diversity or the International Treaty on Plant Genetic Resources for Food and Agriculture) or national policies.

In conclusion, the research provides clear evidence on potential human rights impacts and further areas of concern that should be carefully considered when designing and im-



Women farmers describing and ranking coping strategies to overcome seasonal food insecurity, Sufatubo, Glan, Sarangani province, The Philippines.



Andean farmers collectively harvesting ollucu (*Ollucus tuberosum*), a native tuber rich in protein, near Paucarhualla, Cusco region, Peru.

plementing PVP laws. The findings of the impact assessment showed (i) strong dependence of small-scale farmers on informal seed systems in developing countries, (ii) the threat to the enjoyment of the right to food when access to seeds of protected varieties is restricted, and (iii) the increasing malfunctioning of the informal seed system as the result of stringent laws including UPOV 91-style PVP laws on seeds.

RECOMMENDATIONS: WHAT NEEDS TO CHANGE

The study offers specific recommendations to a range of stakeholders, including governments, the UPOV Members states and Secretariat, providers of technical assistance, and civil society organizations.

Key Recommendations to Governments

- to undertake an HRIA before drafting or amending a national PVP law or before agreeing to or introducing intellectual property provisions in trade and investment agreements in the area of agriculture
- to improve the linkages between the formal and informal seed system and to apply a differentiated approach to PVP for different users and different crops

- to ensure national PVP laws allow small-scale farmers to freely save, use, exchange and sell farm-saved seeds/propagating material
- to ensure that governments abide by a transparent and participatory process that includes all potentially affected stakeholders when drafting, amending or implementing PVP laws and related measures
- to inform government agencies and others involved in seed policy about their obligations concerning the right to food
- to identify what accompanying measures may be necessary for new PVP-related laws, and implement them, including measures to mitigate and remedy any potential adverse impacts of the PVP-related laws on human rights or on the informal seed sector
- for developing countries to use the flexibility provided by the TRIPS Agreement to draft PVP laws and related measures that reflects national agricultural conditions and the needs, interests, and rights of the most vulnerable groups such as small-scale farmers
- to monitor the impact of PVP laws on the right to food, with particular attention to ways in which PVP-related laws or policies impact different segments of the population

Recommendations to Other Actors

- UPOV Members and Secretariat: to review those aspects of the UPOV rules and their workings that affect the informal seed sector, with a view to ensuring that in practice as well as on paper, these rules facilitate PVP systems that respect the interests and needs of developing countries
- Technical assistance providers: to ensure that beneficiary countries undertake a thorough objective assessment of their agricultural situation, covering the formal and informal sectors and their international obligations (e.g., human rights obligations and obligations under the Convention on Biological Diversity, the International Treaty on Plant Genetic Resources for Food and Agriculture, etc.), and draft a *sui generis* PVP law that is evidence-based and suitable for their respective conditions, needs and interests
- All concerned actors: to raise awareness of the important role of the informal seed sector in many countries and the possible human rights implications of UPOV 91-type PVP laws
- Civil society: to get involved and raise awareness when governmental or regional bodies draft PVP-related laws.

PUBLISHER Berne Declaration, Bread for the World – Protestant Development Service, Community Technology Development Trust (CTDT), Development Fund – Norway, Misereor, Searice, Third World Network

DATE January 2015