



## Updates on Plant Variety Protection

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### 1. Editorial

It has been a while since our last newsletter but worth the wait. We are particularly pleased to announce the publication of a new report on the potential impact of a UPOV-based plant variety protection regime in Malaysia. The report comes at a time when pressure from industrialised countries is increasing on several Southeast Asian countries to change their existing *sui generis* PVP system, which all include some form of respect for farmers' rights. This newsletter shows that this pressure contradicts all scientific findings. We need seed legislations that promote diverse seed systems and food security, rather than the export of a plant variety protection regime that unilaterally represents the interests of the seed industry, as demonstrated in several other recently published papers presented in this Newsletter.

### 2. The Potential Impact of UPOV 1991 on the Malaysian Seed Sector, Farmers, and Their Practices

APBREBES and the Third World Network are proud to announce the publication of the report: [The Potential Impact of UPOV 1991 on the Malaysian Seed Sector, Farmers and Their Practices](#) written by NurFitri Amir Muhammad, Researcher for the Third World Network. The report introduces Malaysia's unique and functional system protecting intellectual property on plant varieties and recognizing farmers' innovations. The system also safeguards exceptions for farmers' rights to save, use, exchange, and sell seeds. Based on surveys and interviews, the author analyses the situation on the ground and the potential implications of the application of the UPOV 1991 convention, particularly its restrictions on rice paddy and other farmers. He concludes that "UPOV 1991 is not suitable for Malaysia. It will take away the flexibility every country needs to adapt the PVP system to its national needs and circumstances." The report "sounds a clarion call to resist pressures for Malaysia to join UPOV 91."

### 3. Lesser Food Security, Food Crisis, and Boundaries to Intellectual Property

The [article](#) (restricted access) by Geertrui Van Overwalle, Professor of IP Law at the Katholieke Universiteit Leuven, Belgium, was published as a chapter in the new book [Improving Intellectual Property](#). The introduction of the book written by Graeme B. Dinwoodie, Professor of Law at Chicago-Kent College of Law, and Susy Frankel, Professor of Law at Victoria University of Wellington, argues that "a single uniform top-down solution is unlikely to reflect the array of prescriptive and normative commitments or put in place an optimal solution that works for all. One size does not fit all." An argument that calls into question UPOV's approach. Overwalle's article then

specifically points out, that attention should be “drawn to IP measures for safeguarding access to sufficient and healthy food, such as crop exemptions and compulsory licenses for food in both plant breeder’s right law and patent law. As regulatory institutions, the patent and plant variety system’s overall acceptance rests on a delicate interplay of privileges and responsibilities, and their operation must also accommodate public policies and interests, such as food security.” In our view most existing intellectual property laws do not yet meet this requirement.

#### **4. Navigating Toward Resilient and Inclusive Seed Systems**

The [article](#) by Norwegian University of Life Sciences Associate Professor Ola T. Westengen et al. analyses the seed systems through three functions: variety development and management, seed production, and seed dissemination, and two contextual factors: seed governance and food system drivers. The authors observe that influential donors’ and governments’ support for a private sector-centered development agenda (e.g., by the inclusion of requirements for IPR protection in free trade agreements) in countries where farmers’ seed systems dominate, leads to a mismatch between seed regulations and customary seed exchange practices, to tension, and conflict. To strengthen resilient and inclusive seed systems they develop three principles. The first is that all seed system development efforts should be to “do no harm” to farmers’ seed systems, crucial in the livelihoods of millions of farmers, but rather to build on them. These seed systems seldom only use local varieties (e.g., landraces) but also new varieties originating from breeding programs. However, seed policies and laws meant to promote formal seed system development can have negative spill-over effects on farmers’ seed systems if they outlaw customary practices such as seed-saving and exchange.

#### **5. Policies, Laws, and Regulations in Support of Farmer-managed Seed Systems: Still a Long Way to Go**

The [report](#) written by Ronnie Vernooy, Senior Scientist for the Alliance of Bioversity International and the International Center for Tropical Agriculture (CIAT), et al. and published by ISSD Africa, and the Alliance of Bioversity International and CIAT, is a review of seed policies, including plant variety protection laws, in 14 African countries. The authors describe, for example, how in Ghana the passing of the Plant Variety Protection Bill (2020) has constrained farmer-based systems as it bans local farmers from multiplying and distributing improved seeds. Their analysis of the strengths and weaknesses of both the informal and formal seed sectors reveals important complementarity and opportunities for strengthening the informal sector. They conclude that “there is a need to recognize farmer-managed seed systems and provide policy and legislative support that should address increasing the availability of seed of a wide range of crop varieties.”

#### **6. Benin Says No to UPOV – The Greatest Seed Robbery**

On June 1, 2023, a coalition of diverse organizations, including farmers’ organizations, women’s organizations, trade activists, and consumer groups, expressed their deep concern regarding Benin’s potential membership of UPOV. In a joint statement, the undersigned organizations highlight the potential threats to local seed systems, biodiversity, and food sovereignty if Benin was to join UPOV. The coalition calls upon all stakeholders in Africa to reevaluate the best strategies for seed systems that prioritize the needs of local communities. Specifically, they urge the government of Benin to withdraw its proposal to join UPOV and engage in a thorough review in collaboration with peasant organizations and civil society, to determine the best path forward. (Source: AFSA [Press release](#))

## 7. How to Navigate the Complexities of IP in Agriculture: Milestones and Challenges

In their [article](#), Mehak Rai Sethi, PhD Candidate, and Associate Prof. Vandana Singh from Guru Gobind Singh Indraprastha University, Delhi, India, point out that there are several unrecognized and under-recognized groups in the domain of intellectual property in agriculture. One of the most under-recognized groups includes farmers. “There is an urgent need to tailor a framework of protection for Farmers’ Rights at the International level, in order to ensure that the interests of breeders do not overpower and undermine the interests of farmers.” The authors suggest developing model laws tailored to countries’ needs and requirements. As an example, they mention “South Africa, where most of the agricultural production is dependent upon ‘bio-diversity’, and where a strict adherence to the Uniformity criterion with the DUS (Distinctness, Uniformity and Stability) model of UPOV would be dangerous.”

## 8. Intellectual Property Rights vis-à-vis Food Security: A Critical Analysis

The article by Rishav Ray from the School of Law, Christ University, Bangalore, India) was published in the book [Crop Sustainability and Intellectual Property Rights](#) (Apple Academic Press, Inc. – restricted access). The author argues that under the TRIPS agreement, developing nations do not have many options to avoid the introduction of intellectual property in agriculture. He suggests that using the *sui generis* option “the nations should strive to build a model of an IPR which provides incentives to the breeders as well as does not have any negative impact on the food security of the nation. Thereby, the development and protection of farmers’ rights is necessary for ensuring food security. These rights should be extended to fight biopiracy and other measures to ensure sustainable agro-biodiversity management.”

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