

Plant Variety Protection and Farmers Rights

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Open access or restrictions?

- Exchange of germplasm/seeds and related knowledge based on principle of open access/common heritage of humankind
 - International Undertaking on Plant Genetic Resources (IU), 1983
- Significant policy shift since 1983
 - Agreed Interpretations of the IU, 1989
 - TRIPS Agreement, 1994
 - International Treaty on Plant Genetic Resources for Food and Agriculture (FAO-IT), 2001



Open access or restrictions? (ctd)

Current position:

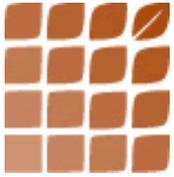
- Under TRIPS, introduction of life patents in all WTO member states
- Under the FAO-IT:
 - Attempt to maintain free flows to facilitate research
 - Recognition that certain restrictions (patents, plant breeders' rights, farmers' rights) are legitimate



What is plant variety protection?

- In general, refers to the protection of knowledge related to plant varieties by breeders
- In IPR context, refers to the rights granted to commercial plant breeders as framed under:
 - International Convention for the Protection of New Varieties of Plants (UPOV), 1978/1991

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What are farmers' rights

- Narrow conception: Article 9(1 and 3), FAO-IT (international level protection)
 - Recognition of farmers' contribution to the conservation and development of plant genetic resources.
 - Farmer breeders do not get 'rights' to their plant varieties
 - Residual rights to save, use, exchange and sell farm-saved seed/propagating material
- Broader conception: Article 9(2), FAO-IT (measures to be taken at the national level)
 - Protection of traditional knowledge relevant to plant genetic resources
 - Benefit sharing
 - Participatory rights



What must ACP states do under existing treaties?

- TRIPS Article 27(3)b
 - Provide ‘protection of plant varieties either by patents or by an effective sui generis system’.
- Implementation of the FAO-IT (farmers’ rights)
- Implementation of the Biodiversity Convention (CBD)
 - Access and benefit sharing, Article 15
 - Traditional knowledge, Article 8(j)
 - IPRs supportive of objectives of CBD, Article 16(5)



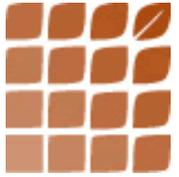
What can ACP states refrain from doing?

- Avoid joining the UPOV Convention
 - No international treaty requires UPOV membership
 - Tailored plant breeders' regime can be adopted without UPOV membership
- Avoid any TRIPS-plus measures



What can be done to foster knowledge conservation and development?

- Use available flexibility under TRIPS, Article 27(3)b etc.
- Implement concurrently all their international obligations under all relevant treaties
 - Agriculture, Environment, Human Rights, IPR treaties
- Introduce effective access and benefit sharing regimes



What can be done to foster knowledge conservation and development? (ctd)

- Implement the principle of prior informed consent (CBD) in its broader context
 - Link with the patent system through a disclosure requirement in patent applications
- Introduce *sui generis* plant variety protection regimes that reward all breeders and protect all types of knowledge

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