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New Study shows why Flexibility is Key to Country-tailored Plant Variety Protection systems

The new APBRES study “Searching for flexibility - Why parties to the 1978 Act of the UPOV Convention have not acceded to the 1991 Act” explores the debates around plant variety protection (PVP) in nine countries that are parties to UPOV 78.

The study reveals the quest of countries for flexibility in their regulation of PVP – flexibility severely restricted under UPOV 1991. The Author demonstrates that by far the most contentious aspect of UPOV 1991 has been its implications for farmers’ rights and peasant seed systems. Countries that have not acceded to the 1991 Act were trying to avoid exacerbating existing conflicts with other domestic and international legal norms, the study found. This highlights the importance of retaining the flexibility to adapt PVP laws to national needs and circumstances and therefore to refrain from acceding to UPOV 91.

In recent decades, the enactment of stronger intellectual property (IP) rights legislation for plant varieties has proven highly contentious in many countries. The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization that actively promotes IP rights on plant varieties, known as plant variety protection (PVP) or plant breeders’ rights (PBRs). Two versions of the UPOV Convention coexist today, the 1978 Act and the 1991 Act. While there is no legal obligation to do so, countries that are party to the 1978 Act have been under pressure from the plant breeding industry and some governments – notably the US and the EU – to adhere to the 1991 Act, which emphasizes the rights of plant breeders over those of farmers. However, several countries have so far refrained from doing so.

Understanding the reasons for this resistance is especially relevant for countries which are not yet members of UPOV. Since 1999, countries joining UPOV can only accede under the 1991 Act. Alternatively, they can remain outside UPOV and develop legislation suited to their needs and circumstances. Countries that are not members of UPOV are mostly from the Global South –Africa, the Middle East, Central Asia, South Asia, and Southeast Asia. In these countries, a majority of people live in rural areas and peasant seed systems play a vital role in food production and agrobiodiversity conservation. It is therefore all the more important that they adopt PVP laws that support peasant seed systems, rather than PBRs laws tailored to the interests of the commercial plant breeding industry.

The study “Searching for flexibility - Why parties to the 1978 Act of the UPOV Convention have not acceded to the 1991 Act”, was authored by Karine Peschard, Research Associate at the Albert

Hirschman Centre on Democracy, Graduate Institute of International and Development Studies,
Geneva.

The study is available in [English](#), [Spanish](#) and [Portuguese](#).

The study will be presented and discussed at a **webinar** on November 3, 2021, at 3pm (CET). Please use [this link](#) to register for the webinar.

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