

The UPOV Convention, Farmers' Rights and human rights:

An integrated assessment of potentially conflicting legal frameworks

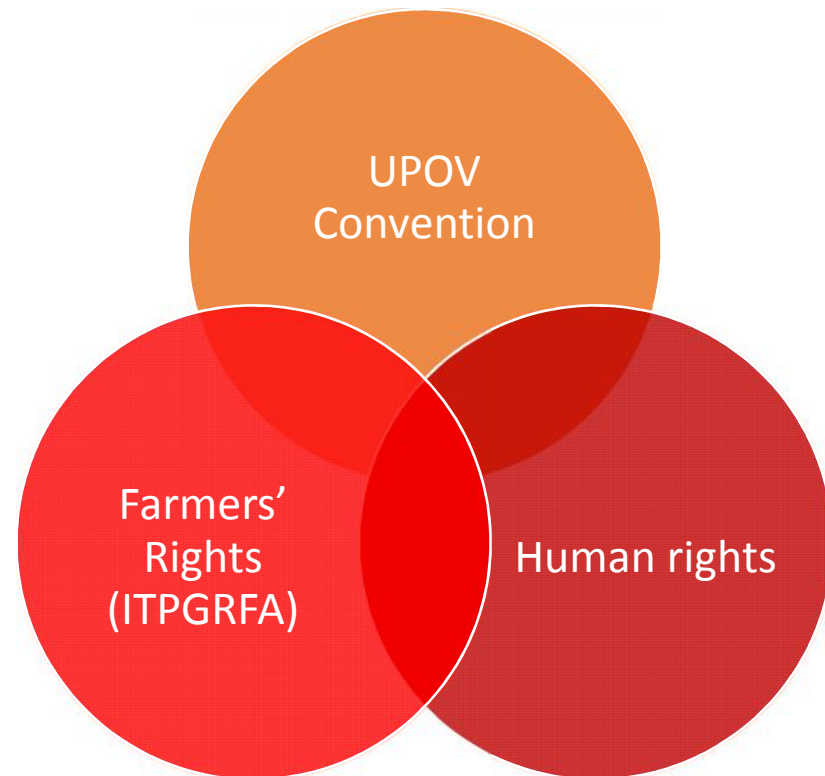
Presentation of a study commissioned by Deutsche Gesellschaft für
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Background of the study

- The overall aim is to explore the relations between the UPOV Convention, Farmers' Rights and human rights.
- Many countries are on the way to developing national plant variety protection (PVP) laws, often based on the UPOV system.
- NGOs and farmer organizations criticize the UPOV system.

What is the UPOV Convention?

An international treaty setting conditions for the protection of new varieties of plants; it further defines the scope of plant breeders' rights with regard to protected varieties, and exceptions for farmers and other plant breeders.



Objectives of the study



To assess whether the regulations of the 1991 Act of the UPOV Convention

1. Promote or hinder the realization of the right to food and other human rights;
2. Promote or hinder the implementation of Farmers' Rights as required by the ITPGRFA; and
3. are appropriate for the agricultural conditions in developing countries.

The UPOV Convention and human rights

Human rights under the ICESCR

The human right to adequate food

- Refers to food and nutrition security in a comprehensive sense
- Rights holders need to have either access
 - to productive resources (e.g. land, seed...) to produce their own food
 - or to sufficient income that entitles them to purchase adequate food

Human rights under the ICESCR are legally binding for the state parties to this treaty!

The human right of everyone to enjoy the benefits of scientific progress and its applications

- Access has to be ensured for all people without discrimination
 - to seed of varieties that are bred based on scientific knowledge and its applications
 - to scientific breeding progress that is directed towards the needs of vulnerable groups



Photo: Sonja Siart

Rights of Indigenous Peoples

UNDRIP

- Not legally binding
- Rights with regard to the genetic resources
- Right to maintain customary practices and institutions
- Free Prior and Informed Consent (FPIC) should be a standard procedure for consultations

ILO Convention No. 169

- Legally binding for signatory states
- Obligation to establish dialogue and processes of consultation with indigenous and tribal peoples through their representative institutions for all matters that concern them directly



Photo: © Fotosearch.com

Human Rights Principles (HRPs)

HRPs are to be followed in all processes that relate to human rights

- Equality and non-discrimination
- Participation and inclusion
- Accountability and rule of law

→ Closely related to key attributes of 'good governance'

The UPOV Convention and Farmers' Rights / ITPGRFA

Farmers' Rights in general

Farmers have an implicit right to the genetic resources they use:

- including a right to use seed and harvested material
- unless challenged by other rights – e.g. plant breeders' rights defined in a Plant Breeders' Rights Act.

The status of farmers' customary rights in relation to rights of others depends of the legal system in each country.



Photo: © IRRI

Farmers' Rights in the ITPGRFA

-  Right to the protection of traditional knowledge
-  Right to participate in decision-making
-  Right to benefit-sharing
-  Right to save, use, exchange and sell seed and propagating materials

The UPOV Convention and agricultural conditions in developing countries

Input-intensive and low-input production systems co-exist

Agricultural conditions in developing countries are diverse:

- In input-intensive systems, external inputs such as seed, fertilizer, agrochemicals increase production costs but enhance yields
- In low-input systems, standard approaches to agricultural intensification are often uneconomic or increase risk; 'improved' varieties do not generally perform better than local ones.
- The distribution of high versus low-input production systems varies among countries.



Photo: Mohan Dhamotharan

Overlap between different breeding and seed systems and diversity of actors

Different breeding and seed systems, various actors, diverse foci:

- Varieties from the formal system enter the farmer-managed system and vice versa
- Breeding and seed production are not separated in the traditional farmer-managed system; they form part of the agricultural production activities and are collective in nature.
- For many crops that are important for local food systems and income generation, the farmer-managed breeding system is the only one that exists.
- Formal breeding (private sector) is in most cases limited to few crops and varieties, e.g. hybrid maize, wheat, cotton, horticultural crops.
- New actors have entered the scene in some countries.



Photo: © GIZ / Ursula Meissner

The 1991 Act of the UPOV Convention and agricultural conditions in developing countries

To summarize:

- The 1991 Act of the UPOV Convention pays little attention to differences among countries, including with regard to the diversity of agricultural conditions and actors involved.
- It does not well address the areas of overlap between formal and farmer-managed breeding systems.
- It creates legal uncertainty with regard to farmers' breeding activities if they cannot be separated from seed production and general agricultural production.
- It does not consider impacts on diverse actors and requirements for sustainable breeding and seed sector development.



Photo: ©CIMMYT / P. Setinela

Recommendations

Countries in the process of introducing national PVP laws (1)

Prior to adopting any PVP laws, governments should

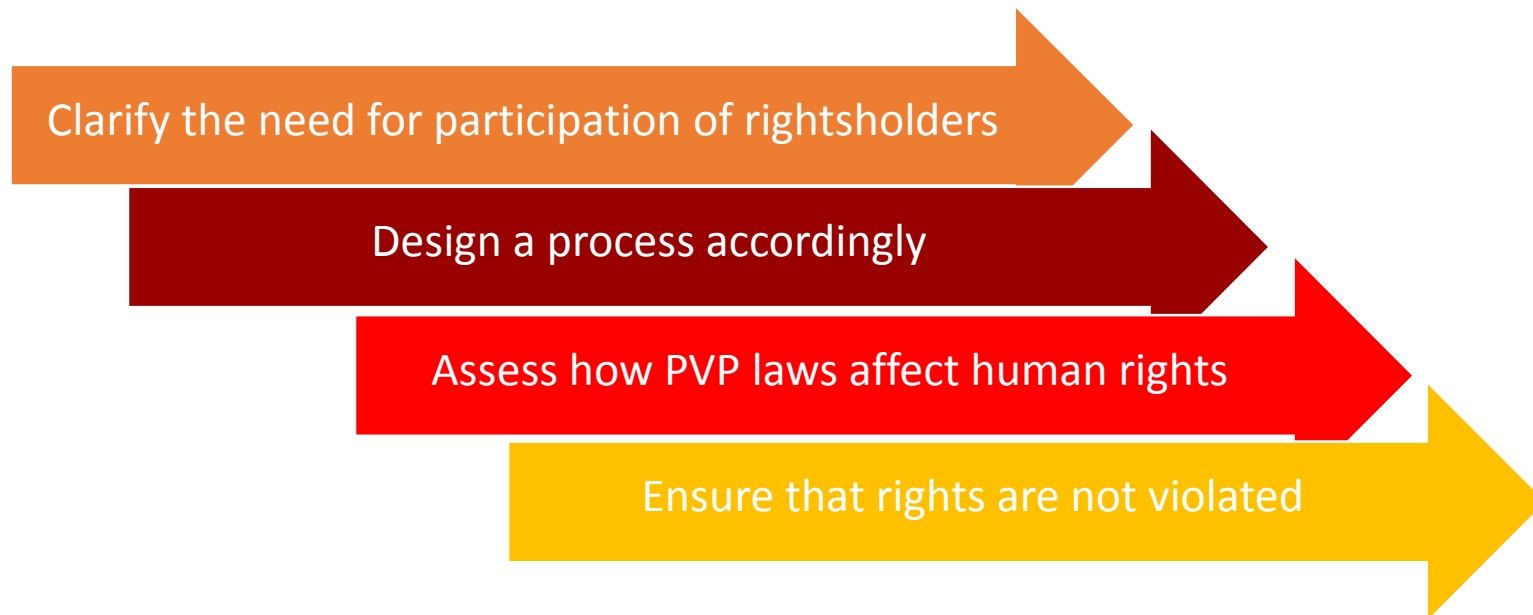


Clarify the objectives of introducing PVP laws

Assess which types of PVP laws meet these objectives

- Based on an assessment of the situation and needs of the farming sector in the country
- Considering relevant treaty obligations they are committed to, e.g. ITPGRFA, ICESCR
- Considering the discretion required for harmonious implementation of different treaty obligations into national law

Countries in the process of introducing national PVP laws (2)



- Is the country state party to ICESCR and/or ITPGRFA?
- Have indigenous peoples been identified on the state's territories?
- Has the state signed the ILO Convention No. 169?
- Which standard procedures or 'best practice' examples exist?
- Which measures need to be taken to ensure that rights are not violated?

Other countries



Could provide assistance to developing countries

Could support opportunities for research

And help further develop rules and procedures within UPOV

Thank you for your interest!

Information on the study



Christinck, A. & M.W. Tvedt (2015):
The UPOV Convention, Farmers' Rights and Human Rights. An integrated assessment of potentially conflicting legal frameworks. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Eschborn/Bonn, Germany.

Available at:

www.giz.de/fachexpertise/downloads/giz2015-en-upov-convention.pdf