



## **Association for Plant Breeding for the Benefit of Society**

**25.10.2016**

### **Statement on UPOV/EXN/PPM1 DRAFT 6 (Agenda item 4 (b))**

#### **Explanatory Notes on Propagating Material under the UPOV Convention**

The chair's summary of the Seminar on Propagating and Harvested Material which took place on 24<sup>th</sup> October 2016 focused on the demands from industry associations that were clearly expressed in various presentations. The proposals were to define propagating material in the broadest way possible, so that breeders' rights can be applied as widely as possible. Also the industry demands a harmonisation of "reasonable opportunity". The analyses of court decisions that were presented, related mainly to the demand of industry associations, e.g the demand for a definition. Court decisions were however presented at the seminar which suggest that the legal situation leads to clear decisions and the need for change is not given.

The definitions of propagating and harvested material presented at the seminar that exist at national level represented only 28 of the 74 UPOV members. A survey that was carried out around 2013 covered only 39 members. Some 40 percent have been omitted. But even if a majority of members had a similar definition, every member should keep the freedom to differ in their interpretation.

The discussions that have taken place in the CAJ and CAJ-AG over the past years show that the situation and views of the members diverge widely. Looking for common definitions for propagating material, harvested material and reasonable opportunity is not the most efficient way to use the resources.

Some presentations also showed the increasing practice to make contracts with agricultural producers. Thereby, the farmers' exemption can be circumvented. The UPOV Convention foresees exemptions. UPOV should not allow the exemption to be circumvented.

Our great concern are farmers in developing countries. Their views were insufficiently presented at the seminar. Many of them belong to Least Developed Countries that are for good reasons exempted from TRIPS Agreement (currently until 2021). An LDC should not be burdened with license fees if it exports crops to industrialised countries. Among the good reasons for the grace period is the fact that LDCs have only small numbers of innovations at national level, and at the same time they have only small means to pay for licenses if they import innovations. The whole idea of trade globalisation would be turned against countries that can cheaply produce and have an undeveloped sector of independent national breeders if industrialised countries

impose license fees.

A definition of propagating material that extends to most of the harvested material would burden the exports Least Developed Countries with license fees even if these countries are not UPOV members or even WTO members.

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