

A stylized world map in a dark green color is centered on the left side of the slide, showing the continents of Africa, Europe, and Asia. The background is a solid dark green.

Sui generis Regimes

Carlos Correa

Modern & farmers' seed systems Continue to co-exist in most of the developing world

- **Farmer's seed systems**, local varieties, small scale production, serving local markets, traditional knowledge. Practice of saving and replanting seeds harvested from the former crop.
- **Large, industrial, commercial-based farming**, focus on limited number of varieties and lowering costs of production: economies of scale, use modern technology, uniformity. Interested in IPR (patent, PVP) protection.

Farmers' seed system

- Farmers' seed systems are credited with “supporting more than 80% of farmers in sub-Saharan Africa and feeding more than 70% of its population.”
- Kusena K, Wynberg R, Mujaju C (2017) Do smallholder farmer-led seed systems have the capacity to supply good-quality, fungal-free sorghum seed? Agric Food Secur 6(52):1–12. <https://doi.org/10.1186/s40066-017-0131-7>

Right to food

- “The right to food is inherently tied to farmers’ seed systems. A seed system
- that allows farmers to freely save, use, exchange and sell seeds ensures that
- people can adequately feed themselves directly from productive land.
- Farmers’ seed systems allow farmers to grow food in a way that responds and
- adapts to change, making communities stronger and food systems more
- resilient.”
- Human Rights Council Report of the Special Rapporteur on the right to food, Michael Fakhri. Seeds, right to life and farmers’ rights (2022) UN Doc A/HRC/49/43 para. 9.

Farmers as breeders

- Farmers' seed systems are the main source of seed and new varieties for most crops in the case study countries. IPRs [intellectual property rights] may reduce the effectiveness of these systems by limiting the saving, exchanging and selling of farmer-produced seed of protected varieties.
- N.P. Louwaars, R. Tripp, D. Eaton, V. Henson-Apollonio, R. Hu, M. Mendoza, F. Muhhuku, S. Pal and J. Wekundah, 'Impacts of Strengthened Intellectual Property Rights Regimes on the Plant Breeding Industry in Developing Countries. A Synthesis of Five Case Studies' (2005), Wageningen UR, available at http://www.iprsonline.org/resources/docs/LouwaarsCGN_Plants_05.pdf.

International treaty on plant genetic resources for food and agriculture

- Art. 9(2)...each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote **Farmers' Rights**, including:
- be included in national legislation:
- (a) protection of traditional knowledge relevant to plant genetic resources
- for food and agriculture;
- (b) the right to equitably participate in sharing benefits arising from the
- utilization of plant genetic resources for food and agriculture; and
- (c) the right to participate in making decisions, at the national level, on
- matters related to the conservation and sustainable use of plant genetic
- resources for food and agriculture

International treaty on plant genetic resources for food and agriculture

- Article 9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

PROTOCOL TO THE AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA ON INTELLECTUAL PROPERTY RIGHTS

- Article 8 Protection of New Plant Varieties
- 1. State Parties shall provide protection for new plant varieties through a sui generis system that includes farmers' rights, plant breeders' rights, and rules on access and benefit sharing, as appropriate.
- 2. State Parties shall comply with additional obligations set out in an Annex to this Protocol on Plant Varieties, to be developed in accordance with Article 42.
- 3. State Parties agree that the Annex to this Protocol on Plant Variety Protection may draw from relevant African and related international instruments that meet their developmental priorities and interests.

African Union Model Law for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (2000)

- Art. 26(1) farmers' rights to:
- (d) save, use, exchange and sell farm-saved seed/propagating material of farmers' varieties;
- (e) use a new breeders' variety protected under this law to develop farmers' varieties, including material obtained from genebanks or plant genetic resource centres; and
- (f) collectively save, use, multiply and process farm-saved seed of protected varieties.
- Art. 26(2): farmers may not "sell farm-saved seed/propagating material of a breeders' protected variety in the seed industry on a commercial scale.'

Sui generis regimes

- Thailand, India, Malaysia, India, Ethiopia, Nepal, Philippines, Bangladesh, Ecuador, Indonesia, etc.
- Protectable subject matter/requirements for protection (local varieties)
- Scope of exclusive rights
- Farmers Rights

Thailand *sui generis* regime (1999)

- ‘**new plant varieties**’ (*exclusive rights*)
- ‘**local domestic plant variety**’ (a plant variety which exists only in a particular locality and has never been registered) (*exclusive rights*)
- ‘**wild plant variety**’ (‘a plant variety which currently exists or used to exist in the natural habitat and has not been commonly cultivated’) (*benefit sharing*)
- ‘**general domestic plant variety**’ (a plant variety originating or existing in the country and commonly exploited) (*benefit sharing*)
- **NDUS requirements, except for local domestic plant varieties**

India: Protection of Plant Varieties and Farmers' Rights Act, 2001

- The following slides are based on:
- **Plant Variety Protection: The Indian Experience**, Sanjeev Saxena¹ and Shiv Datt², Malaysia, 2023

India: Protection of Plant Varieties and Farmers' Rights Act, 2001

- Any plant species that grows in the country that can be produced /commercialized for any
- purpose of cultivation, Authority notifies the species in Gazette of India (>160 plant species)
- Wild relatives or conserved traditional varieties or landraces by farmers of any species even if
- not notified, can be protected

India: Protection of Plant Varieties and Farmers' Rights Act, 2001

- **New Variety**
- ○ **Extant Variety**
- □ **Notified under Seeds Act, 1966**
- □ **Farmers Variety:** a variety which has been traditionally cultivated and evolved by the farmers in their fields, or is a wild relative or land race of variety about which the farmers possess the common knowledge
- □ **Variety of Common Knowledge**
- ○ **Essentially Derived Variety**

India: Protection of Plant Varieties and Farmers' Rights Act, 2001

- Trees & Vines 18 years from date of registration
- Other Crops 15 years from date of registration
- Extant Notified varieties 15 years from date of notification of variety under the Seeds Act, 1966

India: Protection of Plant Varieties and Farmers' Rights Act, 2001

- Right to produce, sell, market, distribute, import or export the variety
- Exceptions:
 - *Researchers' Right*
 - a) *Conducting experiment or research; or*
 - b) *Use as an initial source of variety for the purpose of creating other varieties: Provided that the authorization of the breeder of the registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.*
 - *Farmers Rights : Farmers are recognized as*
 - a) *Breeders*
 - b) *Cultivators/consumers*
 - c) *Conservers*

India: Protection of Plant Varieties and Farmers' Rights Act, 2001

- New varieties and Extant varieties including Farmers' varieties are eligible for registration
- Farmers are entitled to *save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a variety protected under the Act. Farmers cannot sell branded seed of a protected variety.*
- Registered breeders must disclose expected performance under given conditions; in case of failure of expected performance, farmers may claim compensation

India: Protection of Plant Varieties and Farmers' Rights Act, 2001

- Protection of innocent infringement: *the right is not be deemed to be infringed by a farmer who at the time of infringement was not aware of the existence of such a right (Schmeiser case-Canada)*
- ○ Disclosure in the application information regarding the use of genetic material from any tribal or rural families in the breeding or development of such varieties.
- ○ A community can claim for compensation if it has contributed significantly to the evolution of registered variety.
- ○ Allows compulsory licensing on grounds of unreasonable price of seeds

India: Protection of Plant Varieties and Farmers' Rights Act, 2001

- Public sector has contributed in protecting plant varieties of self-pollinated crops (food, fibre and pulses crops)
- ○ Private sector's focus is largely confined towards open- pollinated varieties.
- ○ Progress in farmers' varieties for protection reinforces the importance and uniqueness of this sui generis system adopted by India.
- ○ This trend opens the scope for the plant breeders to design varietal development programmes for desirable traits in various crop species.
- Intellectual property protection: an emphasis on plant varieties: Shiv Datt ; Vikram
- Singh ; Sharma, P. K. ; Sanjeev Saxena; Indian Journal of Agricultural Sciences 2018
- Vol.88 No.3 pp.400-409 ref.18

Status...Sector-wise application

Organization /Sector	Extant	New	EDV	Farmers	Total
ICAR	1193	276	9	-	1478
SAUs/Others	805	202	2	-	1009
Privates	1396	2487	141	-	4024
Farmers	-	-	-	10582	10582
Total	3394	2965	152	10582	17093

As on 26.09.2023

Status..... Varieties registered

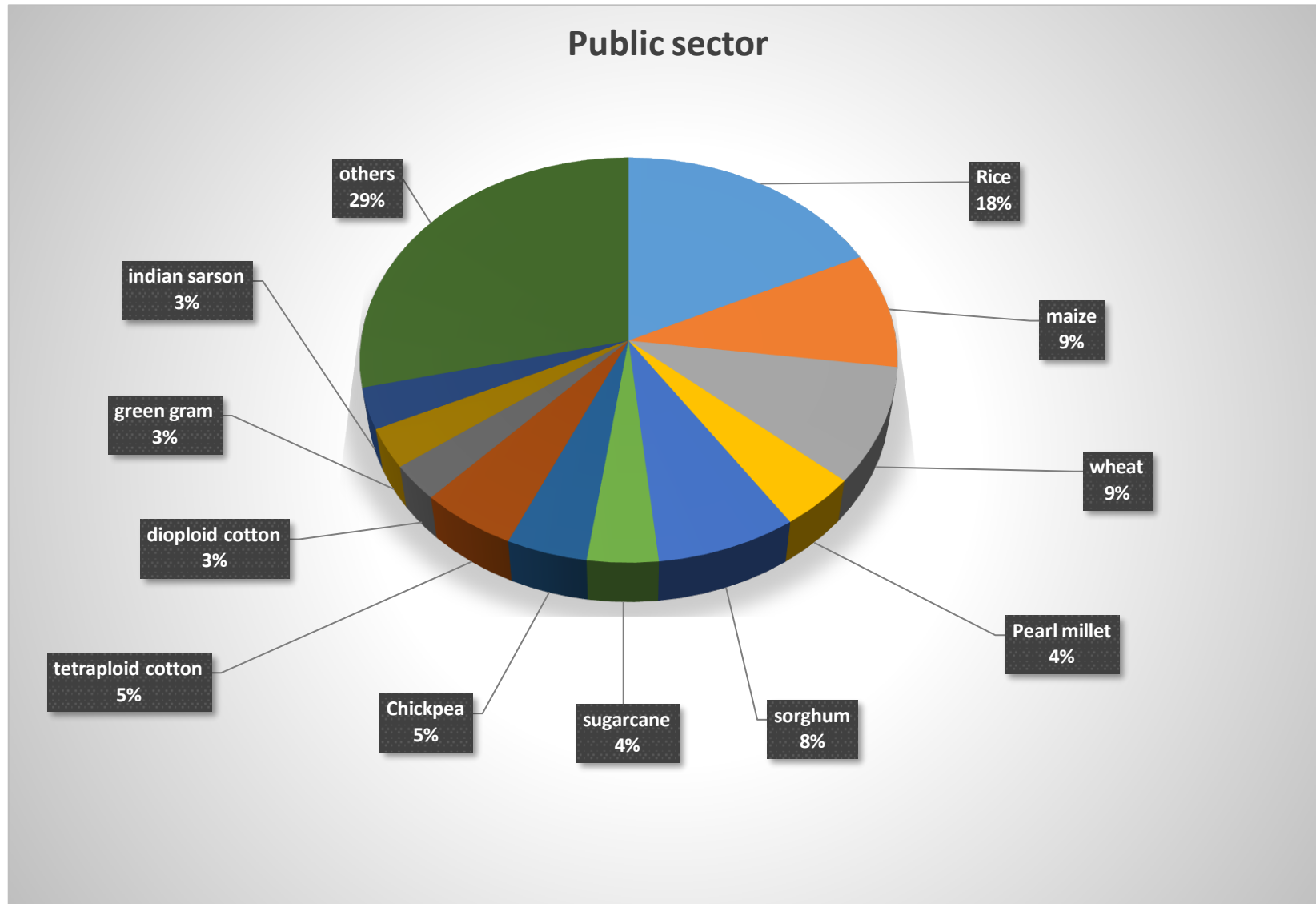
Organization/ Sector	Extant	New	EDV	Farmers	Total
ICAR	961	144	-	-	1105
SAUs/Others	526	25	-	-	551
Privates	750	789	14	-	1553
Farmers	-	-	-	2109	2109
Total	2237	958	14	2109	5318

As on 22.09.2023

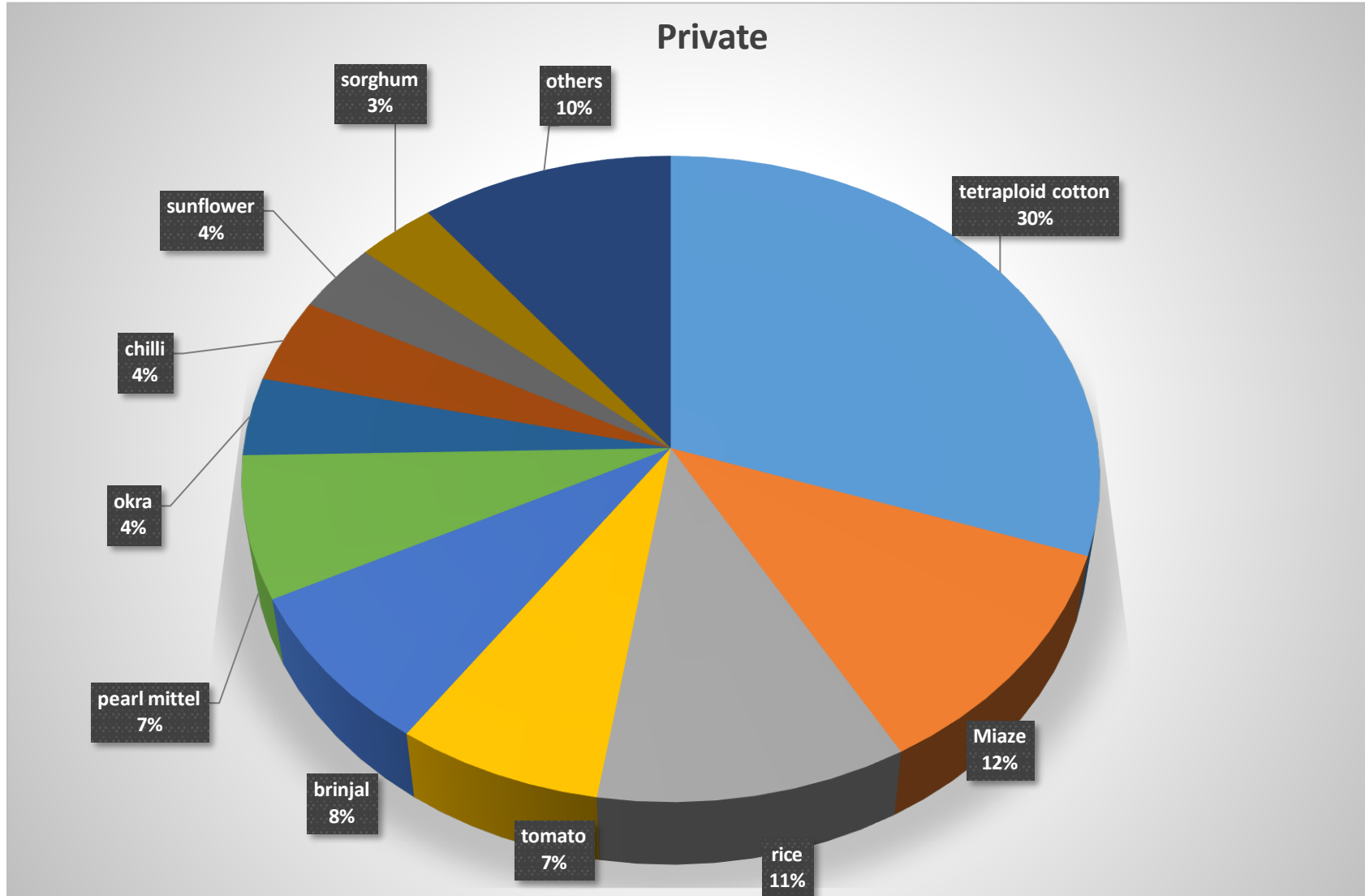
Status..... Sector-wise application

Year	Private Sector			Public Sector			Farmer	Total
	New	Extant	EDV	New	Extant	EDV		
2007	69	74	0	5	282	0	2	432
2008	110	100	10	26	296	0	5	547
2009	128	209	2	42	147	0	127	685
2010	397	87	21	31	8	0	4	548
2011	132	151	9	13	86	0	939	1335
2012	126	138	0	15	104	0	302	693
2013	323	135	69	25	90	2	1001	1653
2014	300	96	24	42	80	0	1970	2512
2015	277	128	2	23	35	0	1980	2446
2016	181	86	3	58	287	1	1864	2480
2017	127	35	0	16	65	0	1524	1716
2018	54	40	0	14	73	0	562	743
2019	48	50	0	20	98	0	7	233
2020	58	33	0	21	179	0	148	424
2021	51	18	0	37	126	2	52	277
2022	52	11	0	56	40	6	55	233
2023 (upto 26-09-2023)	54	5	1	34	2	0	40	136
Total	2487	1396	141	478	1998	11	10582	17093
Grand Total	4024			2487			10582	17093

Status Crop-wise and sector-wise

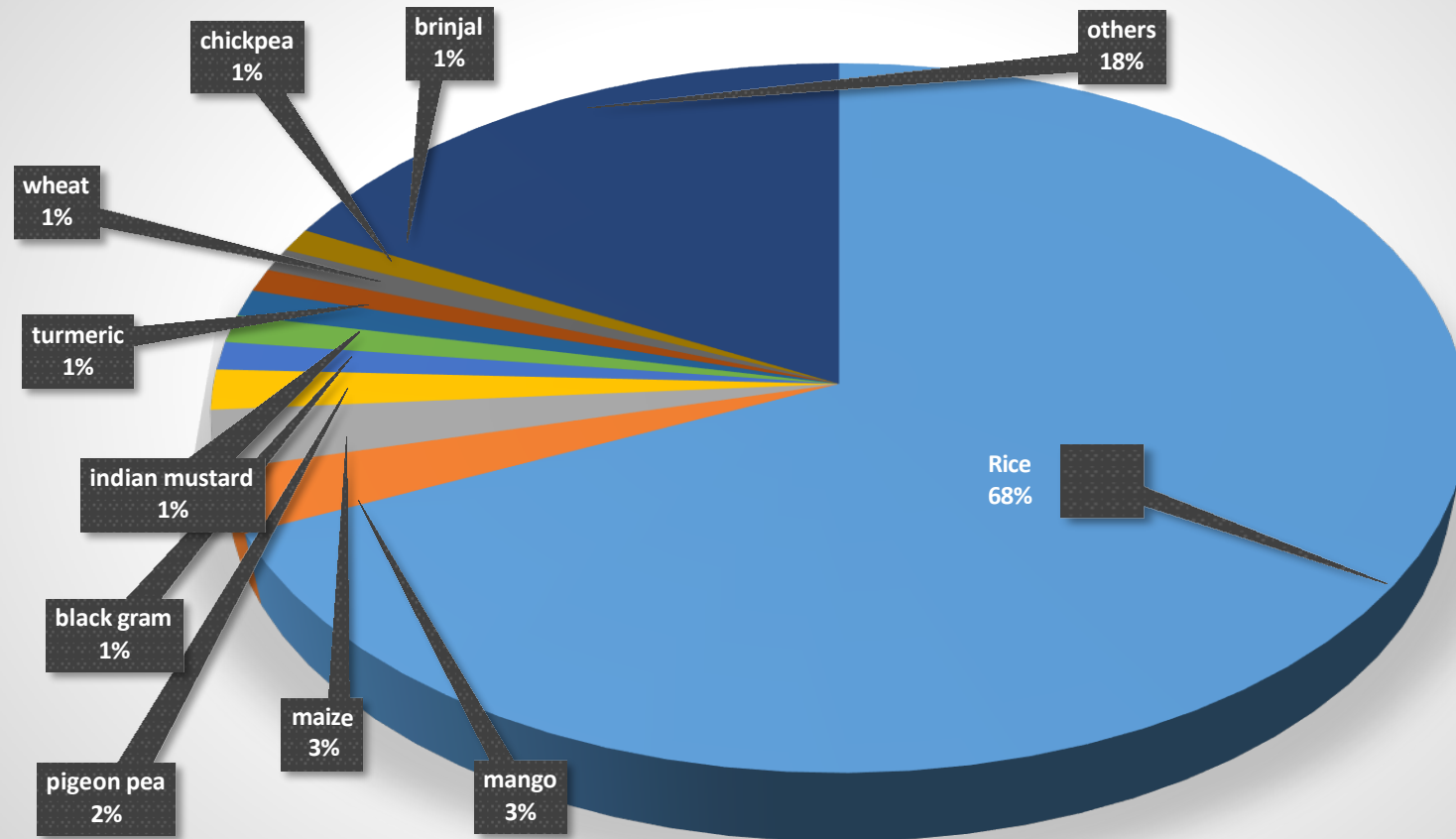


Status Crop-wise and sector-wise



Status Crop-wise and sector-wise

Farmer



Working Paper

Plant Variety Protection in Developing Countries

A Tool for
Designing a
Sui Generis
Plant Variety
Protection
System:
An Alternative
to UPOV 1991

Carlos M. Correa

with contributions from
Sangeeta Shashikant and
Francois Meienberg



Objectives (1)

- Support the conservation and sustainable use of plant biodiversity for food and agriculture;
- Achieve the right balance between breeders' rights and those of farmers and the society at large
- Ensure the livelihood of farming communities, the continuous adaptation of seeds/propagating material
- Increase diffusion of adapted varieties

Objectives (2)

- Respect, protect and fulfil states' obligations regarding the right to food, the right to enjoy the benefits of scientific progress and its application, and the rights of indigenous peoples;

How?

- Support both the formal as well as the informal seed sector
- Implement of farmers' rights, particularly small-scale farmers
- Avoid misappropriation of public research institutions and farmers' varieties

Sui generis PVP

- Alternative to UPOV 1991
- TRIPS compliant
- In line with CBD, Nagoya Protocol, FAO Treaty

Sui generis PVP

- Combination of positive and defensive protection
- Scope broader than UPOV (non-uniform varieties)
- Exception for small scale farmers

New uniform plant varieties

- Close to UPOV 1978 (positive protection)
- NDUS
- Registration
- Exclusive rights
- Farmers' privilege, breeders' exception
- Benefit sharing contribution (Seed Fund)

New farmer and other heterogeneous varieties

- **Misappropriation regime (defensive)**
- **Farmers, farmers' communities and breeders (e.g. public institutions)**
- ND, identifiability
- Registration
- Right to remuneration

Traditional farmers' varieties

- Misappropriation regime (defensive)
- Identifiability
- Unregistered
- Remuneration to Seed Fund

Seed Fund

- On-farm conservation and community seed banks
- Benefit sharing to farmers and farming communities

	New uniform varieties	New farmers and breeders heterogeneous varieties	Traditional farmers varieties
Type of protection	Positive	Defensive	Defensive
Criteria	NDSU	ND, identifiability	Identifiability
Rights conferred	Exclusive rights	Remuneration in case of marketing	Remuneration in case of marketing
Registration	Yes (with benefit sharing contribution)	Yes	No
Exceptions	Small scale farmers, farmers' privilege, breeder's exception	Small scale farmers,	Small scale farmers,