

UPOV 1991 – NOT FIT FOR THE FUTURE

By François Meienberg



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François Meienberg is a Co-founder and, since 2018, Coordinator of the Association for Plant Breeding for the Benefit of Society. APBREBES was founded in 2009 by seven civil society organizations from developing and industrialized countries. The purpose of APBREBES is to promote plant breeding for the benefit of society, fully implementing farmers' rights to plant genetic resources and promoting biodiversity.

30 years after entering into force, the UPOV Act of 1991 stands as an erratic block that refuses to adjust to become a system that can be adapted to the needs and realities of individual countries and serve the common good. This is especially a problem because the implementation of UPOV'91 also has a negative impact on the farmer seed system. One tries to promote one innovation system and at the same time restricts the other. Rather than a plant variety system that represents the particular interests of one single sector (the seed industry), the world needs a system that promotes (or at least not restricts) all seed systems to master the great challenges of humanity, such as climate change and food security.

By the time 19 industrialized countries and South Africa finished negotiating the UPOV Act in 1991, it was clear that this could be neither a global nor a future-oriented work. For this, the participation at the negotiating table was far too unbalanced. Not only the countries of the South but also the representatives of the farmers (at least as observers) were grossly underrepresented. This was in stark contrast to the seed industry, which has been able to represent its interests optimally since the founding of UPOV. What followed was not a success story. Ten years later, only 17 states had ratified the 1991 Act and even today the list of Member States/organizations with 76 members is still small compared to UN agreements. Especially, considering that some new members were really beaten into UPOV with free trade agreements. Why this poor acceptance?

There is hardly any other international agreement that so inflexibly forces new members to transpose the Act almost to the letter into national law. Despite the obvious differences between agricultural and seed systems in the USA or the Netherlands and the ones in Ethiopia and Bhutan, the UPOV system promotes a one-size-fits-all solution. Yet, it is not surprising that a Plant Variety Protection law that a few industrialized countries have tailored to the needs of their industry is inappropriate for many other countries. Among other things, because in many countries of the South it is mainly the farmer-managed seed system that provides farmers with seed – and not the formal seed system. But for the farmer-managed seed system, its value and contribution to food security and agrobiodiversity, the UPOV system is blind in both eyes.

In contrast, other international fora have recognized the signs of the times. The 148 member countries of the International Treaty (ITPGRFA) recognise the enormous contribution that the local and indigenous communities and farmers of all regions of the world have made and will continue to make for the conservation and development of plant genetic resources, which constitute the basis of food and agriculture production throughout the world. In order to further enable this contribution, the Farmers' Rights were anchored in the Treaty, which was further strengthened at the international level with the Declaration on the Rights of Peasants (UNDROP) – especially, their right to seed. The Convention on Biological Diversity also recognizes the importance of traditional knowledge and the need for fair benefit-sharing. And the FAO Voluntary Guide for National Seed Policy Formulation clearly recognizes that both systems, the peasant and the formal, are needed to master the future. UPOV has a lot to learn from these international fora. The 30th Anniversary of the 1991 Act of UPOV could be a good starting point for increased flexibility and long-needed reforms of a system that was never made for the benefit of society.