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**Sent:** Friday, October 18, 2024 3:14 PM

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**Subject:** IP Law of Lao PDR

## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)

Dr. Yehan Cui, President of the Council  
Mr. Anthony Parker, Vice-President of the Council  
Ms Yolanda Huerta, Vice Secretary-General

34, chemin des Colombettes  
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Dear Ms. Huerta,  
Dear Dr. CUI, dear Mr. Parker

For the preparation of the next meeting of the Council on 25 October please find attached our short analysis of the IP of Lao PDR.

We would kindly like to ask you to share our comments with the Council members.

We are looking forward to meeting with you next week.

Best Regards,

Edgar Krieger



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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)  
The President of the Council  
The Vice-Secretary General

34, chemin des Colombettes  
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Switzerland

Hamburg, 18 October 2024

### **Short analysis of Lao PDR's IP Law**

CIOPORA is pleased to submit its short analysis of the most relevant provisions of Laos People's Democratic Republic's Law on Intellectual Property (IP) as shared with the UPOV Council for examination of the compliance with the 1991 Act of the UPOV Convention.

With the exception of the Farmers' Exception, the IP law is in line with the UPOV 1991 Act. However, the law would benefit from improvements, which would make the system more attractive for breeders, particularly breeders of vegetatively reproduced crops.

In detail:

- **Article 3 Definitions**

CIOPORA appreciates the sufficiently broad definition of "propagating material".

- **Article 10 New Plant Variety**

The meaning of Article 10 is unclear to us. Particularly Article 10 Nr. 1 should be clarified.

- **Article 68 Genera and Species Eligible for Protection:**

CIOPORA appreciates that all genera and species of plants are eligible for plant variety protection in Laos.

- **Article 70 Novelty**

The triggering point for the start of the grace period concerning novelty in plant varieties should be linked to the physical transfer of propagating material for commercial

purposes. This clarification would prevent confusion arising from differing interpretations of "sales".

The marketing of harvested material, incapable of producing a new plant true-to-type (e.g. most fruits), should not trigger the grace period as it doesn't allow for the variety's continued use.

Recognizing the globalization of markets and the extended timeframe for bringing a variety to market, the grace period for non-woody plants should be extended to six years and for woody plants to ten years.

CIOPORA appreciates the extension of the Novelty period for older varieties.

- **Article 74 Variety Denomination**

For the sake of transparency and clarity, we strongly advocate for the mandatory use of the variety denomination for all plant material, including both propagating material and harvested material. Article 74 (5) should include at least a provision that foresees that the variety denomination must be presented upon request by the breeder, the title-holder, buyer, or an authority. A good example of such provision can be found in Article 17.2 of the Community Plant Variety Right Regulation 2100/94.

- **Article 80 Substantive Examination of Application for New Plant Variety Registration**

CIOPORA appreciates that the law allows the take-over of DUS examination reports from other countries.

- **Article 82 Rights of the New Plant Variety Owner**

Article 82 of the Laotian IP Law is not entirely clear. The breeders right does not provide the title holder with the right to authorize others to perform the acts in Article 82 (1) 1.1 till 1.7, but to exclude others from these acts. It is, therefore, suggested to move the second sentence of article 82 (4) ("Subject to Articles 85 and 86 ...") to the very beginning of article 82 (1) to clarify the scope of the breeder's rights.

CIOPORA appreciates the protection of products made directly from harvested products.

The definition of EDV in Article 82 (4) (3) of the Laotian Law copies the UPOV text on EDV. However, it is clear from the developments in the last years that the text of the first and the third requirement of the EDV definition are contradictory and cause significant disputes about what is an EDV.

It is, therefore, strongly suggested to deleting the second half of the sentence in article 82 (4) (3) (1) "while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety". This half sentence has been deleted e.g. in the Community Plant Variety Right Regulation 2100/94, too, and in many other PBR laws of UPOV members.

- **Article 84 Provisional Protection**

Laos implemented the minimum protection outlined in Article 13 of the UPOV 1991 Act, granting the right to equitable remuneration for unauthorized use during the provisional period. This approach does not sufficiently incentivize breeders to innovate. Article 84 should offer stronger safeguards for breeders' interests in the period between the filing or publication of a PBR application and its grant.

Applicants should be able to enforce their rights throughout the period between application publication and the final decision on the PBR. Should the application be withdrawn, rejected, or refused, any rights asserted during this time would be deemed void, and any benefits received would need to be returned, unless otherwise stipulated in an agreement.

- **Article 85 Exceptions to the Breeders Rights**

With great concern CIOPORA notices the provisions in Article 85 (5) of the Law on Intellectual Property. The so-called Farmers' exemption has been admitted by UPOV under strictly limited conditions only for seed species grown by farmers and not in the horticultural sector (see the Recommendation relating to Article 15 (2) published in the Final Draft of the 1991 Act of the UPOV Convention and the UPOV document CAJ/50/3, No. 10, 11 and 13).

CIOPORA opposes against the unrestricted application of the so called "Farmers' Exemption" and asks the government of Lao People's Democratic Republic to not apply it to vegetatively reproduced ornamentals, fruits, or cannabis, limiting in the Law such application to agricultural species only. An unlimited application of the "Farmers' Exemption" would lead to a rejection of the PBR system by the breeders of ornamental and fruit varieties and would bring numerous legal conflicts to the borders of countries into which plants shall be imported from Lao People's Democratic Republic.

The strict application of Article 85 (5) could lead to a situation where a grower could buy a few plants of a cut rose or apple variety and could use them and propagate as many new plants as he wanted on his own holdings with a view to selling cut flowers or fruit. Thus, this provision is not only contrary to the before mentioned articles of the UPOV 1991 Convention and the TRIPS Agreement but – which is most important for the success of the Plant Breeders Rights law in Lao People's Democratic Republic - prevent breeders to bring new varieties to Lao People's Democratic Republic as they feel a lack of protection for their varieties.

- **Article 137 Inspection of Intellectual Property at Border checkpoints**

Plant Breeders Rights should be explicitly mentioned in Article 137.

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