

APBREBES report on the

UPOV Seminar on Essential Derived Varieties, 22nd October 2013 in Geneva

The concept of “Essentially Derived Varieties” is absent from UPOV 1978. It was introduced in UPOV 1991 (Article 14) to strengthen breeder’s rights over the protected variety and narrow the scope of breeders’ exemption. Though the concept is defined in Article 14(5)(b) of the 1991 Convention, there is significant uncertainty about the practical application of the concept.

On 22nd October a seminar was organized on EDV to discuss various aspects of EDV and to provide input for an Explanatory Note on Essential Derived Varieties by the CAJ-AG.

At the last UPOV session, on the request of APBREBES, also supported some UPOV members, the seminar be open to the public, and farmers engaged in the adaptation of protected varieties to local circumstances be represented on the agenda. This request was accepted. For the APBREBES statement see <http://www.apbrebes.org/files/seeds/APBREBES%20intervention%20on%20EDV%20planned%20seminar.pdf> .

The seminar was attended by a variety of participants including legal firms, plant breeders associations and national PVP offices, though mainly from developed countries.

Part I of the seminar focused on the “Technical and legal aspects of essentially derived varieties and the possible impact on breeding and agriculture” and included presentations by plant breeders associations such as International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA), the International Seed Federation (ISF) and the Committee for Novelty Protection, International Association of Horticultural Producers (AIPH).

Discussions in this part included the issue of mutations of an innovative initial variety and GMOs, which according to CIOPORA, should be considered as EDVs. ISF strongly supported the concept of essential derivation stating that molecular markers rather than morphological characteristics more clearly reflected the derivation.

AIPH representing the views of growers questioned the whole basis of EDVs. It argued that EDVs resulted in the reduction of healthy competition between breeders, made it difficult for new varieties to enter into the market and gave existing breeders a market monopoly. They were of the opinion that “distinctiveness” was a sufficient criterion for granting breeder’s rights adding that EDVs also did not promote “Innovation and product renewal which was the basis for progress in ornamental sector.”

Ms. Normita Gumasing Ignacio, Executive Director, South East Asia Regional Initiatives of Community Empowerment (SEARICE), gave the perspective of farmer breeders in Southeast Asia on the issue of EDVs. Ms. Ignacio stressed that the dynamic local seed sector which is predominantly derived from the informal sector was threatened by the concept of EDVs as it may restrict farmers in using protected varieties which can potentially adapt to local conditions, thus enhancing farmers' vulnerability and threatening food security. In this context, she added that the current seed policies imported from developed countries do not fit this dynamic system and the farmers' innovation and seed systems are the ones that need "protection".

Participants also particularly differed as to which characteristics should be used to determine EDVs and whether predominant derivation (genetic conformity) or essential characteristics (phenotype) should be the primary consideration. Another issue raised was the enforcement of the EDV concept and whether the burden of proof lay with the original breeder or the second breeder.

Part II of the seminar titled "Experience in relation to essentially derived varieties" looked at court cases and national experiences on the use of EDVs in Australia, Netherlands, Japan and Israel. Different approaches to EDV emerged from this session. There was no presentation on the experience of developing countries or the challenges they face or are likely to face in the implementation of EDVs.

The last segment of the seminar looked at the way forward and the possible role of future UPOV guidance on EDVs including the role of "soft law" guidance as well as the use of alternative dispute resolutions (ADR).

The seminar concluded with a presentation by Chair of the UPOV Council, the Vice-Secretary of the UPOV Office and the President of the European Community Plant Variety Office (CPVO) on the conclusions of the seminar with a focus on development of guidelines on EDV, using of arbitration systems including the suggestion to publish arbitrated cases anonymously.

The conclusions of the Council Chair, the Vice Secretary of the Office of the Union and the CPVO do not reflect many of the important points made by stakeholders.

During the CAJ-AG session, APBEBES made a comment on the seminar, see <http://www.apbrebes.org/files/seeds/Intervention%20EDV%20CAJ-%20AG%202013.pdf>.

All information concerning the seminar including the presentations and webcast can be found at: http://www.upov.int/meetings/en/details.jsp?meeting_id=29782