



Updates on Plant Variety Protection

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1. Editorial

This newsletter follows shortly after the UPOV session at the end of October and comes a few days before the 10th meeting of the Governing Body of the FAO Seed Treaty in Rome. Both institutions have a major influence on how access to genetic resources for food and agriculture is regulated - but they could not be more different. They stand for two different visions with sometimes starkly opposed values. Our readership is made of people from both of those worlds and our newsletter is intended to help them understand the other world a little better.

2. APBRES Report on the UPOV October Session 2023

When we first attended UPOV negotiations as observers over 10 years ago, there was much less discussion and controversy than there is today. This has changed over the years, as illustrated in the last session. This is a positive development because if opposing views are swept under the carpet, there can be no balanced outcome. The main points of contention are currently 1) The protection of parental lines, where subtle pressure is being exerted to ensure that all member States follow the wishes of the industry; 2) The Working Group on Harvested Material, where some countries and stakeholders are still trying to relativise a ruling by the European Court of Justice; 3) The Working Group on Smallholders, where there is continued opposition to a reinterpretation of the private and non-commercial use exception that would bring many subsistence farmers out of illegality. You can find a summary of all these discussions in our [UPOV Session 2023 Report](#) and, as a bonus, we have also taken a quick look at the latest UPOV statistics.

3. No support and legal certainty for small-scale farmers in the Global South

In his [blog](#), Nout van der Vaart, Oxfam Novib's Policy Lead Food and Land, analyses the current, arduous negotiations on exemptions for small-scale farmers under UPOV. He concludes that: "If no clear solution to this problem is reached in the short term, UPOV risks losing more credibility as an international guideline for shaping seed and intellectual property rights laws. Low and middle-income countries in particular, which have to strike a delicate balance between securing the rights of farmers (to freely save, exchange, develop and trade seeds) and the rights of plant breeders, will see the convention as an instrument that mainly defends the interests of the Western seed industry, at the expense of the rights of their rural populations."

4. Cracking the Code: Open-Source Seed and Intellectual Property Rights

One of the great merits of the [article](#) by Colin Lanet[†], Juris Doctor at Drake University Law School, United States, is that he examines the impact of intellectual property systems on agrobiodiversity. He summarises that "the consolidation of the seed industry, which was driven by the patentability of seeds, contributed to a lack of seed adaptation because it eliminated the practice of seed saving. Further, the less adaptability seeds have, the more biodiversity among the common crops rapidly declines. Specifically, agrobiodiversity has significantly changed. As a model of open-source computer code, open-source seed replicates the free sharing of seeds between farmers and growers to promote seed adaptability and reinvigorate agrobiodiversity." He calls for a concerted effort to reinvigorate biodiversity in commercial farming "by informing farmers of their rights within their current contracts and incorporating aspects of the open-source seed movement. With the rise of global climate change, it is more imperative than ever to transition our food systems to a process that promotes adaptability, self-sufficiency, and regionalization."

5. Intellectual Property Exhaustion, Breeders' Frustration, and Hindered Innovation: Reviewing U.S. Organic Corn Seed Development

The [article](#) by A. Bryan Endres, Professor of Food & Agricultural Law at the University of Illinois, United States, et al, stipulates that in its current manifestation, intellectual property rights coupled with restrictive seed-sharing agreements appear to limit development, as genetics with potential benefit to the organic sector are relegated to the locked storerooms of private firms. "As a result, many in the organic community feel trapped in a system that demands innovation, diversity, trust, and knowledge sharing, but has external structures limiting their ability to access needed resources." The article is an attempt to identify some of the legal structural factors that may hinder advancements in organic corn breeding.

6. Property Right of Agricultural Biotechnology in Indonesia: Islamic and Western Legal Philosophy

The [article](#) by Siti Nur Shoimah, Lecturer at the Faculty of Sharia, Achmad Siddiq State Islamic University, and Dyah Octorina Susanti, Lecturer at the Faculty of Law at Jember University, Indonesia, aims to compare the concept of ownership (property rights) in agricultural products in Indonesia, based on Islamic legal philosophy and western legal philosophy. They note that Indonesian legislation still refers to the legal philosophy put forward by Western legal experts, but that in its development there is an Islamic legal philosophy that is also part of the national legal system. They find various similarities between the legal philosophies but also differences, e.g. that on the side of Islamic legal philosophy, the concept of individual ownership cannot be absolute because there are other people's property rights in it, while in terms of Western legal philosophy, the concept of ownership is individual and materialistic.

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