

## Towards Plant Variety Protection in Uganda: Status and Emerging Issues

### 1. Introduction

Uganda, like many other countries is a party to the World Trade Organisation (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). Article 27.3 thereof requires member countries to provide protection for new plant varieties either by patents or by a sui generis system or by a combination of both. In a bid to fulfil its obligations under the TRIPs Agreement, the country has, for the last ten years been developing a plant breeders' rights legislation for the protection of new plant varieties. While this process has been ongoing for that long, there is almost no debate and discussion about the most appropriate regime to develop in Uganda's context. This is largely attributed to the fact that few stakeholders are aware about this process and very few understand issues of plant variety protection.

This info sheet has therefore been prepared with three objectives in mind. First, it is intended to provide basic information on the subject of plant variety protection. Secondly, it intended to provide a summary of the 2004 PVP Bill and update stakeholders about the progress on this draft law. Finally, the info sheet raises some issues that stakeholders need to discuss and understand as we move towards finalisation of the draft legislation.

### 2. Plant Variety Protection

The need for plant variety protection arises from the need to reward especially the formal plant breeders for their investment in terms of Research and Development (R&D). Plant breeder's protection ordinarily leads to improvement and enhancement of existing plant varieties. Through scientific means, plant breeders are able to develop varieties with a number of desirable traits including high yielding, drought resistant, nutritive & medicinal and pests & disease resistant traits. Plant breeders' rights are the major form through which plant variety protection is achieved. Plant Breeders' rights can generally be defined as exclusive rights granted to a person over the commercial production and marketing of reproductive or vegetative propagating material of the protected plant variety. The monopoly/exclusive rights are granted for a limited timeframe during which the rights holder is expected to have recouped his/her investment. The practice has been to grant a time frame ranging between 15-25 years. The underlying hypothesis behind these rights is that they provide incentives to the private sector to invest in improving upon existing plant varieties and engage in commercial plant breeding.

*Continued to page ....2*

In order for a variety to qualify for protection, it must meet certain criterion which proves that it is a new variety. In particular, such variety must;

- 1) by reason of one or more identifiable characteristics be clearly distinguishable from all varieties whose existence is a matter of common knowledge;
- 2) be stable in its essential characteristics, in that after repeated reproduction or propagation or, where the applicant has defined a particular cycle of reproduction or multiplication, at the end of each cycle, remain true to its description;
- 3) be uniform/homogenous;

Until the finalization of African model legislation for the protection of the rights of local communities, farmers and breeders, the widely used model for the protection of plant breeders' rights was the Union for Protection of New Varieties of Plants (UPOV). The major difference between the two model laws is that while the African model law protects plant breeders' rights in harmony with farmers' and community rights, UPOV gives greater protection to formal plant breeders and hardly concerns itself with issues of farmers and community rights.

### **3. A Summary of the 2004 Plant Variety Protection Bill**

Uganda has been developing its plant variety protection legislation along the lines of the African Model Law. In this context, the 2004 Bill (which is the latest) seeks to recognize and protect the rights of private and public breeders over the varieties developed by them; to recognize, protect and support the inalienable rights of local communities including farming

#### **Exemptions to Plant Breeders Rights (Clause 6)**

*“Notwithstanding that plant breeders' rights subsist in respect of a plant variety, any person may:*

- *Propagate, grow and use plants of that variety for all purposes other than commerce;*
- *Sell plants, seed or propagating material of plants of that variety as food or for another use that does not involve the growing of the plants or the production of plants of that variety;*
- *Being a farmer, exchange seed, plants or propagating material of plants of that variety with another farmer for purposes other than commerce*
- *Use propagating material of a plant by way of allowing it to sprout and eat it, or use it in the preparation of food, before it had developed further;*
- *Use the protected variety in further breeding, research or educational, for non commercial purposes; and*
- *Use the existing germplasm available with national gene banks or plant genetic resources for research material.*

communities over their plant varieties, and to provide for matters incidental thereto. The Bill applies to plant varieties in-situ and ex-situ conditions; derivatives of plant varieties; community knowledge and technologies; and plant breeders. It does not affect the traditional method of access, use or exchange of knowledge, technologies and plant varieties and the sharing of benefits based upon customary practices of the concerned local communities.

For a plant variety to be accorded protection, it must be new i.e. it must be distinguishable, stable, homogenous and have a well-defined multi-line. The Bill guarantees exclusive rights to the successful applicant to sell, including the right to license other persons to sell and export plants and reproductive material of plants of the protected variety and to reproduce, including the licensing other persons to produce, reproductive

material of plants of the protected variety for sale. The duration of the rights granted is 20 years in case of annual crops and 25 years for trees, vines and other perennials. The Bill gives Government powers to restrict plant breeders' rights in public interest and sets the conditions under which the rights may be restricted. These are anti-competitive practices of the rights of the holder are identified, where food security or nutritional or health needs are affected, where a high proportion of the plant

#### **Farmers' Rights Protected by the PVP Bill, 2004**

- *The right to traditional knowledge relevant to the farmers' varieties;*
- *The right to equitably participate in sharing benefits arising from the use of their plant varieties;*
- *The right to participate in decision making at the national level, on matters related to the conservation and sustainable use of plant varieties;*
- *The right to save, use, exchange and sell farm-saved seed or propagating material; and*
- *The right to use a new breeders' variety protected under the Act to develop farmers' varieties.*

variety offered for sale is being imported, where the requirements of the farming community for propagating material of a particular variety are not met and where it is considered important to promote public interest for socio-economic reasons and for developing indigenous and other technologies.

In terms of Community Rights and Farmers Rights, the Bill states that local Communities have the right of ownership of their plant varieties, technologies, knowledge, innovations and practices acquired through generations and the right to collectively benefit from such varieties, technologies, knowledge and practices. Any access to such varieties, technologies, knowledge and practices must have the prior informed consent of the community concerned. The state is also obliged to ensure that an appropriate percentage of benefits obtained from the commercial use of a biological

resource or community innovation, practice, knowledge or technology are channelled to the concerned local community in a manner equitable to both men and women. With regard to farmers' rights, the Bill states that farmers have rights to their varieties which shall be recognised and protected under the rules of practice as found in, and recognised by customary law of the concerned local and indigenous communities whether such law is written or not.

#### **4. Cabinet Pronouncement on the 2004 PVP Bill**

Although the 2004 PVP draft legislation tries to strike a balance between plant breeders' rights on one hand and farmers' and community rights on the other, it has been reported<sup>1</sup> that when Cabinet considered this draft law, it directed that issues of farmers' and community rights should be removed from the Bill. Up to now, little is known about what informed this Cabinet decision.

What is clear is that the draft law has since been forwarded to the Attorney General's office to rework it in light of the Cabinet directive.<sup>2</sup>

Uganda's economy is based on agriculture and therefore, largely in the hands of farmers. Uganda is also a party to the International Treaty on Plant Genetic Resources for Food and Agriculture which urges the contracting parties to provide for the protection and promotion of farmers' rights. Consequently, the Cabinet directive is a shocking development and the logic behind it requires an explanation.

<sup>1</sup> See, Uganda Parliament to Debate the Draft Plant Variety Protection Bill, The East African February 25-March 2, 2008.

<sup>2</sup> Idem



President Yoweri Museveni (in army fatigues) touring model farmers during his Prosperity For All drive in Rukungiri District. These farmers need protection from shrewd seed companies.

This explanation is indeed necessary given the potential contribution of farmers' and communities in achieving some of the country's major development goals including food security, sustainable agriculture and poverty reduction. To this end, the exclusion of farmer's rights jeopardises their livelihood and makes them wholly dependant on the dictates of the seed companies.

## 5. Conclusion

The plant variety protection law making process in Uganda is an important opportunity for the country not only to fulfil its international

obligations but most importantly to address some of its major development goals such as sustainable agriculture, poverty eradication and food security. This necessarily requires striking a balance between Plant Breeders' Rights on one hand and farmers' and community rights on the other. As the country moves towards finalising this law, there is need for increased stakeholder participation and involvement in the process. Government must also come up with a clear timeline within which it must finalise this process. This law is long over due.

### FOR MORE INFORMATION, CONTACT ACODE:

Advocates Coalition for Development and Environment  
Plot 96, Kanjokya Street, Kamwokya P.O. Box 29836, Kampala  
Tel: +256 414 530 798 Email: [acode@acode-u.org](mailto:acode@acode-u.org)/ [library@acode-u.org](mailto:library@acode-u.org)  
Website: <http://www.acode-u.org>