



Updates on Plant Variety Protection

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1. Editorial

We are publishing these Updates on Plant Variety Protection shortly after the end of the 2020 UPOV Sessions. The COVID-19 pandemic, which is impacting all of us, has also affected UPOV. For the first time in the history of the organization, meetings of the Council and the other UPOV bodies were held virtually. This virtual environment has advantages and disadvantages which we discuss in our UPOV Report.

This month the Updates presents three new studies: A Research Brief on Foreign Policy and the Right of Peasants, a Policy Brief about the interactions of Multilateral Regulatory Regimes and Plant Breeding, and a Research Article on the problem faced by farmer-plant-breeders in Indonesia.

2. UPOV Meeting Report

UPOV's bodies met virtually during the last week of October. Once again the seed industry dominated many discussions. Important decisions have been taken on the processes to revise the Explanatory Note on Essentially Derived Varieties and to develop guidance on acts done privately and for non-commercial purposes. A [report](#) is now available on our website featuring some of the key decisions taken by UPOV and the input of APBREBES.

3. Research Brief on Foreign Policy and the UN Declaration on the Rights of Peasants

The Geneva Academy, together with a network of Swiss NGOs, released a new [Research Brief](#) on Swiss Foreign Policy and the UN Declaration on the Rights of Peasants. Regarding Plant Variety Protection the authors recommend that Switzerland stop promoting the 1991 Act of the UPOV Convention as if it were the only model for the protection of intellectual property on plant varieties. Instead, they say, Switzerland should encourage developing countries to use the possibilities offered by the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to design sui generis systems of plant variety protection adapted to the agricultural and social specificities of each country. Such systems are protecting both plant breeders and peasants' rights. The recommendations set out in the Research Brief will be relevant to many countries, even if the analysis focuses on Swiss foreign policy, the authors said. The Research Brief – available in [English](#),

[French](#) and [German](#) – recalls that in order to implement the Declaration, Switzerland must ensure that its policies relating to trade, intellectual property and development cooperation are in line with the rights recognized in the Declaration. The Research Brief summarizes the main points of a [detailed study](#), which is available in French.

4. Multilateral Regulatory Regimes and Plant Breeding

The new [Policy Brief](#) by the International Institute for Sustainable Development (ISSD) is addressed to governments developing or reviewing national laws that govern germplasm and plant breeding. Those laws must comply with international laws and obligations. Yet there are competing and incoherent international legal frameworks for the use and reproduction of germplasm. The authors conclude that UPOV fails to provide adequate protection for the rights of farmers, local plant breeders, and traditional knowledge holders, including Indigenous Peoples. “Any system that seeks to protect the creators of a new variety has to balance that protection with the more diffuse idea of protecting the collective right of a population over the generic material they have historically relied upon.” “Informal seed systems have proven important for the protection of agricultural genetic diversity. This diversity has diminished significantly in food systems that are dominated by commercial seed firms whose interest is in specific genetic traits.”

5. Farmer-plant-breeders and the law on Java

The new [Article](#) authored by Christoph Antons, Professor of Law at the University of Newcastle, Australia, et al. reports about farmer-plant-breeders in Indonesia. The article reports on the problems they experienced with seed and intellectual property laws primarily focused on the strengthening of the seed industry and compliance with development plans. “While the seed industry is protected by an expanding system of intellectual property rights, small-scale farmers do not have the means or experience to use this system,” the article explains. Under current law, small-scale farmers’ varieties are considered akin to varieties in the public domain, to be used by others for the creation of “superior varieties.” “Under these circumstances, there are few incentives for farmers to participate in such a system; instead, they are primarily concerned with defending their freedom to operate and organize.” The authors recommend a reform of UPOV, broadening its scope to better address the needs of small-scale producers, including the imposition of mandatory disclosure requirements when germplasm is collected for commercial research and development.

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