

INTELLECTUAL PROPERTY RIGHTS' AND THEIR ROLE ON CONSERVATION OF PLANT VARIETIES

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The management of biological resources has been an increasingly contentious subject at Global levels. This is linked in large part to the progressive recognition of new economic opportunities arising from the use of biodiversity, primarily the possibilities opened-up by genetic engineering, in particular genetically modified seeds. As a result, international legal frameworks for the management of biological resources in particular the Convention on Biological Diversity have had to increasingly take into account not only the needs of biodiversity conservation but and its potential use.

This has important repercussions from a legal perspective as new products developed by the biotechnology industry can often easily be copied once they have been put on the market. Thus it is strongly argued for the introduction of IPR's over GMO's. The resulting TRIPS agreement is an IPR's framework that has directly little to do with environmental management but has significant impacts on ways in which countries to manage their biological resources.

The biodiversity convention is in theory the main treaty dealing with the conservation and management of biodiversity. Its three main goals are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits derived from the use of genetic resources. The PGRFA treaty is concerned with the promotion of sustainable agriculture and food security. Besides PGRFA, the issue of farmers' rights, the International Convention for the Protection of New plant Varieties (UPOV) is significant because it provides a legal mechanism for the protection of plant varieties developed by commercial plant breeders through the introduction of "plant breeders' rights." Plant breeders' rights are a hybrid form of intellectual property rights, which give the seed industry similar incentives to those offered by patents, without establishing a complete monopoly. They included a breeder's and a farmer's exemption that allowed other commercial breeders to conduct research on the protected variety and farmers to use the product of the harvest obtained from a protected variety.

The Protection of Plant Varieties and Farmers' Rights Act, 2001 (Plant Variety Act) was drafted in response to a specific provision requiring the introduction of plant variety protection. The act sets out "to recognize, protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources" as well as "to protect plant breeders' rights to stimulate investment for research and development" It follows model provided by the UPOV convention 1978 version and some elements of the 1991 version.

The interactions between intellectual property rights regimes and biodiversity management remain an evolving and unsettled issue at the international level. Where countries must put legal frameworks for the management of biodiversity that make a coherent whole.