



Updates on Plant Variety Protection

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1. Editorial

This edition of the Newsletter reports on the fairy tale of the causal link between UPOV legislation and a strong seed market. It also highlights new reports from Africa that critically challenge regional plant variety protection agreements. Finally, the Geneva Academy points out in which way the UN Declaration on Peasant Rights must also be implemented in Europe.

2. Access to Seed Index shows: Implementation of UPOV 1991 unnecessary for the development of a strong seed market

An new [policy brief](#) by APBREBES is comparing figures by the Access to Seed Index on the strength of the commercial seed markets in various countries to the status of national plant variety protection laws and the UPOV membership. The comparison shows that it is not possible to identify a connection between a strict plant variety protection law and the commitment of seed companies to engage in these countries. It seems that there is no causal relationship between the two. The data show that countries implementing alternative non-UPOV sui generis PVP systems have been able to maintain and develop national seed markets (e.g. India or Thailand). In Western Africa, Nigeria without a PVP law has seen the most activities of seed companies in the whole region. It is apparent that the development of a seed market and breeding activities, and even more importantly, the improvement of access to seeds for smallholder farmers must not be reduced to the question of UPOV membership or implementation of intellectual property laws. It would be naive to do so, but it does not deter many supporters of the UPOV system from doing it anyway.

3. The Right to Seeds in Europe - rebalancing power relations in rural areas

The [briefing](#), written by Dr Christophe Golay and Dr Adriana Bessa concludes that the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UN - DRDP) has been adopted to rebalance power relations in rural areas and to guarantee that states respect, protect and fulfil the rights of peasants who have been long left out of regional and national policies. Regarding Plant Variety Protection the authors recommend that the EU and EU Member States shall ensure that the negotiation, interpretation and implementation of WTO and UPOV instruments, do not violate, but facilitate the realization of the right to seeds, including peasants' right to freely save, use, exchange and sell farmed-saved seeds. The EU and EU Member States shall further ensure that free trade agreements to which they are party do not lead to violations of the right to seeds of European peasants or peasants in other countries. This implies that they

shall, inter alia, stop requiring developing countries to adopt UPOV's 1991 Act, as a condition for concluding Economic Partnership Agreements with the EU.

4. NGOs raise concerns with the draft EAC Seed and Plant Varieties Bill

In this [preliminary analysis](#), the African Centre for Biodiversity and its partners outline serious concerns with the available draft East African Communities (EAC) Seed and Plant Varieties Bill, dated September 2018. The Bill and its draft regulations are part of ongoing efforts to bring about regional harmonisation of seed and PVP laws through regional blocs or economic communities. The “one-size-fits all” model for PVP proposed in the EAC Bill offers extremely strong IP protection of plant breeders’ rights while threatening farmers’ rights and sustainable agricultural development in the EAC region. Thus, any flexibilities in national laws for smallholder farmers that already exist in Uganda, with regards to plant breeders’ rights and farmers’ rights, will have to be removed once the EAC Bill is passed. The publishers demand that no further decisions are made and that the adoption process of the Bill is halted until inclusive and participatory consultations are undertaken and issues of farmers’ rights are captured and addressed adequately in the draft EAC Bill.

5. The Arusha Protocol on plant varieties protection: Inappropriate to balance breeders’ and farmers’ rights in a manner that promotes food security.

The [research article](#) analyzes the Arusha Protocol for the Protection of New Varieties of Plants (Arusha Protocol) adopted in 2015 but not in force as the requisite ratifications of ARIPO member states have not taken place. The protocol is based on UPOV 1991 and its extensive limitation of the traditional farmers’ rights to freely save, replant and exchange seeds of protected plant varieties, while liberally conceptualizing plant breeders’ rights. The stated farmers’ rights are essential for the food security of the developing ARIPO member states, as their agriculture is predominantly characterized by impoverished small-scale farmers who rely on informal seed exchanges. On that basis, the article is premised on the view that the legal regime for plant varieties protection established under the Arusha Protocol is inappropriate for ARIPO members as it fails to balance breeders’ and farmers’ rights in a manner that promotes food security.

6. Integrating Farmers’ Rights to Equitable Benefit Sharing Into the Malaysian PVP Law

The [paper](#) by Murshamshul Kamariah investigates to what extent the existing legal provisions of plant variety law in Malaysia have integrated this right to equitable benefit sharing to small farmers as compared to similar legislations in India and under the African Union (AU Model Law). The aim is that Malaysia learn from these countries in order to ensure legal protection for small farmers’ right to equitable benefit sharing of their plant genetic resources.

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