



**AFRICAN CENTRE  
FOR BIODIVERSITY**

# **Plant Variety Protection laws and key concerns for seed smallholder farmers and agricultural biodiversity**

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# Outline

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Introduction to Intellectual Property Rights (IPRs)

Part 02



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International Union for the Protection of New Varieties of Plants (UPOV) and key concerns

Part 04



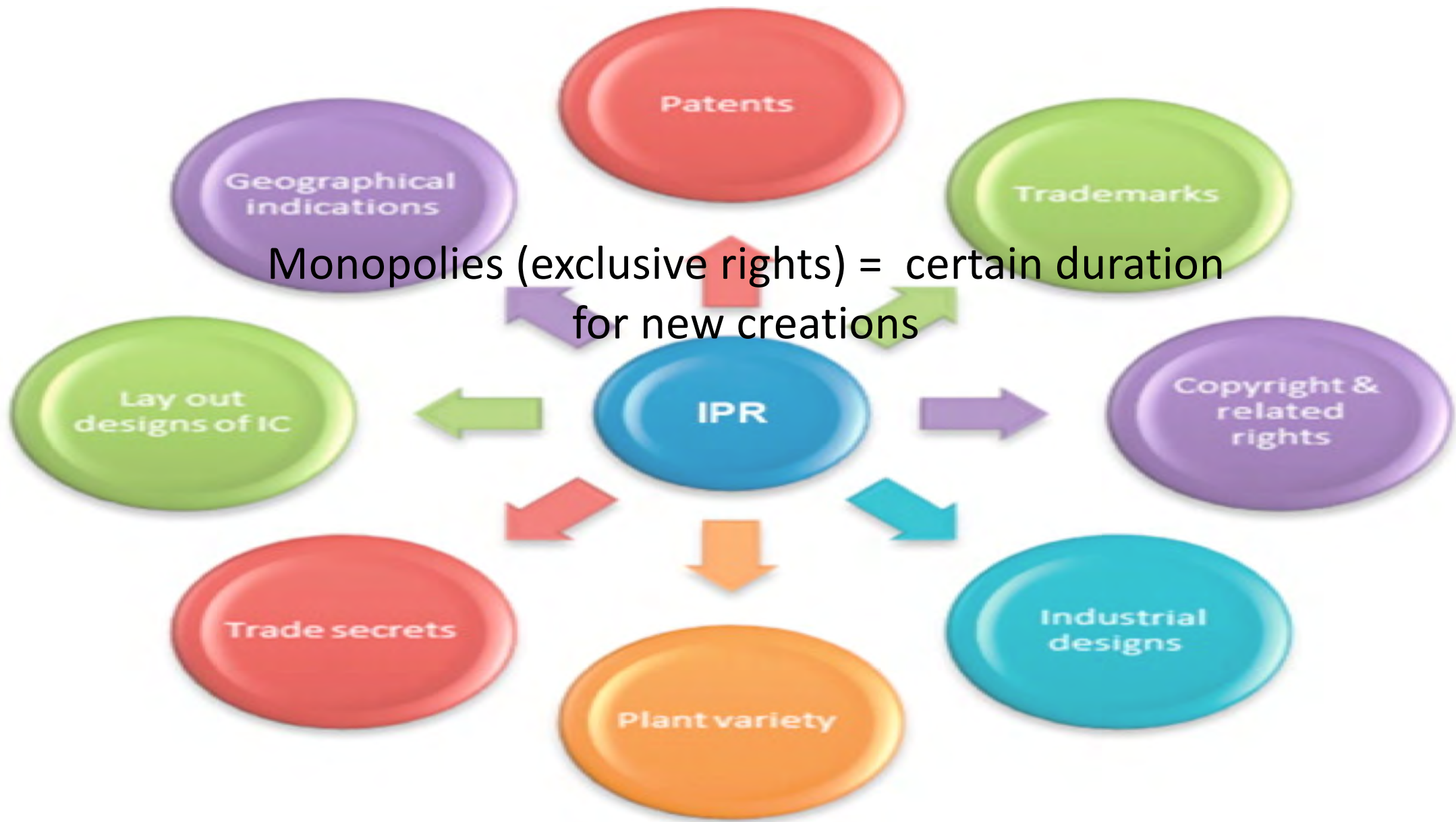
The current situation



# Introduction to Intellectual Property Rights




Monopolies (exclusive rights) = certain duration  
for new creations





Now in the context of plant genetic resources – seed – more specifically plant breeding, there are certain rights that are granted such as patents, plant variety protection and trade secrets.



# Plant Variety Protection vs Patents

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## **Plant Variety Protection (PVP)**

- also known as Plant breeders rights (PBR): form of intellectual property protection for plant varieties. Gives a breeder who has discovered and developed a new plant variety the right to own that variety

## **Patents**

- cover a wide range of subject matter, subject to certain exclusions (e.g. , plants, plant varieties, animals) which vary from country to country.

Both PVP and patent rights provide exclusive commercial rights to holder; are granted for a limited period of time after which they pass into public domain.







## Origin of Plant Variety Protection



## **World Trade Organisation (WTO) = Trade Related Aspects of Intellectual Property Rights Agreement**

- TRIPS – 1<sup>st</sup> Multilateral Agreement; minimum standards on IP (patents, trademarks, industrial designs, PVP e.t.c)

WTO members under obligation to harmonise these standards except

- for LDCs who have exemption – initial deadline set for 1<sup>st</sup> July 2021 and now extended for 13 years until 1<sup>st</sup> July 2034



**Article 27.3 (b) of TRIPS Agreement:** “Members may also exclude from patentability : plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof ”.





## Worthy to note!!

- ✓ Most WTO members often opt for a *sui generis* regime for plant variety protection vs patent system
- ✓ Governments have full freedom to design plant variety protection systems that suit their individual needs, conditions and agricultural priorities.
- ✓ No mention of adoption of UPOV PVP system – currently being pushed onto African countries



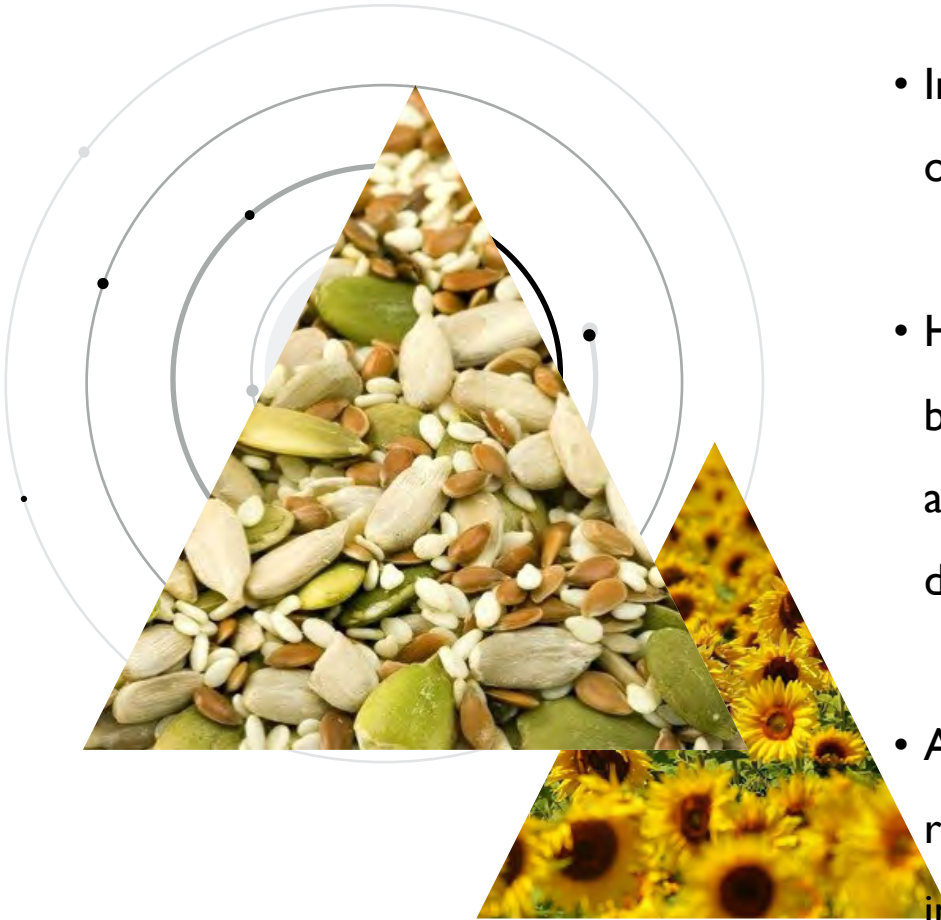


# International Union for the Protection of New Varieties of Plants (UPOV) key features and concerns



# What is UPOV?

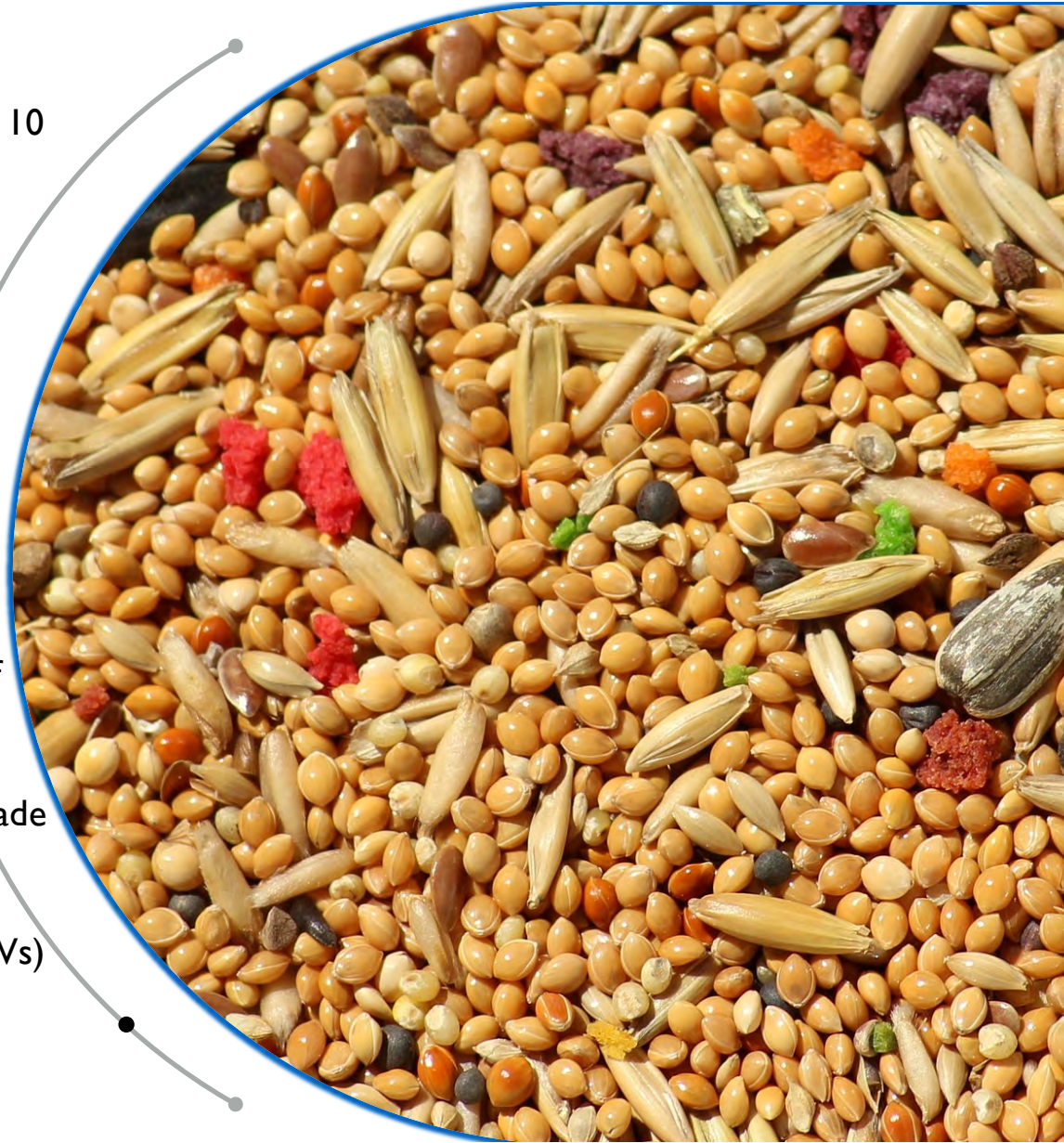
- International Convention for the Protection of New Varieties of Plants
- Highly draconian plant variety protection regime conceived by European plant breeders for their industrialised agricultural systems and currently being pushed onto developing countries
- Adopted in December 1962 (entered into force in 1968), revised in 1972, 1978 and 1991. The 1991 revision entered into force in 1998. ***With each revision....breeders rights have continued to be strengthened.***





# Key features

- ✓ Requires application of PVP to all genera & species within 10 years. No flexibility
- ✓ Duration of protection 20-25 years. No flexibility
- ✓ Breeders' rights granted to varieties that are Distinct, Uniform, Stable and New (DUSN). No other condition allowed.
- ✓ Need breeders' permission when using the propagating material or harvested material of protected variety for production, multiplication, conditioning for the purpose of propagation, offering for sale, selling or other marketing, exporting, importing, stocking. Can extend to products made from harvested material (optional)
- ✓ Above rights extend to “essentially derived varieties” (EDVs) ( varieties that retain the essential characteristics of the initial variety).



# Key features

## ***Acts allowed (without breeders' permission):***

- Acts done privately and for non-commercial purposes
- Acts done for experimental purposes
- When breeding other varieties provided they are not EDVs, do not require repeated use of the protected variety

## ***Farmers exception (optional)***

- Allowed: When using protected varieties, farmers allowed to save seed/propagating material for further propagation on own holding.
- This may be subject to payment of compensation.
- Not allowed: To exchange and sell seed/propagating material.

On a case by case basis: Governments can restrict breeders' right in the public interest subject to payment of equitable remuneration.

Governments can only nullify or cancel breeders rights on the limited grounds provided by the Act.





## Concerns

- ✓ Highly restrictive, inflexible one size fits all PVP system
- ✓ Focused solely on promoting and protecting industrial seed breeders that develop genetically uniform seeds/plant varieties suited to mechanized, large scale agriculture - erosion of biodiversity
- ✓ Provides narrow exceptions to breeders' rights – use of farm saved seed
- ✓ Undermines old age farming practice of saving and exchanging seed – which forms the backbone of seed, agricultural and food systems in Africa
- ✓ Ignores contribution of farmers to the conservation and development of PGRFA
- ✓ Curtails enforcement of farmers' rights



## Concerns

- ✓ Limitations on further breeding
- ✓ Facilitates misappropriation. E.g. Disclosure of origin not allowed under UPOV 1991.
- ✓ Undermines/Inconsistent with the CBD, ITPGRFA objectives
- ✓ Reduces public investment in plant breeding. Public institutions relying on PVP to generate royalties.
- ✓ Creating reliance on imported commercial seeds.
- ✓ Process related to adoption of UPOV 91 laws are untransparent, and undemocratic, flouting provisions enshrined in many African govts constitutions





## Status of African countries and UPOV



States and organisations that  
have already  
joined UPOV

Kenya, Tanzania, Egypt,  
Morocco, Tunisia,  
Ghana (be bound by  
December 2021) & OAPI



States and organisations that  
have initiated procedure  
to join UPOV

Zimbabwe, Mauritius,  
Nigeria & ARIPO



States and organisations in contact with  
UPOV for  
assistance in development of PVP laws

Algeria, Libya, Malawi,  
Mozambique, Sudan,  
Namibia, Zambia & SADC



There are countries that have developed PVP systems that are not based on UPOV and common examples include Thailand, India, Malaysia – also known as *sui generis* PVP laws. However these do not go further in implementing farmers rights







The OAU (now African Union) drafted a model Africa law which sought to balance the requirements of the TRIPS Agreement with the needs of the region. Very little progress in implementation



## We must be clear!

- PVP laws are commercial laws – they do not and should not surpass farmers rights which are human rights including the right to food and nutrition and are linked to a bundle of other rights



## Current situation



- ✓ The push for stringent PVP systems based on UPOV is embedded in the push for industrial agriculture – corporate control and capture of our food and agricultural systems –
- ✓ Regional harmonisation of Plant variety Protection laws – RECs (SADC,ARIPO) and now moving to the AU level
- ✓ Free Trade Agreements/Economic Partnership Agreements.....promoting UPOV 1991 – e.g., AfCFTA

Autonomy over seed is a prerequisite and core component of the exercise of rights by family and community farmers and peasants

Protections are needed against patents (digital sequence information), plant variety protection laws, and the like which erode the exercise of farmers' rights







We need to continue to demand for recognition and support of diverse and more resilient agroecological systems based on farmer seed systems which are imperative in bringing about transformation of our food and seed systems and provide an alternative to the proposed structure of the existing PVP systems





# Thanks



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