

RESEARCH BRIEF



When Saving Seed Becomes a Crime

A study on the criminalization of farmers exercising their right to save, use, exchange and sell seeds under plant breeders' rights laws

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This Research Brief is based on the Study “When Saving Seed Becomes a Crime”, available at www.apbrebes.org/publications

BACKGROUND

In recent years, many countries have made legal changes to restrict farmers' right to save, use, exchange and sell seeds of plant varieties covered by plant breeders' rights.

Plant breeders' rights (PBR) are a form of intellectual property. It gives the breeder of a new plant variety exclusive control over its use, reproduction and commercialization for a limited period of time.

Some countries have also introduced stronger penalties, including criminal sanctions, for **PBR infringement**, in other words for using a protected plant variety without the breeder's permission.

As a result, farmers' right to save, use, exchange and sell seeds is increasingly criminalized. **Criminalization**, in this context, means that an act of a non-criminal nature is being treated as a crime and is made liable to harsher sanctions, such as heavy fines and imprisonment.

Why is this serious? Because the criminalization of farmers,

Indigenous and peasants' seed practices is a violation of their rights, as well as a threat to food security, agrobiodiversity and peasant seed systems.

The study (the full study is available at www.apbrebes.org/publications) documents and takes stock of the scope of the problem. What is the actual impact of PBR laws on farmers exercising their right to save, use, exchange and sell seeds? Are farmers sued for alleged PBR infringement under civil or criminal law? Have farmers been sentenced to prison for PBR infringement? Apart from lawsuits, are there other ways in which seed practices are being criminalized?

The study addresses these questions by documenting concrete cases in a range of countries around the world. The focus is on plant breeders' rights legislation, but it is important to note that other types of laws, for example patent and seed laws, also impact the right to seeds.

THE PUSH FOR CRIMINAL ENFORCEMENT

The plant breeding industry is pushing to enforce PBR more aggressively, including under criminal law. Several organizations have been created with the specific objective of investigating and prosecuting farmers and other actors in the seed chain for PBR infringement.

These organizations promote a discourse that blends “organized crime groups and immoral farmers, growers and breeders” and uphold the idea that PBR infringement is a crime.

The drive to criminalize PBR infringement is evident in the words of the general manager of the Anti-Infringement Bureau: “AIB has taken the fight against (...) PBR infringers to the next logical step by treating these violations as the crime that they are. By using the existing criminal statutes to target the organized crime groups and immoral farmers, growers, and breeders who illegally infringe on [PBR], AIB hopes to weed out those who would compromise the vegetable seed industry.”

Success stories of the AIB, Seed World, 2022

SOME PROMINENT ORGANIZATIONS DEDICATED TO PBR ENFORCEMENT:

- GESLIVE-Gestión de licencias vegetales (Spain)
- The Enforcement Organization (Spain)
- Farmers Yield Initiative (United States)
- Anti-Infringement Bureau (Europe)

Since criminal charges can only be laid by the state, these organizations collaborate with law enforcement agencies to investigate and prosecute PBR infringement. In recent years, cooperation agreements with police and law enforcement agencies in countries such as Italy and Spain have led to a slew of prosecutions and convictions.

The fact that public agencies participate in the enforcement of private intellectual property rights conflicts with their mandate to protect farmers' rights and the public interest.

At the regional and international level, the European Union and Japan use trade agreements and technical cooperation programs to pressure countries in the Global South to enforce PBR more aggressively. This is in the interest of their own plant breeding industry - not in the interest of countries where peasant seed systems provide most of the seeds used in agricultural food production.

SURVEILLANCE TECHNOLOGIES

Industry is increasingly using advanced technologies to monitor farmers' crops and enforce PBR. These technologies include molecular markers, genotyping, drones and satellite imagery. They enable large-scale surveillance of farmers' harvests and facilitate legal actions against farmers in what is a highly unequal power relationship.

A prominent example is that of the Orri mandarin variety in Spain, which is being monitored using a specially designed app, drones and satellite images to detect "unauthorized" plantations, leading to hundreds of lawsuits and to the large-scale destruction of fruit trees.

The problem is that these technologies are being deployed without any public oversight and in the absence of safeguards to protect farmers' rights, including their right to privacy.



LAWSUITS

A survey of fifteen countries shows that PBR infringement is typically considered a dispute between private parties who can seek remedies under civil law. Remedies may include, for example, an injunction to stop using the plant material in dispute, the payment of damages and the destruction of the plant material.

In addition, **ten out of fifteen countries in our survey also allow criminal sanctions for PBR infringement under certain circumstances, including heavy fines and imprisonment.** Criminal penalties vary from up to one year imprisonment in Switzerland to up to 15 years in Ghana.

To better understand how these laws impact farmers, the study discusses in greater detail PBR infringement lawsuits against farmers in Indonesia, India, Italy and Spain:

- In Indonesia, in the mid-2000s, at least fourteen small farmers were prosecuted and sentenced to jail for breeding and exchanging seeds.
- In India, in 2018, PepsiCo filed a PBR infringement lawsuit against nine family farmers for growing a potato variety without a contract.
- In Italy and Spain, there have been several dozens of criminal actions against farmers for PBR infringement since 2018, some of which have led to jail sentences of up to one year. PBR

laws provide for civil remedies, but farmers are being sentenced for "crime against industrial property" under their country's criminal codes.

In a clear denial of farmers' right to seeds, the AIB has stated that "each seed purchased must correspond to only one plant"

AIB press release following the 2019 court conviction of a Sicilian farmer

The line between civil and criminal law is not always clear-cut. Even when PBR infringement is treated as a civil wrong as opposed to a criminal offence, enforcement mechanisms may include search and seizure, court-ordered raids and heavy financial penalties, giving it a strong deterrent effect similar to criminal law (sometimes referred to as "quasi-criminal"). The United States, for example, does not provide for criminal sanctions for PBR infringement. However, fines for PBR infringement are particularly heavy and clearly meant to act as a deterrent to others rather than as fair compensation.

HARASSMENT AND INTIMIDATION

Farmers are also discouraged from exercising their right to save, use, exchange and sell seeds through various forms of intimidation and harassment.

For example, it is a common practice for plant breeders' associations and PBR enforcement organizations to encourage denunciation through anonymous tip lines, which creates a climate of suspicion and social mistrust in farming communities.

Intimidation may veer on harassment, as when company representatives visit farmers in the company of police officers to warn about the potential consequences of infringement, a practice clearly meant to intimidate farmers. As documented in the case of Indonesia, these practices have a "chilling effect" that discourage farmers from engaging in legitimate seed saving and exchange practices for fear of finding themselves "on the wrong side of the law."

A CALL FOR CHANGE

Plant breeders' rights are, at their core, private economic rights. In other words, they are a limited monopoly granted to breeders of new plant varieties to allow them to benefit financially from their innovation for a given period.

A farmer who allegedly infringes PBR does not represent a threat to society that justifies the intervention of the state and criminal sanctions. As the European Court of Justice recently ruled, plant variety protection must not go beyond what is necessary to encourage plant breeding, and agricultural production constitutes a public interest that justifies restricting the exercise of plant breeders' rights.

“agricultural production constitutes a public interest that justifies restricting the exercise of plant breeders' rights”

European Court of Justice, Case C-176/18

The right to save, use, exchange and sell farm-saved seeds and the propagation material of protected varieties is fundamental to the internationally recognized right to seeds. Upholding this right is essential for peasant seed systems, agrobiodiversity,

farmers' livelihoods and food security. Saving seed cannot, and should not, be considered a criminal act.

To stop the criminalization of farmers' seed practices, it is imperative to fully and unreservedly recognize and uphold farmers', Indigenous and peasants' right to seeds.



The full study is available at www.apbrebes.org/publications

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The Association for Plant Breeding for the Benefit of Society (APBREBES) is a network of civil society organizations from developing and industrialized countries. The purpose of APBREBES is to promote plant breeding for the benefit of society, fully implementing Farmers' Rights to plant genetic resources and promoting biodiversity.

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