



## Updates on Plant Variety Protection

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### **1. Editorial**

We open this newsletter with a striking example of the massive influence of UPOV and the World Bank on Zambia's legislation. The Zambian government sent a new draft plant variety protection law to stakeholders in a Word document showing the author as the UPOV Secretariat in Geneva. The document still contained comments and recommendations from UPOV, such as "As discussed during the bilateral meeting, [...] we recommend to amend Section 8 [on the farmers' privilege]," or "The current wording [in] appears to go beyond of what is generally considered to fall under situations of public interest [...]" The actual wording is not based on an analysis of the existing situation in the country, its interests, needs, and national circumstances, but was dictated by UPOV staff in Geneva, in line with the 1991 Act of the UPOV Convention. This is evidenced by the fact that the government has consistently failed to provide stakeholders with the assessment/evaluation that necessitated these legislative changes; there was allegedly none. Find out more below. Further in the newsletter, learn about the external influence on Malawi's seed sector policy process, farmers' rights in Nigeria and Malaysia, and questions around intellectual property on mutant and gene-edited plants.

### **2. Zambia: Strong Resistance Against the Proposed Plant Breeders Rights (PBR) Law in Line with UPOV**

Shortly after the government's proposal for a new Plant Breeders' Rights Bill was presented in April, the Zambia Alliance for Agroecology & Biodiversity (ZAAB), a broad network of farmers' organisations, NGOs and the Rural Women's Assembly, issued an [initial press release](#) rejecting the new proposed Bill in its entirety. In a [second press release](#), ZAAB stated that "the new Bill based on UPOV 1991 standards is completely an ill-suited PVP model for the Zambian context. [...]. The standards undermine the possibility of addressing our diverse development needs by serving multinational over local breeders' and farmers' interests, and limiting capacity to adapt to climate change," the press release said. Those organisations oppose the new Bill's adoption, particularly because the current PBR Act adequately protects plant breeders' rights, and includes important provisions for flexibilities relevant to farmer seed systems. [An article](#) by the Bretton Woods Project shows the World Bank's influence and support for the new Bill. The Plant Breeders' Act' amendment is [an indicator](#) in the World Bank's \$300 million Zambia Growth Opportunities Program ([ZAMGRO](#)). It includes a double check to ensure that Zambia has complied: "Before Cabinet approval, the WB will verify the revised Act to confirm their content." It further notes "Verification of the completion of the Plant Breeders Rights Act will be done against Zambia joining the Union for the Protection of New Varieties of Plants (UPOV) which review confirms that the Act meets expected standards." Incredibly,

no one seems to be asking whether the World Bank's and UPOV's "standards" meet the wishes and needs of the Zambian people. In contrast to UPOV and the World Bank, other international organisations, such as the United Nations Conference on Trade and Development (UNCTAD), tend to include the population's needs in their analysis. For example, in [a report](#) on the implications of AfCFTA, UNCTAD argues that non-UPOV African countries need policy space. Such countries, it states, need "to adopt sui generis PVP rules that align with domestic priorities and multilateral environmental agreements such as the CBD and its Nagoya Protocol, and the rights of farmers included as provided for in the ITPGRFA and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). [...]" It further declares "There is a need to ensure that intellectual property as a tool for sustainable development in Africa is used in a way which leads to long-term food security and access to food, the protection and dissemination of traditional knowledge on plant genetic resources, and the sharing of benefits resulting from biodiversity, rather than focusing on the needs of professional plant breeders." This is precisely what Zambian civil society is calling for.

### **3. The Seed Sector Development in Low-income Countries: Lessons from Malawi's Seed sector Policy Process**

The [article](#) by Henry G. Hunga, an academic affiliated with the University of Malawi, et al found a strong external influence on Malawi's seed sector policy process. The process was protracted "due to the failure to reach the middle ground between the private sector's interest in breeders' rights and the civil society's wish for farmers' rights," it said. "This resulted from governments' failure to bridge the differences that affected the policy process and the high-level lobbying ability and political connections of the private sector." The article showed that "Lack of adequate knowledge and studies on the private sector's influence on the policy process resulted in a limited understanding of their role." The authors therefore recommend that "the government should play an interlocutory role in the policy process for inclusive policies and manage unintended consequences." Further, technical and financial support is necessary for civil society that represents the underprivileged in society."

### **4. Farmers' Rights, Traditional Knowledge, and Intellectual Property**

In [his article](#), Funmilola Abeke Adetoy, Lecturer at Chrisland University's College of Law in Nigeria, looked at instruments protecting new plant varieties and those protecting farmers' rights. He concluded that "the UPOV system is unsuited to Nigeria's small-scale centered agricultural sector and recommended a sui generis system that safeguards the interests of both small-scale farmers and agribusinesses [...]."

### **5. Farmers' Rights in Malaysia: Revisiting the Implementation of the Protection of New Plant Varieties Act 2004**

Suzi Fadhilah Ismail, Associate Professor at the International Islamic University, in Malaysia, looked at the existing legislation governing farmer rights in Malaysia in a [recent article](#). She focused on the relevant provisions of the Protection of New Plant Variety Act 2004 (PNPVA) and concluded that the PNPVA 2004 is unique with its carefully drafted provisions designed to harmonize the distinct interests of commercial breeders, farmers' rights, and indigenous people. She said farmers' rights should not be compromised despite the country's effort to align its current legal framework with UPOV.

## **6. Intellectual Property Over Mutant and Gene Edited Plants**

Hamish MacDonald, Research Fellow at the University of Queensland (Australia), and Seyed Hossein Jamali, independent Researcher, Melbourne, co-published [an article](#) in the Book «Plant Mutagenesis (Springer 2024, restricted access). The article points out that the existing case law in various countries illustrates the lack of clarity around essential derivation (as defined by UPOV) and the strong possibility of arbitrary or inconsistent judgments. The authors discuss scholars' proposals to shift the concept of essential derivation to a trait-based approach and emphasise that ambiguities still need to be resolved here. Comparing the patent system with plant variety protection MacDonald and Jamali voice concern that “the advantages that genetic forms of breeding receive in the patent system over more incremental breeding methods have implications for the kinds of agricultural systems that are incentivised.”

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