

# **Evolving dynamics of the governance of intellectual property for plants in South Asia**

Tenth South Asia Economic Summit 14-15 November 2017, Kathmandu

**Kamalesh Adhikari, PhD**

AIBE Research Fellow

Member of the ARC Laureate Project on  
Intellectual Property and Food Security



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

TC BEIRNE  
**SCHOOL  
OF LAW**

# What it means to protect plant varieties?

- Often means providing protection to plant varieties that are “new, distinct, uniform and stable” by a system of intellectual property
- Intellectual property enables the creator of a new plant variety to exercise a set of exclusive rights over the seed or propagating material of the protected plant variety in respect of the acts such as
  - “production or reproduction (multiplication)”; “conditioning for the purpose of propagation”; “offering for sale”; “selling or other marketing”, “exporting” and “importing”.

# Why to protect plant varieties?

- Plant variety protection is considered to have played a crucial role in the development of the seed industry, crop variety research and development, investment in plant breeding, and food security.
- The origins of comprehensive plant variety protection laws are rooted in the emergence of commercial seed systems that started to separate farming and breeding as two different practices since early 20<sup>th</sup> Century, e.g.,
  - the Plant Patent Act of the US; and
  - the 1961 UPOV Convention developed by European Countries.
- In South Asia, plant variety protection law came into discussion after the GATT was converted into the WTO in 1995.

# What is the international obligation under the WTO?

- Article 27.3 (b) of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) obliges member countries to protect plant varieties either by
  - patents or
  - by an effective *sui generis* (of its own kind) system or
  - by any combination of the two
- Of all WTO members, least-developed countries have an exemption period until 2021.

# A broader question of how to design an effective *sui generis* system?

- Is the legal framework provided by the International Union for the Protection of New Varieties of Plants (UPOV) a *sui generis* system?
- Probably not. This is because UPOV
  - only deals with new plant varieties (does not cover local, native and wild plant varieties)
  - protects breeders' rights over new plant varieties and does not recognize farmers' rights
  - does not create obligations for accessing, using and commercially using the genetic material of local, native or wild plant varieties.

# South Asian initiatives for plant variety protection

- India followed a non-UPOV model and enacted Plant Variety Protection and Farmers' Rights Act in 2001
  - Deals with the protection of new varieties of both breeders and farmers (2,357 varieties of breeders and 9,575 varieties of farmers have been registered for protection)
  - Recognizes the rights of both breeders and farmers
- Pakistan passed the Plant Breeders' Rights Act in 2016
  - Protects new plant varieties (but not farmers' or local varieties)
  - Recognizes farmers' privilege in terms of farm-saved seed.
- Countries such as Sri Lanka, Bangladesh and Nepal have developed draft laws that are still under discussion.

# Evolving dynamics of the governance of plant variety protection???

- The question of whether to or how to protect local, native, traditional or farmer-improved plant varieties
- The question of only to recognize farmers' privilege over breeders' varieties or to also protect farmers' rights over local/native varieties
- The question of what plant varieties are in public domain and what others are under the management and control of the State
- The question of open access models
- The question of accessing and using both tangible and intangible resources of plant varieties (e.g., digital genetic sequence data)
- The question of a model law for South Asian countries

# A Three-Track Model of a Plant Variety Protection?

