



Updates on Plant Variety Protection

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1. Editorial

The new Vice-Secretary General of UPOV was appointed during the extraordinary Council meeting in March. We congratulate Yolanda Huerta Casado on her election. The report on the last UPOV session and other articles in this newsletter show that she is not taking on an easy task. We wish her strength and to lend an ear to those who often struggle to be heard in Geneva.

2. Reform backlog – APBREBES Report on the UPOV Spring Session 2023

Apart from the election of the new Vice-Secretary General, the negotiations during the UPOV session from March 20 to 24 mainly showed stalemate and an inability to face the challenges of the future. The [APBREBES report](#) describes the negotiations of the Working Group on Harvested Material and Unauthorised use of Propagating Material and those on Guidance concerning Smallholder Farmers in relation to private and non-commercial use. The seminar on Essentially Derived Varieties and new breeding technologies was enlightening. It showed that the solution to the problem is probably not as simple as many could have thought.

3. Fewer Choices for Farmers? The Impact of IP on Seeds in the US.

In last December's newsletter, we published an [opinion piece](#) by Jack Kloppenburg, which initially served as input for research by the US Department of Agriculture (USDA). The USDA has now published the report "[More and Better Choices for Farmers: Promoting Fair Competition and Innovation in Seeds and Other Agricultural Inputs](#)". The comprehensive analysis, which includes both patents and plant variety protection rights, shows some worrying trends: - An extreme concentration in IP ownership, with "the top four companies (Bayer, Corteva, ChemChina, and BASF) own 97% of canola, 95% of corn, 84% of soybean, 51% of wheat, and 74% of cotton IP;" - a lack of transparency on existing IP rights associated with a particular plant variety; - the use of licenses that override research and breeding exemptions guaranteed by plant breeders' rights; - an anticompetitive behavior in the industry; - and the negative impact of the current system on the genetic diversity in the fields. It seems questionable whether the recommendations made in the report can really solve the problems. The proposal to introduce research and breeding exceptions for US utility patents would probably have the greatest impact.

4. The European Court of Justice protects farmers from excessive compensation for farm-saved seeds

According to the Regulation implementing the European Council Regulation on community plant variety rights, a person which has repeatedly and intentionally not complied with his obligation on farm-saved seeds «shall cover at least a lump sum calculated on the basis of the quadruple average amount charged for the licensed production of a corresponding quantity of propagating material of protected varieties of the plant species concerned [...]». Based on a case from Germany, the [judgment \(C-522/21\)](#) of the Court of Justice of the European Union found that this implementing Regulation exceeded the limits of the Basic Regulation and that the provision at issue is invalid. According to the judgment, the European Commission was not and is not entitled to create a rule favouring the seed industry in such a way. Consequently, no breeder can claim damages above the simple licence for a repeated infringement of the conditions on farm-saved seed if no further damage is alleged and proven. The German farmers' group "Interessengemeinschaft Nachbau" welcomed the decision.

5. The implications of UNDROP for the right to seeds in Africa – and a Sustainable World Food System

The Geneva Academy published a new Briefing [The Right to Seeds in Africa](#) – authored by Dr. Karine Peschard, Dr. Christophe Golay, and Lulbahri Araya. "For too long, peasant seed systems in Africa have been neglected and marginalized by laws, regulations, and public policies geared toward the needs and interests of the corporate sector," the authors concluded. In the Geneva Academy news release, Dr. Peschard urged caution. " 'Despite positive developments, there is a strong push in Africa to adopt intellectual property norms of plant variety protection modeled on UPOV 1991 and to pass commercially-oriented seed laws, both of which are detrimental to peasant seed systems and represent a direct violation of peasants' right to seeds as enshrined in UNDROP,' she said. Another article related to UNDROP by Dr. Rani Pajrin (Lecturer at the Department of Law, Tidar University, Indonesia) et al [UNDROP as an Effort to Protect Farmers Rights in Realizing the Development of a Sustainable World Food System](#) encourages the creation of a just and sustainable world food system by respecting and fulfilling the rights of farmers and people who work in rural areas.

6. How policies influence smallholder farmers' access to seeds in East Africa

The new Report "[How policies influence smallholder farmers' access to and use of genetic resources in three East African countries](#)", published by Biodiversity International, analyses the impact of policies on Access and Benefit-Sharing, as well the impact of seed policies. Regarding Plant Variety Protection, it states that the "Arusha PVP Protocol seems to ignore the needs of smallholder farmers that strongly depend on the exchange and trade of farm-saved seed to fulfill their seed demand. This can hamper the accessibility and affordability of new but protected varieties for those farmers, who may need them the most." However, in the SADC regulations that allow "exchange for non-commercial purposes", as well as in the PVP act of Uganda (where the traditional method of access, use or exchange of [...] plant varieties by local and between local communities is allowed), the UPOV criteria have been weakened in favour of smallholders. However, the report states, PVP laws and plant breeders' rights in Kenya, Tanzania, and Uganda « are based on UPOV provisions that create restrictions on the multiplication, exchange or sale of seeds of protected varieties by farmers. This is seen to limit access to diversity for farmers in the East African region. »

7. The impact of Plant Breeders' Rights in Costa Rica

The study by Henry Picado Cerdas and Silvia Rodríguez Cervantes from the Network Red de Coordinación en Biodiversidad analyses the implementation and the social resistance to seed registration/certification, as well as to plant breeders' rights in Costa Rica from 1978 to 2021. The [study is only available in Spanish](#). When Costa Rica was forced to adopt the UPOV convention as part of the implementation of the Free Trade Agreement with the United States, it was argued that the implementation of UPOV91 would stimulate investment in plant breeding and increase the supply of varieties. The study shows that neither of these two promises have been fulfilled. After more than 10 years only twenty-two plant breeder right certificates were in force. Nevertheless, the study demonstrates the negative impact of PBR resulting in the supply of rice seed's decline, the concentration of production in the hands of a few, and the extinction of small rice farmers.

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