



Updates on Plant Variety Protection

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1. Editorial

In this newsletter, you will find APBREBES' new report on the discussions within UPOV concerning smallholders and the interpretation of the exception of private and non-commercial use. The latest round of negotiations shows once again how remote the discussions in UPOV are from the reality of smallholder farmers' lives. The papers "African Perspectives on Agroecology" and "Advancing Agrobiodiversity" show the important role of smallholder farmers, which unfortunately continues to be neglected in the UPOV negotiations. On the other hand, there is a lot of movement in Europe, where the debate on new genetic engineering is suddenly challenging old certainties about patents on plants.

2. UPOV Turns a Deaf Ear to the Concerns of Smallholder Farmers

[APBREBES' new report](#), "UPOV turns a deaf ear to the concerns of smallholder farmers", is about the ongoing negotiations within UPOV on guidance concerning smallholder farmers and whether their use, exchange, and sale of seed may in certain cases fall under the private and non-commercial use exemption. The report shows what is at stake, where the idea came from, and how the discussion is developing within UPOV. APBREBES currently considers the chances of a positive outcome to the negotiations rather slim. A clear commitment to take the needs of smallholder farmers into account is still lacking. The report is therefore not only a report on the negotiations but also shows the nature of UPOV.

3. New Genomic Techniques and Intellectual Property Law: Challenges and Solutions for the Plant Breeding Sector

This [Position Statement](#) of the Max Planck Institute for Innovation and Competition provides some policy recommendations about patents and plant variety protection for new genomic techniques (NGTs) and NGT-derived plants. The statement focuses on the plant breeding sector and the applicable EU legal framework. The authors discuss the need to balance incentives of initial plant variety developers and subsequent breeders and include comments on the impact of the UPOV newly elaborated Explanatory Note on essentially derived varieties. Another [Article](#) (EU Parliament on Patents for NGT-Derived Plants: Pawn Sacrifice or Sacrificed to the Pawns) by Michael Kock, IP Consultant in Switzerland, further develops the topic by discussing the recent decision of the European Parliament which would (if implemented) fundamentally change the patentability and patent rights related to plants in the EU.

4. African Perspectives on Agroecology - Why Farmer-led Seed and Knowledge Systems Matter

The book "[African Perspectives on Agroecology](#)", edited by Prof. Rachel Wynberg, Department of Environmental and Geographical Science at the University of Cape Town, explores the importance of farmer-led seed and knowledge systems. She mentions the importance of African smallholder farmers' right to save, use, exchange, and sell farm-saved seed, as they source most of their seed through informal channels such as local markets, own stocks, and social networks. Plant breeders' rights and seed laws, she says, "form part of a host of measures that prejudice the interests of smallholder farmers and restrict the legal space they have to continue customary practices." "Farmers' rights thus remain under threat, especially as trade-related pressures mount for African countries to sign the restrictive 1991 UPOV Convention." The aim of the book is "not only to provide critical perspectives about the onslaught on seed and knowledge in sub-Saharan Africa, but also to demonstrate the viability and necessity of agroecological systems that are diverse, nutritious, and environmentally sustainable."

5. Advancing Agrobiodiversity - Why Organisations of Smallholders and Indigenous Peoples are Vital

The new [Report](#) written by Duncan Macqueen, Director of Forests at the International Institute for Environment and Development (IIED), shows the importance of agrobiodiversity, the central role that smallholder farmers play in its conservation and promotion, and strategies to ensure that this vital work can continue. In this context, the negative impact of UPOV-compliant plant variety protection laws and the struggle of farmers' groups against these laws (e.g. in Ghana and Tanzania) are also addressed. An important recommendation of the report is to fight for laws that support peasant seed systems and farmers' rights.

6. African Free Trade Agreements and Intellectual Property

In this massive [book](#) (paid access), authors Michael Blakeney, Prof. of Law at the University of Western Australia, and Getachew Mengistie Alemu, IP Consultant in the United States, provide a comprehensive overview of the state of intellectual property rights in Africa and the impact of IP clauses in free trade agreements. They explain how, since the commencement of IP law, IP has been defined from an industrialized-country perspective and are quoting Prof. Ncube of the University of Cape Town urging for an Afro-centric approach to IP policy. They state that "the inclusion of IPRs in FTAs may mean that FTAs may reduce the scope of flexibilities and exceptions established under TRIPS" and mention several examples where IP standards concerning plant variety rights have been ratcheted up by FTAs.

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François Meienberg, Coordinator Association for Plant Breeding for the Benefit of Society (APBREBES) Mail: contact@apbrebes.org, Web: www.apbrebes.org