

## Asia under threat of UPOV 91



*Indigenous women farmer from Madhya Pradesh, India, selling her collection of seeds in Organic Farmers Association in Udaipur. Photo: GRAIN*

Asia, home to 60% of the world's people and 74% of its farmers, is the target of a long and intensifying campaign to privatise seeds through new laws and regulations.<sup>1</sup> Up to 80% of all seeds used in Asia today still come from farmers who save seeds from previous harvests.<sup>2</sup> Corporate interests want to make this practice illegal. That way, they can make money by obliging farmers to buy seeds each planting season. For many farmers and public interest groups this is seen as extremely dangerous, as whoever owns the seeds can control the food supply.

The privatisation of seeds often takes place through two kinds of laws: seed laws, which dictate how seeds can be marketed, and intellectual property laws, which give

<sup>1</sup> Jingzhong Ye and Lu Pan, "Concepts and realities of family farming in Asia and the Pacific", FAO, 2016, [www.fao.org/3/a-i5530e.pdf](http://www.fao.org/3/a-i5530e.pdf)

<sup>2</sup> GRAIN, 'Seed laws that criminalise farmers: resistance and fightback', April 2015, <https://www.grain.org/e/5142>

monopoly rights to breeders. Both go in the same direction of banning local and indigenous varieties which are biodiverse and evolving. Governments try to root them out because they not suited for industrial farming, food processing or supermarkets – hallmarks of corporate controlled “progress”.

Under the rules of the World Trade Organisation (WTO), which were agreed to in 1994, virtually all countries of the world must provide intellectual property rights on plant varieties. They can do this either through patents or through an alternative legal system. The global seed industry’s favourite alternative is UPOV (Union for the protection of new plant varieties), a kind of patent system that was designed for plant varieties in Europe 60 years ago. Under UPOV, plant breeders get a 20-25 year monopoly over seeds that are new, distinct, uniform and stable. No one can produce, reproduce, sell or exchange seeds of these varieties without the breeder’s permission. For the seed industry, this kind of control is paramount in order for companies to recoup breeding investments, which are often designed to lock farmers into use of their agrochemicals as well.

### **FTAs pushing UPOV**

The push for Asian countries to join UPOV or to at least follow its rules known as UPOV 91 (because that’s when they were last revised) is raging today under the auspices of various trade negotiations. This is happening both in bilateral trade talks, like EU-India, or under regional talks like those around the Trans-Pacific Partnership (TPP) or the Regional Comprehensive Economic Partnership (RCEP).<sup>3</sup>

The TPP – which was signed in 2016 by Australia, Brunei, Chile, New Zealand, Peru, Singapore, Vietnam, Japan and Malaysia, on the Asia-Pacific side – says that members can continue to exclude plants and animals from their patent laws, as the WTO allows, but they must join UPOV 91 and they must provide patent protection for inventions “derived from plants”.<sup>4</sup> While this is bad enough, the governments of Thailand, Philippines and Indonesia have expressed interest in joining this trade deal as well.

The RCEP is still under negotiation. Leaked negotiating texts from 2014 and 2015 showed Japan and South Korea advocating hardest for a deal that would oblige signatories to join UPOV. In Asia, only Australia, China, Japan, New Zealand, South Korea, Singapore and Vietnam are members of UPOV. So this would have meant that India and eight other countries of Southeast Asian would have to follow suit and eliminate or severely restrict farmers’ rights to save, produce and exchange seeds. Such was the resistance and pressure from farmers’ organisations and civil society groups that this provision was recently dropped from the negotiating text.<sup>5</sup> Shortly after, India withdrew from the talks altogether.

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<sup>3</sup> For an overview of trade talks imposing UPOV, see GRAIN, ‘Trade agreements privatising biodiversity outside the WTO: 2018 update’, August 2018, <https://www.grain.org/e/6030>.

<sup>4</sup> See GRAIN, “New mega-treaty in the pipeline: what does RCEP mean for farmers’ seeds in Asia?”, March 2016, <https://www.grain.org/e/5405>

<sup>5</sup> IPWatch, “ Asian NGOs raise concern over IP and seeds in RCEP trade deal”, February 2019, <https://www.ip-watch.org/2019/02/26/asian-ngos-raise-concern-ip-seeds-rcep-trade-deal/>

This leaves a brewing backdrop of bilateral trade deals where UPOV is bound to be pushed. This especially concerns deals involving European governments like the European Union, the post-Brexit United Kingdom and the European Free Trade Association. We also expect new trade talks led by the US to emerge very soon with both the Philippines and India. So what is the current situation on the ground as countries are pressured to join UPOV and put an end to farm-saved seeds?

## **China**

According to China's sixth national census of 2010, half the total population resides in the rural areas. The country has a rich history of seed-saving and replanting farm-saved seeds. However with increasing industrialisation of agriculture and the promotion of hybrids, traditional varieties have largely been replaced by commercial seeds. China is the world's largest seed market with roughly 12.5 million tonnes of seeds planted annually.

Under the country's first plant variety protection regulation of 1997, China allows farmers to save and re-use protected varieties, without paying royalties, as long as it's on their own farms. This means that farmers cannot exchange or sell these seeds. In 2013, the plant variety protection regulation was amended, with few changes. In 2015, China's broader seed law was revised and now incorporates the 2013 plant variety protection regulation.<sup>6</sup>

In 1999, China became a member of UPOV, adhering to the 1978 convention. But since the new seed law came into effect, China has been under pressure to upgrade to UPOV 1991 from seed companies.<sup>7</sup> At the same time, several of the world's top seed companies merged, including ChemChina buying Syngenta, the world's third biggest seed company. Rarely has China witnessed open opposition to a state sponsored corporate strategy, but this merger was opposed by hundreds of people who believed that the deal would lead to genetically modified crops being sown across the country, undermining Chinese agriculture and food security.<sup>8</sup>

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<sup>6</sup> Zhu Zhenyan, "Some Important Provisions in China's Revised Seed Law", TWN Info Service on Intellectual Property Issues, 4 March 2016, [http://www.twn.my/title2/intellectual\\_property/info.service/2016/ip160302.htm](http://www.twn.my/title2/intellectual_property/info.service/2016/ip160302.htm)

<sup>7</sup> Yangkun Hou, "Protecting new plant varieties in China and its major problems", 7 September 2019, [https://link.springer.com/chapter/10.1007/978-981-13-8102-7\\_14#:~:targetText=Based%20on%20China's%20abundant%20plant,further%20development%20of%20breeding%20work](https://link.springer.com/chapter/10.1007/978-981-13-8102-7_14#:~:targetText=Based%20on%20China's%20abundant%20plant,further%20development%20of%20breeding%20work).

<sup>8</sup> "China citizens protest ChemChina-Syngenta deal amid GMO worries", Reuters, 8 April 2016, <https://www.reuters.com/article/us-china-gmo-protests/china-citizens-protest-chemchina-syngenta-deal-amid-gmo-worries-idUSKCN0X50MA>

## Top 10: UPOV members by number of applications

| Rank | 2008                     |                        | 2017                     |                        | 2018   |                          |       |     |
|------|--------------------------|------------------------|--------------------------|------------------------|--------|--------------------------|-------|-----|
|      | Member                   | Number of applications | Member                   | Number of applications | Member | Number of applications   |       |     |
| 1    | European Union           | 3,013                  | China                    | ↑3                     | 4,465  | China                    | 5,760 |     |
| 2    | United States of America | 1,624                  | European Union           | ↓1                     | 3,422  | European Union           | 3,554 |     |
| 3    | Japan                    | 1,384                  | United States of America | ↓1                     | 1,557  | United States of America | 1,609 |     |
| 4    | China                    | 945                    | Ukraine                  | ↑13                    | 1,345  | Ukraine                  | 1,575 |     |
| 5    | Netherlands              | 751                    | Japan                    | ↓2                     | 1,019  | Japan                    | 880   |     |
| 6    | Russian Federation       | 718                    | Russian Federation       |                        | 807    | Netherlands              | ↑1    | 792 |
| 7    | Republic of Korea        | 490                    | Netherlands              | ↓2                     | 763    | Russian Federation       | ↓1    | 780 |
| 8    | Australia                | 374                    | Republic of Korea        | ↓1                     | 745    | Republic of Korea        |       | 765 |
| 9    | Canada                   | 348                    | Australia                | ↓1                     | 343    | Australia                |       | 384 |
| 10   | Brazil                   | 207                    | Brazil                   |                        | 339    | Brazil                   |       | 327 |

www.upov.int

**UPOV**

According to a survey by the Agricultural University of China, more and more farmers in China now choose to buy seeds from the market instead of using farm-saved seeds.<sup>9</sup> China currently has 4,300 certified seed companies, with the top 50 accounting for 35 percent of the domestic market. As the commercial sector takes over, the price of seeds is rising.<sup>10</sup> Farmers who share or exchange seed of protected varieties in violation of the law are seldom sued since they cannot pay the fines.<sup>11</sup> But it has recently been proposed to make it a criminal offence to infringe upon a plant breeder's right – and to simplify the procedures so that more farmers who illegally sell seeds will be charged.<sup>12</sup>

<sup>9</sup> Shiyu Gu, "How to Improve the Chinese Plant Variety Protection (PVP) Legislation System During the Transition Period Towards the UPOV 1991 Act?", Master Thesis Report, Wageningen University and Research Center, 22 May 2017, <https://edepot.wur.nl/416375>

<sup>10</sup> Siyuan XU, "State-driven Marketization: a preliminary review of China's seed governance and marketization history", 5th international conference of the BRICS Initiative for Critical Agrarian Studies, October 2017, <https://www.iss.nl/sites/corporate/files/2017-11/BICAS%20CP%205-54%20Xu%20S.pdf>

<sup>11</sup> A Guide to Protecting New Variety Rights in China, BUREN China Law Offices, November 2018, [https://www.burenlegal.com/sites/default/files/usercontent/content-files/NVPR\\_online\\_final\\_compressed.pdf](https://www.burenlegal.com/sites/default/files/usercontent/content-files/NVPR_online_final_compressed.pdf)

<sup>12</sup> "China may strengthen criminal punishment to protect seed IP", 23 February 2018, [http://www.xinhuanet.com/english/2018-02/23/c\\_136994543.htm](http://www.xinhuanet.com/english/2018-02/23/c_136994543.htm)



The UPOV secretariat in Geneva has recently started a social media campaign to tout the alleged benefits of its legal system for countries in the global South.<sup>13</sup> Some of its materials stress that over the last ten years, China has risen to the top of the list in the number of plant variety protection certificates requested. But industrialised countries still dominate by far (see table).

It should come as no surprise that China's exports of homegrown, high-end seeds to countries involved in the Belt and Road Initiative (BRI) have seen a major surge in recent years.<sup>14</sup> China's National Seed Trade Association indicates that from 2000 to 2018, overall seed exports rose five-fold, from US\$132 million to US\$694 million. Key markets include BRI countries such as Pakistan, Kazakhstan and ASEAN countries. For example Laoling Xisen Potato Industry Group is exporting potato seed to several countries along the Belt and Road, including Egypt and Kazakhstan. And Beijing-based Atlas Seeds Co. is now selling 100 tonnes of seed every year to Pakistan.

It seems only a matter of time when China will officially join UPOV 1991. This will have serious consequences for countries enmeshed in trade talks with China, or those forming part of the Belt and Road Initiative, as Beijing will likely demand adherence to UPOV 1991 standards.

## **India**

India adopted a plant variety protection law in 2001, to comply with the WTO. It allows farmers the freedom to use, exchange, save and resow protected varieties as long as they don't sell the seeds under the brand name. The law also allows farmers to produce and distribute their own unregistered traditional varieties. The inclusion of a separate chapter on farmers' rights was the result of campaigning and mobilisation by civil society groups, experts and farmers unions. Because of this, India has not joined UPOV.

In 2019, an intense debate broke out in India over the farmers rights provisions. PepsiCo India filed a lawsuit against 11 farmers in Gujarat who were planting PepsiCo's protected potato variety and selling the produce without paying royalties. The company wanted them to pay damages ranging from US\$28,000 to US\$140,000. A huge backlash erupted and PepsiCo withdrew its suits.

During the legal fight, civil society groups discovered that the government was looking into aligning some provisions of the law with UPOV 91, and a few months later a draft Seed Bill 2019 was issued for comment.<sup>15</sup> Judging from this text, there seems to be a growing pressure on the Indian government to join or comply with UPOV, no doubt to capture the country's fast developing seed market, which stood at US\$4.1 billion in 2018.

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<sup>13</sup> See <https://twitter.com/vsgupov> in particular

<sup>14</sup> See GRAIN, "The Belt and Road Initiative: Chinese agribusiness going global", February 2019, <https://grain.org/e/6133>

<sup>15</sup> Government of India, Department of Agriculture, "Draft Seed Bill for public comment", 2019, <http://agricoop.nic.in/recentinitiatives/draft-seeds-bill-public-comments>

Similar to China, the Indian seed industry is also quite ambitious and wants to expand in south and southeast Asia. The National Seed Association of India recently said that, “The Modi Government should take lead in creating a universal system based on breeder rights in order to protect commercial rights of our plant breeders.” As India is now (re)starting bilateral trade talks with the US and the EU, both of whom often oblige their trading partners to become member of UPOV, farmers organisations and civil society are on high alert.

### **Indonesia**

Similar to other Asian countries, Indonesia is also facing a lot of pressure to join UPOV. This is coming from bilateral and regional trade agreements, as well as two regional plant variety protection fora that the government is involved in (see box).<sup>16</sup>

The trade agreement that Indonesia signed with EFTA (Iceland, Norway, Switzerland, and Lichtenstein) in December 2018 states the parties which are not already members of UPOV 1978 shall comply with the substantive provisions of UPOV 1991.<sup>17</sup> The signing of this deal triggered an assessment process from Indonesia’s plant variety protection body about joining UPOV 1991. Nothing has moved forward yet on harmonise national law with UPOV 91 but concerns over farmers’ freedom to breed and use seed are on the rise.

### **Box 1: East Asia Plant Variety Protection Forum and EU IP Key Southeast Asia**

The East Asia Plant Variety Protection Forum was established in 2007 on the initiative of Japan.<sup>18</sup> Its membership consists of the 10 ASEAN countries plus China, Japan and South Korea. Japan serves as the secretariat. The main goal of the forum is to ensure that all of its members join UPOV and harmonise their plant variety protection laws. Forum activities focus on training and exchanges, including to European countries like the Netherlands, to harmonise regulations and procedures for seed distinctness, uniformity and stability testing.

IP Key Southeast Asia is a new project of the European Union launched in April 2018. It was initiated by the European Commission’s trade division and is being implemented by EU Intellectual Property Office.<sup>19</sup> It has a budge of EUR 6 million to support the EU in its trade talks and intellectual property dialogues with ASEAN partners. The project explicitly aims to promote European standards for intellectual property rights legislation, protection and enforcement and to support the interest of European innovators and right holders – in this case private seed breeders – for trading with or investing in Southeast Asia.

<sup>16</sup> Personal communication with Dr. Efrizal Jamal, head of Indonesia plant variety protection body, July 2019.

<sup>17</sup> EFTA, “Annex XVII referred to in article 5 protection of intellectual property”, 2018, <https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/indonesia/efta-indonesia-annex17-intellectual-property-rights.pdf>

<sup>18</sup> EAPVP Forum, “Introduction to the East Asia Plant Variety Protection Forum” <http://eapvp.org/about/>

<sup>19</sup> EU IP key Southeast Asia, <https://ipkey.eu/en/south-east-asia>

The setting up for both the EU and Japanese forums shows that for many countries in Asia, being member of UPOV or having strict laws that discourage or criminalise farmers' seeds is neither a domestic demand nor a priority. The pressure is coming from former colonial powers with large multinational seed corporations. Whose interests are being served?

Farmers are concerned that UPOV only acknowledges and promotes homogeneity in seeds and therefore in crop cultivation. This brings genetic erosion and vulnerability to farmers. Compared to the four EFTA countries, Indonesia has the most diversity in its crops and farming systems. Farmers are worried that changes to comply with UPOV 1991 will increase criminalisation of farmers who simply breeding and sharing their own seeds. Even without UPOV, farmers in Indonesia have already struggling to be able to breed and distributing their seeds.

From 2003 to 2010, no less than 14 farmers were sued by multinational seed companies in Indonesia for alleged infringement of their intellectual property over seeds.<sup>20</sup> In the case of PT BISI, a subsidiary of Thailand's Charoen Pokhpand, farmers were arrested and some had to stay for months in prison despite the lack of evidence from the company. And in almost all the cases, farmers had no legal representative to accompany them in court, and most of them did not understand why they were being convicted for practising what they and their families have been doing since long.

Following these suits, a coalition of farmers, civil society groups and lawyers brought a case to the constitutional court in September 2012, arguing that Indonesia's plant cultivation law unfairly treated small farmers and farmer-breeders as if they were large commercial enterprises. The court ruled that three articles of law are indeed unconstitutional. This decision mean that peasant farmers will no longer need a government permit to collect seeds, produce their own seeds or to distribute them.<sup>21</sup>

In another case, a farmer named Munirwan was arrested in North Aceh in July 2019 after being accused of commercially distributing unreleased rice seed that he received from the provincial government for trial purposes. As he worked with and further bred the seed, Munirwan was able to achieve abundant harvests. He then saved seeds for the next season and sold the rest.<sup>22</sup> After much public pressure, the case against Munirwan was suspended and he was released without sanction.

Despite the decision from Constitutional Court in 2013 and pressure surrounding Munirwan's case, a new plant cultivation law with controversial provisions was adopted in September 2019. The law now explicitly states that small farmers that conduct

<sup>20</sup> Indonesian Human Rights Committee for Social Justice, "Our seed, our sovereignty - seed law victory in Indonesia", 2013, <https://www.grain.org/en/article/4774-our-seed-our-sovereignty-seed-law-victory-in-indonesia>

<sup>21</sup> Ibid.

<sup>22</sup> Gisela Swaragita, "Farmer arrested for producing, selling unreleased rice seed variety", 2019, <https://www.thejakartapost.com/news/2019/07/27/farmer-arrested-for-producing-selling-unreleased-rice-seed-variety.html>

activities of foraging and gathering genetic resources for cultivation have to report to the local and central governments. It also says that plant varieties resulted from farmers' breeding work can only be distributed within their own group – without clear definition of the term “group”. The law also says that small farmers who distribute uncertified seeds will be subject to criminal punishment with prison time between four to six years.

No wonder, then, that Indonesian farmers feel their rights related to seeds being restricted by the day.

### **Malaysia**

Until now, the government of Malaysia has resisted UPOV. Under the WTO rules, it adopted its own form of plant variety protection in 2004 with rights for farmers to save and re-use protected seeds.

In 2012, the Malaysian government revealed its decision to amend the 2004 law to bring it in line with the UPOV Convention of 1991.<sup>23</sup> This decision was met with an outcry of concern from civil society organisations, farmers, consumers and environmental groups who are argued that adherence to the UPOV system will result in a denial of farmer's rights and practices such as freely distributing and selling their own produce. It will promote monopolies, facilitate biopiracy and lead to the loss of local wisdom and biodiversity in Malaysia, they added.<sup>24</sup>

In separate statement, the groups have further highlighted that the average land holding for farmers in Malaysia is only 1.32 hectares. For this majority of smallholder farmers, the main source of seeds is often local markets, farm-saved seed, relatives and neighbours. Prohibiting these practices will be detrimental and undermine farmer seed systems in Malaysia.<sup>25</sup>

While the current government is not sure whether it will ratify TPP, the pressure to join UPOV at the expense of farmers' rights is still on.

### **Philippines**

Informal seed channels are most commonly used by farmers in the Philippines. Also, for many food crops there are no legally protected varieties. Most protected seeds are for only two crops, rice and maize.<sup>26</sup> Even among farmers who grow maize or rice, they tend to get their seeds through informal channels, from relatives, friends or neighbours

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<sup>23</sup> Department of Agriculture Malaysia, 'New developments on PVP in Malaysia', October 2012, <https://www.yumpu.com/en/document/read/37894525/pvp-in-malaysiapdf-the-east-asia-plant-variety-protection-forum>

<sup>24</sup> Zanariah Abd Mutalib, '21 NGO bantah Malaysia sertai Konvensyen UPOV 1991', September 2019, <https://www.bharian.com.my/berita/nasional/2019/09/610836/21-ngo-bantah-malaysia-sertai-konvensyen-upov-1991>

<sup>25</sup> 'Malaysia civil society and farmer groups' memorandum on RCEP and plant variety protection', February 2019, <https://www.ip-watch.org/weblog/wp-content/uploads/2019/02/Malaysia-Memo-of-CSOs-And-Farmers-Groups-No-UPOV-In-RCEP.pdf>



or use seeds left over from last harvest. Besides helping to reduce farm expenses, seed exchanges among farmers helps rejuvenate planting materials and minimises pests and diseases, since different varieties are exchanged.<sup>27</sup> In a country prone to extreme weather, which exacerbates pest and disease attacks, farmer-bred varieties are important. For example, the farmer-led MASIPAG programme has collected more than 2,000 farmer-developed rice varieties of which 18 are drought tolerant, 12 are flood tolerant, 20 are salt water tolerant and 24 are pest and disease tolerant.<sup>28</sup>

To comply with WTO, the country adopted a plant variety protection law back in 2002. It is largely based on UPOV 91 although it has special exceptions for small farmers. Now the government is talking about amending its Seed Industry Development Act of 1992 to crack down on the spread of fake seeds, including genetically modified maize seeds.<sup>29</sup> This shows that exchange of farm-saved seeds, even from transgenic varieties, is prevalent among farming communities. In the case of Monsanto's RoundupReady maize, seeds circulating in informal circuits are ten times cheaper than officially purchased seeds.<sup>30</sup>

The Philippine government has asked UPOV to assess the conformity of its law with the 1991 convention, but no further action has been taken.<sup>31</sup> In the meantime, several studies point out if UPOV 91 were imposed on the Philippines, farmers would lose their knowledge about seeds and be less able to deal with the climatic crisis.<sup>32</sup>

## **Thailand**

Thailand adopted a plant variety protection law in 1999, to comply with WTO. The law is modelled on UPOV, but leaves more freedom for farmers. Farmers are allowed to replant farm-saved seed of protected varieties, but only in their own lands. That means no exchange or sale is permitted. For certain crops, there is a limitation on the amount of seeds that farmers can replant. And there is a rule that plant breeders must share

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<sup>26</sup> Public Eye, "Owning seed, accessing food - A human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines", 2014, [https://www.publiceye.ch/fileadmin/doc/Saatgut/2014\\_Public\\_Eye\\_Owning\\_Seed\\_-\\_Accessing\\_Food\\_Report.pdf](https://www.publiceye.ch/fileadmin/doc/Saatgut/2014_Public_Eye_Owning_Seed_-_Accessing_Food_Report.pdf)

<sup>27</sup> Ibid.

<sup>28</sup> MASIPAG, 'Amidst crisis farmer scientist group launch climate resilient rice varieties', 2019, <http://masipag.org/2019/09/amidst-crisis-farmer-scientist-group-launch-climate-resilient-rice-varieties/>

<sup>29</sup> Jasper Arcalas, 'Flaw in law threatens to slow seeds sector's success', Business Mirror, June 2018, <https://businessmirror.com.ph/2018/06/06/flaw-in-law-threatens-to-slow-seeds-sectors-success/>

<sup>30</sup> Public Eye, "Owning seed, accessing food - A human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines", 2014, [https://www.publiceye.ch/fileadmin/doc/Saatgut/2014\\_Public\\_Eye\\_Owning\\_Seed\\_-\\_Accessing\\_Food\\_Report.pdf#page=1&zoom=auto,-158,449](https://www.publiceye.ch/fileadmin/doc/Saatgut/2014_Public_Eye_Owning_Seed_-_Accessing_Food_Report.pdf#page=1&zoom=auto,-158,449)

<sup>31</sup> Pusat Perlindungan Varietas Tanaman dan Perizinan Pertanian, Kementerian Pertanian Indonesia, 'Perkembangan negara anggota EAPVP' 2018, <http://pvtpp.setjen.pertanian.go.id/cms/wp-content/uploads/2018/01/Perkembangan-Negara-Anggota-EAPVP-Forum-Indirawati-Sintya-D-SS-MA.pdf>

<sup>32</sup> CIDSE, "Resilient communities: The story of Masipag", November 2016, <https://www.cidse.org/2016/11/18/resilient-communities-the-story-of-masipag/>

revenues with the state-run Plant Varieties Protection Fund.<sup>33</sup> The law is said to have enabled Thai-based multinational Charoen Pokphand along with global seed corporations such as Monsanto, Cargill and Pioneer, to gain control over the market particularly in maize seed but also other annual crops.<sup>34</sup>

Despite the growing corporate control, many farmers and farm groups are able to produce good quality rice and maize seeds for their own use and for their groups. Some farmers have set up community seed enterprises. A movement called “Freedom Seeds”, established in 2011 under the Alternative Agriculture Network, is able to produce 100 tonnes of both jasmine and traditional rice varieties per year.<sup>35</sup> Every year before the rice planting season begin, Freedom Seeds hold a seed exchange so the farmers can buy, sell or swap seeds. Another community seed enterprise, Praaw Farmer Seeds Enterprises, set up 20 years ago by a farmer in Chiang Mai, is able to produce high-yielding hybrid maize that now commands 10% of the maize seed market.<sup>36</sup> These community seed enterprises have shown that communities can gain value from their farmer’s skills. Seed production provides a good opportunity for income diversification in rural areas.

In 2017, the Thai Department of Agriculture quietly proposed an amendment to the 1999 law to align with UPOV 91 after previous attempts failed due to strong opposition. According to BioThai and Alternative Agriculture Network, the draft bill would violate peasants’ rights and increase monopoly control by seed companies because it would extend the duration of the protection for new varieties from the current 12-17 years to 20-25 years. It would also abolish the article allowing farmers to replant protected seeds on their own farm, and impose criminal punishment for infringement.<sup>37</sup> The draft amendment would also exempt from the revenue sharing requirement new plant varieties that are not based on Thai material.<sup>38</sup>

Until now, the bill has not been approved. There is still as lot of debate about whether it will hurt farmers and lead to a monopolised seed market in Thailand.<sup>39</sup>

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<sup>33</sup> USDA FAS. “Thai Plant Variety Protection Act Amendment Update”, November 2017, [https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Thai%20Plant%20Variety%20Protection%20Act%20Amendment%20Update\\_Bangkok\\_Thailand\\_11-2-2017.pdf](https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Thai%20Plant%20Variety%20Protection%20Act%20Amendment%20Update_Bangkok_Thailand_11-2-2017.pdf)

<sup>34</sup> Kingkorn Narintarakul, “Thailand’s freedom seeds network: Can Jack face the giant?”, Mekong Commons, 2015, <http://www.mekongcommons.org/thailands-freedom-seeds-network-can-jack-face-giant/>

<sup>35</sup> Ibid. and personal communication with Alternative Agriculture Network

<sup>36</sup> Ibid.

<sup>37</sup> Biothai, “Will collecting seeds for replanting be made a crime?”, October 2017, <https://www.biothai.org/node/1428>

<sup>38</sup> USDA FAS. “Thai Plant Variety Protection Act Amendment Update”, November 2017, [https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Thai%20Plant%20Variety%20Protection%20Act%20Amendment%20Update\\_Bangkok\\_Thailand\\_11-2-2017.pdf](https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Thai%20Plant%20Variety%20Protection%20Act%20Amendment%20Update_Bangkok_Thailand_11-2-2017.pdf)

<sup>39</sup> The Nation, “Amended plant protection act ‘must take care of farmers’”, July 2019, <https://www.nationthailand.com/news/30372158>

**Vietnam**



*Small farmers in Vietnam, especially those in the mountains, who still practice traditional ways of farming have much more freedom to use, save and exchange seeds among themselves compared to lowland farmers who are more exposed to industrial agriculture and the reach of stricter seed laws. Photo: GRAIN*

Vietnam joined UPOV in 2006. Today, it has become the poster-child for what UPOV would like to achieve in Asia, and often hosts exchanges for countries like Thailand and Indonesia that are trying to harmonise their laws with UPOV.

Before it joined UPOV, almost 100% of the country’s seed breeding was in the hands of the public sector. Ten years later, the seed industry in Vietnam has become highly consolidated, with eight companies accounting for 80% of the country’s market. Most of them are global seed companies like Syngenta, Monsanto and Japan-owned Sakata.<sup>40</sup> As a result, small scale farmers face uneasy challenge when they try to distribute their own seed production.

In the Mekong Delta, where half of the country’s rice production located, most seed breeding is done by small farmers. The farmers organise themselves in what they call “seed clubs” to produce and distribute seeds among themselves. In 2008, it was found there are around 300 farmer-run seed clubs in the Delta, supplying more than 16% of

<sup>40</sup> Mordor Intelligence, “Seed sector analysis – Vietnam industry, growth, trends, and forecast (2019 — 2024)”, 2018, <https://www.mordorintelligence.com/industry-reports/seed-sector-analysis-vietnam-industry>

local rice seeds (while only 3.5% comes through the formal system). Seeds of new rice varieties developed by farmers are more diverse, cheaper and help provide household incomes and entrepreneurial skills.<sup>41</sup> Under Vietnam's seed ordinance of 2004, farmers who produce staple crops do not need certification to distribute or sell their seeds, although they have to guarantee the seed's quality by themselves. Therefore, in practice farmers are allowed to breed and distribute their own seeds as long as the seeds are of good quality.<sup>42</sup>

According to the Vietnamese NGO CENDI, despite progressively stricter regulations and poster-child status with UPOV, indigenous farmers, especially those in the mountains, still practice traditional ways of farming and have much more freedom to use, save, exchange seeds among themselves compared to lowland farmers who are more exposed to industrial agriculture and the reach of the law.

## Conclusion

These experiences from different Asian countries belie claims about socio-economic benefits of UPOV membership. UPOV compromises farmers' freedom over their seeds and further consolidates the seed industry. With seed saving and informal seed distribution still a common practice among many communities in Asia, joining UPOV 1991 would be catastrophic as it leads to the criminalisation of farmers for simply doing their daily practices: saving, breeding and distributing seeds.

Defending farmers' seeds from privatisation and monopoly control of corporations is a continuous struggle, which is becoming more difficult in the face of various free trade agreements which impose stricter intellectual property rules. Those who promote UPOV are looking for nothing other than to replace farmers' seeds with uniform commercial varieties.

It is absolutely critical to challenge trade and investment agreements that push Asian countries to join UPOV or follow its rules. The good news is that opposition to these treaties is growing by the day. Ongoing battles show several lessons learned. The most important one is that we must join hands between farmers' movements, indigenous communities and food rights activists together with other sectors to stop further corporatisation and regain control over our seeds and cultures.

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*(This report is available at: <https://grain.org/e/6372>)*

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<sup>41</sup> Huynh Quang Tin, Nguyen Hong Cuc, Tran Thanh Be, Normita Ignacio & Trygve Berg, "Impacts of seed clubs in ensuring local seed systems in the Mekong Delta, Vietnam", 2011, Journal of Sustainable Agriculture.

<sup>42</sup> Bert Visser, The impact of national seed laws on the functioning of small-scale seed system. A Country Case Study, May 2017, Oxfam Novib, [https://www.sdhsprogram.org/assets/wbb-publications/770/Seedlawstudy\\_Bert%20Visser.pdf](https://www.sdhsprogram.org/assets/wbb-publications/770/Seedlawstudy_Bert%20Visser.pdf)