Briefing Note

Intellectual Property Rights and Rural Development – Plant Variety Protection and Its Influence on Food Security and Biodiversity

The background

Intellectual property rights (IPRs) have existed in agriculture for over 80 years now. A basic distinction is made between two forms of protection: patenting and plant variety protection.

In Europe, intellectual property rights in agriculture have until now been regulated primarily through plant variety protection under the UPOV Convention (Union internationale pour la protection des obtentions végétales – International Union for the Protection of New Varieties of Plants). This Convention protects the intellectual property rights of plant breeders but at the same time permits other breeders to use protected material without charge for their own breeding work, a concession known as the ‘breeder’s privilege’. The first UPOV Convention took force in 1961. Although it indirectly permitted farmers to resow seed from protected varieties freely, this ‘farmer’s privilege’ was not incorporated into the Convention until the 1991 revision. Due to these two privileges, plant variety protection differs significantly from patent law.

The issue of intellectual property rights in agriculture became relevant to the developing countries with the founding of the World Trade Organization (WTO) in 1995. Every country acceding to the WTO automatically becomes a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). This Agreement establishes minimum standards for the protection of intellectual property rights for all sectors, including agriculture. Living organisms may, in principle, be the subject of patents. Pursuant to Article 27.3(b) of the Agreement, however, member countries may exclude processes of an essentially biological nature used in plant or animal breeding, as well as plants and animals themselves, from patent protection. However, WTO members must provide for effective protection of intellectual property rights for plant varieties. One option is to establish a sui generis system outside the framework of patent law, by means of arrangements under UPOV for example.

The various international regimes – the WTO, the Convention on Biological Diversity (CBD), the International Seed Treaty (International Treaty on Plant Genetic Resources for Food and Agriculture, ITPGRFA) and UPOV – apply diverse approaches to the protection of intellectual property rights. The WTO, with the TRIPS Agreement, focuses on private trade-related intellectual property rights, whereas the CBD and the ITPGRFA recognise the sovereignty of the signatory states in relation to their biological diversity and establish rules governing access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.

The ITPGRFA regulates the multilateral exchange of genetic resources relating to the most important plants for food and agriculture and enshrines Farmers’ Rights.
These include the protection of farmers’ traditional knowledge, the right to share in the benefits arising from the utilisation of genetic resources, and the right to participate in decision-making at the national level. The ITPGRFA also contains a provision on farmers’ traditional rights to resow, exchange and sell part of the seed they harvest. However, these rights are undermined by the 1991 UPOV Convention and its implementation at national level. Farmers’ Rights play a key role in the debate about property rights relating to plant genetic resources for agriculture.

The public debate about the role of intellectual property rights in agriculture has currently stalled. Positions have become entrenched. Some call for strong intellectual property rights protection as the driver of innovation and the recouping of investment; others oppose strong property rights protection, especially patents and UPOV, in order to promote food security on the basis of smallholder farming while conserving agrobiodiversity. Opponents of strict intellectual property rights in agriculture find support in various studies of international repute, which question whether strong intellectual property rights protection is indeed a driver of innovation.

Despite the findings of these studies, the representatives of UPOV and the plant breeding industry insist that plant variety protection plays a key role in stimulating the development of new varieties, thereby making more and better varieties available to farmers. They also claim that plant variety protection enables breeders to recoup, through licence fees, the investment made in developing a new variety.

The United Nations Special Rapporteur on the Right to Food, Olivier De Schutter, has also criticised the systems of intellectual property rights protection that currently prevail. In a report published in 2009, he points out that the obligations of states to respect, safeguard and protect the right to food must be heeded, even in the context of intellectual property rights in agriculture. Farmers’ access to seed is a key prerequisite for the realisation of the right to food. The obligation to respect the right to food, he argues, requires states to refrain from introducing legislation or other measures which create obstacles to the reliance of farmers on informal seed systems.

The obligation to protect requires states to adopt appropriate measures to regulate seed companies and plant breeders in order to ensure that farmers’ traditional use of seed is not put at risk. Furthermore, states must actively promote farmers’ access to seed and other resources, for example by supporting farmers’ seed systems, in order to safeguard the right to food.

According to De Schutter, no state should be pushed to join the UPOV Convention. The United Nations Special Rapporteur recommends that impact assessments should be carried out in order to ensure that the chosen system of intellectual property rights protection is compatible with the right to food. De Schutter’s opinion and his recommendation are supported by non-governmental organisations (NGOs).

**Our position**

To feed the increasing world population, further intensification of agriculture is necessary. In order to ensure that intensification is sustainable, it must also be tailored to the needs of smallholder farmers and the significant contribution they make to food security. Smallholder farmers’ rights, particularly their rights of access to seed and use of seed, are of key importance.

In this context, GIZ takes the following positions:

1. **Seed is no ordinary product**

   The rich diversity of agricultural crop species (agrobiodiversity) is the product of breeding work by farmers. It is extremely important for adaptation to climate change and long-term food security. Without a large gene pool, breeding in order to meet these new challenges is impossible.

   Commercial seed production, too, is based on the varieties originally developed by farmers. Seed therefore cannot be equated with ‘ordinary’ products such as fertiliser.
2. Intellectual property rights must not jeopardise food security

GIZ is actively engaged in facilitating a transparent dialogue between the seed industry, civil society and the relevant ministries. It is important in this context to focus on overarching development policy goals. Such a dialogue contributes to achieving a balance between different social and commercial interests.

For this to be achieved, a prerequisite is that intellectual property rights must not adversely affect either agrobiodiversity or the realisation of the human right to food. Nor may traditional uses of seed be put at risk. Furthermore, farmers’ access to seed must be actively promoted, and support must be provided for farmers’ seed systems.

3. Farmer-produced seed must be part of support programmes

Agricultural support programmes must not be coupled to the exclusive use of modern high-performance varieties which are subject to strict plant variety protection. This can lead to a decline in agrobiodiversity. There is also a danger that smallholder farmers may become too dependent on external inputs, which they often cannot afford.

4. Civil society involvement

Civil society – such as representatives of farmers’ associations – must be involved in establishing the framework for plant variety protection, both at national and at international level.

5. No obligatory membership of UPOV

At international and regional level, the conclusion of free trade agreements should not be linked to an obligation to join UPOV. Moreover the UPOV Convention should be amended to recognise Farmers’ Rights.

Our recommended actions

Efforts to promote the sustainable intensification of agriculture will result in a greater need for seed-related advisory services on breeding, propagation, supply and legislation. In the 1980s and 1990s this was an important field of action for international cooperation, but since 2000 capacities have been scaled down as a result of falling demand and changing priorities. Now once again it is necessary to build and consolidate capacity for the developing countries, and indeed for development professionals working in international cooperation.

GIZ considers the following the most important recommendations for action:

1. Advise partner countries on plant variety protection

An important area of international cooperation is the provision of advisory services to partners on the development and implementation of national regimes for plant variety protection. These must be adapted to the specific needs of the countries concerned. International cooperation can also play an important role in bilateral negotiations, for example within the framework of Economic Partnership Agreements (EPAs). This involves advising partner countries on the options available to them for plant variety protection in the course of their national implementation of Farmers’ Rights.

2. Support cooperation arrangements with the private sector

Particularly in the seed sector the private sector needs advice and support when it cooperates with developing countries. This ensures that they take account of development policy objectives during the development and implementation of their cooperation projects.

3. Carry out impact studies

The impacts that selected systems of intellectual property rights protection have on the right to food must be documented and evaluated. This calls for impact studies to be carried out.
4. Pay greater attention to plant variety protection and Farmers’ Rights

Greater attention should be paid to the themes of plant variety protection and Farmers’ Rights in the context of rural development, economic development and food security programmes. This could be complemented with targeted provision of further education and training for partners, accompanied by examples of good practice from other countries.

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