

View and Policy about enforcement and protection of Plant breeders 'rights

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EAPVP : Seminar on the Enforcement of Plant Breeders 'rights

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Asia and Pacific Seed Association

Our mission

“**Sustainable agriculture** through the
production and trade of **quality seeds**
for the **world**”

Asia and Pacific Seed Association

APSA members (data from 2019)

Total members 0.00 112.00

29 countries inside
APAC from total 39
countries

24 countries
outside APAC

480 companies
in APAC 71% of
total members
(+100 outside)

24 seed association
+ non-profit
organization in AG

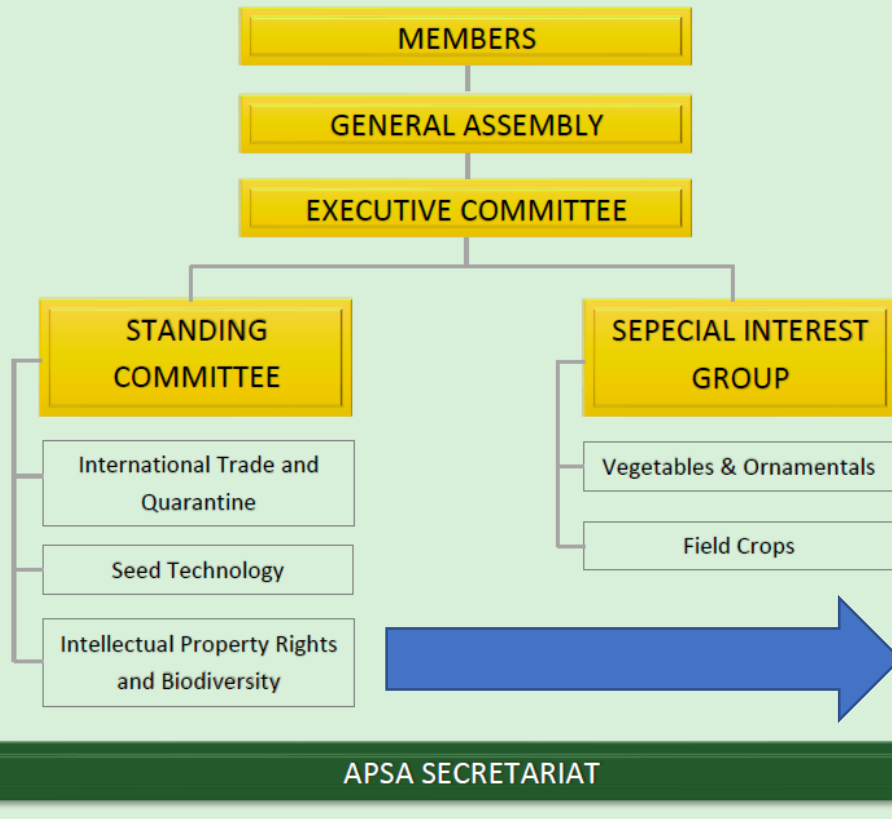
10 Govt seed
agencies

50% of members :
R&D and seed
producer

Key strategic plan

1. Intellectual Property rights
2. Biodiversity and genetic resources
3. Phytosanitary standards and harmonization
4. Innovation in Agriculture (breeding technology)
5. Public and Private Partnership

APSA STRUCTURE



SC IPR&Biodiversity members

No.	Name	Organization	Position
1	Dr Arvind Kapur	Acsen Hyveg Private Limited	Chair
2	Mr Liam Gimon	AIB	Co-Chair
3	Ms Anke van den Hurk	Plantum	Member
4	Mr Francois Burgaud	Groupeement National Interprofessionnel Des Semences Et Plants(GNIS)	Member
5	Mr Viet Anh Khuat	Syngenta Asia Pacific Pte. Ltd.	Member
6	Mr Michael Leader	Bayer (South East Asia) Pte Ltd.	Member
7	Ms Rosa Natividad P. Villanueva	East West Seed Co.,Ltd.	Member
8	Mr Fabrice Mattei	Rouse & Co. International (Thailand) Ltd.	Member

Our key stakeholders



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

UPOV



asta

american
seed trade
association



Plant breeders 'rights

- Plant variety rights (PVR)
- Rights granted to breeders to protect new varieties of plants that are distinguishable, uniform and stable.
- Legally enforceable
- Authorization is required for multiplication, propagation, offering for sale, selling or other marketing, exporting, importing and stocking for commercialization or propagation or multiplication (Article 14 of UPOV 1991)

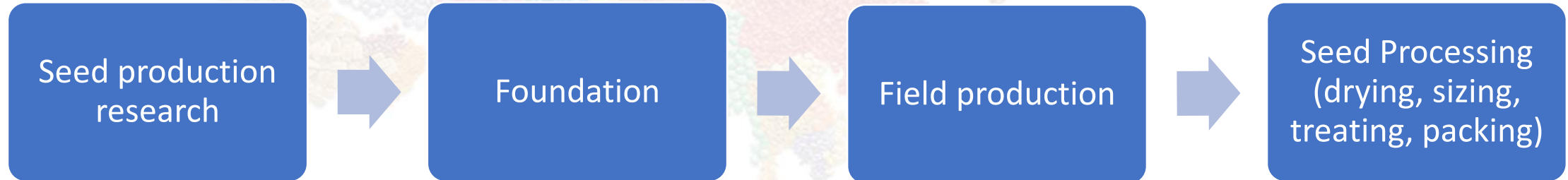


**DEVELOPMENT
IS NECESSARY**

UPOV

Seed production or seed multiplication

Intellectual property right protection (germplasm security)



- ✓ Seed producers
- ✓ Growers
- ✓ Tollers
- ✓ Nursery
- ✓ Breeders
- ✓ Inventory, seed lab, operation, etc
- ✓ Retailer/trader – inside or across country/region

Key Challenges ??

BEFORE WE START, THE DEFINITIONS USED:

IP INFRINGEMENT = THE NON – RESPECT OF IP RIGHTS HELD BY THE RIGHT HOLDER



- Can be :
- accidental
 - ignorance
 - to legally challenge existing IP rights

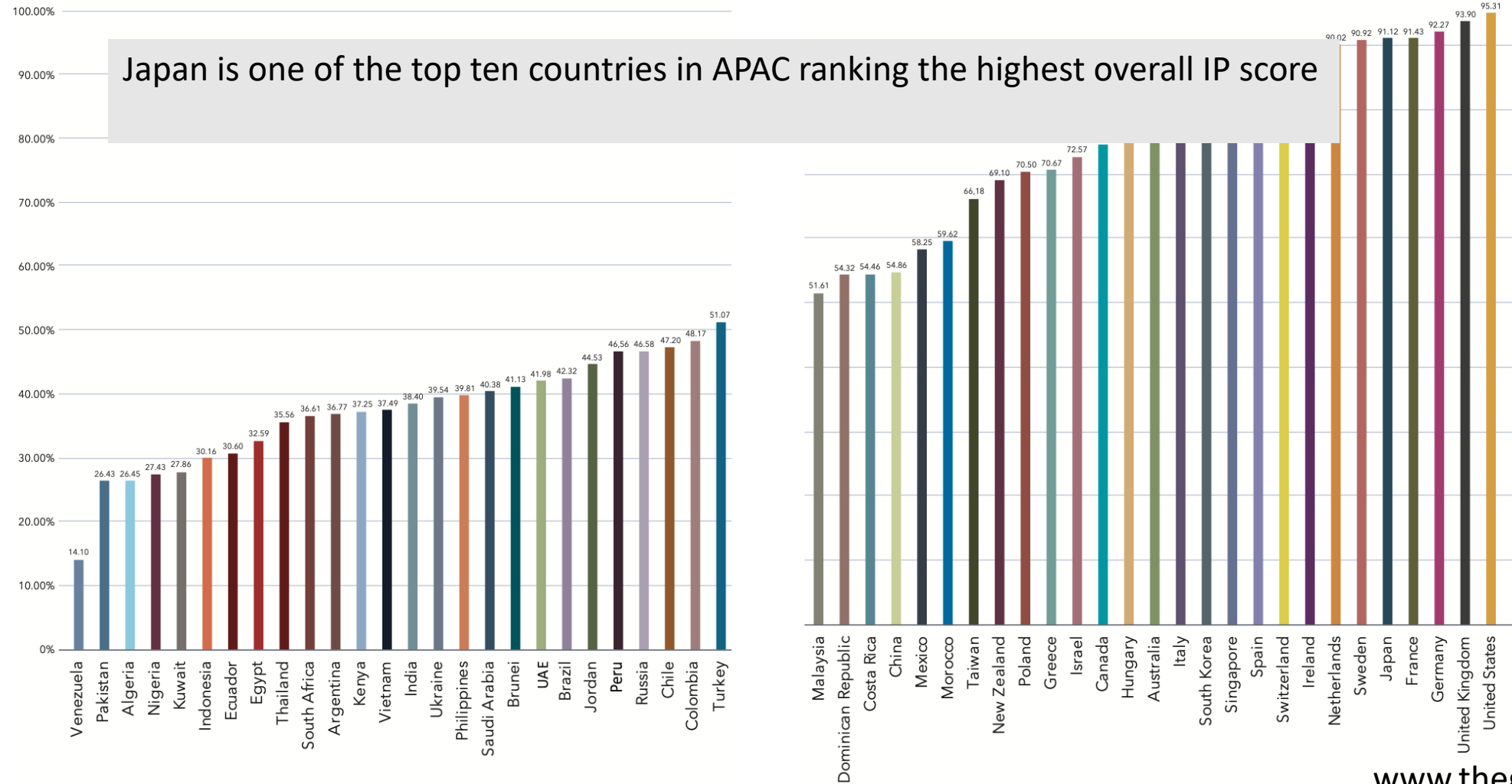
IP PIRACY = UNAUTHORIZED COPYING, DISTRIBUTION AND SELLING OF IP PROTECTED PRODUCTS

- for a significant period of time,
- intentionally committed
- to financial gain,
- on a commercial basis

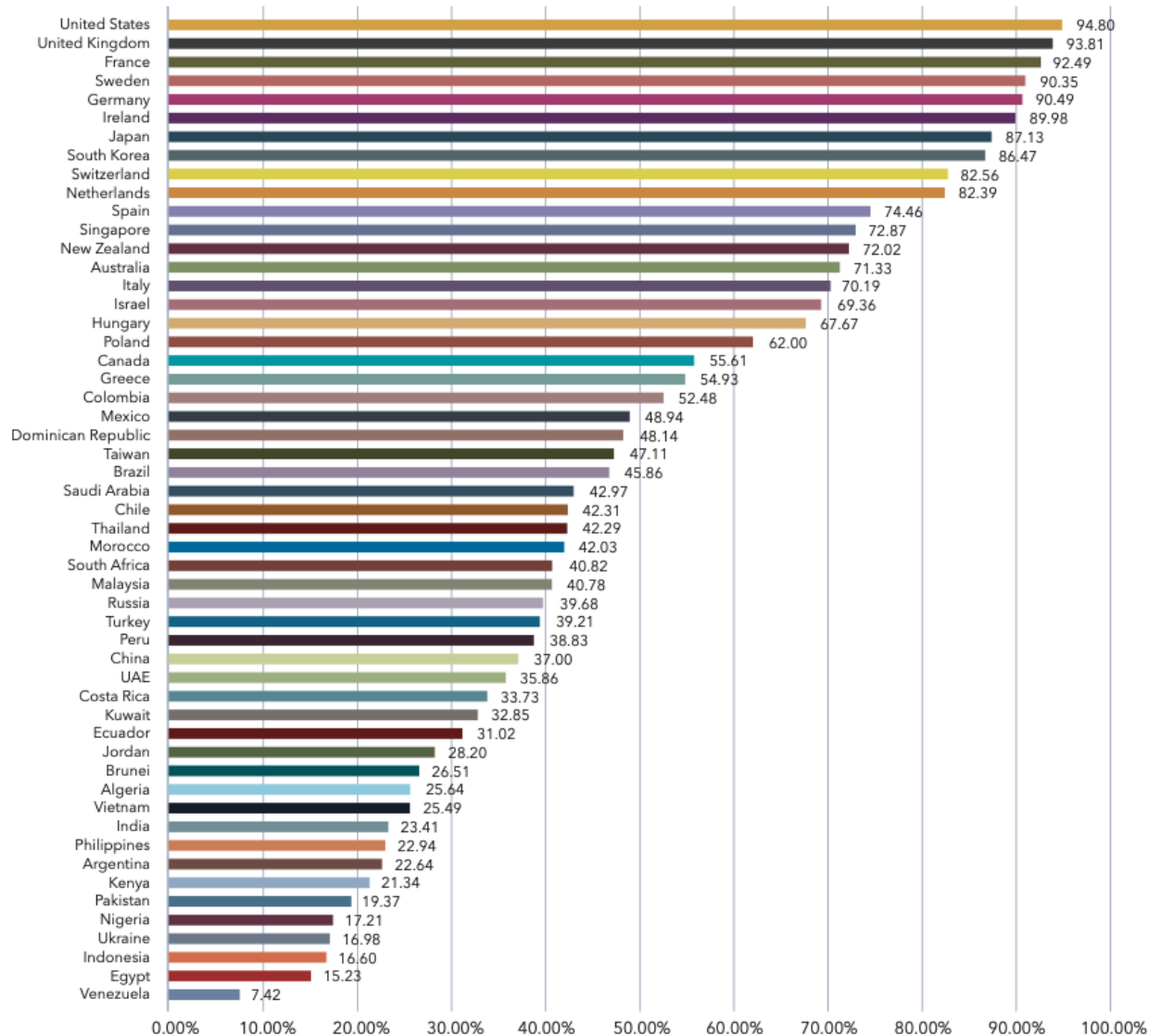
THE MAIN IP IN THE VEGETABLE SEED SECTOR CONCERN **PLANT VARIETY RIGHTS**
(PVR) AND TRADEMARKS

US. Chamber International IP index in 2021

2021 OVERALL SCORES



Enforcement score



ECONOMIES WITH EFFECTIVE IP SYSTEMS



Are **38% MORE LIKELY** to attract venture capital and private equity



Have **2X MORE** innovation output



Have **OVER 550 MORE** high-value inventions patented per million population



Almost **5X MORE** knowledge output in scientific and technical journals



Host over **10X MORE** clinical trials



2X THE ACCESS to new music through legitimate and secure platforms

Learning from the FAO report on status of seed legislation and policies in the APAC region



Food and Agriculture
Organization of the
United Nations

Status of
seed legislation and policies
in the Asia-Pacific region



“more-developed” seed sector	“less-developed” seed sector
• Japan	• Iran (no private sector resp.)
• Australia (no private sector resp.)	• Kazakhstan (no private sector resp.)
• New Zealand	• Kyrgyzstan (no private sector resp.)
○ Republic of Korea	• Myanmar
○ Thailand	• Nepal
○ India (no public sector resp.)	• Sri Lanka
○ China	○ Afghanistan (no private sector resp.)
• Bangladesh	○ Bhutan (no private sector resp.)
• Indonesia	○ Cambodia
• Pakistan	○ Lao PDR (no response)
• Philippines	○ Malaysia
• Vietnam	Total 23 countries

[Status of seed legislation and policies in the Asia-Pacific region \(apsaseed.org\)](http://apsaseed.org)

Learning from the FAO report on status of seed legislation and policies in the APAC region

1. There is a wide variation in seed sector laws and regulations in the Asia and Pacific region
2. There has been a clear shift in seed production from the public to the private sector – particularly for vegetables and hybrid field crops
3. Still, the informal sector remains the default source of seed for self-pollinating cereals, legumes and oilseeds
4. Variety testing systems established long ago for staple food crops are no longer appropriate (e.g. stringent DUS and VCU testing requirements for vegetables found in some countries.)

Learning from the FAO report on status of seed legislation and policies in the APAC region

Important key learning :

There is a need to regulate the seed industry to prevent malpractice, but overregulation may actually increase malpractice.

Laws and regulations should be framed in a way that encourages compliance.

[Status of seed legislation and policies in the Asia-Pacific region
\(apsaseed.org\)](http://apsaseed.org)

Study on PVP laws in APAC by APSA in 2019

- This study was implemented in consultation with the APSA Standing Committee on Intellectual Property Rights and Biodiversity and was carried out from August to October 2019.
- Questionnaires were sent to the office responsible for plant variety protection (PVPO) in 16 countries/territories to collect information on the current status of the law and its implementation. This was mostly to obtain factual information about their PVP system.
- A separate questionnaire was sent to the National Seed Association or other private sector representatives to seek their opinions on how well the PVP system is working in practice.
- Contact was also made with some multi-national companies in the region to learn their experience of using PVP in different countries.

https://www.apsaseed.org/storage/2020/09/PVP%20law%20in%20APAC-%20executive%20summary-31%20Aug_83030.pdf

Current usage of the PVP system

Number of rights granted in 2018 and % partition between domestic/foreign applicants

UPOV members		Non-UPOV members	
China	1990 (60 :40 approx)	India	477 (99 : 1)
Japan	758 (62 : 38)	Indonesia	449 (94 : 6)
Korea	574 (78 : 22)	Chinese Taipei	60 (85 : 15)
Australia	222 (43 : 57)	Malaysia	48 (37: 63)
New Zealand	76 (49 : 51)	Thailand	35 (100 : 0)
Vietnam	128 (73 : 27)	Philippines	17 (82 : 18)

Most PVP offices receive the majority of their applications from domestic breeders; exceptions are Australia, Malaysia and New Zealand.

Total rights granted for different crops (%)

	Cereals/grains	Vegetables	Ornamentals	Others*
Australia	17	3	54	26
China	82	6	6	6
India	78	4	-	18
Indonesia	34	45	2	19
Japan	6	7	78	9
Korea	14	20	55	11
Malaysia	10	5	59	26
New Zealand	10	5	25	60
Philippines	68	24	-	8
Chinese Taipei	2	8	80	10
Thailand	87	-	6	7
Vietnam	58	5	17	20

* Includes forages, roots and tubers, fruits and nuts, industrial crops, trees and fungi; the mix varies widely depending on the focus of breeding activities

Main reasons for seeking PVP*

	Assert ownership	Protect against theft	Collect royalties	
Australia	√	√	√	
China	√	√	√	
India	√	√		
Indonesia	√	√	√	
Japan		√		
Korea	√			
Malaysia	√	√		
New Zealand	√	√	√	
Philippines	√			
Chinese Taipei		√	√	
Thailand		√		
Vietnam	√	√	√	

* Reasons will also vary between crops, depending on the perceived risks and opportunities.

Ranking of top five protected crops/genera*

Australia	Prunus (all stone fruits), Potato, Rose, Wheat, Sugar cane
China	Rice, Maize, Wheat, Soybean, Cotton
India	Rice, Cotton, Maize, Wheat, Mustard
Indonesia	Rice, Maize, Yard-long bean, Cucumber, Sweet corn
Japan	Chrysanthemum, Rose, Carnation, Petunia, Hydrangea
Korea	Rose, Chrysanthemum, Rice, Pepper, Lily
Malaysia	Ornamentals, Forest trees, Rice, Fruits, Vegetables
New Zealand	Rose, Potato, Apple, Ryegrass, Tulip
Philippines	Maize, Rice, Eggplant, Bitter gourd, Papaya
Chinese Taipei	Phalanopsis, Poinsettia, Chrysanthemum, Oncidium, Rose
Thailand	Maize, Rice, Dendrobium, Sugar cane, Soybean
Vietnam	Rice, Maize, Chrysanthemum, Anthurium, Potato
* Total rights granted over multiple years	

Reasons for not obtaining protection

General comments from private sector were as follows:-

Protection is not sufficiently effective/lack of enforcement

Process is too slow/complicated

May cause delay in marketing

Concern about security of the testing system

Disputes and Enforcement

- Most countries have a special procedure for handling disputes about PVP.
- Most say disputes rarely/never go to the civil courts – it is too expensive and it may be difficult to explain the technical details
- It is almost always the breeder's responsibility to follow up on suspected infringements of rights but in some countries PVPO may assist e.g. India, Korea and Philippines

Key learnings from the survey

1. Although PVP laws exist widely across the region, implementation and the pattern of use varies depending on the needs and priorities of the domestic seed/plant breeding industry.
2. Domestic breeders provide the majority of applications – the system is not as international as one might expect
3. The organization and administration of the PVP system also varies depending on government policies for 'service provision'.
4. The main reasons for obtaining PVP are to assert ownership of the variety and reduce the risk of theft, not to obtain royalties on sales. (This may be different for ornamental crops)



Key learnings from the survey

9. The lack (or difficulty) of **enforcement** is a major concern and surely one of the reasons why PVP is not used as much as expected, especially in the vegetable seed community where there is a rapid turnover of varieties. Smaller companies may lack the resources to enforce their rights and prefer to concentrate on breeding intensively to keep ahead in the market.
10. Clearly PVP is not a routine activity for many companies, it is a matter of benefit and cost analysis.



Opportunities to improve PBR enforcement

- DNA marker profiles should be accepted by the PVP offices for opposition.
- Collaborate with all stakeholders in seed supply chain to educate on the value of PBR and IP protection practices.
- National PBR laws and regulations should be consistent with UPOV obligations and conditions.
- Promoting harmonization in testing procedures and sharing information between countries will make PVP more attractive to breeders. The UPOV 'PRISMA' system should facilitate this if it is widely adopted.
- Formation of PBR enforcement organization in the region (like SIPA and AIB)



Vegetable Seed Production Good Practice Guide

JANUARY 2017

PREPARED BY
APSA's Vegetables and Ornamentals Special Interest Group (SIG) and ISF Working Group Vegetable Seed Production

APSA PVP Toolbox program in collaboration with Naktuinbouw & UPOV E-learning Modules

Objectives:

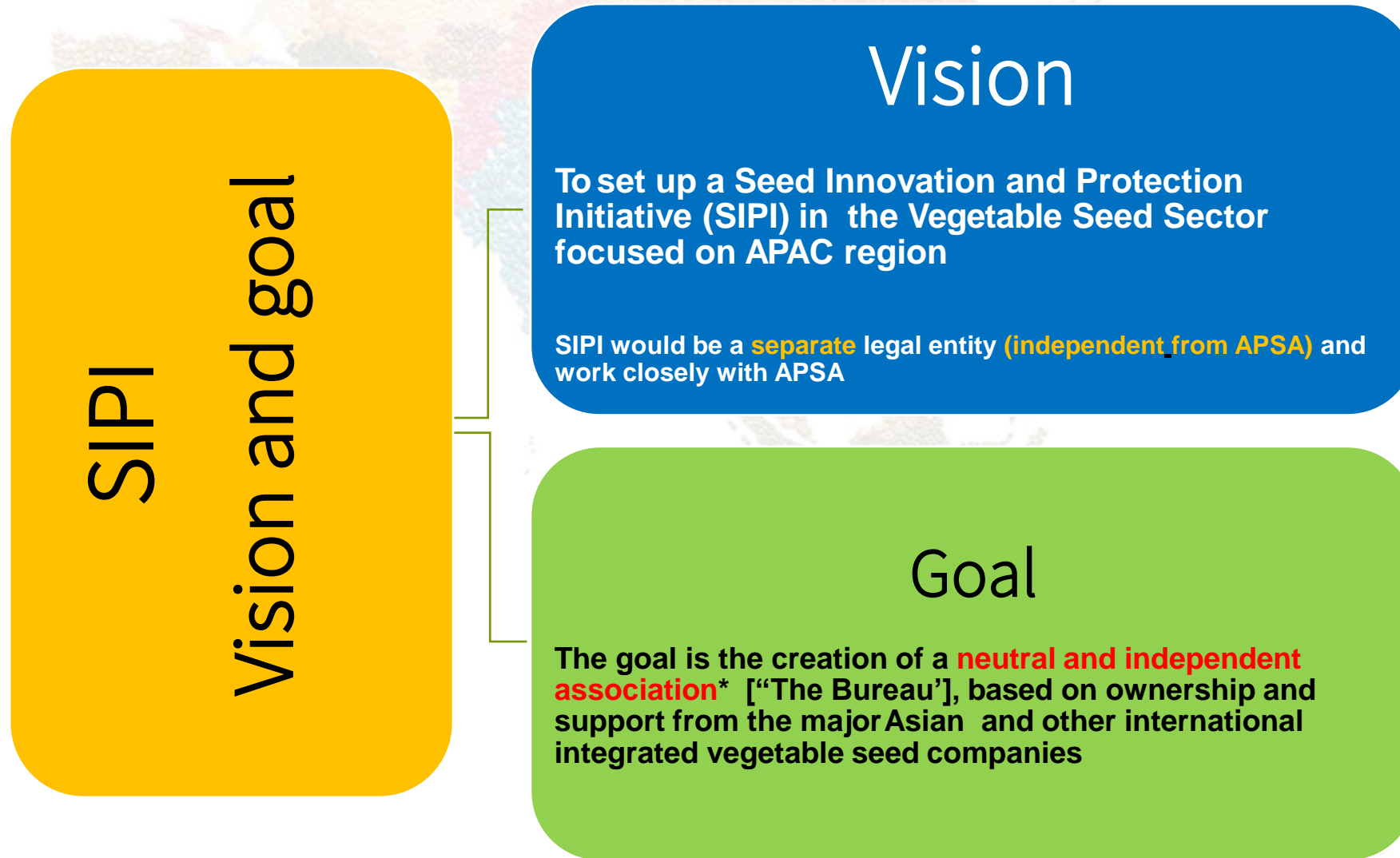
- To create the awareness on the plant variety protection, plant breeders' rights under UPOV1991 convention for key counterparts in the seed industry especially farmers.
- To build the capacity of national seed associations and their stakeholders on the importance of Plant Variety Protection and UPOV1991 convention through a tailor-made program specific for each target country.
- To create the awareness on the commercialization of new developed plant varieties for all departments (breeders, seed producers, sales, and regulatory affairs) related to PVP application and commercialization of the new developed variety.

Activities:

1. E-learning modules for 25 public and private sector's representatives from Philippines Seed Industry Association (PSIA) and Thai Seed Trade Association (ThaSTA)
2. Public Live session on October 8, 2021.

The screenshot displays the Naktuinbouw Academy dashboard. At the top, the logo 'naktuinbouw Academy' is visible alongside navigation links for 'My groups', 'Catalog', and 'Assignments'. The main section, titled 'Dashboard', features a heading 'APSA/PSIA/THASTA - PBR modules'. Below this, two e-learning module cards are shown: 'APSA/PSIA/THASTA Module 1. Legal framework, UPOV Convention' with a 100% completion bar, and 'APSA/PSIA/THASTA Module 2. DUS and Infringement' with an 88% completion bar. Each card includes a brief description of the module's content. Below the modules, a green banner reads 'E-learning Modules'. At the bottom, a grid of video feeds shows participants in a live session. One feed is labeled 'Interpreter 1_Kanok...'. A final green banner at the very bottom states 'Live session for PVP Toolbox program'.

Seed Innovation and Protection Initiative (SIPI): update and proposal



SEED PIRACY HARMS BOTH FARMERS AND INNOVATORS

SEED FROM AN ILLEGAL SOURCE

VS

SEED FROM A LEGAL SOURCE



By selling illegally reproduced seeds, you run the very real and immediate risk of violating PVP laws, but also putting at risk the profits of the farmer and the seed trade. Plant variety protection is a legal tool for innovators to protect their innovations and to stop seed piracy.

Together we can fight against seed piracy with our integrity!



APSA
THE ASIA & PACIFIC
SEED ASSOCIATION

APSASEED.ORG

References :

ISF-APSA Vegetable Seed Production Good Practice Guide

https://www.apsaseed.org/storage/2020/10/APSA%20ISF%20Vegetable%20Seed%20Production%20Best%20Practices%20Guidelines_88437.pdf

Euroseeds : IP Enforcement toolkit

[16.0003-SVO-IP-enforcement-toolkit-1.pdf \(euroseeds.eu\)](https://euroseeds.eu/16.0003-SVO-IP-enforcement-toolkit-1.pdf)

Explanatory note on the Enforcement of Breeders' rights under UPOV convention

[UPOV/INF/12/1 \(E\)](#)

PVR summary report by Baker McKenzie

[baker-mckenzie-plant-variety-rights-summary.pdf \(bakermckenzie.com\)](https://www.bakermckenzie.com/~/media/Files/2019/09/PVR_Summary_Report.pdf)

FAO report : Status of Seed Legislation and policies in the Asia – Pacific region

[Status of seed legislation and policies in the Asia-Pacific region \(apsaseed.org\)](https://www.apsaseed.org/storage/2020/10/FAO_Report_Status_of_Seed_Legislation_and_policies_in_the_Asia_Pacific_region.pdf)

Thank you

Standing Committee - Intellectual Property Rights
and Biodiversity (IPR & BIO)