

SEEDS OF HUNGER: INTELLECTUAL PROPERTY RIGHTS ON SEEDS AND THE HUMAN RIGHTS RESPONSE

EXECUTIVE SUMMARY

Can life be patented? Although many people around the world would respond to this question with a resounding no, seeds – the basis of plant life – are increasingly ‘protected’ by intellectual property rights (IPRs). The two most common types of intellectual property (IP) protection affecting seeds are plant breeders’ rights (PBRs) and patents. Because they restrict or prohibit the re-use and exchange of seeds, patents and PBRs can have negative effects on rural livelihoods, cultural practices and the global food supply, as well as adverse implications for the enjoyment of human rights.

The rise of IPRs on seeds is the result of several interrelated factors. Corporate control of agri-food systems coupled with rapid developments in agricultural biotechnology helped ensure that the World Trade Organization’s (WTO) Agreement on Trade Related Intellectual Property Rights (TRIPS) included minimum standards of IP protection in agriculture. TRIPS has been crucial to the spread of IPRs as a country must ratify the Agreement to join the WTO and comply with its provisions or face trade sanctions.

Bilateral trade agreements and biased technical assistance – from the World Intellectual Property Organization (WIPO), the WTO, the International Union for the Protection of New Varieties of Plants (UPOV) and certain donor governments – have also played significant roles in promoting stringent IP regimes in agriculture sectors that go beyond the standards required by TRIPS.

This Backgrounder highlights a number of human rights concerns related to IPRs on seeds, including:

THE RIGHT TO FOOD

Two thirds of IP-protected seeds available today are owned by the ten largest seed companies, whose phenomenal market power enables them to buy up competition and set seed prices at increasingly higher rates. Meanwhile, the majority of the world’s hungry live in rural areas and are often unable to feed themselves because of a lack of access to land, water or credit. If seeds are added to this list of inaccessible assets, hunger – and violations of the right to food – will become more prevalent.

IPRs on seeds also affect the sustainability of food production, a crucial component of the right to adequate food, in a number of ways. For example, as more plant varieties are subject to IP protection, fewer farmers will be able to exchange or re-sow their seeds, ultimately restricting the flow of genetic material and reducing the number of people involved in crop breeding. This has negative consequences for agricultural biodiversity and endangers the right to food of future generations.

THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

With increasingly fewer alternatives to IP-protected commercially produced seeds, a greater percentage of farmers’ often meagre incomes will be spent on seeds, affecting their livelihoods and

right to an adequate standard of living. This is compounded by the fact that IPRs help orient agricultural research and development (R&D) towards commercially profitable crops and farming methods, rather than towards research that would benefit smallholder farmers and help raise rural living standards.

THE RIGHT TO HEALTH

IPRs are only granted to genetically uniform seeds and thus promote the cultivation of monocultures. Most monocultures are dependent on chemical herbicides and pesticides because they lack the genetic variety that helps protect crops from pests and diseases. The toxins contained in these chemical inputs have negative implications for the right to health, both for the farmers that use them and for broader populations affected by the contamination of the air and water sources far beyond the farm.

THE RIGHT TO PARTICIPATE IN CULTURAL LIFE

Allowing ‘ownership’ of plants and related knowledge offends the religious and cultural beliefs of many rural and indigenous communities. In addition, seed exchange practices have long constituted a fundamental aspect of farmers’ cultural life. By limiting such exchange, thus also hindering rituals around planting and harvests, IP protection directly interferes with the enjoyment of the right to take part in cultural life, as well as with minority and indigenous rights.

AUTHORS’ RIGHT TO BENEFIT FROM THE PROTECTION OF THEIR MORAL AND MATERIAL INTERESTS IN THEIR WORK

Permitting IPRs on genetic resources encourages biopiracy, as neither patents nor PBRs oblige the right-holder to recognize or remunerate the sources of knowledge or genetic resources used in crop development. When biopiracy occurs, it deprives the traditional custodians of the knowledge or resources of their moral and/or material interests.

THE HUMAN RIGHTS RESPONSE

Human rights advocates and others working to promote social justice have a crucial role to play in promoting IP policies that are human rights-consistent. Potential strategies for action include:

- use national human rights institutions and experts, as well as the UN human rights treaty bodies and Special Procedures, to raise awareness about the potential negative implications of IPRs on seeds and hold States to account
- lobby governments to enshrine the non-patentability of living organisms in national constitutions
- conduct human rights impact assessments of IP laws and policies relating to seeds, including when negotiating and implementing trade agreements
- work with farmers associations, indigenous and minority groups to develop and lobby for *sui generis* systems for the protection of plant varieties, which allow farmers to continue exchanging and re-sowing harvested seeds, as well as protecting the traditional knowledge and genetic resources of communities from biopiracy
- urge governments not to sign trade or IP-related agreements that restrict their ability to develop national *sui generis* systems to protect plant varieties
- use the arenas provided by WIPO, the Convention on Biodiversity and the International Treaty on Plant Genetic Resources for Food and Agriculture to raise awareness about the human rights implications of IPRs on seeds