



## Updates on Plant Variety Protection

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### 1. Editorial

We are publishing these Updates on Plant Variety Protection shortly after the end of UPOV's Autumn Session 2019 and as the 8th session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture is about to begin in Rome. Two different worlds. And yet, in both bodies decisions made are of great relevance to Farmers' Rights, agrobiodiversity and innovation in plant breeding. In this Newsletter, besides APBREBES Report on the recent UPOV session, we draw your attention to three scientific articles, querying about the right Plant Variety Protection system to implement especially in developing countries in order to best benefit society.

### 2. APBREBES report on the UPOV autumn 2018 session

UPOV's bodies met in Geneva from 29th October to 2nd December 2019. Now available on our website is a [report](#) some of the key decisions taken by UPOV and the input of APBREBES.

### 3. Is UPOV 1991 a good fit for developing countries ?

This article by Mrinalini Kochupillai, Lecturer at the Technical University of Munich is part of the recently published book [The Innovation Society and Intellectual Property](#). The article discusses the question whether UPOV 1991 (or a similar IP regime) is a good fit for developing countries that seek to create an *innovation society* in the context of seed related innovations. This is done by comparing UPOV 1991 with the sui generis regime adopted by India. The author concludes by saying that «Overzealous adoption of incentive measures that support creation only by the formal sector tend to act as indirect disincentives for farmer-innovators to continue the age-old science and art of in-situ agrobiodiversity conservation and seed improvement. Indeed, maintaining and continuing this age-old art brings boundless benefits to society – most of which remain forever uncompensated. In this situation, UPOV-type regimes coupled with technological advancements are also failing to create an innovation society, as they discourage or prevent farmers, who are traditionally active, necessary and first level innovators, from engaging in the process of innovation altogether, thereby reducing their status to that of mere labourers.» Needed is a law «that primarily promotes informal innovations and in-situ agrobiodiversity conservation.»

#### **4. Reimagining the relationship between food sovereignty and intellectual property for plants: Lessons from Ecuador and Nepal**

The [Article](#) by David J. Jefferson and Kamalesh Adhikari, both from the School of Law at the University of Queensland, was published in the Journal of World Intellectual Property. In the conclusion the authors write : «We recognize that the global expansion of intellectual property laws for plant varieties has mainly served the interests of professional plant breeders, by concentrating control of seeds and plants in the hands of a small number of actors. This has enabled the entrenchment—and in some countries, the dominance—of multinational agricultural firms in local markets. However, new legal systems in Ecuador and Nepal demonstrate that food sovereignty can be invoked as a basis for the reimagination of intellectual property outside of the ambit of exclusive ownership. Moreover, intellectual property laws can be deployed in novel ways, for instance by granting protection to a broader set of plant varieties. Overall, the case studies of Ecuador and Nepal provide evidence that the relationship between food sovereignty and intellectual property can be reconfigured. Rather than asking whether food sovereignty can act as a foil to intellectual property, we suggest that scholarly inquiry should shift to focus on understanding how food sovereignty might inspire countries to create alternative forms of intellectual property for plants and seeds. Doing so could expand intellectual property, moving beyond exclusive ownership to reimagine how different actors might control the use of plant material to support more sustainable, dynamic, and just food systems.»

#### **5. Intellectual property protection in plant varieties. A worldwide index (1961-2011)**

Although already published in 2015 by Mercedes Campi and Alessandro Nuvolari we like to bring attention to this [article](#), as he provides statistical evidence about the impact of Intellectual Property Rights in Plant Varieties. The authors measured the strength of intellectual property (IP) protection for plant varieties in 69 countries over the period 1961–2011. They conclude : «We find a positive and significant correlation between the strengthening of IP protection and agricultural valued added for developed countries, but we are not able to establish any significant correlation for developing countries. To conclude the evidence presented in this paper supports the hypothesis that the effect of IPRs may be different across sectors, technologies and development levels. For this reason, a more cautious approach towards the adoption of a global and harmonized IP protection system (such as that emerging from TRIPS) should be in order. In this sense, our results are in line with the historical appraisal of Khan and Sokoloff, who argue that « ... intellectual property rights best promoted the progress of science and arts when they evolved in tandem with other institutions and in accordance with the needs and interests of social and economic development of each nation.» ».

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