



## Updates on Plant Variety Protection

*Issue #48, 17 September 2021*

### **1. Editorial**

The UPOV Council recently decided that the new Plant Variety Protection Act of Nigeria meets the requirements of the 1991 Act of the UPOV Convention (UPOV 91). However, this does not mean that the law serves the needs of the Nigerian society. The opposite holds true as demonstrated by the first article of this newsletter, explaining the opposition to the new law. The second item in the newsletter points to a scientific article that supports the demands of the Nigerian civil society: in order to strengthen food security, biodiversity, and farmers' rights, the country must develop its own adapted legislation instead of copying it unquestioningly from industrialised countries.

### **2. Opposition against the new Plant Variety Protection Law is rising in Nigeria. The constitutionality of the law is challenged in court.**

In a [Petition](#) sent to UPOV and the National Government of Nigeria, the Health of Mother Earth Foundation (HOMEF) together with 100 other Farmers and Non-Governmental Organisations demand that Nigeria should not accede to UPOV and its 1991 Act. They further ask that “the Plant Variety Protection Act, 2021 should be recalled and replaced with a *sui generis* law based on the African Model which addresses the peculiar challenges in Agriculture in an all-inclusive and mutually benefitting way”. In addition, the constitutionality of the law is being [challenged in court](#). HOMEF has filed a lawsuit at the Federal High Court Abuja suing the Federal Republic of Nigeria, the Attorney General of the Federation, and the Minister of Agriculture and Rural Development. The Plaintiff seeks a declaration that section 43(2) of the Plant Variety Protection Act 2021 is illegal, invalid, null and void, and contrary to the letters and spirit of the Constitution of the Federal Republic of Nigeria.

### **3. A critical look at West Africa's regional IP and trade regime**

In her new [article](#) « Maximizing the differentiation principle in regional IP treaties to advance food security: Limitations in West Africa's regional IP and trade regime », published in the Journal of World Intellectual Property, Uchenna F. Ugwu, Research Fellow of the Faculty of Law at the University of Ottawa, analyses the relevant Intellectual Property and food security-related regulations applicable to West Africa and then proposes a model framework for applying IP agreements that will advance food security. She states that « In regions like West Africa where food production still greatly relies on smallholder farmers and local plant varieties, differential treatment protecting farmers rights, peasants rights, traditional knowledge, local biodiversity, and sustainable agriculture must be

understood as binding objectives, that must be considered in interpreting the provisions of IP agreements, rather than just exceptions to patents and PBRs ».

#### **4. Seed as a commons— A Symposium exploring innovative concepts and practices of governing seed and varieties**

The [introduction](#) to the Symposium explores how the theory of commons can be used to study, conceptualise and transform governance models for seed and plant varieties to counter ongoing trends towards agrobiodiversity loss and concentration of economic and political power in farming and food systems. Contributions to the Symposium include case studies from a range of geographical and socio-cultural contexts from the Global North and South. The introduction and the five case studies have been [published by the Journal of Agriculture and Human Values](#) (the case studies are starting at page 509 in the middle of the Journal, four of them are open access). The topic of seed commons is also covered in the [thesis](#) by Julia Tschersich, Research Assistant at the Carl von Ossietzky University Oldenburg, Germany «Seed Commons in the Multi-Level Governance Regime: Creating Empowering Institutions for a Social-Ecological Transformation of Agri-food Systems».

#### **5. Farmers' Rights and Digital Sequence Information: Crisis or Opportunity to Reclaim Stewardship Over Agrobiodiversity?**

Digital Sequence Information has been a contentious issue in international normative discussions, a topic explored by a [recent paper](#) by Rachel Wynberg, Professor in the Department of Environmental and Geographical Science at the University of Capetown, South Africa, et al. “Contestations about the way in which digital sequence information is used and regulated have created stumbling blocks across multiple international policy processes. Such schisms have profound implications for the way in which we manage and conceptualize agrobiodiversity and its benefits,” the authors found. The paper looks at the relationship between farmers’ rights, as recognized in the International Treaty on Plant Genetic Resources for Food and Agriculture, and the dematerialization of genetic resources. “Using concepts of ‘stewardship’ and ‘ownership’ we emphasize the need to move away from viewing agrobiodiversity as a commodity that can be owned, toward a strengthened, proactive and expansive stewardship approach that recognizes plant genetic resources for food and agriculture as a public good which should be governed as such.”

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