# Intellectual Property Rights for Plant Varieties in Nigeria: Critical Reflections on TWAIL, Empirical and Comparative Methodologies

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In this reflective piece, I will discuss the methodologies I adopted to answer the three research questions posed in my doctoral thesis titled ‘The Regime Complex for Plant Variety Protection: Revisiting TRIPS Implementation in Nigeria.’ First, what type of intellectual property rights (IPR) for plant varieties is best suited to Nigeria? This question stems from Nigeria’s membership of the World Trade Organisation (WTO) and its obligation under article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to protect plant varieties. Second, how can Nigeria design and implement such a system? This question addresses the requirements for the establishment of the IPR system identified as suitable for Nigeria. Third, why do Global South members of the WTO introduce systems that differ from their rhetoric at the TRIPS Council? This question uncovers reasons for the contradictions between

Global South WTO members' rhetoric at the TRIPS Council in Geneva ('Geneva rhetoric') and their actions at home. Its answers provide lessons for Nigeria. To unpack these questions, I decided to centre the interests of the often marginalised small-scale farmers, who are significant contributors to the agricultural sector in Nigeria.

I started my research with a literature review to map out the context of the study. While there was limited literature on the subject with specific focus on Nigeria, there was a plethora of literature on the overlapping international regimes relevant to the subject, namely TRIPS, International Convention for the Protection of New Varieties of Plants (UPOV), Convention on Biological Diversity (CBD), Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol) as well as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). There was also literature on the African regional intervention in this regard, the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (African Model Law) as well as on other Global South countries including India, Thailand and Malaysia. Based on my positionality and the landscape of existing literature, I chose to adopt Third World Approaches to International Law (TWAIL) alongside  empirical and comparative methodologies, because they were apposite to answering the three research questions posed.

TWAIL, simply put, is a critical way of thinking about international law through the lens of Third World peoples. For my doctoral research, international law encompassed the aforementioned international intellectual property laws (and related laws) for plant varieties. 'Third World peoples' used here include not only Nigeria as a state but specifically, the marginalised female and male small-scale farmers who are usually excluded from some international and national systems. TWAIL scholarship share three central themes. First, it engages in historical analysis to disinter partial narratives of international law. Second, the historical analysis exposes avenues through which particular aspects of international law are unjust to everyday realities of Third World peoples. Third, some TWAIL scholarship attempt to reform or transform unjust international law to suit the needs and realities of Third World peoples. This conceptualisation of

TWAIL was an appropriate fit for my interrogation. It contributed to answering my first and second research questions.

Inspired by TWAIL and considering the limited literature on the subject in Nigeria, I needed information that was not available in textbooks, monographs, journal articles or other literature sources. The most effective way to get this information was through first-hand discussions with stakeholders. This was achieved through semi-structured interviews with small-scale farmers, farming community leaders, plant breeders, government officials, civil society activists, legal practitioners and academics, over three months of field research in Nigeria. Semi-structured interviews are flexible interview methods where the researcher (or interviewer) has guide questions, but also discretion in the order of asking them. Semi-structured interviews were suited, as opposed to structured interviews for example, because it provided the opportunity to elicit detailed information from interviewees within a short period. It also provided the interviewees the opportunity to express their views in their own words.

Though suitable as a method, semi-structured interviews portend their own challenges, one of which is access to interviewees. I resolved this challenge in three ways. First, after receiving ethical approval, I sent interview request emails to all the potential interviewees I had selected. The interviewees were purposively selected based on their experience or knowledge of the issues interrogated in the thesis. Second, I attended a workshop on an agriculture-related law in Abuja, Nigeria, which one of the interviewees, Professor Johnson Ekpere, informed me about. At that workshop, I met most of the interviewees to whom I had previously sent emails in person, which enabled me to book firm appointments. Third, I interned at the WTO office in Nigeria's Federal Ministry of Industry, Trade and Investment, where I had direct access and referrals to the government officials working on the issues in which I was interested. Accordingly, in addition to TWAIL, the findings from my empirical research contributed immensely to answering my first and second research questions.

To answer my third research question, I engaged in comparative analysis. Comparative analysis makes comparisons across different countries or subjects, to explain reasons for similarities and differences, as well as to gain a more in-depth understanding of the different contexts. I examined the factors

that influenced IPR for plant varieties law-making in Africa, India and Thailand. Around Africa, there is a proliferation of the UPOV 1991 plant breeders' rights system. In contrast, India and Thailand have boldly resisted the pressures to join UPOV. Instead, they have creatively introduced *sui generis* systems suited to their needs and realities, in line with proposals by Global South WTO members at the TRIPS Council. The comparative analysis revealed how and why there is a proliferation of UPOV 1991 styled plant breeders' rights system in Africa; conversely, how and why India and Thailand translated their Geneva rhetoric into domestic legal architecture. This analysis provided valuable insights for the Nigerian case study. The basis for this comparative analysis includes India, Thailand and the African Group's similar positions on IPR for plant varieties at the TRIPS Council. Also, India, Thailand and Nigeria's substantial small-scale farmers and burgeoning private seed sectors.

In conclusion, the combination of TWAIL, empirical and comparative methodologies adopted in my research was fit for purpose. By the time I submitted my doctoral thesis, I had not only successfully answered the three research questions posed, I had also presented the first comprehensive analysis on IPR for plant varieties in Nigeria. Central recommendations of the thesis include the following. First, a *sui generis* system which incorporates a mix of plant breeders' rights, farmers' rights, as well as access and benefit sharing principles is best suited for Nigeria. Second, Nigeria should proactively design and introduce the proposed *sui generis* system before it is coerced to adopt a system unsuited to it. Third, civil society organisations should contribute to circulating knowledge about the proposed *sui generis* system and stalling coercions to adopt unsuitable systems. Although I successfully answered the research questions, proposed recommendations and received commendations from my doctoral examiners on the empirical and comparative analyses of the thesis, the thesis' examiners were less convinced about TWAIL's contributions to my research findings. I am presently conducting further research to address these reservations.

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