



## Updates on Plant Variety Protection

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### 1. Editorial

We are pleased to publish an APBREBES Opinion Paper by Jack Kloppenburg. At first, the article was only intended as input for a United States Department of Agriculture (USDA) research, but after reading it we were convinced that it deserved a wider audience. Other contributions featured in this issue, question, in their own way, the plant variety protection right under UPOV 91 or discuss alternatives in Central America, South Asia, and Africa.

### 2. Concentration and IPRs in the Seed Industry: a View From the USA

The [APBREBES opinion paper](#) by Jack Kloppenburg, Professor Emeritus, Department of Community and Environmental Sociology, at the University of Wisconsin-Madison and Secretary of the Open Source Seed Initiative, shows the linkages between the concentration of the seed industry, intellectual property rights, and restricted access to plant genetic material for further breeding. Even if the situation in the United States cannot be compared with that in other countries, the findings and demands in the article are certainly of interest worldwide.

### 3. Sentence by the Supreme Court of Honduras, declaring the PVP Law unconstitutional

We already reported in our [newsletter #51](#) about the landmark decision of the Supreme Court of Honduras, which declared unconstitutional the new UPOV91-compliant plant variety protection law. A few weeks ago, the court decision was finally published in the official journal. We took this as an opportunity to translate the [decision into English](#) to make it accessible to a wider public. The ruling is certainly interesting for other countries because it states that the Plant Variety Protection Act in line with UPOV 91 contravenes, restricts, and undermines not only constitutional regulations but also international treaties, as well as international standards on the protection of the right to adequate food.

### 4. A critical appraisal of farmers' rights in the plant variety protection law of Bangladesh

Bangladesh has enacted the Plant Varieties Protection Act (PVP) 2019 to comply with its obligations under various relevant international regimes of plant variety and farmers' rights, precisely, TRIPS, the CBD and the ITPGRFA (International Treaty on Plant Genetic Resources for Food and Agriculture). The Act has specifically recognized some traditional or customary practices of Bangladeshi farmers and delineates that farmers shall have rights, except for commercial purposes, to produce, reproduce, preserve, use, reuse, exchange or sell protected varieties. The [study](#) (paid access) by Mohammad Ataul Karim, a researcher in IP and an Advocate at the Supreme Court of Bangladesh, analyses the law, compares it with Indian legislation, and concludes that "Farmers' rights are slowly taking their place in international law whereas breeders' rights have already been firmly established. In fact, farmers' rights have emerged to ease the tensions created by

IPRs and endeavour to strike a counterbalance in the plant variety protection Regime.”

## **5. In defense of farmer-saved seeds Current developments in seed laws harmonization in Africa**

The [study](#) by Peter Munyi (Lecturer at the Faculty of Law, University of Nairobi) was published by DeSIRA-LIFT, a service project of the European Commission, Directorate General for International Partnerships (DG INTPA). The study stipulates that the promotion of agroecological, healthy, and affordable food systems in Africa cannot be achieved without farmers participating in seed policy-making processes. “These policies include those concerning maintaining the rights of farmers to save, use and exchange farms-saved seeds and harvests of protected as well as indigenous varieties, the study found. It further states that finding “a balance between farmers’ rights and rights of PVP holders will contribute immensely to the agroecological approach for food production in Africa, the EU, and beyond. It is well understood that promotion of indigenous rights, farmers’ rights, and agroecology may aid in dealing with adverse effects of climate change. However, UPOV 1991 does not take cognizance of these elements.” The study, therefore, recommends that the European Commission should lead in advocating for change and amendment to UPOV 1991, (including the Explanatory Note ad FAQs on private and non-commercial use).

## **6. Strengths and weaknesses of organized crop seed production by smallholder farmers: A five-country case study**

The [study](#) by Bhramar Dey of Catholic Relief Services, United States, et al, is based on cases from twenty-five seed producer groups in five countries (Vietnam, Uganda, Zambia, Niger, and Guatemala) and shows that all groups supply a significant share of seed offered in local markets. The authors argue that “national seed laws still need adaptation in recognition of the role of smallholder seed production in contributing to national food and nutrition security.” In Vietnam for example, the author said that tension between the use of protected varieties by the seed clubs and plant variety protection legislation was recognized but unresolved. The study also shows how at the local level the lines between the public, private and civil sectors, as well as farmer producers, between the formal and informal sectors become blurred. “The dichotomy between formal and informal seed systems disappears in farmers’ fields.”

## **7. From Financing Organic Plant Breeding—New Economic Models for Seed as a Commons**

In his [article](#), Dr. Johannes Kotschi (Agregol, Association for Agriculture & Ecology) et al focuses on the obstacles as well as on possible solutions for the financing of organic plant breeding in Europe. An analysis of the situation in Europe revealed that royalties from intellectual property rights (IPRs) such as plant variety protection are inappropriate for organic seed. “New additional financing strategies were developed based on the concept of seed as a commons, and the attitude of stakeholders in the food value chain towards an open source strategy was assessed,” explained the author.

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Feedback & Contact

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