23 Commentary on the regulation on production management of farm households’ plant varieties in Vietnam

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The need for a legal document about managing the informal seed system

Vietnam is an agricultural country with 70 percent of the population living by agriculture. The crop production sector plays an important role in agriculture remarkable contributions coming from the plant breeding sector. In years of subsidization with big government investment capital, an official seed system (involving companies, public research institutes, and universities) produced a large quantity of seed for farmers. However, this official system has its limitations. For example, it only provides farmers with 10–20 percent of the rice seed that they need annually. This shows the important role of the farmers’ informal variety system, which still supplies the vast majority of seed for production, even for rice, which is a very important commercial crop in Vietnam.

The same is true for most other plant varieties, with the exception of maize, and some vegetables and flowers, vegetable species and fruit trees: seeds provided by farmers (selling, exchanging or saving their own seed) still accounts for the largest proportion produced and used annually. This illustrates the important role of farmers in maintenance, preservation and selection of seed used for their process of agricultural production themselves.

There are many policies and guidelines in Vietnam that affect the informal seed system inadvertently, in its pursuit of policy goals not directly related to those seed systems. While the role of government agencies and state-owned companies researching, selecting, breeding or producing seeds is addressed throughout most of these regulations, until quite recently none of them directly addressed or provided support for farmers’ roles in these processes. The Ministry of Agriculture’s Decision, ‘Regulation on Production Management of Farm Households’ Plant Varieties, 2008’ was designed to address this situation, to encourage the effective development of the informal seed system.
In the early stages of consideration of such a legal instrument, it was considered that it should be developed with the following elements:

- It should be consistent with, and complement, existing laws in Vietnam.
- It should benefit farmers partly by contributing to raising their own awareness, and that of national researchers and agriculture extension workers, about farmers’ dynamic role in their informal seed systems, as a precursor to further developing their own capacities and the advantages to be gained by informal seed systems.
- It should cover all aspects influencing the development of the informal seed system, including such areas as economics, politics, society, culture, environment and traditional knowledge.
- It should regulate the informal seed system to improve the local residents’ quality of life.
- It should contribute to developing the local residents’ ability to conserve and stock local genetic resources.

In November 2006, the Department of Cultivation suggested issuing a decision at the ministerial level. By the end of 2007, the draft Decision on ‘Regulations on Managing Informal Seed Production’ was completed thanks to the cooperation of core agencies like the Vietnam Seed Association, Department of Cultivation, Department of Legislation of the Ministry of Agriculture and Rural Development, and many other authorities and unions.

The process of developing the law was relatively short but intense. In March 2007, the first draft was given to all members of the multistakeholder task force that was established to guide a five-year national research and capacity building project supported by the internationally organized Genetic Resources Policy Initiative (GRPI). The draft was also presented for feedback at the meeting of the National Seed Consulting Council and at the conference held by the Seed Association. Based on feedback received, a second draft entitled ‘Regulations on Encouraging the Development of the Informal Seed System’ was developed. This second draft included articles covering the following seven areas: (1) object and scope of regulation, (2) definition of the informal seed system, (3) purpose of encouraging the development of the system, (4) role of the system in saving, conserving and exploiting native genetic resources, (5) role of the system in researching, selecting and breeding new varieties, (6) improving the quality of varieties bred from informal seeds and (7) organizing and implementing the responsibilities of six agencies.

In November 2007, a conference with representatives of the seed program, seed associations and the production department was organized to discuss the title and scope of the draft and whether the word ‘policy’ would be used. Participants also looked at the purpose of producing seeds in the informal system and which phase should get policy support (production for own consumption, for exchange within the community or in cooperation with commercial enterprises). Among other things, they discussed the level of farmer participation in
research as well as the role of research agencies. In addition, they examined the issue of registration for seed protection: if specialty seeds belong to the community, how should support for the informal seed system be provided, what should be the source of finances and where should participants in the seed system be registered?

After the conference, a third draft was developed, which included nine articles that were more detailed in terms of management and division of responsibilities. This draft was circulated for comments and, after more discussion and work, a fifth draft was issued as the official Decision (No. 35/2008/QĐ-BNN) of the Ministry of Agriculture and Rural Development, entitled ‘Regulation on Production Management of Farm Households’ Plant Varieties’ (hereinafter, the ‘Decision’).

Summary of the Decision

The Decision consists of a total of 10 articles. (Because it is short, it is reproduced in its entirety at the end of this commentary.) The Decision’s objectives are to motivate farmer households to be involved in protecting, maintaining and making reasonable use of local genetic resources, making good choices and breeding newly-found varieties and to create favourable conditions for households production of high quality and low production price seed to meet the production demand.

The Decision is applied to farm households, cooperative teams and organizations that utilize, circulate and transact plant varieties on the market.

Very significantly, the Decision formally recognizes the important contributions that farm households can make to collecting, maintaining and conserving local plant genetic resources, to developing new plant varieties, and to seed purification and seed production. The Decision complements this recognition by formally opening up the possibility of various forms of government financial support to farmer households (and collectives) for such activities. This represents a very important step forward; in the absence of such a legal recognition of their role, and explicit recognition of their ability to receive support (and to make proposals for support in their own name), funds from the listed sources would not have been available to support the related activities.

The Decision also clarifies that farm households may apply for plant variety protection rights under the national plant variety protection law, and may register new varieties pursuant to the national plant ordinance, provided the varieties satisfy the conditions for protection that are set out in those acts. The Decision does not create alternative criteria for either plant variety protection of for variety registration, so to be recognized for plant variety protection rights, the household variety would need to satisfy the conditions of distinctness, uniformity and stability as established in the plant variety protection law. However, it does state that the associated costs of testing and registration should be lower or covered by the government.
The Decision clarifies that farmer households do not have to comply with seed production standards as set out in the national seed ordinance when the seed is for their own use, or for exchange among farmers within the local district administrative unit. However, if they are commercializing seed, they must also comply with the seed ordinance production conditions.

Very importantly, the Decision specifies various forms of support that must be provided from different government departments, research agencies and agricultural extension, including strengthening capacity of farming households in genetic resources identification, collection, maintenance and use; seed purification and developing new plant varieties; testing performance of farm household varieties; developing pilot demonstration models of farmer households’ seed production; and developing and submitting the expenditures for informal seed activities to the provincial people’s committee for approval.

MINISTRY OF AGRICULTURAL AND RURAL DEVELOPMENT

SOCIALIST REPUBLIC OF VIETNAM

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REGULATION

On production management of farm households’ plant varieties
(Issued together with Decision No. 35/2008/QĐ-BNN dated 15/02/2008 by Minister of Ministry of Agriculture and Rural Development)

Article 1. Application scope and objects

1 Application scope
This document defines management contents for activities including maintenance, conservation and exploitation of local genetic resources and plant varieties; new plant variety breeding; seed production and exchange in communities or on market circulation.

2 Application objects
This regulation applies to farm households, cooperative teams, cooperatives, and clubs (hereafter referred to farm households) involved in activities specified in Clause 1 of this Article.

Article 2. Farm households’ plant varieties
Farm households’ plant varieties are varieties developed and produced by farmers for use, exchange or circulation on market.
Article 3. Objectives of farm households’ plant variety management

1. Encourage farm households participating in effective maintenance, conservation and exploitation of local plant genetic resources and new plant variety development.

2. Create favorable conditions for farm households’ production of high quality and low production price seed to meet the production demand.

Article 4. Collection, conservation and exploitation of local plant genetic resources and varieties

1. Farm households allowed to participate in activities including collection, maintenance, conservation, exploitation and utilization of local plant genetic resources and varieties, as specified in regulation on plant varieties.

2. Implementation of activities specified in Clause 1 of this Article:
   a. Farm households develop proposals and investment projects submitted for People’s Committee of provinces and cities under the central government for approval and implementation;
   b. Farm households participate in projects of other organizations;
   d. Expenditure for collection, maintenance, conservation, exploitation and utilization of local plant genetic resources and varieties is supported by state budget approved by authorized agency, including:
      - Central state budget supports projects approved by ministerial and governmental levels.
      - Provincial budget supports projects approved by People’s Committee of provinces and cities under the central government.

Article 5. New plant variety development and seed purification

1. Farm households are allowed to apply scientific projects on new plant variety development and seed purification to Science and Technology Department of provinces and cities under the central government or to Science, Technology and Environment Department of Ministry of Agriculture and Rural Development (MARD) as specified in Decision No. 36/2006/QĐ-BNN dated 15/5/2006 issued together with Regulation on management of scientific and technological projects by Minister of MARD.
Plant varieties developed by farm households can directly or authorize other local or central organizations to conduct varietal testing/evaluation, trial production and recognition as specified in Decision No. 95/2007/QĐ-BNN dated 27/11/2007 by Minister of MARD on recognition of new agricultural plant varieties.

Article 6. New plant variety protection

Farm households who are breeders of new plant varieties shall register for new plant variety protection as specified in Intellectual Property Law and Government Decree No. 104/2006/NĐ-CP dated 22/9/2006 on concrete regulation and guidelines to enforce some articles of Intellectual Property Rights on Plant variety rights.

Article 7. Budget sources supporting farm household breeding activities

1 Farm households producing seed in concentrated seed production areas under provincial seed programs in the period 2006 to 2010 shall be supported by provincial budgets for infrastructure and equipment to serve seed production and processing as specified in Decision No. 17/2006/QĐ-TTg dated 20/1/2006 by Prime Minister on continuation of Decision No. 225/1999/QĐ-TTg dated 10/12/1999 on programs of crop varieties, animal breeds and forest varieties to 2010 and Ministerial Circulation No. 15/2007/TTLT-BTC-BNN&PTNT dated 8/3/2007 by Ministry of Finance and MARD on guidelines of governmental budget use and management for programs of crop varieties, animal breeds and forest varieties.

2 Budget for testing, trial production, new plant variety recognition, mother stock and stock nursery evaluation and selection, and registration of new plant varieties developed by farm households shall be supported by governmental budget. Concrete financial support shall be approved by the Chairman of People’s Committee of provinces and cities under the central government based on Provincial Agriculture and Rural Development Department’s proposals.

Article 8. Production, exchange and circulation of farm households’ seed

1 Farm households producing seed for households’ use or exchange in district administrative unit shall not be obligatory to provide all production conditions as specified in Clause 1 of Article 36 of Ordinance on Plant varieties. If planting materials of industrial crops
and perennial fruit trees using vegetative propagation should use mother stocks or stock nursery.

2 Farm households producing seed for commercialization purposes:
   a Seed in the list of main crops shall need to provide all conditions as specified in Clause 1 of Article 36 of the Ordinance on Plant varieties.
   b Industrial crops and perennial fruit trees shall need to provide all conditions as specified in Clause 1 of Article 38 of the Ordinance on Plant varieties.
   c Shall execute regulation on quality announcement, testing and certification and labeling.

Article 9. Implementation

1 Crop Production Department
   - Lead organization for activity management and instruction of farm households’ plant varieties nation-wide.
   - Organizing Science and Technology Board for evaluating testing results, proposing recognition and release to production of new plant varieties developed by farm households.
   - Supervising mother stock and stock nursery evaluation and selection, recognition and management of fruit trees and perennially industrial crops nation-wide.
   - Supervising National Testing Centre of plant varieties, plant-derived products and fertilizers and Office for protection of new plant varieties to guide and help locals and farm households in implementing testing and trial production activities, recognition and registration for plant variety protection.

2 Science, Technology and Environment Department
   - Guiding locals to help farm households applying, developing and implementing projects on plant genetic resource collection, conservation and utilization, purifying seed, and developing new plant varieties submitted to authorized bodies for approval.
   - Cooperating with Crop Department in control and evaluating testing results of farm household new developed plant varieties.

3 Research institutes under MARD
   - Consulting farm households about plant genetic resource and variety conservation, maintenance and exploitation, seed purification, and new plant variety development research.

4 National Centre of Agricultural and Fishery Extension
   - Supervising the agricultural extension network to support farm households with technical training in farm household breeding activities and in setting up pilot demonstration model of farm household purified and newly developed plant varieties.
5 Agriculture and Rural Development Departments of provinces and cities under the central government
- Directly managing and guiding farm household breeding activities in the locality.
- Developing and submitting Provincial People’s Committee for budget approval of farm household breeding activities as specified in Article 7 of this Decision.
- Supervising local agricultural extension for training and developing pilot demonstration model of farm households’ seed production.

Article 10. Implementation provisions

1 Organizations and individuals involved in activities of local plant genetic resource and variety conservation, maintenance, and exploitation, of new plant variety development, seed production and circulation in community or markets shall be administratively sanctioned or criminally executed according to violating degree.

2 If in the course of implementation, any problems or new matters arise, organizations and individuals involved in farm household breeding activities should report to MARD by written document for prompt solution.

Notes

1 Regulation on Production Management of Farm Households’ Plant Varieties, Decision No. 35/2008/QĐ-BNN dated 15/2/2008.
2 Ibid.