AFSA

ALLIANCE FOR FOOD SOVEREIGNTY IN AFRICA

Decoding UPOV1991:

A Clear Explanation for Farmers and Communities

Résumé : Plant Variety Protection (PVP) systems are currently being implemented worldwide. However, it remains a challenge for one of the sectors most affected by these legislations, the farmer communities, to understand what it's about and how it affects them. The negotiations to implement seed legislations have not prioritized the participation of farmers in decision-making or provided accessible information in many states. That's why this guide aims to explain the most important features of UPOV, the preferred PVP regulatory framework in many places.

The goal of this guide is to raise Farmers' and Policy makers' awareness about the implications of UPOV 1991 and provide to farmer communities and Civil Society Organizations with tools to decide the future of their seed systems.

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1. Rationale for PVP

The International Union for the Protection of New Varieties of Plants Revision of 1991 (UPOV1991) is a type of **Plant Variety Protection (PVP)**. PVPs emerged in the 20th century as a method to encourage innovation and research in the field of agriculture, allowing breeders the exclusive right to use their registered material to ensure they can recover their investment after the development and research of plants, seeds, and propagation material. Unlike patents, PVPs offer more flexibility related to their significant public interest. As a result, some PVP formulations allow the use of these registered materials for non-commercial purposes, public research, or for the purpose of improving the material.

After the entry into force for all member countries of the World Trade Organization's **TRIPS Agreement in 1994**, it became **mandatory for all member states to have a PVP** system, at the free choice of each state. **In the case of less developed countries (LDCs), an extended transition period (until 2034)** has been granted for implementation of the PVP of choice, recognizing their special requirements, economic, financial, and administrative constraints. Some countries like Thailand or India have chosen to create their own PVP laws, without adhering to UPOV, that recognize the rights of farmers. These laws also comply with the requirements of the TRIPS Agreement.

2. What is UPOV1991?

The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization headquartered in Geneva, Switzerland, whose **objective is to provide and promote a specific PVP system, known as UPOV 1991**. The **UPOV Convention was conceived and designed by European states**, considering the agricultural interests of industrialized food systems in their region. Two organizations stand out in the design of the Convention: The International Association for the Protection of Intellectual Property (AIPPI) and the International Association of Plant Breeders (ASSINEL), both being **European breeder associations**. As for governmental actors, only European governments were involved in the drafting of the convention. The UPOV Convention was born out of negotiations between these actors. This is why many critics argue that it is legislation made by and for European powers, but it does not address the needs of other regions, where, for example, traditional agriculture predominates instead of industrial agriculture.

3. Key provisions of UPOV91

In this section, we will address the most relevant articles of UPOV 1991 concerning the topics of greatest interest to farmer's communities.

[1] *All countries in Africa are WTO members except Algeria, Libya, Sudan, Southern Sudan, Ethiopia and Somalia.*

[2] *This pressure being through training programs, conditionality to join other trade agreements with European powers or policy influence jointly with multimillionaire organizations such as AGRA.*

3.1 Farmer's Rights vs Breeder's Rights

The agriculture in the African continent is mostly traditional or family farming, where over 90% of seeds are accessed through farmer's own systems, including farmers' stocks, social networks, and local markets. These practices also hold significant cultural, practical, social, and even spiritual value for many communities. That's why the rights of farmers to freely save, replant, and share seeds are especially important in Africa. However, the UPOV 1991 system contradicts these rights by dealing with breeder's rights (individual), not farmer's rights (collective/communal). The breeder's rights grant a minimum of 20-year exclusivity. Specifically, in Article 14 of the Convention, the following is specified:

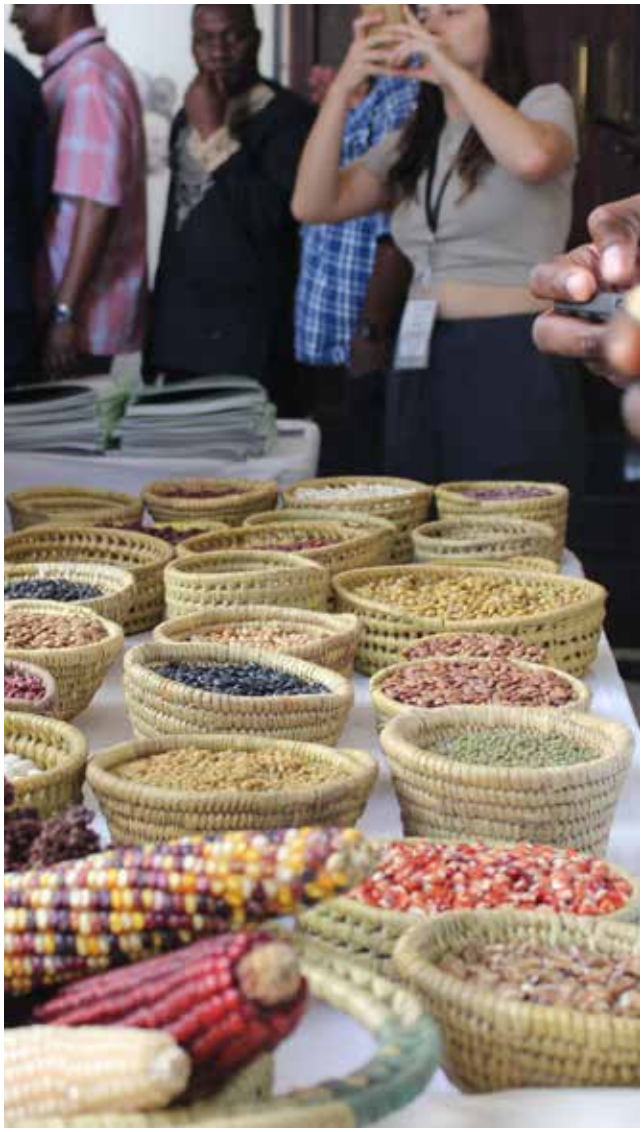
''The following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

(i) production or reproduction (multiplication),
(ii) conditioning for the purpose of propagation,
(iii) offering for sale,
(iv) selling or other marketing,
(v) exporting,
(vi) importing,
(vii) stocking for any of the purposes mentioned in (i) to (vi), above.''

These rights are also protected by Article 18, which specifies the following: «The breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory.» In this way, a member state of the Convention cannot modify this exclusivity.

The farmer's exception, a tool designed to balance the rights of farmers with those of the breeders, is explained in Article 15. States that wish to do so can make use of this exception, but it only allows for the permission to use protected varieties for storing or solely for propagation on their own holdings and for consumption by themselves and their direct dependents. **Trading, exchanging, sharing, and gifting seeds of protected plant varieties is still prohibited**.

It's also worth noting that the economic capacity of farmer's communities often differs from that of industrial breeders. However, **the fees for registering and maintaining a variety under the protection of the Convention are very high**. For example, in the OAPI region, a member of UPOV1991, the application fee for registering a variety is around 900 dollars, in addition to an annual fee of about 400 dollars to maintain the certificate.



3.2 DUS criteria

For a seed variety to be commercialized it should be registered in a catalogue created by the designated authority of each member state, following the UPOV guidelines. Registration goes with the ''DUS criteria'' **(Distinctness, Uniformity, and Stability)**. This means that the variety must be distinct, uniform, and stable, while also meeting the novelty criterion. The **testing** of this characteristics requires a previous payment of the correspondent fee, which in the OAPI region is currently around **900$**. UPOV 1991 considers a variety new if it hasn't been marketed/sold before, even if it already existed. It must be distinct in one or more characteristics that are commonly known.

[3] *This information can be found at: http://www.oapi.int/index.php/en/ressources/reglements*

It should be reasonably uniform in its relevant characteristics. Lastly, it must remain true to its description after several rounds of reproduction and propagation. However, traditional seeds used by farmers for centuries are known for their adaptability and ability to change, rather than their stability and uniformity. Therefore, **this protection criterion does privilege commercially bred plant varieties developed by large corporations**. All of this is reflected in Articles 5 to 9 of the convention.

In addition to the difficulties this criterion presents for registering traditional varieties of local farmers, it does not specify any measures that require disclosing the origin of the registered variety. In other words, **there is a risk of the so-called 'biopiracy'** in which large corporations register traditional varieties, making minimal modifications to meet the criteria, and preventing farming communities from using such varieties without payment. A significant case revolves around the Hoodia cactus in the Kalahari Desert, traditionally used by the San people to reduce hunger and thirst. The Council for Scientific and Industrial Research in South Africa discovered the appetite-suppressing molecule in the cactus and sold the rights to develop an anti-obesity drug to Pfizer. However, there were failures to meet basic requirements regarding information and material transfer and associated benefit-sharing arrangements with the local farmers.

3.3 Agrochemical dependency

The UPOV91 system promotes industrial agriculture and the use of seeds that meet the DUS criteria for protection under the convention. This results in i**ncreased use of uniform and high-yielding seeds**, which may be more susceptible to the damage caused by heat, drought, salinity and pests. Consequently, t**heir cultivation requires the use of synthetic fertilizers and chemical pesticides to ensure successful harvests**. Many activists have pointed out that this situation doesn't appear coincidental, as the three largest Agribusiness Multinational Corporations that sell these seeds (Corteva, Bayer, and Syngenta) also market agricultural chemicals.

Many experts have warned of the danger this poses to soil health, which is crucial for long-term land use and maintaining its fertility. Additionally, the waters in the areas where these practices are conducted also become contaminated with these harmful substances that are dangerous for the environment and living organisms.

3.4 Biodiversity loss

Biodiversity protection has become a priority on the international agenda. It is a crucial factor in ensuring the proper nutrition of the entire world; however, **the Food and Agriculture Organization of the United Nations estimates that 75 percent of crop diversity was lost between 1900 and 2000**.

This is largely due **to the replacement of many traditional or indigenous varieties with a few high-yielding ones**. This endangers the resilience of our food systems since biodiversity is our best defense against climate change. Traditional seeds contain valuable genetic information that has been obtained through the selection of the best traits over hundreds of years.