



Updates on Plant Variety Protection

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1. Editorial

Over the past years, this newsletter has repeatedly highlighted a central lesson from research and practice alike: plant variety protection must be tailored to the realities, priorities, and agricultural systems of individual countries. The *one-size-fits-all* model embodied in UPOV 91, developed by and for industrialised nations, fails to reflect this diversity.

Against this backdrop, the African Continental Free Trade Area (AfCFTA) marks a significant milestone. Through its new framework on plant variety protection, the African Union and its member states have developed an approach that responds better to African needs and circumstances. Unsurprisingly, it departs from UPOV 91 in several important respects. This represents an important step towards strengthening the continent's regulatory sovereignty and its ability to shape intellectual property rules in line with its own development priorities.

At the same time, the European Union (EU) continues to promote UPOV 91 through bilateral free trade agreements, pressing countries across the Global South to adopt its standards. In doing so, it is seeking to dismantle long-standing farmers' rights. In both the Philippines and Zimbabwe, for example, existing plant variety protection laws allow smallholder farmers to save, exchange, and sell seeds of protected varieties. Should the EU succeed in incorporating UPOV 91-style obligations into ongoing trade negotiations, these protections could be lost—with potentially serious consequences for farmers' livelihoods and the realisation of the right to food.

This edition introduces the new AfCFTA annex on plant variety protection and documents the growing opposition of farmers' organisations and civil society groups to free trade agreements that restrict farmers' rights. It also explores the broader challenge of designing intellectual property regimes that not only encourage innovation but also respect human rights and support equitable and sustainable food systems

2. AfCFTA Annex on Plant Variety Protection adopted by the African Union

In February this year, the [Annex on Plant Varieties Protection to the Protocol to the Agreement Establishing the African Continental Free Trade Area on Intellectual Property Rights](#) was [adopted](#) by the Assembly of Heads of State and Government of the African Union. The text is also available through the [TRALAC website](#) (registration required). The Annex establishes a distinctly African framework for plant variety protection. Among its notable features is a requirement that plant breeders disclose the source of the traditional knowledge or genetic resources used in developing a protected variety. It also contains a dedicated chapter on **Farmers' Rights**. Under the Annex, smallholder farmers have the right to use protected varieties for propagation and for exchange with other farmers, provided that such activities do not extend to production for commercial marketing. The Annex also leaves important policy choices to individual states. For example, State Parties **may** provide protection for farmers'

varieties that do not meet the conventional criteria of distinctness, uniformity, and stability (DUS). Likewise, they **may** choose to extend breeders' rights to essentially derived varieties, rather than making such protection mandatory.

The Annex forms an integral part of the AfCFTA Protocol on Intellectual Property Rights. For State Parties that are not least developed countries (LDCs), the Protocol becomes applicable upon its entry into force, thirty days after the deposit of the twenty-second instrument of ratification. LDCs are granted a three-year transition period for implementation.

For further background on the Agreement and its legal architecture, see the [article](#) *The AfCFTA Agreement: Origins, Legal Structure, Key Features, and Institutions* by Franziska Sucker (University of the Witwatersrand).

APBEBES will examine the Annex and its broader legal and policy implications in greater detail and report on its findings later this year.

3. Opposition to the Introduction of UPOV 91 through Free Trade Agreements

The EU is in the final stages of negotiations on new free trade agreements with the Philippines and a group of countries in south-eastern Africa (Zimbabwe, Madagascar, the Comoros, the Seychelles, and Mauritius). In all of those countries, farmers' organisations and NGOs are opposing the clauses that require the introduction of UPOV-91-compliant plant variety protection legislation. In the **Philippines**, NGOs are [reaffirming](#) strong opposition to the expansion of intellectual property rights over seeds and to the Philippines' government's possible alignment with UPOV 91 in the ongoing Free Trade Agreement negotiations. They also [emphasize](#) the significant human rights implications of these proposed commitments. In **Madagascar**, which does not have a plant variety protection legislation, farmers' organisations and NGOs are [opposing](#) the introduction of legislation based on the UPOV-91 Convention through the FTA with the EU. In particular, they are calling for the publication of the negotiation outcomes and for meaningful participation in the decision-making process – a right to which they are entitled under international law. Resistance in **Zimbabwe** has already been demonstrated through an [open letter](#) opposing the country's adoption of UPOV 1991, demanded by the European Union in the EPA trade negotiations. This opposition has now been reaffirmed by [Zimbabwean farmers](#), who not only reject the inclusion of the UPOV clause in the EPA but also oppose a new draft bill introduced by the government in parallel. The bill seeks to align Zimbabwe's national plant variety protection regime with UPOV 1991 and would effectively forsake important farmers' rights, including the right of farmers on communal land to exchange seeds. And in **Zambia**, which was pressured to join UPOV by the World Bank, [resistance](#) continues against changes to the country's plant variety protection laws and in favour of maintaining farmers' rights.

4. The N'Djamena Declaration: Africa's Seeds Belong to Its Peoples

From June 2 to 4, 2026, the 4th Pan-African Conference on Seed Governance in N'Djamena, Republic of Chad, brought together farmers' organizations, civil society organizations, women and youth movements, academics, researchers, parliamentarians, local governments, regional institutions, and development partners from 20 African countries. The conference culminated in the adoption of a [landmark declaration](#) on the future of Africa's farmer-managed seed systems, which clearly states that farmers' rights are non-negotiable.

5. An Innovation Garden for Farmers' Plant Breeding? Inspiration from the Regulatory Sandbox

The [article](#) by Saurav Gimire, a doctoral researcher at the Vrije Universiteit Brussels, examines how “the expansion of IP protection in plant-related innovations has narrowed the practical space for farmer-led breeding and increased legal uncertainty around access, use, and further improvement.” While farmers continue to breed plants using a wide range of materials, including IP-protected varieties, they may face restrictions arising from infringement risks, high enforcement costs, and uncertainty surrounding the scope of laws governing seeds, Gimire said. To address these constraints, the article proposes “the Innovation Garden as an experimental legal regime inspired by the regulatory sandbox.” Gimire further explains that “Through Innovation Garden farmer-breeders could pre-declare breeding activities and work under oversight of a regulator in a protected environment. By enabling local experimentation and legal flexibility, the Innovation Garden has the potential to secure freedom of operation as well as contribute to promotion of seed diversity, supporting farmers’ rights, and contributing to food sovereignty.”

6. Food Security and Scientific Innovation in International Law

In her [article](#) published in the Book “Food Innovation and Legal Challenges”, Ludovica Di Lullo, a postdoctoral research fellow in International Law at the University of Parma, analyses various international agreements (The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), etc.) and their interlinkages with human rights. She concludes that “A comprehensive approach should also be adopted to achieve an up-to-date integration of specific norms that balance IP rights and human rights obligations. [...] The strengthening of protection of the rights of farmers has proved to balance the incentives for innovation for professional plant breeders and the reward to farmers for their role in the preservation of plant resources. In other words, human rights can offer a fertile ground for restoring a balance in IP law, [...]”

7. Patenting Plant Biotechnology Innovations: Legal Frameworks, Limitations and Ethical Implications

C. Ninitha Nath, Assistant Professor at the Kerala Agricultural University, and her colleagues show in their [article](#) that the fundamental tension within the patenting of biotechnology innovations in plant breeding lays between two legitimate but often competing goods: “the incentivisation of costly, specialised research and development through the promise of temporary monopoly profits, and the maintenance of open access to the genetic and technological resources that make cumulative plant improvement possible.” The evidence reviewed in the article suggests “that the current balance is substantially misaligned, favouring the former at the expense of the latter, and that the costs of this misalignment fall disproportionately on public-sector breeders, smallholder farmers, developing countries, and the agrobiodiversity commons.” She concludes that “intellectual property in plant breeding is not merely a technical legal question but a deeply political one, with far-reaching consequences for who has access to the means of food production, who benefits from agricultural innovation, and whether the biodiversity that underpins long-term agricultural resilience can be conserved against the enclosure pressures of a proprietary seed system.”

8. Seed is life – and life should not be owned

The [video](#) by the Seed and Knowledge Initiative from southern Africa shows through striking images and powerful statements that seeds are more than just a commodity.

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