A differentiated approach to plant variety protection (PVP)

**ALQ - How can room be created for informal and intermediary seed systems in a UPOV '91 informed Plant Variety Protection (PVP) system?**

**Background**

Intellectual Property Rights give the holder the right to exclude others from using his or her invention for a particular period of time.

African regional organisations are in the process of establishing PVP systems which are in line with the international standards set by the International Union for the Protection of New Varieties of Plants (UPOV).

Proponents hope that a UPOV-compliant PVP system will incentivize breeding and the introduction of new varieties, while opponents fear that such PVP system favours foreign seed companies and criminalize farmers.

The dichotomies between proponents and opponents have taken centre stage and there is much distrust and misunderstanding.

The challenge for African countries is to strike a balance between protecting the interests of breeders in order to maintain the incentive function of plant breeder’s rights in the commercial market, while providing leeway to smallholder farmers that depend on informal sources for their seed security and survival.

**Key events**

- **Programme launch:** Launch of the programme in Nairobi in September 2014 and the development of key research questions in thematic working groups with resource persons, validated by large audience in breakout working groups.

- **Scoping paper and action planning:** Validation of the scoping paper and identification of action learning activities and action plan for each of these with the thematic working group in Kampala February 2015.


- **High Level Round-Table Meeting on Plant Variety Protection in Africa, 27-28 November 2014, Cape Town, South Africa**


- **Workshop:** Can room be created for informal and intermediary seed systems in a UPOV ‘91 informed plant variety protection system? 20 October 2015, Harare, Zimbabwe.


**Key outputs**

Desktop research resulted in a discussion paper on Plant Variety Protection in Africa from an ISSD perspective and scientific publications including in Nature Biotechnology.


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**A solution to the controversy on plant variety protection in Africa**

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African countries are in the process of establishing Plant Variety Protection (PVP) systems which are in line with the international standards set by the International Union for the Protection of New Varieties of Plants (UPOV). The debate is whether to adopt a UPOV-compliant PVP system which favours foreign seed companies and criminalizes farmers, or to continue with informal seed systems that are based on community knowledge and innovation. The challenge for African countries is to strike a balance between protecting the interests of breeders in order to maintain the incentive function of plant breeder’s rights in the commercial market, while providing leeway to smallholder farmers that depend on informal sources for their seed security and survival.

**Ethiopian farmer in his wheat seed crop field**

**Participants of the High Level Round-Table Meeting on PVP in Africa, 27-28 November 2014, Cape Town, South Africa**

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Main findings & lessons learned

In most African countries, PVP is relevant for only a small segment of the formal seed sector.

PVP, like any intellectual property rights, are intended to stimulate innovation and development by regulating rights and obligations amongst parties involved in commercial trade. A PVP system will not incentivize breeding in crops for which there is no commercial market.

- Figure 1 shows a percentage summary of the 1458 PVP applications filed in Kenya since 1999 to August 2016.
- Figure 2 shows the distribution of the 15% PVP applications made in respect of cereal crops. Over 60% of the applications made concern maize.
- Figure 3 shows the distribution of the 3% PVP applications made in respect of vegetable crops. Over 75% of the applications relate to French beans, which is an export crop.

Public research organisations should carefully manage PVP applications and not overestimate prospective revenues.

The UPOV 1991 Convention can restrict the accessibility of protected varieties for smallholder farmers.

McGuire and Sperling’s (2015) recent study of 9660 households across six countries covering 40 crops shows that smallholder farmers access 90.2% of their seed from informal systems with the majority being bought from local markets. A UPOV 1991 compliant PVP system does not allow farmers to trade seed of a protected variety.

African countries should seize the opportunity to establish a PVP system that suits their specific needs.

The UPOV exemption for acts done privately and for non-commercial purposes provides the best opportunity to create legal space for farmer-seed systems in a UPOV 1991 compliant PVP system.

African countries can develop regulations that allow a certain category of farmers (i.e. smallholder or resource-poor farmers) to freely save, exchange and sell farm-saved seed of protected varieties.

The exchange and local trade of farm-saved seed of protected varieties need to fall within the scope of the exemption.

Clear definitions are needed to make the exemption operational: Who is a smallholder farmer?

The Ethiopian draft PVP bill defines a smallholder farmer as someone whose total earnings from sales of crops produced do not exceed the average household income. Next to income levels, a smallholder farmer can be classified in terms of farm size, cropping area or production capacity.

Other concerns raised during the stakeholder meetings relate to the need to improve transparency and democratic accountability in decision-making processes on PVP, and the compatibility of the UPOV system with national and international legislation on Access and Benefit Sharing.

The topic remains controversial with strong disagreements and entrenched positions.

Next steps and future focus areas

Next steps:

- Thesis defence of Peter Munyi!!
- Presenting our findings at Symposium on possible interrelations between the ITPGRFA and UPOV (Geneva, October 2016)

Future Work:

ISSD Africa should assist countries in establishing a PVP system that is supportive of, or at least not detrimental to, the various seed systems that operate within the country and acceptable to its key stakeholders, notably farmers and breeders.

This could be done by:

- Building understanding amongst farmers, breeders and policymakers on PVP and its role in seed sector development through open and constructive dialogue;
- Monitoring the impact of existing PVP systems on various seed systems
- Promoting inclusive and transparent decision-making processes on national, regional and international levels
- Promoting a broader interpretation of the private and non-commercial use exemption in UPOV and its member countries in order to create legal space for farmer-seed systems
- Support the domestication of Farmers’ Rights as formulated in the FAO Treaty, e.g. by developing guidelines for national implementation of Farmers’ Rights

[Image: Ethiopian farmers on their way home (wheat seed crop field)]