



When Saving Seed Becomes a Crime

A study on the criminalization of farmers exercising their right to save, use, exchange and sell seeds under plant breeders' rights laws

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	Executive summary	3
1	INTRODUCTION	5
2	BACKGROUND AND KEY CONCEPTS	6
3	THE PUSH FOR CRIMINAL ENFORCEMENT	8
4	SURVEILLANCE	10
	The use of molecular techniques for PBR enforcement	10
5	LITIGATION	12
	5.1 Comparative analysis of selected countries' legislation	12
	5.2 PBR litigation and farmers' right to seeds: A look at case law	14
	Indonesia	14
	India	14
	European Union	15
	Italy	16
	Spain	17
6	HARASSMENT AND INTIMIDATION	18
7	FINDINGS	19
8	FINAL REMARKS	20
	APPENDIX	21
	Brazil	22
	Canada	23
	Ecuador	24
	Germany	25
	Ghana	26
	India	27
	Indonesia	28
	Italy	30
	Japan	31
	Kenya	32
	Philippines	34
	Spain	35
	Switzerland	37
	United States	38
	Zambia	39
	Acronyms and Abbreviations	40
	Endnotes	41

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Executive summary

In recent years, the plant breeding industry has moved from lobbying for stronger plant variety protection laws to pushing for their more aggressive enforcement, including under criminal laws. The increasing criminalization of farmers' seed practices raises significant concerns for farmers' rights and livelihoods, seed and food security, agrobiodiversity and the right to food.

This study aims to take stock of the criminalization of farmers' rights to save, use, exchange, and sell seed under plant breeders' rights (PBR) laws, an issue that is often discussed but not systematically studied. Criminalization, in this context, means that an act of a non-criminal nature is being handled as if it were a crime and is made liable to harsh sanctions such as heavy fines and imprisonment. More specifically, the study aims at documenting the modalities of criminalization and their impact on farmers based on selected case studies.

Examples of the criminalization of farmers' seed practices under PBR laws were identified through an informal survey of farmer and civil society organizations and a review of the academic and grey literature. Several cases were then selected among these and further documented through interviews with farmers' and civil society organizations, journalists and researchers. In addition, the study compiles and analyzes legislative provisions related to what farmers are allowed to do with PBR-protected seeds and sanctions for PBR infringement in a sample of fifteen countries' legislation worldwide.

The study shows that criminalization takes a variety of forms. First, there is an industry-driven push to enforce PBR under criminal law through cooperation with national and regional law enforcement agencies. Countries that headquarter the largest seed companies also leverage trade agreements and cooperation programmes to push for

more aggressive PBR enforcement in countries in the Global South. A second dimension of the criminalization of farmers' seed practices involves experimenting with the use of advanced tools such as molecular markers, drones and satellite imagery to monitor crops and enforce PBR, enabling large-scale surveillance without public oversight or safeguards for farmers' right to seeds and right to privacy. Third, taking farmers to court over PBR infringement, especially when it is considered a criminal offence, represents the most overt form of criminalization. Fourth, even in the absence of litigation, a more insidious dimension of criminalization lies in intimidation and harassment practices, such as anonymous tip lines, that instill a climate of fear and deter farmers from what are in fact legitimate practices.

PBR are, at their core, private economic rights, that is, a limited monopoly granted to the breeders of new plant varieties to allow them to earn a financial benefit from their innovations through control over their commercialization. A farmer who allegedly infringes PBR does not represent a threat to society that justifies the intervention of the state and criminal sanctions. As the European Court of Justice recently ruled, plant variety protection must not go beyond what is necessary to encourage plant breeding, and agricultural production constitutes a public interest that justifies restricting the exercise of plant variety rights. In fact, there is a strong case to be made that it is the criminalization of farmers' seed practices that represents a threat to the public interest and to society given its manifold negative impacts on peasant seed systems, agrobiodiversity, farmers' rights and livelihoods, and ultimately food security.

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1

Introduction

In recent decades, many countries have amended their laws to restrict farmers' right to save, use, exchange and sell seeds from protected plant varieties, and to introduce stronger sanctions for infringement of plant breeders' rights (PBR). This phenomenon is well documented.¹ Less documented is the actual impact of these laws on farmers and their seed practices. What is the extent of the issue? Are cases of alleged PBR infringement litigated under civil or criminal law? Have farmers been sentenced to prison for PBR infringement? What forms does criminalization take? More broadly, what have been the repercussions of these legislative changes on farmers exercising their right to save, use, exchange and sell seeds?

This study addresses these questions by documenting concrete cases from a range of countries around the world.² Cases

were identified through an informal survey of farmers' and civil society organizations, and through a review of the academic and grey literature. Some of the cases discussed, for example that of PepsiCo in India, have received considerable media attention, while others have not. In addition, the study compiles and analyses the legislative provisions related to the farmer's exception and to remedies for PBR infringement in fifteen countries. Countries were selected to reflect a variety of legislative scenarios and to provide geographical balance. While the focus is on plant variety protection or plant breeders' rights laws, it is important to note that other seed-related laws and regulations, notably those related to patents and seed marketing, also impact farmers' seed practices.³

This study is timely as the plant breeding industry is moving from lobbying for stronger plant variety protection laws to pushing for their more aggressive enforcement, including under criminal laws.⁴ This is part of a wider tendency to criminalize economic infringements related to intellectual property.⁵ Criminalization, in this context, means that an act of a non-criminal nature is being handled as if it were a crime and is made liable to harsher sanctions such as heavy fines and imprisonment. The criminalization of PBR infringement and its impacts on farmers' seed practices is particularly problematic because it is a direct threat to farmers' livelihoods, agrobiodiversity, food security and the ability of peasant seed systems to function and thrive. It is also a violation of the right to seeds of Indigenous Peoples, farmers and peasants, as recognized in international law.

Chapter 2 provides some background on the issue and defines key concepts such as plant breeders' rights, the right to seeds, the farmer's exception, PBR infringement and criminalization. The next four chapters address various dimensions of the criminalization of farmers' right to seeds and seed practices. Chapter 3 highlights the renewed push to enforce PBR driven by industry organizations exclusively dedicated to this purpose and working in cooperation with law enforcement agencies. Chapter 4 examines how PBR enforcement is abetted by new tools and technologies that allow extensive surveillance of farmers and monitoring of crops. Chapter 5 offers a comparative analysis of the relevant legislative provisions in fifteen countries and presents four case studies of PBR infringement litigation. Chapter 6 draws attention to how harassment and intimidation can have a deterrent effect on farmers' seed practices even in the absence of litigation. The last two chapters summarize the study's main findings and present some final insights.



2

Background and key concepts

Saving seed and other propagating material (hereafter referred simply as seed) for replanting is an age-old practice at the heart of agriculture and agrobiodiversity.⁶ Long taken for granted, the ability to freely save, use, exchange and sell seeds has been increasingly stifled by legal and technological developments since the 1930s. **Farm-saved seed**, however, continues to play an important role throughout the world. The prevalence of farm-saved seed varies significantly among crops and countries and it is hard to find reliable data, but the Organization for Economic Co-operation and Development (OECD) estimates that in 2016, farm-saved seed accounted for around 10 percent of the total share of seed in North America, for 20 to 30 percent in Europe and Latin America, and for over 60 percent in Asia, the Middle East and Africa.⁷ Depending on the context, farm-saved seed are frequently exchanged with other farmers and/or sold on the local market.

This study focuses on a specific type of legislation related to seed called **plant variety protection (PVP) or plant breeders' rights (PBR)** that gives developers of new plant varieties exclusive control over the propagating material of these varieties for a given period, usually between 15 and 30 years. It is a form of intellectual property specific to plant varieties that includes exceptions to the exclusive rights of the plant breeder. One of these exceptions is the **farmer's exception**, whose scope – that is, the extent to which a farmer is allowed to save, exchange and sell farm-saved seed from protected varieties – is determined by a country's plant variety protection legislation.

The **infringement of plant breeders' rights** involves the unauthorized use of a protected plant variety, in other words the use of a protected variety without the authorization of the owner of the PBR certificate. Like the scope of the farmer's exception to the exclusive rights of the plant breeder, what constitutes unauthorized use and the consequences for infringement are determined by a country's legislation.

PBR infringement, like other forms of intellectual property such as patents, typically falls under civil law. In fact, the expressions “infringement,” “breach” or “violation” – as in, for example, patent violation or breach of contract – commonly refer to civil law. In contrast, an “offence” usually refers to a breach of a criminal statute, such as theft, assault, or fraud, and is punishable by the state. While **civil lawsuits** involve a dispute between private parties, **criminal proceedings** are matters of public interest where the government takes legal action against an individual or entity accused of violating a criminal law. As

stated in the Preamble of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement), intellectual property rights are private rights, subject to underlying public policy objectives, including developmental and technological objectives.⁸

Whether PBR infringement falls under civil law or criminal law matters because they do not carry the same consequences. **Civil law remedies** focus on compensating the injured party rather than punishing the offender. In the case of PBR infringement, this would typically involve the payment of monetary compensation and an injunction to destroy the reproductive material of the variety in dispute. In contrast, **criminal penalties** involve more severe consequences such as a criminal record, substantial fines and imprisonment.

In a growing number of countries in recent years, PBR infringement has become liable to harsh penalties under civil law and, in some cases, to criminal proceedings, and it is in this context that we refer to the criminalization of seed practices. **Criminalization** can be understood as a process through which previously legal behaviour becomes illegal as a result of new legislation or of a change in the interpretation and application of existing laws. However, the line between civil and criminal law is sometimes blurred. For instance, when civil or administrative penalties under civil law become more punitive or coercive, this is sometimes called “criminalization by another name” or “quasi-criminal law”, a grey area where civil law enforcement can have criminal-like effects. This study takes a broad view of the criminalization of farmers practicing their right to seeds as encompassing four dimensions: a push for criminal enforcement, surveillance, litigation, and harassment and intimidation.

Behind efforts to restrict farmers' right to save seeds from protected varieties and introduce harsher penalties for PBR infringement are plant breeders' associations and the **International Union for the Protection of New Varieties of Plants (UPOV)**, an intergovernmental organization that promotes an extensive form of plant variety protection in the interest of the plant breeding industry.

Under the 1978 Act of the UPOV Convention (hereafter UPOV 78), farmers are implicitly allowed to use, save and exchange (but not sell) a protected variety without the authorization of the breeder, provided they do not market the propagating material commercially. When the UPOV Convention was last revised in 1991 (hereafter UPOV 91), the implicit farmer's exception was replaced by the so-called “**farmer's privilege**” – a limited and

optional farmer's exception subject to national legislation. Most countries that are signatories to UPOV 91 have incorporated the farmer's privilege to their national legislation. The farmers' privilege, however, is problematically restricted. It is limited to a farmer's own use, which means that farmers are prohibited from exchanging or selling seeds of protected varieties. The farmer's privilege to save seed must also "be within reasonable limits and safeguard the legitimate interests of the breeder."⁹ It is ultimately up to each country to determine how these terms are to be interpreted. However, in an explanatory note aimed at providing guidance on the Convention's implementation, the UPOV Secretariat argues that the optional exception should be limited to certain crops and should not extend, for example, to asexually propagated horticultural crops such as ornamentals, fruits and vegetables.¹⁰ For the crops where the exception applies, UPOV argues that there should be limits based on size of holding, crop area and/or crop value. UPOV also argues that farmers should under certain circumstances (depending on the size of the holding, for example) pay royalties for the right to use farm-saved seed, as is the case in the European Union (see Section 5.2).

The farmer's exception and privilege as defined in the UPOV Conventions are at odds with the **right to seeds** as it has since been recognized in the 2001 FAO Plant Treaty, the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the 2018 UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).¹¹ UNDRIP recognizes Indigenous Peoples' right to maintain, control, protect and develop their seeds, and their ownership of these seeds. Farmers' and peasants' right to seeds, including the right to save, use, exchange and sell farm-saved seed and propagating material, is recognized in both the Plant Treaty and UNDROP.¹² India provides an example of legislation that recognizes farmers' right to seeds as a stand-alone right. Under the Indian Protection of Plant Varieties and Farmers' Rights Act, farmers have the right to save, use, sow, resow, exchange, share or sell seed of a protect-

ed variety, as they have always done, with the only caveat that it must not be labelled as a branded seed variety.¹³

Importantly, UNDROP addresses the relationship among the various types of laws impacting the right to seeds. It clearly states that States shall elaborate, interpret and apply relevant international agreements and standards to which they are a party – including the TRIPS Agreement and the UPOV Convention – in a manner consistent with their human rights obligations as applicable to peasants and other people working in rural areas.¹⁴ This includes ensuring that "seed policies, *plant variety protection* and other intellectual property laws, certification schemes and seed marketing laws respect and take into account the rights, needs and realities of peasants" (emphasis added).¹⁵ Moreover, UNDROP stipulates that States must "take all necessary measures to ensure that non-State actors that they are in a position to regulate, such as private individuals and organizations, and transnational corporations and other business enterprises, respect and strengthen the rights of peasants and other people working in rural areas."¹⁶

As to **liability for PBR infringement**, UPOV 91 merely stipulates that contracting parties must "provide for appropriate legal remedies for the effective enforcement of breeders' rights."¹⁷ However, in an "Explanatory note on the enforcement of breeders' rights under the UPOV Convention", UPOV mentions a series of possible measures that might be considered by Member parties to enforce PBR, including "criminal actions and penalties in cases of [wilful] violation of the breeder's right [on a commercial scale]."¹⁸ Note that the brackets indicate text that may or may not be included in national laws. Explanatory notes are meant to provide guidance and are not legally binding for countries that are party to the Convention. As for the TRIPS Agreement, it provide for civil remedies for infringement, and only requires criminal sanctions for cases of willful trademark counterfeiting and copyright piracy on a commercial scale.¹⁹ In sum, under international law, there are no requirements to provide for criminal sanctions for PBR infringement.



3

The push for criminal enforcement

In recent decades, UPOV and the plant breeding industry have been steadfastly pushing to strengthen the enforcement of plant breeders' rights under civil and criminal law. New organizations and initiatives have emerged that are exclusively dedicated to investigating and prosecuting farmers and other actors in the seed chain.²⁰

One of the first such organizations, GESLIVE-Plant Licensing Management, was founded in Spain in 1996 and became a subsidiary of the Spanish National Association of Plant Breeders (ANOVE) in 2013. GESLIVE deals with the management and enforcement of plant breeders' rights, including licenses, royalty collection and legal proceedings. Among other services, GESLIVE provides a tip line for the anonymous denunciation of alleged PBR infringement named "ethics hotline" (*línea ética*).²¹ GESLIVE has been actively involved in prosecution for PBR infringement in Spain since the 2010s (see Chapter 5.2). Also in Spain, The Enforcement Organization (TEO) was set up in 2014 to, as its name indicates, enforce intellectual property on a specific plant variety – the Orri mandarin – including by undertaking legal actions against alleged infringers (see Chapter 4).²²

In the United States, the Farmers Yield Initiative was created in 2009 as a coalition of public and private organizations whose stated goal is "to protect the public and the grain industry by supporting plant variety improvement through research, education, certification, and *PVP enforcement*" (emphasis added).²³ Its website serves two purposes: make available its annual publication focusing on plant variety protection, and provide a tip line to encourage anonymous denunciations of alleged infringers.

Another prominent organization dedicated to PBR enforcement is the Anti-Infringement Bureau for Intellectual Property Rights on Plant Material (AIB), a Brussels-based industry association founded in 2010 to promote PBR in the vegetable seed sector. Among its members are the world's largest seed corporations, such as Bayer, Syngenta, BASF, Vilmorin, KWS, Rijk Zwaan and Sakata.²⁴

AIB, which was headed in 2022 by a retired US criminal intelligence officer, boasts initiating training and engaging "in cooperative activities with several police and military organizations to attack infringement issues via criminal violations."²⁵ AIB has signed formal cooperation agreements with the International Criminal Police Organization (Interpol) and the European Union Agency for Law Enforcement Cooperation (Europol) for both training and enforcement purposes.²⁶

AIB has also developed and encouraged cooperation and joint operations with law enforcement agencies at the national level, notably in Italy (*Guardia di Finanza* and *Carabinieri Forestali*) and Spain (*Guardia Civil*). The Italian *Guardia di Finanza* is a militarized law enforcement agency dealing with economic and financial crimes that reports directly to the Minister of Economy and Finance; the *Carabinieri Forestali* is a specialized unit of the *Carabinieri* military force, responsible for conducting criminal investigations related to forests, the environment and agrifood. As for the Spanish Civil Guard, it is a civil police force organized along military lines that can conduct criminal investigations and whose duties include rural policing. Agreements between AIB and these law enforcement agencies include signing formal cooperation protocols and initiating actions and operations in conjunction with these groups to include regular training. As illustrated by a host of recent cases in Italy and Spain, this cooperation has already led to multiple prosecutions and convictions under criminal laws of farmers, breeders and other actors in the seed chain (these cases are discussed in more detail in Chapter 5.2).

Where there is no dedicated organization, PBR enforcement activities are carried out by national plant breeders' associations, for example SICASOV (France), BSPB (UK), ARPOV (Argentina) and URUPOV (Uruguay). The distinction between plant breeders' associations and anti-infringement organizations is often blurred: GESLIVE, for example, is a fully owned subsidiary of the Spanish National Association of Plant Breeders (ANOVE).

The extent to which public agencies work closely with the private sector to investigate and bring charges against farmers is troubling. In the US, the federal Agricultural Research Service, which is part of the US Department of Agriculture (USDA), was a member of the Farmers Yield Initiative (FYI) before it withdrew under public pressure.²⁷ According to professor Jack Kloppenburg, the participation in FYI by public agencies is unfortunate but unsurprising: private companies favour patents, but many Land Grant Universities use PBR to protect revenue streams from their varieties. Because Land Grant Universities are in dire need of funding, they are going after plant variety protection more aggressively.²⁸ Cooperation between public and private actors for the enforcement of PBR is not limited to Europe and North America. In Brazil, Project Coalition was set up in 2015 by the Brazilian Plant Breeders' Association (BRASPOV), the Brazilian Seed Producers Association (ABRASEM), the Brazilian arm of the seed and agrochemical international trade association (Croplife Brasil) and the National Plant Variety Protec-



tion Service (SNPC) of the Ministry of Agriculture. Project Coalition set up a system based on anonymous denunciations and the hiring of investigative and legal services to bring legal actions for PBR infringement. Between 2015 and 2019, the system was pilot tested with soybean and resulted in fourteen civil lawsuits against soybean producers.²⁹

The drive to criminalize PBR infringement is evident in the discourse of these organizations. In the words of AIB's general manager:

AIB has taken the fight against PVP and PBR infringers to the next logical step by treating these violations as the crime that they are. By using the existing criminal statutes to target the organized crime groups and immoral farmers, growers, and breeders, who illegally infringe on the PVPS [sic] and PBRs, AIB hopes to weed out those who would compromise the vegetable seed industry.³⁰

Some of these organizations are calling to increase regional and international cooperation and set up a worldwide network for PBR enforcement.³¹

Countries that headquarter the largest seed companies also leverage trade agreements and regional and international cooperation to pressure countries in the Global South into adopting stronger PBR norms and strengthening their enforcement.³² The European Union continues to include the obligation to adhere to UPOV 91 in its bilateral trade negotiations with countries in the Global South³³ even though UPOV 91 is ill-fitted to their needs and interests.³⁴ Since 2017, the European Commission also uses its IP Key technical cooperation programmes in China, Latin America and South-East Asia to enhance the protection and enforcement of intellectual property, including in the area of plant variety rights, and to assist with the implementation of its trade agreements.³⁵ For the period 2022–2024, the EU Commission spent over 13 million euros globally through the IP Key cooperation programmes.³⁶

Similarly, Japan, whose companies dominate the regional seed sector for certain vegetables and flowers, has been aggressively pushing countries in the region to adopt stringent UPOV 91 norms of plant variety protection under the guise of regional technical cooperation through the East Asia Plant Variety Protection (EAPVP) Forum.³⁷ The EAPVP Forum has close links to the UPOV Secretariat and to the authorities of the main beneficiaries of the UPOV system, namely the US Department of Agriculture (USDA), US Patent Office (USPTO), and European Community Plant Variety Office (CPVO).³⁸ In 2023, the National Agriculture and Food Research Organization (NARO), a semi-autonomous organization under the authority of the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF) announced its plan to create in the next few years a PBR Management Agency (a provisional name subject to change). This agency is a joint public-private initiative developed by NARO and the Japan Association for Techno-innovation in Agriculture, Forestry and Fisheries (JATAFF). JATAFF represents the largest Japanese seed companies and enforcing PBR is one of its explicit goals.³⁹ The general objective of this new agency is to strengthen the system for monitoring infringement and to establish networks of similar agencies in the region. More specifically, one of its objectives is to address PBR infringement in Japan and overseas, including by gathering evidence, issuing warnings and initiating litigation.⁴⁰ In 2025, MAFF published a strategy paper stating two priorities: promoting the early establishment and operational launch of the PBR Management Agency, and revising the plant variety protection law – already one of the strictest worldwide – to promote overseas licensing and domestic management.⁴¹ While this this not stated explicitly in the strategy paper, a major newspaper reported that the government intended to revise the Plant Variety Protection and Seed Act by expanding the scope of criminal penalties for unauthorized export and related violations.⁴²

4

Surveillance

A second dimension of the current drive to enforce PBR is the deployment of state-of-the-art tools and technologies in the lab and in the field to monitor farmers' crops and practices. These technologies include molecular markers and databases, genotyping by sequencing, bioinformatics, specialized software, algorithms and drones.⁴³ These technological developments raise concerns for farmers' right to seeds as well as for their right to privacy in what is a highly unequal power relationship.⁴⁴

THE USE OF MOLECULAR TECHNIQUES FOR PBR ENFORCEMENT

The conventional approach to PBR enforcement used by the plant breeding industry entails comparing the quantity of seed sold to a farmer with the amount of harvested produce s/he places on the market. If they do not match, searches are initiated in the production areas and DNA tests based on morphological, physiological and biochemical traits are carried out on the crops. The next step is to sue farmers, who have the burden of proof and must produce invoices to prove that they paid royalties on the seeds used to produce their harvest.

A new *modus operandi* is now emerging that uses molecular markers to identify plant material and assist in the enforcement of PBR on commercial plant varieties. Indeed, the industry is actively seeking to develop varieties that can be identified by molecular markers to facilitate monitoring.⁴⁵ This approach relies on the use of single nucleotide polymorphisms (SNPs), a common type of variations in the DNA sequence that serve as genetic markers. In other words, SNPs act as a "fingerprint" that allows the faster and easier identification of a variety in a lab based on the genetic analysis of a plant sample.

In Spain and Italy, The Enforcement Organization (TEO) has developed molecular markers for the Orri mandarin in collaboration with leading research centers.⁴⁶ In Peru, cooperation between the government agencies responsible for the enforcement of intellectual property and for agrarian innovation has led to the development of PBR enforcement guidelines. In 2024, a first decision based on genetic marker testing was issued in a PBR infringement case involving a protected mandarin variety.⁴⁷ In Uruguay, the National Seed Institute (INASE) and the Uruguayan Plant Breeders Association (URUPOV) have used molecular markers for the identification of soybean varieties as part of a formal cooperation agreement signed in 2016 and aimed at PBR enforcement.⁴⁸ INASE and URUPOV are also developing a project whose objective is to use optical markers and artificial intelligence for the identification of soybean, wheat, and barley varieties.⁴⁹

From an industry perspective, the main advantages of using molecular marker-based approaches to PBR enforcement are to speed up the process of variety identification and reduce costs. In doing so, industry hopes to "enhance deterrence", in other words to discourage farmers from saving seed for fear of being accused of potential infringement. This is already happening in Peru, where increased inspections for PBR infringement have pushed family farmers to pre-emptively enter into licensing agreements.⁵⁰ This has been celebrated as a positive development by UPOV⁵¹, contradicting the often-made argument that PBR enforcement is aimed at large producers and does not impact family farmers. That family farmers are being pressured into entering licensing agreements is problematic given that Peru's legislation allows farmers to save seed from protected varieties for their own use without infringing on PBR.⁵²

The case of the Orri Mandarin variety in Spain illustrates how molecular markers can be used in combination with advanced technological tools to monitor farmers' crops in the fields.

TECHNOLOGICAL ENFORCEMENT: THE CASE OF THE ORRI MANDARIN IN SPAIN

The Orri mandarin is a popular hybrid seedless variety developed by Israel's Agriculture Research Organization (ARO). In 2013, the European Community Plant Variety Office (CPVO) granted ARO a Plant Variety Certificate that protects its PBR in the European Union until 2043, that is, for thirty years. ARO, through the Plants Production and Marketing Board (PPMB) of Israel, has issued The Enforcement Organization, S.L. (TEO) an exclusive license to exploit the Orri variety in Spain and Portugal.⁵³

In Spain, the Orri Running Committee (ORC) was formed as a producers' association whose goal is to control, defend and promote the Orri variety. ORC claims to have developed:

*a pioneering control system in the agri-food sector to monitor and defend industrial property rights. It combines state-of-the-art technological tools, including the OrriApp application, developed internally and capable of identifying, in the field and in real time, suspicious plots and obtaining high-resolution satellite images, and drones equipped with multispectral cameras that allow the aerial detection of illegal plantations.*⁵⁴

When the ORC suspects "unauthorized use", it refers the case to The Enforcement Organization (TEO) to take legal action.⁵⁵ As of 2025, TEO has filed 150 legal actions against producers of Orri mandarins (see Chapter 5.2).⁵⁶

DATA PRIVACY: THE BATTLE OVER FEES FOR FARM-MADE SEED IN GERMANY

For nearly three decades, German farmers and their organizations have been embroiled in a bitter fight with the plant breeding industry on the collection of fees for farm-made seed.

Since 1994, the European Union (EU) Regulation on plant variety protection is aligned with the significant restrictions on farmers' rights under UPOV 91. Plant breeders' rights extend beyond reproductive material to include harvested material. Except for small farmers, the replanting of farm-made seed is conditional on the payment of a fee to the holder of the plant variety certificate.⁵⁷

The way in which these provisions are implemented varies among EU countries. In Germany, the German Plant Breeders' Association (BDP) determines fees for farm-made seed. Some of the plant breeding companies that are members of BDP partner with the Seed Trust Administration (STV) to collect these fees from farmers.

Farmers' organizations – through IG Nachbau (Interest group against fees on farm-made seed) and AbL (Peasant Farmers' Association) – have long denounced the approach used by the plant breeding industry to collect these fees, notably through blanket requests to access farmers' arable data.⁵⁸ In 1999, German farmer Christian Schulin challenged this request in court. The case reached the European Court of Justice (CJEU), which ruled that STV was not entitled to make blanket requests for farmers' data. The CJEU determined that STV could only request information when it had some indication, for example a proof of purchase, that a farmer had acquired seed of a protected variety and could be using it for reproductive purposes.⁵⁹

STV and BDP did not give up and, in 2016, they sued the German state of Thuringia for refusing to release farmers' arable crop data. STV and BDP lost the case both in the Regional Court and in the European Court of Justice (CJEU). In its decision, the CJEU denied the claim that they had a right to this information.⁶⁰ In the words of the managing director of IG Nachbau and AbL, the CJEU confirmed that "a limited liability company from Bonn may not use data from a state authority to achieve its business objectives and collect farm-made seed fees."⁶¹

In yet another case originating in Germany, in 2023 the CJEU struck down a provision of the EU Regulation implementing the agricultural exemption, as the farmer's privilege is called in Europe.⁶² According to this provision, a person who did not comply with the obligations on farm-made seed repeatedly and intentionally had to pay damages equivalent to four times the amount of the license fees. The CJEU ruled that the European Commission had gone beyond the scope of its implementing powers; that the provision was contrary to the obligation to prove the extent of the damage; and that it amounted to punitive damages, which are prohibited by EU law. By declaring the provision invalid, the ruling of the CJEU protected farmers from excessive damage awards.⁶³

Since farmers who save seed from their harvests for replanting usually have it cleaned by a seed processor, the STV also put pressure on seed processors to obtain information about farmers, in effect trying to enlist their help in enforcing PBR.

In the latest twist in the dispute, the STV filed a lawsuit against an agricultural cooperative for purchasing crops from a farmer whose seeds did not meet the requirements set out in the plant variety rights legislation.⁶⁴ The Federal Court of Justice ordered the cooperative to refrain from repeating this action. To prevent a recurrence of such a dispute, the national umbrella organisation of cooperatives (*Deutscher Raiffeisenverband-DRV*), the STV, the BDP and the German Farmers' Association entered into talks, but had not found a solution as of 2025.

In 2024, the two main agricultural trading organizations – DRV and the Independent Agricultural Trade Association (*Der Agrarhandel e.V.*) – introduced a "supplier declaration" in which farmers have to declare that they have paid reproduction fees and complied with plant variety protection requirements, liable to a penalty of 100 euros per ton of harvested produce.

Farmers denounced the fact that the declaration only mentions certified seeds subject to reproduction fees and omits other legal sources of seeds. The declaration does not include, for example, varieties that are free of plant variety rights or for which plant variety protection is expired.

Around the same period, the STV introduced a so-called "harvest certificate" to exempt agricultural traders from further legal claims by plant breeders. To obtain this certificate, farmers must disclose detailed information about their activities, including seed purchase receipts, the extent of cultivation of each crop, and whether they save seed on farm, even if this does not affect plant breeders. These requirements, however, exceed the existing legal framework.

In response, farmers' organizations called on farmers not to sign the "supplier declaration" nor the "harvest certificate." They also threatened to initiate antitrust proceedings against agricultural trading companies on the grounds that the declaration and certificate were unlawful and represented an abuse of market power. IG Nachbau and AbL cited data protection concerns, since STV, BDP and agricultural trading companies would share farmers' data among themselves. They also cited antitrust concerns since this system would create an incentive for agricultural trading companies to only accept varieties licensed by BDP members. As a result of the campaign, one of the largest agricultural cooperatives in Germany (RWZ) relented and waived contractual penalties in its supplier declaration, as well as the threat of non-payment and non-acceptance of the harvest.⁶⁵ Many farmers and agricultural trading companies have since adopted a model supplier declaration developed by IG Nachbau in which a farmer declares compliance with legal requirements related to seeds. This declaration is not restricted to the use of protected varieties and does not provide for contractual penalties.

5

Litigation

The third and most visible dimension of the criminalization of farmers' right to save, use, exchange and sell seeds are PBR infringement lawsuits under civil and, increasingly, criminal law. Chapter 5 presents a comparative analysis of relevant legislative provisions in a sample of fifteen countries, followed by case studies of PBR infringement lawsuits in Indonesia, India, Italy and Spain.

WHY PBR INFRINGEMENT IS A CIVIL – NOT A CRIMINAL – MATTER

As stated in the WTO TRIPS Agreement, intellectual property rights such as plant breeders' rights (PBR) are private rights subject to broader public policy objectives. PBR grant breeders a limited monopoly to obtain a financial return from the commercialization of their innovations. Accordingly, PBR infringement is a dispute between private parties for which civil remedies are appropriate.

Farmers who infringe PBR do not pose a threat to society that justifies the intervention of the state and criminal sanctions. PBR enforcement should remain the responsibility of the PBR holders. Criminalizing PBR infringement risks undermining farmers' right to save, use, exchange and sell seeds, and may have a chilling effect on legitimate farming practices.

5.1 COMPARATIVE ANALYSIS OF SELECTED COUNTRIES' LEGISLATION

To assess the state of farmers' right to seeds, we compiled the provisions related to the farmer's exception and to PBR infringement in the national laws of fifteen countries worldwide. Countries were selected with a view to ensuring geographical balance and having a diverse sample in terms of countries that are parties to UPOV and those that are not. The appendix presents, for each country, a table with an overview of the provisions related to the so-called "farmer's exception", to civil remedies and, when applicable, to criminal sanctions for PBR infringement. The appendix also includes, for each country, the full text of the most relevant provisions of the law. Note that references to specific laws and regulations are not provided in endnotes in Section 5.1 since these can be easily consulted in Appendix.

When examining criminal sanctions in national laws, we distinguish between, on the one hand, PBR infringement as it

relates to accusations that a farmer has saved, used, exchanged or sold seeds of a protected variety without the authorisation to do so; and, on the other, violations related to false labelling and the misrepresentation of registered denominations. While there are exceptions, the latter category is more commonly considered liable to stricter sanctions. In Zambia, for instance, PBR infringement is liable to civil remedies, but using a registered denomination in a false or misleading way is liable to up to ten years' imprisonment.

Importantly, the two sets of provisions – the "farmer's exception" and penalties for PBR infringement – must be read together. Indeed, in a scenario where two countries have similar sanctions in place for PBR infringement, the implications of these provisions for farmers depend on the way in which farmers' rights are defined and protected.

Provisions related to the farmer's exception

A comparative analysis of selected countries' national laws reveals significant variation in the scope of farmers' freedom to use PBR-protected varieties. At one end of the spectrum, India recognizes farmers' right to seeds as a stand-alone right. Under the Indian Protection of Plant Varieties and Farmers' Right Act, farmers can save, use, sow, resow, exchange, share or sell their farm produce, including seeds from protected varieties, as they were entitled to prior to the entry into force of the law, with the sole proviso that seeds must not be labelled under their commercial name. In addition, farmers are explicitly protected from innocent infringement. At the other end of the spectrum, Japan, since joining UPOV 91 in 1998, has prohibited farmers from saving seed for replanting without the breeder's permission for an increasing number of plant species. The Japanese Plant Variety Protection Act passed in 2020 no longer includes the option available under UPOV 91 to provide for a "farmer's privilege." As a result, farmers have no right whatsoever to save, use, sow, resow, exchange, share or sell seeds from protected varieties.

In between these two approaches, there are a host of intermediate scenarios.

- Zambia, which is not party to UPOV, allows farmers to propagate, grow and use protected varieties provided it is not for commercial ends, and farmers can also sell propagating material of a protected variety on their own farm or any other place where it is grown.
- The Philippines, also not party to UPOV, provides for a farmer's exception that allows small farmers to save, use, exchange,

share or sell their farm produce of a protected variety as long as it is not sold under a commercial marketing agreement. Small farmers can exchange and sell seed from protected varieties among themselves.

- Indonesia is not a party to UPOV and allows farmers to use seed from protected varieties for non-commercial purposes, defined as individual activities for their own needs and not those that meet the needs of the larger community.
- Brazil, a party to UPOV 78, allows farmers to save seed for their own use, and small farmers to multiply seed from protected varieties to give away or exchange among themselves.
- Ecuador, also a party to UPOV 78, allows farmers to use, exchange or sell protected plant varieties within the traditional communitarian agricultural sphere as long as it is for non-profit purposes.
- Canada, Germany, Ghana, Kenya, Spain, Switzerland and the United States – all party to UPOV 91 – provide for a narrow “farmer’s privilege” modelled on UPOV 91. Farmers are only allowed to save seed from protected varieties for replanting on their own farms, and this is often subject to additional conditions, for instance the payment of royalties to the PBR holder. This is the case in both Canada and Germany, but Germany, based on the EU Regulation, makes an exception for small farmers. In Switzerland and the United States, farmers do not have to pay compensation for saving and replanting seed of a protected variety on their own land. (Although it must be noted that, in the United States, plant varieties are patentable, in which case seed saving is prohibited. See Chapter 6.)

Finally, there is a correlation between a country’s membership in UPOV and the scope of farmers’ right to seeds. India’s provisions on farmers’ rights, for instance, would not be allowed if it were to join UPOV. Countries that are signatory to the UPOV Conventions, whether under the 1978 Act or 1991 Act, are constrained in their ability to realize their FAO Plant Treaty and UN-DROP commitments related to farmers’ rights and peasants’ right to seeds, as explained in Chapter 2.

Civil and criminal sanctions for PBR infringement

A comparative analysis of how countries in the sample legislate PBR infringement also reveals significant variation: while some countries do not consider PBR infringement as a criminal offence, other countries provide for prison sentences of minimum 10 years and up to 15 years.

All the countries analyzed regulate PBR infringement as a civil law matter. This means that plant breeders who believe that their intellectual property rights are being infringed may initiate a civil lawsuit. Civil remedies typically include one or more of the following measures:

- A preliminary injunction to stop using the plant material in dispute while the case is ongoing.
- A demand for information from the defendant about the alleged infringement, for example who was involved and how much material was sold. Such a demand may be issued by a court early in litigation or before initiating full proceedings
- If there is a finding of infringement, a permanent injunction may be issued by a court to prevent further use of the plant material.

- Claim for damages, in the form of lost profits or the amount of royalties that would have been paid for a licence.
- Declaratory relief, that is, a court declaration that the PBR have been infringed, which can set a precedent and support licensing negotiations.
- An order to destroy the plant material in dispute.
- An order for the successful party to reimburse the injured party for its legal costs (or part of these costs).
- An order to publish the decision in the form of a press release on the infringer’s website or in a trade or agricultural publication.

Most countries in our sample provide some protection against innocent infringement. Some countries do so explicitly. India’s PPV&FR Act, for example, has a specific article on protection of innocent infringement (art. 42); and Kenya’s Seed and Plant Varieties Act provides that there is no right to damages in respect of PBR infringement if the person infringing the rights was not aware, and had no reasonable grounds for suspecting, that the plant variety in question was the subject of such rights (art. 20.3). Most countries, however, do so indirectly by specifying that only intentional or wilful infringement is subject to liability.

Five out of fifteen countries in our sample – Brazil, Canada, India, the United States and Zambia – do not consider PBR infringement to be a criminal offence. In the remaining ten countries, PBR infringement can constitute a criminal offence under certain circumstances, subject to criminal proceedings and penalties such as heavy fines and imprisonment. The ten countries are: Germany, Ghana, Indonesia, Italy, Japan, Kenya, the Philippines, Spain, Switzerland and Zambia.

In relation to criminal sanctions, it is necessary to look beyond PBR laws. In some countries, the PBR legislation makes explicit reference to criminal sanctions. However, in other cases, for example Spain and Italy, the PBR legislation provides for civil remedies, but PBR infringement has been prosecuted as a criminal act under the Criminal Code.

Provisions related to criminal sanctions vary significantly in their wording and scope. Switzerland, for example, provides for up to one year imprisonment for intentional PBR infringement, but someone who commits PBR infringement by negligence is liable to a fine. Some countries’ legislations provide for more drastic criminal provisions with no safeguards. The Philippines’ Plant Variety Protection Act, for instance, provides for criminal penalties for “any person who violates any of the rights of the holder”, without any qualifiers such as the infringement being intentional or on a commercial scale. These penalties include heavy fines of minimum one hundred thousand pesos (approx. one thousand seven hundred USD), and from three to six years’ imprisonment. The Japanese Plant Variety Protection and Seed Act provides that any person who has infringed on a plant breeder’s right or an exclusive exploitation license is subject to a heavy fine (up to 10 million yen or sixty-four thousand USD) and to imprisonment for up to ten years. The Ghana Plant Variety Protection Act provides that a person who wilfully sells a protected variety commits a criminal offence and is liable on summary conviction to a fine or a term of imprisonment of 10 to 15 years.

Finally, the line between civil and criminal law is not always clear-cut. Even when PBR infringement is treated as a civil as opposed to a criminal case, enforcement mechanisms may include search and seizure, court-ordered raids and heavy financial penalties, giving it a strong deterrent effect similar to criminal law (sometimes referred to as “quasi-criminal”). For example, while the United States does not provide for criminal sanctions, fines for PBR infringement are particularly heavy and clearly meant to act as a deterrent to others rather than as fair compensation (see Chapter 6).

5.2 PBR LITIGATION AND FARMERS’ RIGHT TO SEEDS: A LOOK AT CASE LAW

This section presents and analyzes PBR infringement cases in India, Indonesia, Italy and Spain. While the prosecution of Indonesian small farmers and the PepsiCo lawsuit in India have received considerable media and scholarly attention, the recent host of cases in Italy and Spain have mostly been covered in the national language press and in specialized agricultural publications.

Indonesia

Indonesia offers one of the earliest and best documented cases of the criminalization of small farmers exercising their right to save, use, exchange and sell seeds.⁶⁶ As of 2016, the NGO Indonesian Human Rights Committee for Social Justice had recorded approximately fourteen cases of small farmers being prosecuted and sentenced to jail for breeding and exchanging seed.⁶⁷ This is an underestimate since NGOs report undocumented cases of prosecuted farmers who will not speak to journalists or NGOs out of fear.⁶⁸ Small farmers received jail sentences of up to six months. In some cases, the sentence was suspended and replaced by a probationary sentence; in others, small farmers were sentenced to prison in addition to one-year probation.

The best documented case is that of Tukirin, a corn farmer from the East Java region who was prosecuted in 2003 for using a PBR-protected hybrid corn varieties developed by PT BISI – a subsidiary of the Thai company Charoen Pokpand – to breed his own seeds and sell them to neighbours in small quantities.⁶⁹ Tukirin pleaded not guilty, but was eventually charged with illegally selling uncertified seeds. Under the Plant Cultivation System Act, seed certification can only be undertaken by the government or by authorized individuals or entities, and anyone who carries out seed certification without permission is liable to a penalty of maximum three years’ imprisonment and a maximum fine of 150 million rupiahs (approx. ten thousand USD). Tukirin received a suspended six-month prison sentence and a one-year probationary sentence, and he was prohibited from planting the seeds of the variety in dispute for one year.

This case is especially shocking because it was plagued by legal inconsistencies and procedural irregularities. The charges brought against Tukirin shifted during the course of three trials, from seed theft initially, to plagiarism of cultivation methods, to eventually being sentenced for illegal seed certification even though he did not certify his seeds. In sum, what was initially a case of PBR infringement ended up being a violation of the seed marketing law (the Plant Cultivation System Act). According to

Saurav Ghimire, this happened because the company could not provide evidence for the PBR infringement charges.⁷⁰ On a procedural level, Tukirin was not represented by a lawyer despite having the right to legal representation and he was not informed of the court decision for four months, eventually losing the right to appeal.

In response to these lawsuits, the Coalition for Seed Advocacy asked the Constitutional Court for a judicial review of the Plant Cultivation System Act. In 2013, the Constitutional Court partially granted the judicial review, striking down three articles of the law as unconstitutional.⁷¹ In practice, the ruling meant that small farmers could no longer be prosecuted for exchanging and selling uncertified seeds, and for collecting germplasm for breeding. However, in spite of this ruling, a small rice farmer was arrested in 2019 for selling uncertified seeds to his fellow villagers of a variety developed by the nonprofit Association of Indonesian Seed Banks and Farmers’ Agricultural Technology (AB2TI).⁷² In response to the media attention, the Constitutional Court ruling was codified in a new law, the Sustainable Agricultural Cultivation System Act of 2019, which replaced the 1992 Act.⁷³

Indonesia is not a party to UPOV and has so far resisted pressure to commit to accede to UPOV 91.⁷⁴ Its PVP Act, while reflecting some elements from UPOV 91, allows farmers to use part of the harvested crop of a protected variety for non-commercial purposes.⁷⁵ On the other hand, the Act allows the state to investigate and bring criminal charges for PBR infringement. Anyone found to have deliberately violated the farmer’s exception for commercial purposes is liable to a maximum imprisonment of five years and a maximum fine of up to one billion rupiah (approx. sixty thousand USD).⁷⁶

India

Also in Asia, another case that garnered significant media attention is the infringement lawsuit filed by the US multinational PepsiCo against nine family farmers in the Indian State of Gujarat in 2018 and early 2019.

The potato variety in dispute – FL 2027, sold under the commercial name FC5 – is a popular variety with lower moisture content used in the fabrication of Lay’s potato chips. In 2016, PepsiCo obtained a plant variety certificate from India’s Protection of Plant Varieties and Farmers’ Rights (PPV&FR) Authority granting the company exclusive rights over its propagating material until 2031 (initially for six years, with renewal subject to review).

In India, PepsiCo uses a type of contract farming known as a buyback scheme by which it supplies seed potatoes to farmers, who sell back their produce to the company at a fixed price at the end of the season. In the suit filed in a commercial court, PepsiCo argued that the farmers had not entered into a buyback agreement with the company and were therefore not authorized to grow and sell that potato variety. PepsiCo sought damages equivalent to more than ten million rupees (one hundred and forty thousand USD) per farmer, a colossal amount in a state where the average monthly income of a family farm is approximately fifty USD.⁷⁷ PepsiCo also sought a permanent injunction restraining farmers from using the variety. The lawsuit caused an uproar and met with stiff resistance from farmers’ organiza-

tions. Faced with a public backlash and political pressure, PepsiCo offered a unilateral settlement which would have forced farmers to enter its buyback agreement. Farmers refused to settle, and PepsiCo withdrew its lawsuits in May 2019.

The lawsuit led a farmers' rights activist, Kavitha Kuruganti, to file an application with the PPV&FR Authority⁷⁸ to revoke PepsiCo's PVP certificate. Kuruganti argued that the certificate was not in the public interest since it was being used to harass and intimidate farmers; and that it had been obtained based on incorrect and incomplete information. Indeed, PepsiCo had submitted the application under the category "new variety" although the variety had been commercialized outside of India for over five years and should therefore have been registered as an "extant" variety.⁷⁹ In addition, the rights had not been properly assigned to PepsiCo by the original breeder at the time of the application.⁸⁰

In December 2021, the PPV&FR Authority found in Kuruganti's favour and revoked the registration certificate.⁸¹ As a result, PepsiCo lost its right to be considered the registered breeder of the variety and to sue for PBR infringement. PepsiCo appealed to the Delhi High Court, where a single judge bench confirmed the revocation in July 2023.⁸² However, in January 2024, this decision was set aside by a bench of the same court, which allowed PepsiCo's appeal and reinstated its PVP certificate on the grounds that the activist had not demonstrated that PepsiCo had acted against the public interest, and that registration could not be cancelled merely on procedural grounds.⁸³ Kuruganti appealed to the Supreme Court in May 2024, and the case was ongoing at the time of going to press.⁸⁴

Activists were able to draw on India's unique sui generis legislation to build their case. Indeed, the PPV&FR Act establishes

that farmers are entitled to save, use, sow, resow, exchange, share or sell any seed including those protected under the Act as long as they are not labelled as such, and farmers are protected from innocent infringement. As Kuruganti argued in her petition, the section on farmers' rights begins with "notwithstanding anything contained in this Act."⁸⁵ This is known as a "non-obstante" provision, one that must be interpreted in accordance with the Act's legislative intent which – as stated in the title of the law and in its preamble, is to protect farmers' rights.⁸⁶ In contrast, the sections on the grant of plant variety protection and infringement begin with "subject to the (other) provisions of this Act." Read together, this means that farmers' rights prevail over any other provisions that may contradict them and that "if any conflict arises, the Act's legislative intent is for a liberal interpretation in favour of farmers' rights."⁸⁷

European Union

The European Union (EU) is the region with the most documented cases of prosecution for PBR infringement under criminal law, primarily in Spain.

Plant variety protection is regulated at the EU level through Council Regulation (EC) No. 2100/94 on Community plant variety rights.⁸⁸ Known as the Basic Regulation, it applies directly and automatically in EU member States and is consistent with the 1991 Act of the UPOV Convention, which the EU has ratified. While the EU as an institution is party to UPOV 91, not all EU member countries are: as of 2025, Portugal and Italy remained party to UPOV 78, and Cyprus, Greece, Malta, and Luxembourg had not joined UPOV.

A plant variety rights title issued by the European Community Plant Variety Office (CPVO) has direct effect in all EU countries.



In addition, some EU countries have their own national legislation implementing the Basic Regulation. In countries where there is a national PVP law and system, for example France, Germany, Poland and Hungary, breeders have the choice of applying to the relevant national authority for protection (only valid in the country) or applying to the CPVO for EU-wide protection.

The Basic Regulation provides for a farmer's privilege modelled on UPOV 91, known as the "agricultural exemption": farmers are authorized to use the product of their harvest from a protected variety (other than hybrid or synthetic varieties) for propagating purposes on their own land. The agricultural exemption applies to a specific list of agricultural plant species. Moreover, farmers are required to pay an equitable remuneration to the holder of a plant variety certificate, but an exception is made for small farmers.⁸⁹ For species that are not on the list, seed saving is only permitted within the scope of the "non-commercial and private use" exception.

PBR infringement is regulated by the Basic Regulation and by Directive 2004/48/EC on the enforcement of intellectual property rights.⁹⁰ The Basic Regulation provides for civil remedies in cases of PBR infringement. Sanctions for PBR infringement are determined at the national level and apply equally to national and Community-wide plant variety rights.⁹¹ The more general EU Directive on IPR enforcement also allows for criminal sanctions "in appropriate cases."⁹² Since EU member states retain primary jurisdiction over criminal law, it is up to national courts to determine whether an infringer can be found criminally liable for PBR infringement.⁹³

In 2019, the European Court of Justice delivered a decision in a case concerning the scope of plant variety rights under EU law.⁹⁴ The case originated in Spain, where the Plant Variety Protection Club (CVVP) sued a Spanish grower, Martínez Sanchís, for allegedly infringing its plant variety rights by planting trees of the Nadorcott mandarin variety during the period between the application for a plant variety certificate and its grant, and harvesting the fruits after the grant. The Supreme Court of Spain sought the opinion of the European Court of Justice, which ruled that while the grower had to pay compensation, it did not constitute an unauthorised use of the variety.⁹⁵ Without getting into the technicalities of the case, the decision of the European Court of Justice emphasized that plant variety protection must not go beyond what is necessary to encourage plant breeding, and that agricultural production constitutes a public interest that justifies restricting the exercise of plant variety rights.⁹⁶

Italy

In Italy, the first PBR infringement lawsuit that resulted in a criminal conviction was filed in 2018 against a tomato producer from Sicily.⁹⁷ The Brussels-based Anti-Infringement Bureau (AIB, see Chapter 3) sued the producer and owner of four greenhouses for growing a tomato variety without a licence. AIB acted on behalf of the Chinese-owned agrochemical company Syngenta, the owner of a plant variety certificate on this variety, which is resistant to the tomato yellow leaf curl virus.

This case stands out for being the first case of its kind in Italy and for the heavy sentence handed down to the producer. In 2019, the Judge sentenced the producer to a fine of fifteen thousand euros (approx. seventeen and a half thousand USD). In ad-

dition, the producer had to pay seventy thousand euros in compensation to be split between AIB (twenty thousand euros) and Syngenta (fifty thousand euros) and eight thousand euros each to AIB and Syngenta in court costs. Finally, the producer received a suspended sentence of one year in prison.⁹⁸ In a comment on the decision published on its website, AIB writes that:

*the sentence creates a significant precedent in the seed sector, because it **gives criminal significance** to the widespread technique of reproducing plants covered by Plant Breeders' Rights with cuttings or "stubs" of plants, a practice which can damage the protected rights of the owners of the varieties, under which **each seed purchased must correspond to only one plant** [emphasis added].⁹⁹*

The lower court decision was confirmed on appeal in 2024 in what the AIB Director said was "an important milestone for the protection of plant breeders' rights in criminal proceedings."¹⁰⁰ In 2022, in a similar case, two tomato producers and nursery owners were sued for PBR infringement and sentenced to eight months in prison, a fine of twenty thousand euros, eighty thousand euros in damages and twenty thousand euros in legal costs.¹⁰¹ There have been more cases since, with an article referring to the "umpteenth case" initiated by an anonymous denunciation to AIB and prosecuted through the "virtuous cooperation" between AIB, the *Carabinieri* military force and administrative authorities.¹⁰²

In these lawsuits, AIB sought – successfully – to sentence producers to prison for PBR infringement by evoking Article 517 of the Italian Criminal Code, which penalizes "the manufacture and trade of goods made by usurping industrial property rights", an offence punishable by imprisonment of up to two years and a fine of up to twenty thousand euros. In Italy, PBR are the object of a specific chapter in the Industrial Property Code, which provides for civil remedies for infringement including injunctive relief, damages, publication of judgment and destruction of infringing material.¹⁰³ However, as in the case of this tomato producer, PBR infringement is increasingly being prosecuted as a criminal offence under criminal law, which carries more severe sanctions including imprisonment.

In 2024, the Italian Supreme Court ruled in favour of a small table grape producer, Ms. Miglionico, in a case brought by Sun World International LLC, a US-based global agribusiness company specializing in the development and licensing of proprietary fruit varieties. Sun World is the owner of Community plant variety rights for the seedless red table grape variety named SugaNineteen, protected under PVR Certificate N°32280 and sold under the Scarlotta trademark. The contract between Ms. Miglionico and Sun World stipulated that the whole plantation was Sun World's property and that the fruit produced by the "leased plants" had to be marketed within a Sun World-approved distribution network. Having unsuccessfully tried to sell the fruit within this network, Ms. Miglionico eventually sold the fruit outside of it. Sun World immediately terminated the contract and initiated civil proceedings. Sun World won the case in the Milan Arbitration court but eventually lost in the Italian Supreme Court. Drawing on the ruling of the European Court of Justice in the Nadorcott case (see European Union section above), the Supreme Court determined that the contractual

clauses concerning ownership of the leased plants and the right to dictate to whom the fruit could be sold were incompatible with European law. The Supreme Court ruled that while Sun World had a right to compensation (which had been paid), it could not have the plants destroyed. However, this decision came too late for Ms. Miglionico, who had already had to destroy her plantation under a lower court order. Importantly, the Supreme Court ruled that restricting farmers' freedom to sell the fruits of the harvest at a distributor of their choice was contrary to the public interest.¹⁰⁴

Spain

Spain appears to be the country with the highest number of PBR infringement lawsuits. As reported in Fresh Plaza, a global trade media platform for the fresh produce industry, "in recent years, Spain has fined, sentenced to jail, uprooted plantations, and destroyed the plants of the people that infringe intellectual property rights."¹⁰⁵

Most of these cases were initiated by GESLIVE-Plant Licensing Management, a subsidiary of the National Association of Plant Breeders (ANOVE) that specialises in PBR management, inspections and enforcement (see Chapter 3). Between 1999 and 2016, GESLIVE reports initiating 530 legal proceedings for PBR infringement, in addition to 462 administrative denouncements,¹⁰⁶ for a variety of crops including cereals, almonds, fruits, berries, legumes and flowers.

The Spanish Law on the Protection of Plant Varieties provides for civil remedies for PBR infringement, including injunction, damages, and the confiscation and destruction of plant material.¹⁰⁷ In addition, the protection of PBR was introduced in the Criminal Code in 2003 and reinforced through an amendment in 2015. As a result, the non-payment of licence fees in Spain is a criminal offence applicable to all those involved in the sector including farmers, nursery owners and retailers, and liable to a prison sentence of one to three years, and to a fine of 12 to 24 months.¹⁰⁸

Criminal law professor María Isabel Montserrat Sánchez-Escribano compiled and analyzed all criminal sentences for PBR infringement handed down in Spain between 2004 and 2019 and identified 62 decisions, with a steady increase in recent years.¹⁰⁹ The case law analysis she conducted shows that no sentence has exceeded one year's imprisonment, and that the courts have opted for lesser sentences ranging from three to six months and, on a few occasions, eight months. Practically all the decisions have been handed down "by agreement", which means that the defendant accepts responsibility in exchange for a lower penalty and no possibility of appeal. In most cases, the jail sentence has been either suspended or replaced by a fine.¹¹⁰

In one of the cases analyzed, the Criminal Court of Toledo sentenced a farmer, Jose Santiago Adanez Corral, for crime against industrial property for advertising seeds "for sowing or bread" from a protected variety of organic wheat (Isengrain) without the consent of the PBR holder. Corral was sentenced in 2018 to nine months in prison, was barred from running for office for the term of the sentence and had to pay a 16-month fine at a daily rate of nine euros (a total sum of approx. five thousand USD). The conviction was confirmed on appeal by the provincial court of Toledo.¹¹¹

The Enforcement Organization (TEO) has also been actively prosecuting infringement of PBR over the Orri Mandarin variety, for which it holds an exclusive licence in Spain and Portugal (see Chapter 4). Since 2016, it is no longer possible to legalize "non-compliant" plantations.¹¹² In the 2017-2018 season, TEO filed 92 lawsuits, including 68 civil suits and 24 criminal actions. These lawsuits led to the destruction of 40,000 Orri mandarin trees on over 80 hectares in Spain.¹¹³ Legal actions usually require the cessation of the activity, the destruction of the trees, monetary compensation, the publication of a press release about the seizure, and the adoption of measures to prevent further infringement.¹¹⁴ In 2020, a first prison sentence was handed down to a grower of Orri mandarin for a "crime against industrial property", as defined in article 274.4 of the Spanish Criminal Code, for having made grafts of a protected variety. The grower was sentenced to three months and one day in prison, was barred from running for office for the duration of the sentence and had to pay damages estimated at sixty euros per trees for a total of 518 trees (over thirty five thousand USD).¹¹⁵ TEO says it monitors large farms, but also claims to have identified virtually all Orri farms in Spain and Portugal.¹¹⁶ The average area of fruit production in Spain is 5.3 hectares.¹¹⁷

PBR litigation: The tip of the iceberg?

The cases discussed above show that farmers and other actors are being prosecuted and sentenced to prison for PBR infringement in various countries in Europe and Asia. The earliest cases go back to the mid-2000s, with a marked increase in recent years, especially in Europe. The broader impact of these lawsuits should not be underestimated, even when a sentence ends up being suspended. As the Indonesian Human Rights Committee for Social Justice notes:

For poor farmers like Tukirin, having to appear in court to answer the questions of strangers like a criminal while not understanding what he was actually charged with, may be more of a penalty than imprisonment itself. Thus, the whole case was pursued to convey an important message: "Buy your seeds from the companies or else..."¹¹⁸

Importantly, the cases that end up before the courts are only the tip of the iceberg, since the PBR industry usually favours out-of-court settlements. In the United States, the Executive Director of Oklahoma Genetics Inc (OGI) claims that "we use the federal courts to hold infringers accountable as a last resort", which suggests that they usually settle out of court.¹¹⁹ Similarly, the director of the French Plant Breeders' Organization (SICASOV) acknowledges that SICASOV "always seeks to reach an out-of-court settlement with the [alleged] offender in order to bring the dispute to a swift and amicable end, and only initiates civil proceedings as a last resort."¹²⁰ This strategy seems to work, since only one case had reached French courts as of 2021.¹²¹ Because these settlements typically include confidentiality clauses, there is no information available as to their number or content. For those at the receiving end of these proceedings, seeking an extrajudicial agreement is not necessarily an admission of guilt, but a way to avoid the financial and human costs of lengthy court proceedings against more powerful actors.

6

Harassment and intimidation

While lawsuits are an important dimension of the criminalization of seed practices, evidence shows that farmers can be deterred from exercising their right to save, use, exchange and sell seed in the absence of litigation. Saurav Ghimire has dubbed this phenomenon, whereby farmers restrict themselves from multiplying or exchanging seeds beyond the restrictions imposed by the legislation, the “chilling effect”: a climate in which farmers avoid what are in fact legitimate practices out of fear that they could find themselves on the wrong side of the law.¹²²

Harassment and intimidation may take a variety of forms. A common denominator among all the organizations devoted to PBR infringement is to encourage farmers to inform on one another by providing online forms and toll-free numbers for anonymous tips.¹²³ Seeds Canada, a Canadian seed industry organization, provides a list of “potential infringement/suspicious seed activity” that includes “coffee shop chatter of a neighbour selling seed.”¹²⁴ As Jack Kloppenburg observes, in the United States, “criminalization has worked, at least for commercial crops, in the sense that no one is saving seeds from protected

varieties anymore [even if it is allowed for replanting on one’s own farm] as it is too risky.”¹²⁵ “Inculcating a climate of fear and mistrust in farm country,” he adds, “is not good public policy”, not to mention the deleterious impact on the social fabric of farming communities.¹²⁶

In some cases, harassment and intimidation are more overt. In Indonesia, seed company representatives visit farmers in the company of police officers to check on the use of PBR-protected varieties and to warn farmers about the consequences of infringement.¹²⁷ These visits are conducted in the absence of any records or legal proceedings. As Saurav Ghimire and his colleagues conclude, the reason there have been no more lawsuits in Indonesia since 2014 is that farmers have been effectively deterred from exercising their right to seed.¹²⁸ Stated differently, farmers have become more cautious in breeding new varieties as well as in saving and exchanging seed.¹²⁹ These examples show that the criminalization of farmers’ seed practices is a multifaceted issue, and that the absence of litigation cannot be taken as evidence that the right to seeds is not being infringed upon.

PIONEERING DETERRENCE: THE CASE OF THE UNITED STATES

In the United States, PBR infringement is not liable to criminal proceedings (see Appendix). And yet, high-profile civil lawsuits involving IP-protected seeds and varieties combined with open incitement to denunciation among neighbours have instilled a climate of fear among farmers, effectively deterring them from saving, sharing or selling seeds.

Many of the strategies used by the industry to enforce PBR were pioneered with patented genetically modified (GM) crops in the United States and elsewhere in the 2000s. These include tip lines for denouncing neighbours and high-profile lawsuits such as the ones brought by Monsanto against Canadian farmer Percy Schmeiser and US farmer Vernon Hugh Bowman.¹³⁰ The Technology Use Agreements that farmers are required to sign to gain access to (in effect, rent) patented seeds give companies the right to access farmers’ fields and records at will, similar to how plant breeding companies seek to access farmers’ arable data in Germany.¹³¹

The US legislation that provides intellectual property rights for plants is peculiar because plant varieties are patentable and because the same variety can be simultaneously covered by a plant variety certificate and a utility patent. Contrary to plant variety certificates, patents do not allow farmers to save seeds for replanting. As a consequence, patents have largely superseded plant variety protection certificates.¹³²

In recent years, there has been a string of civil lawsuits against farmers for PBR infringement resulting in out-of-court settlements, consent judgments and judicial decisions.¹³³ In 2010, the Farmers Yield Initiative reported twenty-five infringement cases, with damages ranging from ten thousand USD to two and half million USD.¹³⁴

Two cases stand out for the hefty damages awarded. In 2019, in a civil suit, Iowa farmer James Fevold was ordered to pay close to three million USD to the South Dakota Board of Regents for the unauthorized use of a PBR-protected oat variety developed by South Dakota State University.¹³⁵ The same year, Kansas farmer Dustin Kelley was ordered to pay over three million USD for the unauthorized sale of seeds from a PBR-protected wheat variety developed by Oklahoma State University and licensed exclusively to Oklahoma Genetics Inc.¹³⁶ In these two cases, the owners of the PBR certificates are public agricultural universities, and it has been argued that farmers were depriving the latter of royalty income that would be reinvested in public research.¹³⁷ However, the need for public universities to compensate for declining federal funding by suing farmers for PBR infringement speaks to the broader problem of the commodification and corporatization of universities and public research in the United States.¹³⁸ It also belies the idea that public research institutions are unlikely to take legal actions against farmers using their protected varieties.

7

Findings

As the cases presented in this study show, the criminalization of farmers' seed practices under PBR laws is happening under various forms in a number of countries around the world. To paint a full picture, other types of laws that impact and criminalize farmers' practices of saving, using, exchanging and selling seeds, notably seed marketing and patent laws, would need to be considered. Here is a summary of the study's main findings:

1. In recent years, there has been a renewed push to aggressively litigate PBR infringement, as evidenced by the creation of organizations dedicated to PBR enforcement, and by calls to strengthen regional and international cooperation among them.
2. In some countries, PBR infringement is now considered a criminal offence under PBR laws or criminal codes, subject to harsh sanctions including heavy fines and imprisonment. However, criminal sanctions are not appropriate for dealing with PBR infringement. PBR are private rights and the responsibility for enforcement lies with the PBR holder, not the state. Criminalising PBR infringement can adversely impact the rights of farmers to save, use, exchange and sell seeds, and can have a chilling effect on farmers' legitimate seed practices.
3. While prosecution is the most overt face of criminalization, farmers are also being deterred from exercising their right to save, use, exchange and sell seed through civil litigation, surveillance, harassment and intimidation. To fully capture the issue, it is therefore necessary to take a broader view of criminalization as a mutually reinforcing set of modalities that together form a momentum toward disenfranchising farmers all the while enhancing the power and reach of the plant breeding and seed industry.
4. Strategies to enforce PBR include open incitement to anonymous denunciations, and visits by company representatives and police officers warning farmers of the consequences of infringement. These strategies create a climate of fear and mistrust that deter farmers and peasants from exercising their right to seeds.
5. As evidenced by the case of the Orri mandarin, the plant breeding and seed industry are harnessing new technologies including molecular markers to enforce plant variety protection. These technologies allow industry to monitor crops and surveil farmers on an unprecedented scale, yet they are being deployed without any public oversight and in the absence of safeguards to protect the rights of farmers, including their right to privacy.
6. Despite UPOV and industry assurances that PBR enforcement is not aimed at family farmers, the latter are being impacted, as shown by the fact that they are pressured into entering licensing agreements and, in some cases, have been intimidated, harassed, prosecuted and sentenced to heavy fines and imprisonment.
7. Some public entities and agencies are actively involved in enforcing plant variety protection against the rights and interests of their farming communities. Examples include the participation of the US Federal Agricultural Service in the Farmers Yield Initiative (before it withdrew under public pressure) and cooperation between private plant breeding organizations and public law enforcement agencies.
8. At the international level, some countries including the US, the EU, Switzerland and Japan are leveraging technical cooperation and assistance to pressure countries in the Global South to enforce UPOV 91-based PBR norms through bilateral and regional trade agreements. This is done with the explicit objective "to help their entrepreneurs and companies valorise their intangible assets" even though these norms are ill-suited to these countries' seed systems and infringe on farmers' and peasants' right to seeds.¹³⁹

8

Final remarks

The gradual erosion of farmers' right to seeds under PBR regimes worldwide has paved the way for the criminalization of farmers' seed practices. As this study shows, criminalization is a multilayered set of modalities: its most overt face is the prosecution of PBR infringement under criminal law, but it also manifests itself through technological surveillance, and harassment and intimidation.

Amidst the relentless push to extend Western IP regimes globally, we tend to lose sight of the fact that intellectual property rights, including plant breeders' rights, are first and foremost economic entitlements. As stated in the WTO TRIPS Agreement, they are private rights, subject to underlying public policy objectives. PBR are, at their core, a limited monopoly granted to breeders of new plant varieties to allow them to earn a financial benefit from their innovation through their commercialization. PBR infringement therefore represents a conflict between pri-

vate parties for which the injured party may seek civil remedies. A farmer who allegedly infringes PBR does not represent a threat to society that justifies the intervention of the state and criminal sanctions.

As the European Court of Justice recently ruled, plant variety protection must not go beyond what is necessary to encourage plant breeding, and agricultural production constitutes a public interest that justifies restricting the exercise of plant variety rights.¹⁴⁰ Treating PBR infringement as a criminal act is especially problematic because seeds – as living forms and the foundation of food systems and food security – are not the same as pirated CDs. In fact, there is a strong case to be made that it is the criminalization of farmers' seed practices that represents a threat to the public interest and to society given its manifold negative impacts on peasant seed systems, agrobiodiversity, farmers' rights and livelihoods, food security and the right to food.



Appendix

Selected countries' legislation in matter of PBR infringement

A note on the appendix: Under criminal sanctions, a distinction is made between sanctions related to PBR infringement and sanctions related to the false or misleading use of variety denominations. The information in the column Denominations is not exhaustive and provided for information purposes only. The text of the most relevant provisions related to PBR infringement is provided for each country, as well as links to the full text of the legislation.

BRAZIL

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
BRAZIL	UPOV 78	Plant Variety Protection Act (1997) [Link]	Art. 10 of the PVP Act provides for farmers' rights to keep and plant seeds for their own use, except for sugar-cane. Farmers are not deemed to infringe upon PBR if they (1) store and plant seeds obtained from a protected variety for their own use; or if they (2) use or sell the product of their harvest as food or raw material (except for reproductive purposes). Small rural producers can also multiply seeds from protected varieties to give away or exchange, but only in dealings exclusively with other small rural producers.	Art. 37 of the PVP Act provides that PBR infringement is liable to damages (amount to be determined in the regulations), seizure of material and the payment of a fine equivalent to 20 percent of the commercial value of the material seized.	Not applicable	Not applicable

RELEVANT PROVISIONS OF THE LAW – FEDERAL LAW No 9,456 of April 25, 1997

CHAPTER I | PROTECTION

Section III | Right to protection

Art. 10. The right to property of the plant variety shall not be deemed infringed by whoever:

IV – being a small rural producer, multiplies seeds, for donation or exchange, exclusively for other small rural producers, within the scope of financing or support programs benefiting small rural producers, conducted by public agencies or non-governmental agencies, authorized by the Public Administration.

V – multiplies, distributes, exchanges or commercializes seeds, seedlings and other propagating material within the scope of the provisions of art. 19 of Law No. 10,696, of July 2, 2003, as family farmers or family enterprises that meet the criteria of Law No. 11,326, of July 24, 2006. (as amended by Law No. 13,606, de 2018).

§ 1. The provisions of the caput specifically do not apply to the cultivation of the sugar cane (...)

CHAPTER IV | PENALTIES

Art. 37. Anyone that sells, offers for sale, reproduces, imports, exports, as well as packs or holds in storage for such purposes, or provides for any purpose, the propagation material of a protected plant variety, under the correct designation or any other, without being authorized to do so by the holder thereof, shall be bound to indemnify the same, in amounts to be defined in a proper regulation, in addition to having the material seized, and shall also pay a fine in the amount equivalent to twenty percent of the commercial value of the seized material, and shall additionally be deemed to have committed the crime of infringement of the rights of the breeder, notwithstanding other

legal penalties being applicable.

§ 1. There being contumacy as to the same or another material, the percentage of the fine shall be twice that having been applied relatively to the last penalty, notwithstanding additional applicable penalties.

§ 2. The competent agency shall forward the seized material at no cost – provided the same has an adequate quality – for distribution, as seeds for planting, to farmers settled by Agrarian Reform programs or in areas where there may be in course of development public programs of incentive to familiar agriculture, commercialization thereof being prohibited.

§ 3. The provisions of the caput and of § 1. of this Article do not apply to the cases provided in Article 10.

CANADA

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
CANADA	UPOV 91	Plant Breeders' Rights Act (1990) Last amended 2019 [Link]	Art. 5.3(2) of the PBR Act ("Farmers' privilege") provides that farmers can reproduce, condition and store* UPOV 91 protected seed varieties for use as seed on their own holdings. If royalties were not collected on the sale of seeds, the PBR-holder can demand payment later, such as when the crop is sold (so-called End Point Royalties). Note that the Government can restrict or remove the "farmers privilege" by passing regulations.	Art. 41 of the PBR Act provides for civil remedies for infringement, including restraint from the use, production and sale of the material, recovery of damages, inspection, and disposition of the material. There were no changes to the sanctions for infringement when Canada amended its PBR Act to join UPOV 91 in 2015.	Not applicable	Under art. 53 of the PBR Act, offences related to disclosing secret information and using false denominations are liable to a fine and up to three years' imprisonment; and to up to five years for the falsification of documents.

RELEVANT PROVISIONS OF THE LAW – PLANT BREEDERS' RIGHTS ACT – S.C. 1990, c. 20

Farmers' privilege

5.3 (2) The rights referred to in paragraphs 5(1) (a) and (b) and—for the purposes of exercising those rights and the right to store—the right referred to in paragraph 5(1)(g) do not apply to harvested material of the plant variety that is grown by a farmer on the farmer's holdings and used by the farmer on those holdings for the sole purpose of propagation of the plant variety.

Civil Remedies**Infringement**

41 (1) A person who infringes plant breeder's rights is liable to the holder thereof and to all

persons claiming under the holder for all damages that are, by reason of the infringement, sustained by the holder or any of those persons and, unless otherwise expressly provided, the holder shall be made a party to any action for the recovery of those damages.

Relief in the event of infringement

(2) In an action for infringement of plant breeder's rights that is before a court of competent jurisdiction, the court or a judge thereof may make any interim or final order sought by any of the parties and deemed just by the court or judge, including provision for relief by way of injunction and recovery of damages and generally respecting proceedings in the action

and, without limiting the generality of the foregoing, may make an order

- (a) for restraint of such use, production or sale of the subject-matter of those rights as may constitute such an infringement and for punishment in the event of disobedience of the order for that restraint;
- (b) for compensation of an aggrieved person;
- (c) for and in respect of inspection or account; and
- (d) with respect to the custody or disposition of any offending material, products, wares or articles.

ECUADOR

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
ECUADOR	UPOV 78	PBR are legislated as a chapter (Titulo IV) of the IP Law, the Ingenios Act (2016) [Link, in Spanish]	Under Art. 489 of the Ingenios Act, farmers can make personal use, exchange, or sell protected plant varieties within the traditional communitarian agricultural sphere without the authorization of the breeder, as long as these acts are performed for non-profit purposes. This does not extend to fruits, ornamentals and trees (sectors of special interest to commercial breeders). Art. 491 provides that farmers can save and exchange propagative material as long as they do not use trademarks or trade names.	In case of PBR infringement, the Ingenios Act allows for both administrative (arts. 554 and 559) and judicial proceedings (art. 550). Art. 560 provides for inspections, requests for information, sanctions (e.g., compensations, fines) and other preventive measures.	Not applicable Explanation Art. 549 of the Ingenios Act allows for criminal procedures in matters of infringement. However, when the Integral Organic Criminal Code (COIP) was enacted in 2014 [Link], it did not include any criminal sanctions related to IPR. COIP was amended in 2015 to introduce criminal protection for trademark, counterfeiting and copyright piracy, and again in 2021 to strengthen penal sanctions, but it does not extend to PBR. (Source)	Not applicable (See PBR infringement column)

RELEVANT PROVISIONS OF THE LAW – CODIGO ORGANICO DE LA ECONOMIA SOCIAL DE LOS CONOCIMIENTOS, CREATIVIDAD E INNOVACION (2016) [author's translation]

TITLE IV PLANT VARIETIES

Article 489. – Exceptions. – The rights of the holder of a breeder's right shall not be infringed by any person who reserves, reproduces, multiplies or sows the product obtained from the cultivation of the protected variety, or of a variety essentially derived therefrom, when such acts are carried out:

1. for his own use;
2. To sell or exchange, without any profit motive, that product as raw material or food-stuff; and
3. In the context of ancestral agricultural practices or in a traditional community agricultural setting, including for the sale or exchange, without profit, of seeds or other material of that variety.

The commercial use of material for multiplication, reproduction or propagation, including whole plants and their parts, of fruit, ornamental and forest species, is exempted from this article.

Article 491. – Other limitations on the breeder's right. – The holder of a breeder's right may not prevent the use by farmers for multiplication purposes or for exchange with other farmers for the purpose of multiplication of seeds or other propagating material that the farmers have obtained from the planting of the protected variety or from exchange with other farmers, provided that such multiplication or exchange does not extend to the trademark or trade name of the holder. Such exchange shall be made in compliance with customary rules, legal and regulatory provisions for the mobilization of material.

Article 549. – Jurisdiction in intellectual property matters. – Knowledge of the proceedings referred to in this Chapter (Judicial proceedings in intellectual property matters) shall be vested in the competent judicial authority in accordance with the provisions of the General Organic Code of Procedure. The judges of the place where the infringement was committed or where the effects of the infringement are noticed shall also be competent to hear such proceedings.

The administrative acts of the National Competent Authority on intellectual rights may be challenged in the contentious-administrative jurisdiction, for which it will not be necessary to exhaust the administrative channels. Other actions shall be processed in the civil or criminal jurisdiction in accordance with the competence provided in the legal system.

Article 550. – Action for infringement. – The owner of an intellectual property right recognized in the country or any other person entitled to that effect may bring legal action against any person who infringes such rights. He may also bring an action against persons who carry out acts that indicate the imminence of an infringement.

Article 554. – Administrative actions. – Pursuant to the provisions of this Title, the owner of a protected right or any other person entitled to do so may bring an administrative action against any person who infringes the corresponding rights. He may also take action against persons who carry out acts that indicate the imminence of an infringement.

Any criminal proceedings shall be brought in accordance with the relevant legislation.

Article 559. – Administrative trusteeship. – The national competent authority on intellectual rights shall exercise, ex officio or at the request of a party, inspection, monitoring and sanctioning functions to prevent and repress infringements to intellectual property rights.

Article 560. – Measures ordered by the authority on intellectual property. – The national competent authority on intellectual rights may order the adoption of one or more of the following measures:

1. Inspection;
2. Request for information including the power to order the production of documents or

objects that are under the control or possession of the alleged infringer;

3. Sanction of the infringement of intellectual property rights; and,
4. The other preventive measures provided for in the general rules of procedure.

GERMANY

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
GERMANY	UPOV 91	Plant Variety Protection Act (2013) [Link]	PVP Law, Section 10a ("Restriction of the effect of plant variety protection"), subsection (2) allows a farmer to use farm-saved seeds obtained from protected varieties of the species contained in the list in Annex, with the exception of hybrids or synthetic varieties. Except for small farmers, the use of farm-saved seed is conditional to the payment of remuneration to the PBR holder, and the farmer must inform the volume of farm-saved seed.	Sections 37-40 of the PVP Act provide that PBR infringement is liable to civil remedies, incl. compensations or damages and destruction or recall of infringing materials.	Section 39 ("Criminal provisions") provides that intentionally infringing on PBR is a criminal offence and may be punished with up to three years' imprisonment or a fine. If infringement is on a commercial scale, it is liable to up to five years' imprisonment or a fine.	Not applicable (Dealt under Section 40, "Provisions on regulatory fines" and liable to civil remedies)

RELEVANT PROVISIONS OF THE LAW – PLANT VARIETY PROTECTION ACT (SORTENSCHUTZGESETZ), AS LAST AMENDED IN 2013

Section 10a Restriction of the effect of plant variety protection

(1) The effect of plant variety protection shall not extend to acts in accordance with section 10 subsection (1)

1. in the private domain for non-commercial purposes,
2. for experimental purposes relating to the protected variety,
3. for the purpose of breeding new varieties as well as acts referred to in section 10 subsection (1) with these varieties, with the exception of the varieties in accordance with section 10 subsection (2).

(2) The effect of plant variety protection shall furthermore not encompass harvested material

which a farmer has obtained by planting, on his/her own holding, propagating material of a protected variety of the species contained in the list in the Annex, with the exception of hybrids or synthetic varieties, and has been used there as propagating material (farm-saved seed) where the farmer complies with his/her obligations as stipulated in subsections (3) and (6). For the purpose of farm-saved seed, the harvested material may be conditioned by the farmer or by an undertaking (conditioner) commissioned by him/her to do so.

(3) A farmer who makes use of the possibility of using farm-saved seed shall be required to pay a suitable remuneration to the holder of the plant variety right. Remuneration shall be deemed to be suitable if it is considerably lower

than the amount that is agreed for the production of propagating material of the same variety in the same territory on the basis of an exploitation right in accordance with section 11.

(4) Agreements between holders of the plant variety right and farmers regarding the suitable amount of remuneration may be based on corresponding agreements between the professional organisations. They may not preclude competition in the seed sector.

(5) The requirement to pay in accordance with subsection (3) shall not apply to small farmers within the meaning of Article 14 para. 3, third indent, of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227 p. 1).

(6) Farmers who make use of farm-saved seed and any conditioners commissioned by them, shall be required to provide the holders of plant variety right with information as to the volume of farm-saved seed.

(7) The Federal Ministry of Food, Agriculture and Consumer Protection is herewith empowered to amend the list of species that are cited in the annex by means of an ordinance where this is necessary in order to adapt it to list for Community plant variety rights.

Section 10b Exhaustion of plant variety protection

Plant variety protection shall not extend to acts which are carried out with plants or parts of plants or products directly obtained therefrom (material) of the protected variety or of a variety to which plant variety protection in accordance with section 10 subsection (1) No. 1 also extends that has been placed on the market by the holder of the plant variety right or with his/her consent, unless such acts

1. involve further production of propagating material without the aforementioned material having been intended for that purpose on delivery, or
2. involve the export of material of the variety which permits propagation of the variety

to a country which does not protect varieties of the species to which the variety belongs; this shall not apply if the exported material is intended for growing.

[Sections 37, 38, 40: see what to include as it represents a lot of text]

Section 39 Criminal provisions

(1) Anyone who

1. in contravention of section 10 subsection (1), including in conjunction with subsection (2), produces, conditions for the purposes of propagation, places on the market, imports, exports or stores propagating material of a variety that is protected in accordance with the present Act, a plant, a part of a plant or a product, or
2. in contravention of Article 13 para. 1, in conjunction with para. 2, sentence 1, including in conjunction with para. 4, sentence 1, or para. 5, of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ L 227 p. 1) propagates, conditions for the purpose of propagation, offers for sale, places on the market, imports, exports or stores material of a variety protected by a Community plant variety right

shall be punished with up to three years' imprisonment or a fine.

(2) Where the offender acts on a commercial basis, the punishment shall be up to five years' imprisonment or a fine.

(3) The attempt shall be punishable.

(4) In cases falling under subsection (1), the offence shall only be prosecuted on request unless the criminal prosecution authority considers ex officio intervention to be required because of the particular public interest in criminal prosecution.

(5) Objects to which the criminal offence is related may be confiscated. Section 74a of the German Criminal Code (Strafgesetzbuch) shall be applied. The provisions on confiscation shall not be applied where the claims designated in section 37a are admitted in proceedings in accordance with the provisions contained in the Code of Criminal Procedure with regard to the compensation of the violated party (sections 403 to 406c).

(6) In the event of a conviction, it shall be ordered that the sentence be published on request if the violated party so moves and puts forward a legitimate interest therein. The nature of the publication shall be laid down in the judgment.

GHANA

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
GHANA	UPOV 91	Plant Variety Protection Act, 2020 (Act 1050) [Link]	Art. 20.3b of the PVP Act provides for a limited farmer's privilege in line with UPOV 91.	Art. 59 of the PBR Act provides for civil remedies for PBR infringement.	Art. 60 of the PBR Act provides that a person who wilfully (a) offers for sale, sells or markets the propagating material of a variety protected in Ghana commits an offence and is liable on summary conviction to a fine or a term of imprisonment of 10 to 15 years.	Art. 60 of the PBR Act provides that a person who wilfully 60(b) markets propagating material of a variety protected in Ghana without the registered variety denomination or 60(c) uses the registered variety denomination of a variety protected in Ghana commits an offence and is liable on summary conviction to a fine or a term of imprisonment of 10 to 15 years.

RELEVANT PROVISIONS OF THE LAW – PLANT VARIETY PROTECTION ACT, 2020 (ACT 1050)

Exceptions to plant breeder right

Art. 20 (3) The Minister shall, in making the Regulations, take into account the need to

- (a) safeguard the legitimate interests of breeders; and
- (b) permit farmers to make personal use of their own holdings for purposes of propagation of the product of harvest which the farmers have obtained by planting on the holdings the protected variety or a variety provided for under paragraphs (a) and (b) of subsection (4) of section 19.

Civil remedies

Art. 59.

- (1) Where a person is aggrieved by the infringement of a plant breeder right, that person may bring an action in the High Court for

- (a) an order of injunction to prevent the commission or continuation of the commission of the act of infringement or to prohibit the continuation of the infringement;
- (b) the recovery of damages for the infringement;
- (c) the forfeiture, seizure or destruction of propagating or harvested material which has been produced contrary to this Act;
- (d) an order requiring the Customs Division of the Ghana Revenue Authority to detain goods that infringe on the rights of a plant breeder imported or ready for export; and
- (e) any other remedy that the court considers necessary.

- (2) Subsection (1) does not preclude an action being brought under any other enactment for the enforcement of the rights of a person.

Offences

Art. 60. A person who wilfully

- (a) offers for sale, sells or markets the propagating material of a variety protected in Ghana;
- (b) markets propagating material of a variety protected in Ghana without the registered variety denomination; or
- (c) uses the registered variety denomination of a variety protected in Ghana for another variety of the same plant species or closely related species likely to cause confusion commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units and not more than eight thousand penalty units or a term of imprisonment of not less than ten years and not more than fifteen years.

INDIA

COUNTRY	UPOV status	PVP Law	Farmer's exception*	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
INDIA	Not a UPOV member	The Protection of Plant Varieties and Farmers' Rights Act (PPV&FR Act), 2001 [Link]	Article 39 (iv) of the PPV&FR Act ("Farmers' Rights") provides that: "a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act", as long as it is not labelled as a branded seed of a protected variety. *India provides for farmers' right to seeds as opposed to a farmer's exception.	Art. 66 ("Relief in suits for infringement") provides that in a suit for infringement, a District Court may provide an injunction and, at the option of the plaintiff, either damages or a share of the profits. Art. 42 ("Protection of innocent infringement") provides that a farmer may not be condemned for infringement if s/he can prove that s/he was not aware of the existence of such a right.	N/A	Arts. 71 to 73 provide that selling under false denominations, falsely representing a variety as registered, or repeated offences are liable to fines and imprisonment ranging from 6 months to 3 years, substantial fines, or both.

RELEVANT PROVISIONS OF THE LAW – PROTECTION OF PLANT VARIETIES AND FARMERS RIGHTS ACT, 2001

CHAPTER VI – FARMERS’ RIGHTS

39. Farmers’ rights.—(1) Notwithstanding anything contained in this Act,—

- (iv) a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act: Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.

Explanation.—For the purpose of clause (iv), “branded seed” means any seed put in a pack-

age or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.

42. Protection of innocent infringement.— Notwithstanding anything contained in this Act,—

- (i) a right established under this Act shall not be deemed to be infringed by a farmer who at the time of such infringement was not aware of the existence of such right; and
- (ii) a relief which a court may grant in any suit for infringement referred to in section 65 shall not be granted by such court, nor any cognizance of any offence under this Act shall be taken, for such infringement by

any court against a farmer who proves, before such court, that at the time of the infringement he was not aware of the existence of the right so infringed.

CHAPTER X – INFRINGEMENT, OFFENCES, PENALATIES AND PROCEDURE

66. Relief in suits for infringement.—(1) The relief which a court may grant in any suit for infringement referred to in section 65 includes an injunction and at the option of the plaintiff, either damages or a share of the profits.

INDONESIA

COUNTRY	UPOV status	PVP Law	Farmer’s exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
INDONESIA	Not a UPOV member	PVP Act No.29 (2000) [Link]	Under Art.10(1)(a) of the PVP Act, farmers are allowed to use part of the harvested crop of a protected variety for non-commercial purposes. An interpretation specifies that “non-commercial purposes” means “individual activities particularly those of small farmers for their own needs and does not include activities that are extended to meet the needs of the larger community.”	Art. 67 of the PVP Act allows a PBR owner or licence holder to claim damages for PBR infringement.	Art. 69 of the PVP Act allows the state to bring criminal charges for PBR violations. Chapt. X (“Investigation”) allows the state to conduct investigations and criminal proceedings in PBR-related matters. Chapter XI (“Penal provisions”) Art. 73 – Anyone found to have deliberately violated the provisions referred to in Art.10(1) (“farmer’s exception”) for commercial purposes is subject to a maximum imprisonment of 5 years and a maximum fine of up to one billion rupiah. Art. 75 states that criminal actions as indicated in Chapt. XI refer to criminal felonies.	

RELEVANT PROVISIONS OF THE LAW – ACT NO.29 OF 2000 ON PLANT VARIETY PROTECTION

Article 10

(1) It shall not constitute a contravention or violation of the PVP rights when:

- a. Part of the harvested crop of a protected variety is used for non-commercial purposes.
- b. The protected variety is used for research activities, plant breeding and for constituting new variety.
- c. The protected variety is used by the Government in the framework of the policy for the supply of food and medicines without infringing the economic rights of the PVP rights owner.

(2) Provisions for the use of the protected variety by the Government referred to in paragraph (1) sub-paragraph (c) shall be further regulated the Government.

Article 67

(1) A PVP rights owner or license holder or Compulsory Licence holder has the right to claim for damages through the State Court from anyone who deliberately and without the right commits the acts stipulated in Article 6.

(2) The submission of claim for damages for the acts stipulated in Article 6 paragraph (3) shall only be accepted when it is proven that variety used is the same as the variety that has been issued with PVP rights.

(3) The State Court's decision on a claim referred to in paragraph (1) by the State Court Registrar must promptly be relayed to the PVP Office and thereafter recorded in the PVP Public Register and announced in the PVP Official Bulletin.

Article 68

(1) To avoid increased loss to the party whose rights have been violated, the judge may order the party violating those rights, for the duration of the State Court's investigation, to temporarily cease all activities stipulated in Article 6 paragraph (3).

(2) The judge may order the delivery of the products of the violation of PVP rights to be implemented, when the judgement of the court has been executed and after the person or legal body sued pays compensation to the bona fide owner of the product.

Article 69

The right to submit a claim provided for in this CHAPTER does not derogate from the right of the State to execute criminal charges for the violation of the PVP rights.

Article 70

(1) Other than investigation by the Police of the Republic of Indonesia, the office of certain state civil officers at the departments whose scope of work and responsibilities include PVP development by the prevailing legislation, can be given special authority as investigating officers as stipulated in Law No. 8, of 1981 concerning Law of Criminal Procedures to conduct criminal proceedings in PVP.

(2) An Investigating Officer as stipulated in paragraph (1) has the authority to:

- a. Conduct an investigation on the authenticity of a report or information pertaining to criminal actions relating to PVP;
- b. Conduct an investigation on a person or body that is suspected of having committed a criminal action relating to PVP;
- c. Request for information and evidence from a person or body connected to the criminal incidents relating to PVP;
- d. Conduct investigation on bookkeeping, recordings and other relevant documents pertaining to criminal actions relating to PVP;
- e. Conduct investigation at specific locations that are suspected of containing evidence of bookkeeping, recording and other documents as well as confiscating sub-paragraphs that may be used as evidence in criminal proceedings relating to PVP;
- f. Request for expert assistance in carrying out the investigation of criminal actions relating to PVP.

(3) An Investigating Officer as stipulated in paragraph (1) will inform the commencement of an investigation and subsequently present the investigation report to the Public Prosecutor through the Police Department of the Republic of Indonesia in accordance with Article 107 Law No. 8, of 1981 concerning Laws of Criminal Procedure.

Article 73

Anyone found to have deliberately violated the provisions referred to in Article 10 paragraph (1) for commercial purposes, is subject to a maximum imprisonment of 5 years and a maximum fine of up to Rp. 1.000.000.000,00 (One Billion Rupiah).

Article 75

Criminal actions as indicated in this CHAPTER refer to criminal felonies.

II. INTERPRETATION OF ARTICLES

Article 10

Paragraph (1), sub-paragraph (a)

Not for commercial purposes as referred to in this sub-paragraph, are the individual activities particularly those of small farmers for their own needs and does not include activities that are extended to meet the needs of the larger community. This must be stressed so that the market segment for the said variety that has been issued PVP and the interest of the PVP rights holder continues to be protected.

Article 69

This provision is to emphasize that PVP rights have a great impact on the economical and political social order.

Article 70

Paragraph (1)

The authority given to the officers of the state civil office does not impinge the authority of the Republic of Indonesia National Police to investigate any PVP criminal acts.

In carrying out the given authority, the state civil office shall work under the coordination and supervision of the office of the Investigating Officer from the Republic of Indonesia National Police.

Paragraph (2)

Self-explanatory

Paragraph (3)

In the interest of the investigation, the Republic of Indonesia National Police investigation department may or may not be required to provide guidance and assistance to the State Civil Investigation office as stated in paragraph (1).

What is meant by guidance includes investigation techniques and tactics, whereas assistance with investigation covers arresting, restraining or laboratory examination. Therefore, the State Civil Investigation office shall notify early the Republic of Indonesia National Police of the said investigation. The outcome of the investigation in the form of the confiscated materials and evidence shall be handed over to the Public Prosecutor through the Republic of Indonesia National Police.

ITALY

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
ITALY	UPOV 91	Industrial Property Code, Decree 30/2005, last amended by Law 102/2023 [Link] Chapter II, Section VIII ("New Plant Varieties"), arts. 100-116.	Art. 170-bis establishes a farmer's privilege based on UPOV 91 and EC Regulation 2100/94.	The Industrial Property Code provide for civil remedies for infringement including injunctive relief (art. 124), damages (art. 125), publication of the sentence (art. 126) and seizure of infringing material (art 129).	Art. 127 of the Industrial Property Code ("Criminal and administrative sanctions") provides for fines for IPR violation. Under art. 517-ter of the Criminal Code (2022), usurping or violating an industrial property title is liable to up to two years' imprisonment and a fine of up to 20,000 euros [Link]	Offences related to the use of denominations also come under art. 517-ter of the Criminal Code.

RELEVANT PROVISIONS OF THE LAW – INDUSTRIAL PROPERTY CODE LEGISLATIVE DECREE

10 FEBRUARY 2005, N. 30

Article 107 | Contents of the breeder's law

1. The breeder's authorization is required for the following acts carried out in relation to the reproduction or multiplication material of the protected variety:

- production or reproduction;
- conditioning for the purpose of reproduction or multiplication;
- offered for sale, sale or any other form of marketing;
- export or import;
- detention for one of the purposes listed above.

2. The breeder's authorization is required for the acts mentioned in paragraph 1 carried out in relation to the harvested product, including whole plants and parts of plants, obtained through unauthorized use of reproduction or multiplication materials of the protected variety, unless that the breeder was unable to reasonably exercise his right in relation to the aforementioned reproduction or multiplication material.

Use is presumed unauthorized unless proven otherwise.

3. The provisions of paragraphs 1 and 2 also apply:

- to varieties essentially derived from the protected variety, when this is not, in turn, an essentially derived variety;
- to varieties that are not clearly distinguishable from the protected variety in accor-

dance with the distinction requirement;
c) to varieties whose production requires the repeated use of the protected variety.
[...]

Article 108 | Limitations of the breeder's right

1. The right of breeder does not extend to acts carried out in a private sphere, for non-commercial purposes; to acts carried out on an experimental basis; to acts carried out for the purpose of creating other varieties, as well as, where the provisions of article 107, paragraph 3 are not applicable, to acts referred to in the same article 107, paragraphs 1 and 2, carried out with respect to such other varieties.

2. Without prejudice to the provisions of article 107, paragraph 1, anyone who intends to proceed with the multiplication, with a view to certification, of material coming from a variety subject to patent rights for a new plant variety, is required to give prior notification to the holder of the right.

Article 170-bis | Duties regarding biotechnological inventions

5. With regard to biotechnological inventions, the use by the farmer, for the reproduction or multiplication on his own in his company, of patented material of plant origin, takes place in compliance with the provisions of Article 14 of Regulation (EC) n. 2100/94 of the Council, of 27 July 1994.

Article 124 | Corrective measures and civil sanctions

1. With the sentence that ascertains the violation of an industrial property right, an injunction on the manufacture, trade and use of the things constituting violation of the right, and the order of definitive withdrawal from the market of the same things in the towards anyone who owns it or has access to it. The injunction and the definitive withdrawal order from trade can also be issued against any intermediary who is a party to the proceedings and whose services are used to infringe an industrial property right.

2. By issuing the injunction, the judge can set a sum due for any violation or non-compliance subsequently noted and for any delay in the execution of the measure.

3. With the sentence that ascertains the violation of an industrial property right, the destruction of all the things constituting the violation may be ordered, if there are no particular reason to do so, at the expense of the author of the violation. The destruction of the thing cannot be ordered and the person entitled can only obtain compensation for damages if the destruction of the thing is detrimental to the national economy. If the products constituting infringement of industrial property rights are susceptible, after adequate modification, to legitimate use, the judge may order, instead of their definitive withdrawal or destruction, their temporary withdrawal from the market, with the possibility of reinsertion following

the adjustments imposed to guarantee compliance with the law.

4. With the sentence that ascertains the violation of industrial property rights, it may be ordered that the objects produced, imported or sold in violation of the right and the specific means that uniquely serve to produce them or to implement the protected method or process are assigned ownership to the owner of the right itself, without prejudice to the right to compensation for damages.

5. The judge also has the power, upon request of the owner of the objects or means of production referred to in paragraph 4, taking into account the residual duration of the industrial property title or the particular circumstances of the case, to order the seizure, at the expense of the author of the violation, until the title, objects and means of production are extinguished. In the latter case, the owner of the industrial property right can request that the seized objects be awarded to him at the price which, in the absence of agreement between the parties, will be established by the enforcement judge, having heard, if necessary, an expert.

6. Things constituting a violation of industrial property rights cannot be ordered to be re-

moved or destroyed, nor can their use be prohibited when they belong to those who use them personally or domestically. When applying sanctions, the judicial authority takes into account the necessary proportion between the seriousness of the violations and the sanctions, as well as the interests of third parties.

[...]

Article 127

Criminal and administrative sanctions

1. Without prejudice to the application of articles 473, 474 and 517 of the penal code, anyone who manufactures, sells, exhibits, uses industrially, introduces objects into the State in violation of an industrial property right valid in accordance with the provisions of this code, is punished upon complaint, with a fine of up to 1,032.91 euros. (8)

[...]

CRIMINAL CODE

[Unofficial translation]

Article 517-ter. (Manufacture and trade of goods made by usurping industrial property titles).

Without prejudice to the application of Articles 473 and 474, anyone who, being able to

know of the existence of the industrial property title, manufactures or industrially uses objects or other goods made by usurping an industrial property title or in violation thereof shall be punished, on complaint of the offended person, by imprisonment of up to two years and a fine of up to 20,000 euros.

To the same punishment shall be subject whoever, in order to make profit, introduces into the territory of the State, holds for sale, offers for sale directly to consumers or otherwise puts into circulation the goods referred to in the first paragraph.

The provisions of Articles 474-bis, 474-ter, second paragraph, and 517-bis, second paragraph, shall apply.

The crimes provided for in the first and second paragraphs are punishable provided that the rules of domestic laws, EU regulations and international conventions on the protection of intellectual or industrial property have been observed.

JAPAN

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
JAPAN	UPOV 91	Plant Variety Protection and Seed Act, Act No. 83 of 1998, last amended 2022. [Link]	No farmer's exception	Arts. 33 and 34 provide for injunctions, destruction of material and damages.	Art. 67 ("Crime of Infringement") provides that "Any person who has infringed on a breeder's right or an exclusive exploitation license is subject to imprisonment for not more than ten years or to a fine of not more than 10,000,000 yen, or combination thereof.	Arts. 68 to 71 stipulates fines and up to three- or five-years' imprisonment for offences related to omitting or misusing a registered denomination when selling propagating material for commercial purposes.

RELEVANT PROVISIONS OF THE LAW – PLANT VARIETY PROTECTION AND SEED ACT – ACT NO. 83 OF MAY 29, 1998

Article 33

- (1) The holder of a breeder's right or exclusive exploitation license may demand a person that infringes or is likely to infringe on their breeder's right or exclusive exploitation license discontinue or refrain from that conducting that infringement.
- (2) The holder of a breeder's right or exclusive exploitation license, in making the demand prescribed in the preceding paragraph, may demand the destruction of the propagating material, the harvested material or the processed products whose existence constitutes an infringement, or the objects used in the act of infringement, or other measures necessary for the prevention of that infringement.

Article 34

- (1) If the holder of a breeder's right or of an exclusive exploitation license on which another person has intentionally or negligently infringed claims compensation for damage caused by that infringement, and that person has transferred the propagating material, the harvested material or the processed products whose existence constitutes the infringe-

ment, and the amount of damage suffered by the relevant holder may be presumed to be the amount arrived at when the quantity of the propagating material, harvested material or processed products transferred (hereinafter referred to in this paragraph as the "transferred quantity") is multiplied by the profit per unit of the material or products which that holder would have sold if there had been no infringement, within the limit attainable by that holder in consideration of their capability to exploit those materials or products; provided, however, that, if any circumstances exist under which that holder could not have sold the number of the relevant material or products equivalent to all or part of the transferred quantity, the amount corresponding to the quantity which would not have been sold due to those circumstances is to be deducted.

- (2) If the holder of a breeder's right or exclusive exploitation license on which another person has intentionally or negligently infringed claims compensation for their damage caused by that infringement against that other person, and profit has been gained as a result of the act of infringement, the amount of profit is presumed to be the amount of

damage suffered by that holder.

- (3) The holder of a breeder's right or exclusive exploitation license on which another person has intentionally or negligently infringed may claim compensation for damage caused by that infringement against in the amount equivalent to money which that holder would be entitled to receive from the exploitation of the registered variety, etc.
- (4) The provisions of the preceding paragraph do not preclude a claim for compensation for damage in an amount exceeding that provided for in that paragraph. In such a case, if the infringer of the breeder's right or exclusive exploitation license did not commit the relevant infringement intentionally or with gross negligence, the court may take those circumstances into consideration in determining the amount of damages.

Article 67

Any person who has infringed on a breeder's right or an exclusive exploitation license is subject to imprisonment for not more than ten years or to a fine of not more than 10,000,000 yen, or combination thereof.

KENYA

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
KENYA	UPOV 91	Seeds and Plant Varieties Act, CAP 326 (1972, last amended in 2012), Part V – PBR [Link] *This law covers both PBR and seed marketing	The farmer's privilege is defined in the SPV (PBR) Regulations (2021) [Link] . Art.20(1E) provides a narrow UPOV 91 exception: "within reasonable limits and subject to safeguarding the legitimate interests of the breeder, farmers may use the product of the harvest which they have obtained by planting, on their own holding, the protected variety." Note that this is at the discretion of the Cabinet Secretary. As of 2025, the Cabinet had not issued Regulations. In November 2025, a High Court Judge declared several articles of the SPV Act unconstitutional, including art. 20(1E). See [Link]	Art. 20(1)(b) of the SPV Act provides that PBR infringement is liable to damages, injunctions or account (of the infringer's profits). Arts. 28 and 29 of the SPV Act establish a Seeds and Plants Tribunal whose jurisdiction includes ruling on matters relating to PBR infringement (with no possibility of appeal to the High Court). As of September 2025, the Tribunal had not yet been set up.	The SPV Act provides for the institution of criminal proceedings (Art.31) and prison sentences for various offences under the Act, incl. PBR infringement. Under the SPV (PBR) Regulations, 2001, infringement of PBR in the registered name of a variety is liable to a fine of three thousand shillings or to imprisonment for a term of three months or to both [Link]	Art. 25 provides that making a false representation of giving false information is considered an offence.

RELEVANT PROVISIONS OF THE LAW – SEEDS AND PLANT VARIETIES ACT CAP 326 (2012)

20. Nature of rights

(1) Subject to this Part, and of any other written law, the holder of plant breeder's rights in a plant variety shall have the exclusive right to do, and to authorize others to do, the following—

- (a) produce reproductive material of the variety for commercial purposes, to commercialize it, to offer it for sale, to export it, to stock it for any of these purposes and to have any or all of their activities performed;
- (b) in the circumstances described in the Fifth Schedule to this Act, to this Act, to exercise the other rights therein specified,

and, subject to the provisions of this section, infringements of plant breeder's rights shall be actionable at the suit of the holder of such rights, and in any proceedings for such an infringement all such relief, by way of damages, injunction, account or otherwise shall be available as is available in any corresponding proceedings in respect of infringements of other proprietary rights:

Provided that in so far as the production and the stocking for production of the propagating material of a variety for which plant breeder's rights have been granted, is undertaken solely for research purposes or for developing new varieties in the breeder's own nursery this shall not be deemed to be at variance with the exclusive right of the holder of a plant breeder's rights.

(...)

(3) There shall be no right to damages in respect of an infringement of plant breeder's rights—

- (a) if the person infringing the rights was not aware, and had no reasonable grounds for suspecting, that the plant variety in question was the subject of such rights; or
- (b) in a case where the infringement consists of a breach of conditions attached to a licence, if that person had no notice of any of those conditions, but the person who would, but for the foregoing provisions of this subsection, be entitled to damages shall be entitled to an account of profits in respect of the infringement, and to payment of any amount found due on the account, whether any other relief is granted under this section or not.

(4) The holder of plant breeder's rights may, in authorizing other persons to exercise his exclusive rights, impose any conditions, limitations or restrictions which may be imposed by the holder of any other kind of proprietary rights, and plant breeder's rights shall be as-

signable in the same manner as other kinds of proprietary rights.

31. Institution of criminal proceedings

(1) Notwithstanding any provision of any other written law as to time limits in criminal proceedings, where a part of a sample has been tested by a seed analyst proceedings for including in a statutory statement false particulars concerning the matters which, under seeds regulations are to be ascertained for the purposes of the statement by a test of the seeds, being proceedings relating to the seeds from which the sample was taken, may be brought at any time not more than six months from the time when the sample was taken.

(2) If, at any time before a test is begun to ascertain whether a part of a sample of seeds is of a specified variety or type, and not more than six months after the sample was taken, the person to whom any other part of the sample was given, or any other person, is notified in writing by an authorized officer that it is intended to test the seeds and that, after the test, proceedings may be brought against that person for including in a statutory statement a false statement that seeds were of a specified variety or type, then, notwithstanding any provision of any other written law as to time limits in criminal proceedings, any such proceedings relating to the seeds from which the sample was taken may be brought against the person so notified at any time not more than two years from the time when the sample was taken, and a certificate purporting to be issued by an authorized officer and stating that a person was so notified shall be sufficient evidence of that fact.

(3) Proceedings for an offence relating to a statutory statement which has been delivered to a purchaser of seeds, or relating to seeds which have been sold and delivered, may be brought before a court having jurisdiction at the place of delivery of the statement or seeds.

SEEDS AND PLANT VARIETIES

(PLANT BREEDER'S RIGHTS)

(FRUIT, NUT AND TREE CROPS SCHEME)

REGULATIONS, 2001

*See Subsidiary legislation, CAP 326, pp.103 and foll. For example:

7. Offences

A person who infringes the plant breeder's rights in the registered name of a variety of fruit, nut and tree crops covered by the Fruit, Nut and Tree Crops Scheme commits an of-

fence and is liable to a fine of three thousand shillings or to imprisonment for a term of three months or to both.

The same applies to vegetables, trees and woody climbers, rot and tuber crops, maize, ornamental and herbaceous, oil and fiber crops, cereals, pulses, and pasture plants and grasses.

THE SEEDS AND PLANT VARIETIES (PLANT BREEDER'S RIGHTS) REGULATIONS, 2021

PART VI | EXCEPTIONS

Exceptions to the Breeder's Right

30. (1) The breeder's right shall not extend to:-

- (i) acts done privately and for non-commercial purposes;
- (ii) acts done for experimental purposes; and
- (iii) acts done for the purpose of breeding other varieties, and, except where the resultant variety is Essentially Derived, the breeder may not exploit it without the consent of the owner of the initial variety in accordance with Section 20 (1),(1A) & (1B), of the Act.

(2) The Director shall gazette a list of agricultural crops and vegetables whose varieties have been improved, protected and with historical practice of saving seeds and maximum land sizes, where small scale farmers will not need permission of the breeder to use farm saved seeds as determined by the Plant Breeders' Rights Committee.

(3) The Cabinet Secretary, may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeders rights in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or Essentially Derived Variety.

PART VI | THE SEEDS AND PLANTS TRIBUNAL

29 (4) The Tribunal shall, in addition to any other jurisdiction conferred upon it, hear and determine any matters agreed to be referred to the Tribunal by any arbitration agreement relating to the infringement of plant breeder's rights, or to matters which include such infringement, but subsection (3) of this section shall not apply in relation to any jurisdiction conferred by this subsection.

PHILIPPINES

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
PHILIPPINES	Not a UPOV member	Plant Variety Protection Act (2002) [Link]	Section 43(d) of the PVP Act recognizes the traditional right of small farmers to save, use, exchange, share or sell their farm produce of a protected variety, except when a sale is for the purpose of reproduction under a commercial marketing agreement. The Board shall determine the condition under which this exception shall apply, taking into consideration the nature of the plant cultivated, grown or sown. This provision shall also extend to the exchange and sell of seeds among and between said small farmers: Provided, that the small farmers may exchange or sell seeds for reproduction and replanting in their own land.	Sections 52 to 54 of the PVP Act allow for damages, injunction and the confiscation of infringing materials.	Section 56 of the PVP Act provides for criminal penalty for PBR infringement, including imprisonment for 3 to 6 years and/or a fine of minimum one hundred thousand pesos and up to three times the profits derived from the alleged infringement.	Offences related to the use of denominations also come under art. 517-ter of the Criminal Code.

RELEVANT PROVISIONS OF THE LAW – PLANT VARIETY PROTECTION ACT NO. 9168 (2002)

TITLE VII RIGHTS OF HOLDERS

SECTION 43. Exceptions to Plant Variety Protection. – The Certificate of Plant Variety Protection shall not extend to:

- Acts done for noncommercial purposes;
- Acts done for experimental purposes;
- Acts done for the purpose of breeding other varieties, except when Sections 39 and 40 apply; and
- The traditional right of small farmers to save, use, exchange, share or sell their farm produce of a variety protected under this Act, except when a sale is for the purpose of reproduction under a commercial marketing agreement. The Board shall determine the condition under which this exception shall apply, taking into consideration the nature of the plant cultivated, grown or sown. This provision shall also extend to the exchange and sell of seeds among and between said small farmers: Provided, That the small farm-

ers may exchange or sell seeds for reproduction and replanting in their own land.

TITLE VIII INFRINGEMENT

SECTION 47. What Constitutes Infringement. – Except as otherwise provided in this Act, any person who without being entitled to do so, performs the following acts:

- Sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it; or
- Import the novel variety into, or export it from, the Philippines; or
- Sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or
- Use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or

- Use seed which had been marked “unauthorized propagation prohibited” or “unauthorized seed multiplication prohibited” or progeny thereof to propagate the novel variety; or
- Dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or
- Fails to use a variety denomination the use of which is obligatory under Section 15; or
- Perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid Philippine plant patent; or
- Instigate or actively induce performance of any foregoing acts,

May be sued by the holder, who may also avail of all relief as are available in any proceeding involving infringements of other proprietary rights.

SECTION 52. Damages. – The court may award actual, moral, exemplary damages and attorney's fees according to a proven amount including a reasonable royalty for the use of the protected variety.

SECTION 53. Injunction. – The court may also enjoin the infringer(s) from further performing any act of infringement on the rights of the holder(s) as defined in this Act.

SECTION 54. Court to Order Confiscating of Infringing Materials. – Upon petition by the complainant, the court may order the confiscation of infringing materials, and:

- a. Cause their distribution to charitable organization;
- b. Cause the sale and provide the proceeds thereof to research organizations; or
- c. Cause the return to the petitioner for further scientific use.

SECTION 56. Criminal Penalty. – Any person who violates any of the rights of the holder provided for in this Act may also suffer the penalty of imprisonment of not less than three (3) years but not more than six (6) years and/or a fine of up to three (3) times the profit derived by virtue of the infringement but in no case should be less than One Hundred Thousand pesos (P100,000.00).

SPAIN

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
SPAIN	UPOV 91	EU Regulation (EC) 2100/94 on Community Plant Variety Rights [Link] Kingdom of Spain Law 3/2000 governing the protection of plant varieties [Link]	Art. 14 of the PPV Law provides for a farmer's privilege in line with UPOV 91	Arts. 21 and 22 of the PPV Law provides that PBR infringement is liable to injunction, damages, confiscation and destruction of material, etc.	Protection of PBR was introduced in the Criminal Code (Organic Law 10/1995) in 2003 and last amended in 2015 (Organic Law 1/2015) [Link] Art. 274 provides that the non-payment of licence fees is an offence applicable to all those involved in the sector, from nursery owners to retailers, including farmers, who run the risk of one to three years in prison.	Not applicable Administrative offences are covered under arts. 29-31 and liable to civil remedies.

RELEVANT PROVISIONS OF THE LAW – LAW 3/2000 GOVERNING THE PROTECTION OF PLANT VARIETIES

Article 14 | Exception for the benefit of the farmer

1. Farmers shall be authorized for the purpose of propagation on their own farms, to use the product of the harvest obtained from the sowing on such farms of material for the propagation of a protected variety that has been legally acquired and is neither hybrid nor synthetic.

- (a) For the purpose of this Law, the term "own farm" shall be understood to be any farm or part thereof that the farmer really uses to cultivate plants, whether he be the proprietor thereof or whether he administer it under his responsibility and for his own

account, in particular in the case of leased land.

- (b) Similarly the term "farmer" shall be understood as referring to any individuals, bodies corporate, co-operatives, agricultural processing companies, mercantile companies or any other admitted in Law as owner of the farm for the purpose of administering it under their own responsibility and for their own account.

2. The exception to which this Article refers shall apply only to the plant species mentioned in Annex 1.

3. The exercise of the exception shall be subject to the following rules:

- (a) There shall be no quantitative restrictions on the farmer's exploitation when the operational needs of the farm require that no such restrictions apply.
- (b) The product of the harvest may be processed to provide seed stock to be sown by the farmer himself or by any services to which he may resort but the identity of the product to be processed and the product resulting from the process must be clearly identified at all times.
- (c) Smallholding farmers shall not be obliged to pay the right-holder a fee. For the pur-

pose of this Law, smallholding farmers shall be considered those determined by regulation according to the peculiarities of the species they produce.

- (d) All other farmers shall be obliged to pay the holder a fee that shall be considerably less than the amount paid for production under licence of the propagation material of the same variety in the same area.
- (e) Verification of the observance of the provisions of this Article or of those adopted pursuant hereto shall be the exclusive responsibility of the holder of the plant varieties right.
- (f) Farmers and those providing processing services shall, on request, provide the holder of the plant varieties right with any information he may deem necessary.

4. Official bodies involved in verification may provide relevant information if they came by it in the ordinary performance of their duties and provided that this incurs no additional burden or cost. This provision shall be understood in accordance with domestic or Community provisions on personal data protection.

Article 21 | Violation of the plant breeder's rights

The holder of a plant varieties right may take appropriate action of any class and nature before the courts of ordinary jurisdiction against anyone who violates those rights and may demand that the necessary measures be taken to safeguard those rights.

In particular, the holder may demand:

- (a) An injunction for cessation of the Laws that violate the right.
- (b) Payment of damages.
- (c) The collection of all obtained vegetable material that is in the possession of any of

the persons responsible for the violation and the destruction of such material, if indispensable.

- (d) The granting of ownership of the plant material referred to in the previous paragraph, in which case its value shall be set against the damages awarded. If the value of the said products should exceed the damages granted, the holder of the right shall compensate the condemned party for the excess.
- (e) Publication of the sentence at the cost of the condemned party.
- (f) Adoption of measures necessary to avoid continuation of the violation of the rights.

Article 22 | Damages

1. Anyone infringing the plant breeder's rights shall be liable for damages in respect of their having:

- (a) Conducted any of the operations cited in Article 12(2) of this Law without possessing the authorization of the holder of the plant variety rights.
- (b) Used, to the point of creating a risk of confusion, an identical or similar denomination to that of a protected variety, if that denomination is applied to another variety of the same or a botanically close species.
- (c) Omitted to use the denomination for a certain protected variety or changed the mentioned denomination.

2. Anyone violating the rights of the plant breeder in any other way different from those mentioned in paragraph 1, shall be liable for damages only when, in their performance they employed deceit or negligence, where deceit is deemed to obtain from the moment the offender has been warned by the holder of the plant variety right and summoned to cease violating the plant breeder's rights.

3. Damages in favour of the holder of the plant varieties rights shall include not only the value of the loss suffered and the earnings forfeited by the holder but also the prejudice that may be deemed to have been suffered from the discredit of the plant variety covered by the plant variety right caused by the offender through improper use thereof. In no case may the damages be less than the benefit derived by the person who committed the offence.

ARTICLE 274.4 OF THE SPANISH CRIMINAL CODE (ORGANIC LAW 1/2015)

4. Whoever, for agricultural or commercial purposes, without the consent of the plant variety licence holder and being aware of its registration, produces or reproduces, conditions with a view to production or reproduction, offers on sale, sells or otherwise commercialises in another manner, exports, imports or possesses, for any of the purposes mentioned, plant material for reproduction or propagation of a protected plant variety pursuant to national laws or those of the European Union on protection of new plant varieties, shall be punished with a prison sentence of one to three years.

Whoever perpetrates any of the deeds described in the preceding Paragraph using plant material for reproduction or propagation that does not belong to the variety stated, under the denomination of a protected plant variety, shall be punished with the same penalty.

SWITZERLAND

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
SWITZERLAND	UPOV 91	Federal Act on the Protection of New Plant Varieties (last amended in 2008) [Link]	Art. 7 of the PVP Act allows farmers to use farm-saved seed from protected varieties for use on their own holding without any payments to plant breeders. The farmer's privilege applies to a list of plant species determined by the Federal Council [Link] .	Chapt. 3 of the PVP Act provides for civil remedies for PBR infringement, incl. provisional measures and damages.	Chapt. 4 of the PVP Act provides for criminal sanctions for the intentional infringement of PBR, incl. a maximum sentence of one year's imprisonment or a fine (art. 48.1), or a fine if the person has acted by negligence (art. 48.2). The law also provides for the seizure of material (art. 50).	Other infractions, incl. failure to use the variety denomination when selling propagating material of a protected variety, are punishable by a fine if the person acted intentionally (art. 49).

RELEVANT PROVISIONS OF THE LAW – FEDERAL LAW ON THE PROTECTION OF PLANT VARIETIES No. 232.16 of March 20, 1975 (status as of September 1, 2008)

Art. 7 | Farmer's privilege

1. Farmers who have acquired propagating material from a protected agricultural variety put in circulation by the holder or with his consent may, on their holdings, propagate the harvested material they have obtained by growing such material.

2. The Federal Council shall determine the plant species to which the farmer's privilege shall apply; in so doing, it shall give special consideration to their importance as raw materials for foodstuffs or fodder.

Art. 37 | Action to prevent or restrain the disturbance

1. Anyone whose right deriving from protection or whose right to the variety denomination has been threatened or infringed may bring suit to put a halt to the act or to eliminate the resulting unlawful state of affairs.

Art. 38 | Right to bring suit before the granting of protection

1. As soon as the application has been published, the applicant may, before protection has been granted, bring suit to put a halt to the act or to eliminate the unlawful state of affairs, provided he supplies the opposing party with sufficient guarantees.

2. Although action for damages may only be brought once protection has been granted, it can cover the damage caused by the defendant's fault from the time the application was published.

CHAPTER 4 | CRIMINAL LAW PROTECTION

Art. 48 | Violation of the provisions relating to the protection of varieties

1. Anyone who, without being entitled to do so, carries out the acts referred to in art. 5, para 1,

by utilizing the propagating material or the harvested material of a protected variety or a variety covered by art. 5, para 2 a.-c., or who utilizes such material on an ongoing basis with a view to producing the propagating material of a new variety, shall, if he has acted intentionally, be punished, subsequent to a complaint by the aggrieved party, by a maximum sentence of one year's imprisonment or a fine.

2. Punishment shall take the form of a fine if he has acted by negligence.

Art. 50 | Seizure of material

Even if it has not been possible to prosecute or convict any specific person, the judge may order the seizure of the products produced unlawfully.

UNITED STATES

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
USA	UPOV 91	The Plant Variety Protection Act (1970) [Link]	PVPA, Para 2543 ("Right to save seed. Crop Exemption") A farmer's privilege allows farmers to save and replant seed of a protected variety on their own land. Following the Supreme Court decision in <i>Asgrow Seed Co. v. Winterboer</i>, 513 U.S. 179 (1995), the PVPA was amended to comply with UPOV 91 by eliminating the exemption that allowed farmers to sell saved seeds from protected varieties.	PVPA, Paras 2561 and 2564 provide for remedies by civil action for PVP infringement in the form of damages. Allows for the recovery of all legal costs and up to three times the amount of damages. Para 2568 specifies civil remedies for infractions related to false marking.	Not applicable	Not applicable (Liable to civil remedy under Para. 2568)

RELEVANT PROVISIONS OF THE LAW – THE PLANT VARIETY PROTECTION ACT OF 1970 (PVPA), 7 U.S.C. §§ 2321-2582

§2543. Right to save seed; crop exemption

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 2541 1 of this title, it shall not infringe any right hereunder for a person to save seed produced by the person from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on the farm of the person, or for sale as provided in this section. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement.

A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 2567 of this title that the actions of the purchaser constitute an infringement.

§2561. Remedy for infringement of plant variety protection

An owner shall have remedy by civil action for infringement of plant variety protection under section 2541 of this title. If a variety is sold under the name of a variety shown in a certificate, there is a prima facie presumption that it is the same variety.

§2564. Damages

(a) Upon finding an infringement the court shall award damages adequate to compen-

sate for the infringement but in no event less than a reasonable royalty for the use made of the variety by the infringer, together with interest and costs as fixed by the court.

- (b) When the damages are not determined by the jury, the court shall determine them. In either event the court may increase the damages up to three times the amount determined.
- (c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.
- (d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding the infringer to have established innocent intentions, shall have discretion as to awarding damages.

ZAMBIA

COUNTRY	UPOV status	PVP Law	Farmer's exception	Civil remedies	Criminal sanctions	
					PBR infringement	Denominations
ZAMBIA	Not a UPOV member	The Plant Breeders' Rights Act, 2007* [Link] *At the time of publication, a Bill to amend the PBR Act was under discussion.	Art. 8 of the PBR Act provides that: 8(a) A farmer can propagate, grow and use a protected variety as long as it is not for commercial ends. 8 (c) A farmer can sell propagating material of a protected variety on their own farm or any other place where it is grown.	Art. 39(2) of the PBR Act provides that a person who infringes a plant breeders' right may be sued in any court of competent jurisdiction by the holder of a plant breeder's right for an injunction or damages or both.	Not applicable	Art. 55 of the PBR Act provides that: (1) providing false, misleading or deceptive information to secure a licence or registration is liable to a substantial fine and up to one year's imprisonment. (2) the misuse of a registered denominations is liable to a substantial fine and/or to imprisonment for up to ten years.

RELEVANT PROVISIONS OF THE LAW – THE PLANT BREEDER'S RIGHTS ACT, 2007

Article 8 | Exemptions to rights of breeder

8. (1) Notwithstanding the existence of a plant breeder's rights in respect of a plant variety, any person or farmer may—

- (a) propagate, grow and use any plant of the variety for purposes other than commerce;
- (b) sell any plant or propagating material of the variety as food or for another use that does not involve the growing of the plant or the propagation of that variety;
- (c) sell within a farm or any other place at which any plant of the variety are grown, any plant or propagating material of the variety at that place;
- (d) use any plant or propagating material of the variety as an initial source of variation for the purposes of developing another new plant variety except where the person makes repeated use of the plant or propagating material of the first mentioned variety for the commercial production of another variety;
- (e) sprout the protected variety as food for home consumption or for the market;
- (f) use the protected variety for further breeding, research or teaching; and
- (g) obtain, with the conditions of utilisation, the protected variety from a gene bank or plant genetic resource centre.

(2) A farmer may save, exchange or use part of the seed from the first crop of a plant which

the farmer has grown for sowing in the farmer's farm to produce a second and subsequent crop.

Article 39 | Infringement of right

39. (1) A plant breeder's right in a plant variety is infringed

by any person who—

- (a) not being the breeder of the plant variety registered under this Act, or a registered agent or licensee of that variety, undertakes any act stipulated under sub-section (1) of section seven in relation to the variety without the permission of the variety's breeder, or within the scope of a registered agent or licensee without permission of the registered agent or licensee as the case may be;
- (b) uses, sells, exports, imports or produces any other variety or gives a variety a denomination identical with or deceptively similar to the denomination of a variety registered under this Act, in such a manner that may cause confusion in the mind of the general public in identifying the variety that is registered.

(2) A person who infringes a plant breeders right may be sued in any court of competent jurisdiction by the holder of a plant breeder's right for an injunction or damages or both.

(3) A court may, in addition to the costs of an action under this Act, grant an injunction or damages or both as may appear to be reasonable or just in the circumstances of the case.

(4) Any action or proceeding for an infringement of a plant breeder's rights may be instituted in writing in a court or, where agreeable to both parties, be submitted to arbitration in accordance with the Arbitration Act.

(5) A defendant in an action or proceeding for an infringement of plant breeder's rights in respect of a variety may apply by way of counter-claim for the revocation of that plant breeder's rights on the grounds that—

- (a) the variety was not a new plant variety; or
- (b) facts exist which, if known to the Institute before the grant of that plant breeder's rights, would have resulted in the refusal of the grant.

(6) The court may, where it is satisfied that a grant for revocation of a plant breeder's right exists, make an order revoking that right.

Acronyms and Abbreviations

ABL	Peasant Farmers' Association (<i>Arbeitsgemeinschaft bäuerliche Landwirtschaft</i> , Germany)	JATAFF	Japan Association for Techno-innovation in Agriculture, Forestry and Fisheries
ABRASEM	Brazilian Seed Producers Association	MAFF	Ministry of Agriculture, Fisheries and Forests (Japan)
AIB	Anti-Infringement Bureau for Intellectual Property Rights on Plant Material	NARO	National Agriculture and Food Research Organization (Japan)
ANOVE	National Association of Plant Breeders (<i>Asociación Nacional de Obtentores Vegetales</i> , Spain)	OGI	Oklahoma Genetics, Inc. (United States)
ARPOV	Argentine Association for the Protection of New Plant Varieties	ORRI	Orri Running Committee (Spain)
BDP	Federal Association of German Plant Breeders (<i>Bundesverband Deutscher Pflanzenzüchter e.V.</i> , Germany)	PBR	Plant breeders' rights
BRASPOV	Brazilian Plant Breeders' Association	PVP	Plant variety protection
BSPB	British Society of Plant Breeders	PPV&FR	Protection of Plant Varieties and Farmers' Rights (India)
CJEU	Court of Justice of the European Union	SICASOV	Agricultural Cooperative Society of Plant Breeders (<i>Société Coopérative d'Intérêt Agricole des Sélectionneurs et Obtenteurs de Variétés Végétales</i> , France)
CPVO	(European) Community Plant Variety Office	SNPC	National Plant Variety Protection Service (<i>Serviço Nacional de Proteção de Cultivares</i> , Brazil)
CVVP	Plant Variety Protection Club (<i>Club de Variedades Vegetales Protegidas</i> , Spain)	STV	Seed Trust Administration (<i>Saatgut-Treuhandverwaltungs GmbH</i> , Germany)
DRV	National umbrella organisation of cooperatives (<i>Deutscher Raiffeisenverband</i> , Germany)	TEO	The Enforcement Organization (Spain)
EAPVP	East Asia Plant Variety Protection (Forum)	TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
FYI	Farmers Yield Initiative (us)	UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
IG	Interest group against fees on farm-saved seed (<i>Interessengemeinschaft gegen die Nachbaugesetze und Nachbauggebühren</i> , Germany)	UNDROP	United Nations Declaration on the Rights of Peasants and other people working in rural areas
MANSHBAU	Indonesian Human Rights Committee for Social Justice	UPOV	International Union for the Protection of New Varieties of Plants
INASE	National Seed Institute (<i>Instituto Nacional de Semillas</i> , Uruguay)	URUPOV	Uruguayan Plant Breeders Association (<i>Asociación Civil Uruguayana para la Protección de los Obtentores Vegetales</i>)
INDECOPI	National Institute for the Defence of Competition and Protection of Intellectual Property (<i>Instituto Nacional de Defensa da Competencia y de la Protección de la Propiedad Intelectual</i> , Peru)	USDA	United States Department of Agriculture
INIA	National Institute for Agrarian Innovation (<i>Instituto Nacional de Innovación Agraria</i> , Peru)	USPTO	United States Patent and Trademark Office
ITPGRFA	International Treaty for Plant Genetic Resources for Food and Agriculture	WTO	World Trade Organization

Endnotes

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- 14 UNDROP, Op. cit., art. 2.4.
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- 22 See The Enforcement Organization at [\[Link\]](#).
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The Association for Plant Breeding for the Benefit of Society (APBREBES) is a network of civil society organizations from developing and industrialized countries. The purpose of APBREBES is to promote plant breeding for the benefit of society, fully implementing Farmers' Rights to plant genetic resources and promoting biodiversity.

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