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**Farmers' Rights and Intellectual Property Rights –
Can the Conflicting Concepts be Reconciled?**

Diplomarbeit

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Executive Summary

The thesis discusses the conflicting relation of Farmers' Rights and Intellectual Property Rights (IPRs) on plant genetic resources and subsequently shows options for reconciliation on the national and international level.

Throughout the thesis a particular focus is placed on the effects of Farmers' Rights and IPRs on farmers in developing countries and on the conservation of agricultural biodiversity.

Initially, it describes the history, nature and purpose of both concepts and the relevant national and international institutional frameworks for their implementation, such as the WTO TRIPS agreement, the UPOV convention and the FAO International Undertaking on Plant Genetic Resources.

While doing so, it becomes apparent that the relation of Farmers' Rights and IPRs is one of conflict. The central conflicts are exhibited: IPRs on the one hand are individual and exclusive rights, which derive their legitimation from the promise to be welfare optimising and innovation enticing. In describing their history, it becomes obvious that they have mainly been advocated and pushed for by the corporate sector of developed countries. Due to their exclusive nature, right holders have the power to control the use of their intellectual goods, such as improved seeds, and exclude others. Some effects of IPRs on the agricultural sector in developing countries are illustrated.

On the other hand, Farmers' Rights are collective and non-exclusive rights. They represent the interests of developing countries and their traditional farmers by trying to remunerate past conservation and informal innovation efforts with regard to plant genetic resources. They also aim at enticing the future conservation of plant genetic resources, especially in *in situ* conditions. Equity and conservation concerns as central themes of Farmers' Rights are given special attention in the discussion. While a part of Farmers' Rights are legal rights in the conventional sense, the concept is in fact far more comprehensive and should be regarded as a crucible and a forum for a variety of concerns of developing countries and their farmers. Factual background in regard to the past, present and future use and exchange of plant genetic resource is presented as a basis of analysis for the different claims of Farmers' Rights.

At the same time as IPRs on plant genetic resources are becoming reality in most developing countries, Farmers' Rights are also on the threshold of being implemented through a legally-binding international agreement and through national legislation in various countries. Therefore, the thesis concludes by showing possible options for reconciliation through parallel implementation on the national and international level. Hence, the guiding research question pose in the title of the thesis is answered in the affirmative.

More explicitly, it is argued that a successful conclusion of the revision of the International Undertaking on Plant Genetic Resources as well as a permissive interpretation of the *sui generis* provision of the WTO TRIPS agreement are essential to the reconciliation on the international level. On the national level, reconciliation can be achieved through plant variety protection legislations that try to balance the interests of commercial breeders, of traditional farmers and the global interest in plant genetic resource conservation. It is argued that in order to reach this end, individually drafted plant variety protection legislations that incorporate Farmers' Rights are more apt than ready made solutions such as the adoption of the UPOV 1991 convention. Finally, central features of some recent approaches such as the Farmers' Privilege, benefit-sharing and the prior informed consent provision are treated in detail.

The annex shows, how diverse and innovative the approaches of reconciliatory legislation are that developing countries are currently undertaking in order to satisfy diverse interests and obligations and to ease the tension between Farmers' Rights and IPRs.