



Updates on Plant Variety Protection

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1. Editorial

We are pleased to present a new report authored by Searice that explores the reasons behind the agricultural development in Vietnam. In recent years, advocates of the International Union for the Protection of New Varieties of Plants (UPOV) have repeatedly claimed that the introduction of the UPOV system in Vietnam resulted in impressive yield increases. A claim that has now been proved fundamentally wrong, as illustrated in the Searice report.

2. UPOV Misleads Developing Countries with Absurdly Incorrect Information

A [press release](#) published today by APBREBES, Searice and Fastenopfer reveals that UPOV representatives have been spreading misleading messages for years to justify the introduction of the UPOV system in developing countries. With countless lectures, speeches and tweets they have linked yield increases in Vietnam to the introduction of the UPOV system, despite the fact that there is no causal relationship between these increases and the country's UPOV membership. For example, UPOV cites sweet potatoes as being the crop with the highest yield increase following the introduction of the UPOV system in Vietnam in 2005. However, no application for a plant variety protection (PVP) has been filed with Vietnam's Plant Variety Protection Office (PVPO) for sweet potatoes in these years. This misleading communication by UPOV was revealed by a report also published today (see next topic in this Newsletter). The NGOs, therefore, are calling on UPOV, and its proponents to stop spreading misinformation.

3. Plant Variety Protection in Practice in Vietnam: The Pains in the Gains Achieved

The [report](#) published today by Searice, APBREBES and Fastenopfer analyses the factors which led to Vietnam's agricultural development in the last few decades. The main finding of the research is simple: "While plant breeding is necessary, agricultural development must be detached from the notion that a draconian plant variety protection law is a fundamental prerequisite. The PVP law has marginal effects to crop development. Vietnam's agricultural development is not the result of the PVP Law, but rather a complex interaction of various interventions by the government. The UPOV-style PVP Law is incompatible with Vietnam's seed system, highly concentrated on rice and may even threaten research and development on other crops."

4. Views on the private and non-commercial exception of UPOV

Following a request by APBREBES and amending a decision taken by the Consultative Committee, the UPOV Council decided last October to also invite observers to share their views on the implementation of the exception of acts done privately and for non-commercial purposes in relation to smallholder farmers (see the [APBREBES UPOV Session Report](#)). In its [submission APBREBES](#) points out that the current interpretation of the private and non-commercial exception is extremely narrow and therefore meaningless. Hence, the Explanatory Note must be revised. The proposal by Oxfam, Plantum and Euroseeds is a starting point for an adaptation but needs further clarification and adaptation. APBREBES also clarifies that although an adaptation is necessary, it will not solve the inherent contradictions between Farmers' and Breeders' Rights in the 1991 Act. The European Coordination Via Campesina elaborates on this aspect in [its submission](#) and calls for an amendment to the UPOV 91 Convention allowing for the establishment of two distinct seed systems in order to ensure that the rights of farmers are fully respected. The South Centre recommends in its [response](#) a substantial revision of the current Explanatory Note to *inter alia* clarify that the exchange and sale of (unbranded) seeds produced in excess to consumption by subsistence farmers falls under the exception. According to the decision taken by the Council, the office of the Union will now prepare a first draft of the guidance for the Consultative Committee (CC). CC documents being restricted, observers will be excluded from further discussion on this topic.

5. Essentially Derived Varieties: No more questions?

The negotiations of the Working on Group on Essentially Derived Varieties (EDVs) started last December. Surprisingly, the list of topics on policy issues identified by member countries and breeders, which included over 60 items to be considered for revision of the Explanatory Note has not been discussed. The Working Group, accepted a proposal by its Chair, Peter Button, that the first draft to be prepared by the office of the Union will be based on the position of the breeders' organisations presented at the second meeting of the WG. In the same manner as for the seminar on EDVs, the whole process seems orchestrated. There are no dissenting opinions to be heard and no real discussion taking place. Is this apparent consensus a reflexion of reality? In a new [article](#) "Essentially Derived Varieties in View of New Breeding Technologies - Plant Breeders' Rights at a Crossroad: From Open Innovation to Patent-like Exclusivity?", Michael Kock (former head of intellectual property at Syngenta) raises open and highly controversial questions. He points out that with an expansive EDV definition, which primarily focuses on genetic similarity, as demanded by the breeders' organisations, all varieties bred with new breeding technologies would be deemed essentially derived, or in other words – plagiarisms, which have a limited scope of protection. This feels odd as at the same time breeders' organisations repeatedly emphasise the innovative leap made by these technologies.

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