



## Updates on Plant Variety Protection

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### 1. Editorial

This newsletter is published on the eve of the 9th Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) taking place in Delhi, India, from 19-24 September. We are happy to contribute to the upcoming negotiations on Farmers' Rights with a timely briefing paper presented in this Newsletter. This contribution is a collective effort by a broad panel of renowned experts. In addition to Prof. Christoph Golay and Dr. Karine Peschard from the Geneva Academy, Prof. José Esquinas, the former Secretary of the ITPGRFA, former UN Special Rapporteurs on the Right to Food Prof. Hilal Elver and Prof. Olivier De Schutter, and Prof. Michael Fakhri the current UN Special Rapporteur on the Right to Food all participated in this enlightening paper. The message is clear: International human rights law can no longer be ignored in the implementation of the Treaty.

### 2. Implementing the International Treaty (ITPGRFA) in light of UNDROP

This [Briefing Paper](#), published jointly by APBREBES and the Geneva Academy, explains how the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ([UNDROP](#)) complements the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), in particular its Article 9 on Farmers' Rights, and how their joint implementation is essential for the realization of farmers' and peasants' rights.

We demonstrate that UNDROP: 1) reaffirms as well as further elaborates on the scope of peasants' right to seeds and related State obligations; 2) firmly positions peasants' rights, including their right to seeds, as human rights that take precedence over other legal norms; 3) brings to bear accountability mechanisms linked with defining peasants' rights as human rights guarantees; and 4) clearly defines the role and obligations of UN agencies.

### 3. Farmers, Seeds & the Laws: Importing the Chilling Effect Doctrine

"As an increasing number of countries are formulating Plant Variety Protection (PVP) laws, a growing number of farmers are affected by plant breeders' rights," according to Saurav Ghimire, Researcher at the Centre for Private and Economic Law at Vrije Universiteit in Brussels. His [article](#) on the farmers' interaction with the PVP law and seed certification law in Indonesia, published by the South Centre, establishes that "the farmers have internalised the law beyond the scope of the legal text, such that they self-limit breeding, saving, and exchanging of seeds even in legally permissible situations." Based on the chilling effect doctrine, this article argues that "the related laws should be relaxed to ensure that they do not over deter farmers from exercising their rights."

#### **4. The Interface between Plant Variety Protection and Food Security: An Indian Experience**

The [article](#) by Gaurav Goswami, Assistant Professor, School of Law, University of Petroleum & Energy Studies in India investigates the role that the Plant Variety Protection & Farmers Right Act can play in realising the Sustainable Development Goals (SDGs). He supports the path India has taken:

“While patent laws and UPOV recognise and reward plant breeders and agricultural biotechnologists for their role in agricultural innovation, they fail to recognise the role played by traditional farmers in the conservation and development of plant genetic resources from which some of these new varieties were created. India needs to balance the interest of the private parties and the citizens, including small farmers.”

#### **5. Protection and Restriction of Grain-Related IP Rights in the Context of Food Security**

The [article](#) by Zhenyu Zhang and Zhuanzhuan Ge, Researchers at Taiyuan University of Technology in China promotes a middle-way on IP on seeds in China. On the one hand, intellectual property rights are to be strengthened, but on the other hand, the authors emphasize the need to coordinate the relationship between intellectual property rights and food rights and farmers’ rights. They underline the importance of preventing the food-related intellectual property rights system from “being alienated as a means to control the market, restrict competition, hinder innovation and seek improper benefits.”

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