

PVP in the South: caving in to UPOV

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Country*	National PVP adopted	Member of UPOV	In process of joining UPOV	Consulting UPOV**	Under special pressure to join UPOV***
Afghanistan					
Algeria					
Angola					
Antigua					
Argentina					
Bahamas					
Bahrain					
Bangladesh					
Barbados					
Belize					
Benin					
Bolivia					
Botswana					
Brazil					
Brunei					
Burk. Faso					
Burma					
Burundi					
Cambodia					
Cameroon					
Cent Af Rep					
Chad					
Chile					
China					
Colombia					
Congo					
Costa Rica					
C. d'Ivoire					
Cuba					
Djibouti					
Dominica					
Dom Rep					
Ecuador					
Egypt					
El Salvador					
Eq. Guinea					
Ethiopia					
Fiji					
Gabon					
Ghana					
Grenada					
Guatemala					
Guinea					
Guinea-Biss					
Guyana					
Honduras					
Hong Kong					
India					
Indonesia					
Iran					
Iraq					
Jamaica					
Jordan					
Kenya					
Korea, N					
Korea, S					
Kuwait					
Laos					
Lebanon					
Lesotho					
Liberia					
Libya					
Madagascar					
Malawi					
Malaysia					

Country*	National PVP adopted	Member of UPOV	In process of joining UPOV	Consulting UPOV**	Under special pressure to join UPOV***
Mali					
Mauritania					
Mauritius					
Mexico					
Mongolia					
Morocco					
Namibia					
Nepal					
Nicaragua					
Niger					
Nigeria					
Oman					
Pakistan					
Panama					
Papua N G					
Paraguay					
Peru					
Philippines					
Qatar					
Rwanda					
S Tomé & P					
S. Arabia					
Senegal					
Seychelles					
S. Leone					
Singapore					
South Africa					
Sri Lanka					
St K, N, A					
St Lucia					
St V & G					
Sudan					
Suriname					
Syria					
Taiwan					
Tanzania					
Thailand					
Togo					
Tonga					
Trin & Tob					
Tunisia					
UAE					
Uganda					
Uruguay					
Venezuela					
Viet Nam					
Yemen					
Zambia					
Zimbabwe					

* Not all countries listed are members of WTO.

** According to UPOV, the government has "been in contact with the Office of the Union with a view to developing legislation in line with the UPOV Convention"

*** Through a bilateral treaty, usually a trade agreement with US or EU, WTO accession negotiations or other

PVP in the South: the statistics

	PVP in place	Member UPOV
Africa & Middle East	9	4
Asia & Pacific	10	2
Latin America & Caribbean	16	12
Total	35	18

The WTO TRIPS Agreement obliges all members to provide intellectual property protection for plant varieties at the national level, either through patents or “an effective *sui generis* system” or both (Art. 27.3b). Few countries have laws that explicitly provide for patents on plant varieties, while others permit it in practice. As patents block anyone but the patent-holder from not only making and selling but using an invention, the patenting of plant varieties would severely affect plant breeding and agriculture at large.

TRIPS does not define “effective *sui generis* system” – the other option – for protection of plant varieties. Industrialised countries had the UPOV system in mind when TRIPS was drafted, but UPOV is not mentioned in the Agreement. This means that the jury is out on what is to be considered an “effective” system under TRIPS. The UPOV Convention is an international agreement which sets rules for patent-like monopoly rights over crop varieties. It is highly biased toward industrial farming conditions and two-thirds of UPOV’s members are countries of the North.

Developing country members of WTO – there are 70 – were supposed to have implemented Art. 27.3(b) of TRIPS by January 2000. Least-developed country members – there are 31 – have until January 2006. And while a mandated review of the provisions of TRIPS Art. 27.3(b) is under way since 1999, it has not yet resulted in any concrete actions to change the Agreement, despite numerous proposals from the South on how to ‘improve’ it. These have ranged from prohibiting all patents on life, to incorporating recognition of traditional knowledge, to obliging patent applicants to disclose the origin of biological materials used in their inventions.

The table shows at least two things.

- **Despite the threat of trade sanctions from unmet deadlines, less than half (47%) of the developing country members of WTO have implemented TRIPS Art. 27.3(b) at face value** by enacting some form of plant variety protection law. This excludes the least-developed countries, none of which have enacted such laws. Considered together, less than a third of the WTO members from the South (32%) have PVP legislation in place.
- Despite the flexibility sometimes associated with the *sui generis* option in TRIPS Art. 27.3(b), **UPOV-type PVP is aggressively becoming a blanket reality in the South.**

Half of the developing countries which have adopted PVP laws – and the vast majority only did so in the last few years, because of TRIPS – have also joined UPOV. An additional 26 are currently in the process of joining. And yet another 30 are allegedly seeking UPOV’s advice on the conformity of their draft PVP bills with the UPOV provisions.

What does all this mean? Country after country, the *sui generis* option in TRIPS is being reduced to UPOV-type legislation. The main reason for this is direct pressure from industrialised countries to *harmonise* intellectual property laws worldwide – not only through global treaties, but also through regional and bilateral trade and investment agreements. This carries serious implications for sustainable agriculture and farmers’ rights. Because accepting UPOV is the first step toward accepting full-fledged patents on life.