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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

CONSULTATIVE COMMITTEE

Eighty-Seventh Session Geneva, April 11, 2014

COMMUNICATION STRATEGY

Document prepared by the Office of the Union

Disclaimer: this document does not represent UPOV policies or guidance

1. This document contains the communication strategy approved by the Consultative Committee and presents proposals for answers to frequently asked questions that were not agreed by the Consultative Committee, at its eighty-sixth session, held in Geneva on October 23 and 24, 2013.

COMMUNICATION STRATEGY

2. At its eighty-sixth session, the Consultative Committee approved the communication strategy as proposed in the Annex to document CC/86/5 "Communication Strategy", subject to the following amendments (see document CC/86/14 "Report on the Conclusions", paragraphs 46 and 47):

paragraphs 13 and 23	to add features for policy-makers and for the general public
paragraph 20(b)	to add that "The status of the response would be indicated in the response"

3. The communication strategy as approved by the Consultative Committee at its eighty-sixth session is provided as Annex I to this document. It is proposed that a report on the implementation of the Workplan contained in the communication strategy (see Annex I, Section IV "Workplan") be presented to the Consultative Committee at its eighty-eighth session.

4. *The Consultative Committee is invited to:*

(a) *note the communication strategy approved by the Consultative Committee at its eighty-sixth session, as presented in Annex I to this document; and*

(b) *include an item on the agenda of its eighty-eighth session for a report on the implementation of the Workplan contained in the communication strategy.*

FREQUENTLY ASKED QUESTIONS (FAQS)

Background

5. At its eighty-sixth session, the Consultative Committee agreed the answers to the following frequently asked questions (FAQs), as set out in the Appendix to the Annex to document CC/86/5 (see document CC/86/14 "Report on the Conclusions", paragraph 48):

- What is UPOV?
- What does UPOV do?
- What is a plant variety?
- What are the requirements for protecting a new plant variety?
- Can breeders use a protected variety in their breeding programs?
- Who can protect a plant variety?
- Where do I apply for protection of a variety?
- Can I obtain protection for more than one country from a single application?
- What are the benefits of plant variety protection and UPOV membership?
- What is the effect of plant variety protection on varieties that are not protected (e.g. traditional varieties, landraces etc.)?
- What is the relationship between plant breeders' rights and measures regulating commerce, e.g. seed certification, official registers of varieties admitted to trade (e.g. National List, Official Catalogue) etc.?
- Does the UPOV Convention allow a variety to be refused protection because it is genetically modified?
- Can I use plant variety protection to protect the following: a trait (e.g. disease resistance, flower color), a chemical or other substance (e.g. oil, DNA), a plant breeding technology (e.g. tissue culture)?
- Can I protect a hybrid variety under the UPOV system?
- How do I know if a variety is protected?
- Who is responsible for enforcing plant breeders' rights?
- Is it true that UPOV only promotes commercially bred plant varieties geared to industrialized farmers?

6. The Consultative Committee further agreed to consider new draft answers to the following FAQs on the basis of comments, to be sent to the Office of the Union by November 30, 2013, on the draft answers in the Appendix to the Annex to document CC/86/5 (see UPOV Circular E-13/275 of November 18, 2013).

- Who can attend UPOV meetings?
- Why do farmers and growers need new plant varieties?
- Why is plant variety protection necessary?
- How does plant variety protection work?
- Why does UPOV require varieties to be uniform and stable; doesn't that lead to a loss of diversity?
- What is the relationship between the UPOV Convention and international treaties concerning genetic resources, e.g. the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)?
- What is the relationship between patents and plant breeders' rights?
- "Biopiracy": can I protect an existing plant or variety that I discover?
- Can a farmer replant seed of a protected variety without the authorization of the breeder?
- Can a farmer sell seed of a protected variety without the authorization of the breeder?
- Does UPOV allow biochemical or molecular data in the DUS examination?

7. The Consultative Committee agreed that the new draft answers should be presented for consideration by the Consultative Committee at its eighty-seventh session (see document CC/86/14 "Report on the Conclusions", paragraph 49).

8. In response to the invitation of the Consultative Committee, the Office of the Union received comments from the European Union and Norway on the drafts answers to the FAQs above. On the basis that there were substantial changes to the draft answers considered by the Consultative Committee at its eighty-sixth session, it was concluded after consultation with the President of the Council that the work of the Consultative Committee would be facilitated by circulation of the new draft answers to FAQs prior to the eighty-seventh session of the Consultative Committee. UPOV Circular E-14/024, of February 18, 2014, presented the new draft answers to FAQs in accordance with the comments and proposals received by the European Union and Norway and invited the Consultative Committee to indicate any text of the draft answers that would not be acceptable. In the case of text that would not be acceptable, the Consultative Committee was invited to suggest any modifications that would make it acceptable, if appropriate.

9. In response to UPOV Circular E-14/024, comments were received from Japan and the United States of America.

Proposed answers to FAQs

10. Annex II to this document presents draft answers to FAQs in accordance with the comments and proposals received in response to UPOV Circulars E-13/275 and E-14/024. In the case of draft answers for which there were comments received in response to UPOV Circular E-14/024, two alternative texts are proposed: Alternative 1 reflects the text that was circulated in UPOV Circular E-14/024 and Alternative 2 reflects the comments that were received. Text that is closely related to text of the UPOV Convention or text of information materials¹ is highlighted in grey and references to relevant materials are indicated below the question.

11. The Consultative Committee is invited to consider the draft answers to frequently asked questions, as set out in Annex II to this document.

[Annex I follows]

¹ The term "information materials" should be understood to cover different forms of information, such as those used in relation to frequently asked questions, model forms, explanatory notes, distance learning materials, guidance documents or position papers (see document CAJ/52/5 "Report", paragraph 67).

COMMUNICATION STRATEGY

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I. AIM AND OBJECTIVES

1. The aim of the communication strategy is to improve awareness and understanding of the UPOV system in order to support the development of plant variety protection for the benefit of society.
2. In order to achieve that aim, the objectives of the communication strategy are to:
 - (a) raise awareness of UPOV and the benefits of the UPOV system of plant variety protection;
 - (b) provide improved information for members of the Union on the operation of the UPOV system; and
 - (c) enhance the understanding of the UPOV system by stakeholders.

II. AUDIENCE

3. The following table summarizes the audience focus around which this communication strategy is based:

Objective	Authorities of UPOV members	States / Intergovernmental organizations that contact the Office of the Union	Policy makers	International Intergovernmental Organizations	Breeders/Applicants	Seed producers / plant propagators	Farmers/Growers	Non-Governmental Organizations	Education professionals and students	General Public
(a) to raise awareness of UPOV and the benefits of the UPOV system of plant variety protection	X	X	X	X	X	X	X	X	X	X
(b) to provide improved information for members of the Union on the operation of the UPOV system	X									
(c) enhance the understanding of the UPOV system by stakeholders	X	X	X	X	X	X	X	X	X	X

III. CURRENT SITUATION AND GAP ANALYSIS

4. This section reviews the current situation and seeks to identify gaps as a basis for possible future work, which is considered in Section IV "Workplan".

Materials

5. The following sections list the most relevant materials that UPOV currently has with regard to the objectives set out in Section I "Aim and Objectives":

- (a) *Raising awareness of UPOV and the benefits of the UPOV system of plant variety protection*

6. The most relevant materials that UPOV currently has are:

Material	Location
Introduction to UPOV (microsite)	http://www.upov.int/overview/en/
Ashiro Rindo story	http://www.upov.int/multimedia/en/2011/ashiro_rindo.html
Video interviews	(UPOV YouTube channel –see below)

UPOV leaflet (Publication No. 437)	http://www.upov.int/about/en/list_publications.html
UPOV Report on the Impact of Plant Variety Protection (Impact Study)	http://www.upov.int/export/sites/upov/about/en/pdf/353_upov_report.pdf
Declaration/Proceedings from the Second World Seed Conference	http://www.worldseedconference.org/en/worldseedconference/home.html
Trilogy ² publication	
UPOV events and presentations	
UPOV Posters	
Articles in general press	
Articles in specialist press	

7. As indicated in the list above, UPOV has a considerable quantity of material that explains the objectives of the UPOV system of plant variety protection. However, the objective to increase awareness of the objectives of the UPOV system of plant variety protection might be aided by the following:

- (i) answers to frequently-asked questions [about the UPOV system](#);
- (ii) additional illustrative examples of the benefits of plant variety protection (e.g. case study videos such as Ashiro Rindo, animated stories); and
- (iii) an update of the Impact Study to incorporate new information including, for example, information from the Trilogy and on the development of regional systems of plant variety protection.

(b) *Providing improved information for members of the Union on the operation of the UPOV system*

8. The most relevant materials that UPOV currently has are:

Material	Location
UPOV Collection	http://www.upov.int/upov_collection/en/
Distance Learning Course	http://www.upov.int/resource/en/dl205_training.html
UPOV Lex	http://www.upov.int/upovlex/en/
Plant Variety Database (PLUTO)	http://www.upov.int/pluto/en/
GENIE database	http://www.upov.int/genie/en/
Presentations at UPOV/other events	

9. The materials and methods of communication for members of the Union on the operation of the UPOV system are covered by the regular work of the UPOV bodies and the Office of the Union according to programs approved by the Council. That work is kept under constant and detailed review, for example in relation to the UPOV Collection. That review also includes consideration of new initiatives, such as the development of the advanced distance learning course DL-305 "Examination of Applications for Plant Breeders' Rights" (DL-305) and would include responses to developments such as the letter of the International Seed Federation (ISF) of January 21, 2013, on the subject "Application, examination and granting aspects of PBR applications".

² Publication combining the proceedings of the "UPOV Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership", the "Symposium on Plant Breeding for the Future" and the "Symposium on the benefits of plant variety protection for farmers and growers".

(c) *Enhancing the understanding of the UPOV system by stakeholders*

10. The most relevant materials that UPOV currently has are:

Material	Location
Introduction to UPOV (microsite)	http://www.upov.int/overview/en/
Ashiro Rindo story	http://www.upov.int/multimedia/en/2011/ashiro_rindo.html
Video interviews	(UPOV YouTube channel –see below)
UPOV Report on the Impact of Plant Variety Protection	http://www.upov.int/export/sites/upov/about/en/pdf/353_upov_report.pdf
Trilogy publication	
UPOV events and presentations	
Articles in specialist press	
UPOV Collection	http://www.upov.int/members/en/upov_membership.html
Distance Learning Course	http://www.upov.int/resource/en/dl205_training.html
UPOV Lex	http://www.upov.int/upovlex/en/
Plant Variety Database (PLUTO)	http://www.upov.int/pluto/en/
GENIE database	http://www.upov.int/genie/en/

11. The Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership (Seminar) and the Symposium on the Benefits of Plant Variety Protection for Farmers and Growers (Symposium) demonstrated that plant variety protection provides benefits for breeders in both the private and public sectors and can enable farmers and growers to become breeders. The Symposium also demonstrated that plant variety protection can play an important role in improving incomes for farmers and growers. One of the means to support the objective of improving the level of understanding of the UPOV system by stakeholders would be to improve awareness of the ways in which plant variety protection can be used for their benefit. In addition, the effectiveness of plant variety protection relies on the respect and understanding of the rights of breeders by all stakeholders.

12. Presenting information from the perspective of different stakeholders could be an important means of improving the level of understanding of the UPOV system by stakeholders. For, example the UPOV Collection contains a wealth of information, but which is unlikely to be suitable for stakeholders without extensive knowledge of UPOV and without knowledge of where to find the relevant material. However, such materials might be the basis for the development of material that is suitable for breeders and farmers in a way that complements information provided by the authorities of members of the Union and observer organizations. If such material was developed, it would be useful to ensure that breeders and farmers visiting the UPOV website would be able to find that information easily, for example by the creation of a link to a “breeders” or “farmers” page.

13. On that basis, it could be helpful to develop features of the UPOV website that are focused from the perspective of different types of stakeholders, such as:

- Breeders: e.g. private breeders, public breeders, farmer-breeders
- Seed producers / plant propagators
- Farmers: e.g. commercial farmers, small-holder farmers, farmer cooperatives
- Processors, wholesalers and retailers
- Policy-makers
- General public

14. In order to provide information that is focused on the needs of particular groups of stakeholders, “UPOV events and presentations” in this context would include workshops and meetings on themes identified by stakeholders. Such events might be organized by UPOV, by the stakeholders or by other parties in which UPOV’s participation would help to fulfill the objectives.

Communication methods

15. UPOV currently uses the following methods of communication:

- UPOV website
- UPOV sessions
- UPOV activities (hosted by governments)
- UPOV training courses (e.g. distance-learning courses, training trainers)
- UPOV seminars and symposia
- UPOV workshops
- Participation in meetings, workshops
- Press

16. The aim of the redesigned UPOV website, launch in November 2011, was to improve the availability of information on UPOV to a range of users. The UPOV website is the most widely accessible communication means for UPOV and should continue to be a core element of the communication strategy, with other methods (e.g. social media – see below) serving to increase awareness of the information on the UPOV website and to enhance the features of the website. For example, the Consultative Committee, at its eighty-fourth session, held in Geneva on October 31, 2012, approved the use of:

- (i) web conferencing by UPOV bodies, as considered appropriate by the UPOV body concerned, to facilitate participation by members of the Union and observers in accordance with the existing procedures;
- (ii) web conferencing by the Office of the Union to facilitate participation by invited participants to its meetings, as considered appropriate by the Office of the Union; and
- (iii) webcasting of sessions of UPOV bodies for viewing by members of the Union and observers in accordance with the existing procedures, as considered appropriate by the UPOV body concerned.

17. At present, UPOV is not yet using social media. However, at its eighty-second session, the Consultative Committee approved the establishment of a UPOV channel on YouTube for hosting of UPOV videos. The Consultative Committee, at its eighty-third session, noted that the establishment of a UPOV channel on YouTube for hosting of UPOV videos would be arranged in conjunction with the development of a coherent image for UPOV publication and presentation materials, for consistency with the redesigned UPOV website.

18. With regard to other social media:

Facebook: the requirement for the Facebook page to be updated on a regular basis would mean that considerable resources would be required. Facebook might be considered to be suitable for a special event of widespread interest.

Twitter: on the basis of UPOV being a non-active Twitterer, maintenance requirements could be reasonable and Twitter could be a useful tool to increase awareness of topical information available on the UPOV website.

LinkedIn: at present, the features of LinkedIn do not appear to provide major benefits towards UPOV's communication strategy.

Flickr: Flickr may provide a useful service for sharing photographs and videos of UPOV events, either openly to all or to a restricted group of users. In order to use Flickr to share photographs and videos, it would be necessary to seek the permission of all relevant persons.

Wikipedia: Wikipedia has become the largest and most popular general reference work on the Internet. Therefore, ensuring the accuracy of information concerning UPOV on the Wikipedia page will be an important means of communicating information about UPOV. However, it is recognized that there will be certain content on the Wikipedia UPOV page that may be a matter of opinion and for which the Office of the Union would not be in a position to intervene, unless so instructed by the members of the Union.

Incident Management

19. At present, UPOV does not have a specific incident management communication procedure.
20. The following procedure might be considered:

Incident management procedure

In situations where, in the opinion of the Office of the Union, after consultation with the President of the Council (where time allows), an urgent response to an important issue is considered necessary within a time period that would not allow consideration at a session of the Consultative Committee and the Council, and for which UPOV has not previously taken a position, the following approach will be followed:

(a) In cases where at least 2 weeks are available for a response, the members of the Union will be consulted by e-mail, with at least 5 days (including non-working days) for comment. The proposed status of the response will be indicated in the e-mail (e.g. whether the response would represent the position of UPOV, dependent on agreement with the proposed response). The status of the response will be indicated in the response;

(b) In cases where less than 2 weeks are available for a response, the Office of the Union will respond, as such, after consultation with the President of the Council (where time allows). The status of the response will be indicated in the response. The Office of the Union will inform members of the Union by e-mail of the response at the earliest opportunity and will include the matter on the agenda of the subsequent session of the Consultative Committee. In such cases, as far as possible, the Office of the Union will also inform members of the Union in advance of the need to respond to an issue without consultation, with the aim of enabling members of the Union to contribute relevant views and information.

IV. WORKPLAN

21. The following workplan reflects the gap analysis in Section III "Current Situation and Gap Analysis".
22. The workplan concerns activities that are additional to the activities that are already covered in the regular work programs and activities specified in the Program and Budget for the 2012-2013 Biennium, e.g. the development of information materials. It has been developed in accordance with the Program and Budget for the 2012-2013 Biennium, which states that the "main focus and priority for the 2012-2013 biennium is support for members of the Union in the operation of their plant variety protection systems" (see document C/45/4 Rev.2 "Program and Budget for the 2012-2013 Biennium"). In recognition of the limited resources available, the workplan has also been prioritized according to the level of resource needed for delivery and the topicality of the issues.

Communication materials

Stakeholder-focused features on UPOV website

23. In order to facilitate use of the UPOV system and to improve the level of understanding of the UPOV system, stakeholder-focused features, based on existing information, will be introduced on the UPOV website as follows:

- Breeders (priority)
- Seed producers / plant propagators (priority)
- Farmers (priority)
- Processors, wholesalers and retailers
- Policy-makers
- General public

General Information

24. The following materials will be developed in order to improve the understanding of the UPOV system by a broad range of stakeholders:

- (a) Answers to frequently-asked questions about the UPOV system;
- (b) A brief, illustrative explanation of the benefits of the UPOV system aimed at an audience with no previous knowledge of plant breeding or plant variety protection and/or illustrative examples of the benefits of plant variety protection (e.g. case studies such as the Ashiro Rindo video, animated stories);

The development of this explanation would be a part of UPOV's involvement in EXPO 2015

- (c) An update of the Impact Study

A plan for updating the Impact Study will be presented in 2014.

Communication methods

25. The following methods of communication will continue to be used:

- UPOV website
- UPOV sessions
- UPOV activities (hosted by governments)
- UPOV training courses (e.g. distance-learning courses, training trainers)
- UPOV seminars and symposia
- UPOV workshops
- Participation in meetings, workshops,
- Press

26. However, particular consideration will be given to the increased use of electronic workshops to increase the outreach of the Office of the Union and other speakers. Examples of new types of e-workshops would include workshops for discussion groups on selected themes.

27. All such workshops will be reported to the Consultative Committee and the Council and, as appropriate, authorization by the Council of the events will be sought in advance.

28. Social media will be used as follows:

YouTube: a UPOV channel on YouTube for hosting of UPOV videos will be arranged in conjunction with the development of a coherent image for UPOV publication and presentation materials;

Twitter: the use of Twitter to increase awareness of topical information available on the UPOV website will be investigated and pursued, if feasible within existing resources. In that regard, it is normally expected that "tweets" are sent on a frequent basis, which would be an unrealistic burden for the Office of the Union. However, the World Intellectual Property Organization (WIPO) has agreed that UPOV can use the WIPO account to "tweet" information as required;

Facebook: no plans for use at present;

LinkedIn: no plans for use at present;

Flickr: no plans for use at present;

Wikipedia: the accuracy of information concerning UPOV on the Wikipedia page will be monitored and corrections proposed as resources allow. A report of editorial changes proposed by the Office of the Union will be reported to the Consultative Committee.

V. MEASURING RESULTS

29. In recognition of the limited resources that will be used in the communication strategy workplan, only minimal resources will be used in monitoring the results. As far as technically possible and within available resources, results will be measured as follows:

- Visits to UPOV website
- Visits to stakeholder-focused features on UPOV website
- Participation in workshops

[Annex II follows]

PROPOSED ANSWERS TO FREQUENTLY ASKED QUESTIONS (FAQs)

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- What is the relationship between the UPOV Convention and international treaties concerning genetic resources, e.g. the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)4
- What is the relationship between patents and plant breeders' rights?4
- [Alternative 1: "Biopiracy": can I protect an existing plant or variety that I discover?].4
- [Alternative 2: Can I protect an existing plant or variety that I discover?]4
- Can a farmer replant seed of a protected variety without the authorization of the breeder?5
- Can a farmer sell seed of a protected variety without the authorization of the breeder?6
- Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability ("DUS")?6

Note: Text that is closely related to text of the UPOV Convention or text of information materials¹ is highlighted in grey.

A reference to relevant materials is indicated below the question.

In the case of draft answers for which there were comments received in response to UPOV Circular E-14/024, two alternative texts are proposed: Alternative 1 reflects the text that was circulated in UPOV Circular E-14/024 and Alternative 2 reflects the comments that were received.

- **Who can attend UPOV meetings?**

(document UPOV/INF/19/1)

In addition to UPOV members, observer States, intergovernmental organizations and international non-governmental organizations may attend the sessions of the Council and, if applicable, of the Administrative and Legal Committee (CAJ), Technical Committee (TC) and Technical Working Parties (TWPs). The Consultative Committee normally holds closed sessions, restricted to the members of the Union. However, observers may be invited to present their views in relevant agenda items. The “Rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies” (document UPOV/INF/19/1) can be consulted at http://www.upov.int/information_documents/en/.

- **Why do farmers and growers need new plant varieties?**

(<http://www.upov.int/overview/en/improvement.html>)

New varieties of plants with features such as improved yield, resistance to plant pests and diseases, salt and drought tolerance, or better adaptation to climatic stress are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Due to the continuous evolution of new pests and diseases as well as changes in climatic conditions and users' needs, there is a continuous demand by farmers/growers of new plant varieties and development by breeders of such new plant varieties.

The tremendous progress in agricultural productivity in various parts of the world is largely based on improved varieties, together with improved farming practices, and future food security depend on them.

- **Why is plant variety protection necessary?**

(DL-205)

Successful breeding requires great skill and knowledge. In addition, large-scale breeding calls for significant investment in land, specialized equipment (for example, greenhouses, growth chambers and laboratories), and skilled, scientific manpower.

It takes a long time to develop a successful plant variety (10 to 15 years in the case of many plant species). Yet not all new plant varieties are successful and, even where the varieties show significant improvements, changes in market requirements may eliminate the possibility of a return on investment. This makes it necessary to balance the benefits with the return of the original high investment. Generally, however, plant breeding results in the availability of varieties with increased output and improved quality for the benefit of the society.

Sustained and long-term breeding efforts are only worthwhile if there is a chance to be rewarded for the investment made. To recover the costs of this research and development, the breeder may seek protection to obtain exclusive rights for the new variety.

At the same time, a new variety, once released, can often be easily reproduced by others. The original breeder is thus deprived of the fair opportunity to benefit from his or her investment. It is, therefore, critical to

¹ The term “information materials” should be understood to cover different forms of information, such as those used in relation to frequently asked questions, model forms, explanatory notes, distance learning materials, guidance documents or position papers (see document CAJ/52/5 “Report”, paragraph 67).

provide an effective system of plant variety protection, which encourages the development of new varieties of plants thereby benefiting the breeder and society at large.

- **How does plant variety protection work?**

(1978 Act and 1991 Act of the UPOV Convention, <http://www.upov.int/overview/en/protection.html> and UPOV Flyer)

The UPOV Convention provides the basis for members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeder's right.

The breeder's right means that the authorization of the breeder is required to propagate the variety for commercial purposes. The UPOV Convention specifies the acts that require the breeder's authorization in respect of the propagating material of a protected variety and, under certain conditions, in respect of the harvested material. UPOV members may also decide to extend protection to products made directly from harvested material, under certain conditions.

In order to obtain protection, the breeder needs to file individual applications with the authorities of UPOV members entrusted with the task of granting breeders' rights (see http://www.upov.int/members/en/pvp_offices.html).

- **Why does UPOV require varieties to be uniform and stable; doesn't that lead to a loss of diversity?**

(1978 Act and 1991 Act of the UPOV Convention and DL-205)

...Why does UPOV require varieties to be uniform and stable?

A variety which is the object of a breeder's right needs to be both sufficiently uniform and stable in order to define the object of the right granted to the holder.

The notion of uniformity ensures that the variety can be defined as far as is necessary for the purpose of protection. This is indicated by the notion of sufficient uniformity, i.e., the criterion for uniformity does not seek absolute uniformity. The UPOV Convention links the uniformity requirement for a variety to the particular features of its propagation. This means that the level of uniformity required for truly self-pollinated varieties, mainly self-pollinated varieties, inbred lines of hybrid varieties, vegetatively propagated varieties, cross-pollinated varieties, mainly cross-pollinated varieties, synthetic varieties and hybrid varieties will, in general, be different. Furthermore, it relates only to the characteristics which are relevant for the protection of the variety.

As with the uniformity requirement, the criterion for stability has been developed to establish the identity of the variety as the subject matter of protection by ensuring that the relevant characteristics of the variety remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

...doesn't that lead to a loss of diversity?

On the contrary, the UPOV system encourages the development of new varieties of plants, therefore adding to diversity. The "breeder's exemption" in the UPOV Convention enables plant diversity to be available for further breeding activities because acts done for the purpose of breeding other varieties are not subject to any restriction by the breeder. This reflects the fact that access to protected varieties contributes to sustain greatest progress in plant breeding and, thereby, to maximize the use of genetic resources for the benefit of society.

Moreover, the UPOV system does not govern the use of non-protected varieties nor the implementation of policies and legislation related to the use of non-protected varieties.

- **What is the relationship between the UPOV Convention and international treaties concerning genetic resources, e.g. the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)**

(Reply of UPOV to the Notification of June 26, 2003, from the Executive Secretary of the Convention on Biological Diversity (CBD):

http://www.upov.int/export/sites/upov/news/en/2003/pdf/cbd_response_oct232003.pdf

The UPOV Convention, the CBD and the ITPGRFA are all international instruments.

The objectives of the CBD and the ITPGRFA are the conservation and sustainable use of genetic resources and the sharing of benefits arising from their use.

Both the ITPGRFA and the UPOV Convention aim to support plant breeding activities and to encourage the development of new varieties of plants. The ITPGRFA does so by providing a system for facilitated access to plant genetic resources, while the UPOV Convention does so by establishing a system for plant variety protection. When implemented by UPOV members, the relevant legislations dealing with these matters should be compatible and mutually supportive.

- **What is the relationship between patents and plant breeders' rights?**

Patents and plant breeders' rights are separate intellectual property rights with different conditions of protection, scope and exceptions. Breeders can use plant breeders' rights, patents or other forms of intellectual property rights, or a combination to the extent that such systems are available in the territory concerned.

[Alternative 1:

Nowadays, with recent technological developments, for example the rising number of gene-related patents and rapid progress in the field of genetic engineering, patents and plant breeders' rights are more interlinked and therefore relevant database are important to be developed and strengthened.]

[Alternative 2ⁱ:

Nowadays, with recent technological developments, for example the rising number of gene-related patents and rapid progress in the field of genetic engineering, patents and plant breeders' rights are more interlinked and therefore the development and strengthening of relevant databases can be useful.]

- **[Alternative 1: "Biopiracy": can I protect an existing plant or variety that I discover?]**
- **[Alternative 2ⁱⁱ: Can I protect an existing plant or variety that I discover?]**

(1991 Act of the UPOV Convention, documents UPOV/EXN/BRD/1 and UPOV/EXN/VAR/1)

Only the breeder* of a new plant variety can protect that new plant variety. The 1991 Act of the UPOV Convention provides, under its Article 21(1)(iii), that "[e]ach Contracting Party shall declare a breeder's right granted by it null and void when it is established [...] (iii) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled."

*The term "breeder" is defined in Article 1(iv) of the 1991 Act of the UPOV Convention as:

- the person who bred, or discovered and developed, a variety,
- the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or
- the successor in title of the first or second aforementioned person, as the case may be.

The term "person" embraces both physical and legal persons, and refers to one or more persons. Under the UPOV Convention, there is no restriction on who can become a breeder. A breeder might be, for example, an amateur gardener, a farmer, a scientist, a plant breeding institute or an enterprise specialized in plant breeding.

With regard to "discovered and developed", a discovery might be the initial step in the process of breeding a new variety. However, the term "discovered and developed" means that a mere discovery, or find, would not entitle the person to obtain a breeder's right. Development of plant material into a variety is necessary for a breeder to be entitled to obtain a breeder's right. A person would not be entitled to protection of an existing variety that was discovered and propagated unchanged by that person.

The Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture address the issue of access to genetic resources and benefit sharing.

- **Can a farmer replant seed of a protected variety without the authorization of the breeder?**

(1978 Act and 1991 Act of the UPOV Convention and document UPOV/EXN/EXC/1)

Commercial farmers

It is necessary to consult the legislation in each UPOV member to know the answer to this question.

Under the 1978 Act of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for the production for purposes of commercial marketing of the reproductive or vegetative propagating material, as such, of the variety. However, no specific mention is made of replanting seed of a protected variety by farmers. Therefore, it is necessary to consult the legislation in each UPOV member.

Under the 1991 Act of the UPOV Convention (see Article 15(2)), there is an optional exception to the breeder's rights according to which UPOV members can decide to allow farmers to replant seed on their own farms without the authorization of the breeder, under certain circumstances. The wording of this optional exception is as follows:

“Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or Article 14(5)(a)(ii).”

It is a matter for each UPOV member to decide if, and how, to incorporate this option in its legislation.

[Alternative 1: Moreover, the UPOV Convention does not regulate varieties that are not covered (never covered or no longer covered) by plant variety protection. Therefore many plant varieties can be replanted by farmers without the authorization of the breeder.]

[Alternative 2¹: Moreover, the UPOV Convention does not regulate varieties that are not protected (never protected or no longer protected) by plant breeders' rights. Therefore many non-protected plant varieties can be replanted by farmers without the authorization of the breeder.]

Subsistence farmers

Since the 1991 Act and 1978 Act give no definition of the words “commercial” and “subsistence farming”, it is necessary to consult the legislation in each UPOV member to know the answer to this question specific for that UPOV member.

Under the 1978 Act of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for the production for purposes of commercial marketing of the reproductive or vegetative propagating material, as such, of the variety. The 1978 Act of the UPOV Convention is silent on the question of subsistence farmers, and therefore it totally depends on the national legislation.

[Alternative 1:

Under the 1991 Act of the UPOV Convention (see Article 15(1)(i)), a compulsory exception sets out that the breeder's right does not extend to “acts done privately and for non-commercial purposes”. With subsistence farming, it is observed that the farmer produces barely enough food for their own consumption and that of their dependents. Thus, the propagation of a protected variety by a farmer exclusively for the production of a food crop to be consumed by that farmer and the dependents of the farmer, may be considered to fall within the meaning of acts done privately and for non-commercial purposes. In the occasional case of remaining negligible or unimportant quantities of harvested food produce, the exchange of this produce against other vital goods within the local community can be considered by a UPOV member to fall under such acts.

It should be noted that under the UPOV system breeders decide the conditions and limitations under which they authorize the exploitation of their protected varieties. They may, for instance, allow farmers to exchange seeds freely within the local community.]

[Alternative 2ⁱ:

Under the 1991 Act of the UPOV Convention (see Article 15(1)(i)), a compulsory exception sets out that the breeder's right does not extend to "acts done privately and for non-commercial purposes". With subsistence farming, it is observed that the farmer produces barely enough food for their own consumption and that of their dependents. Thus, the propagation of a protected variety by a farmer exclusively for the production of a food crop to be consumed by that farmer and the dependents of the farmer, may be considered to fall within the meaning of acts done privately and for non-commercial purposes.

It should be noted that under the UPOV system breeders decide the conditions and limitations under which they authorize the exploitation of their protected varieties. They may, for instance, allow farmers to exchange seeds freely within the local community.]

- **Can a farmer sell seed of a protected variety without the authorization of the breeder?**

(1978 Act and 1991 Act of the UPOV Convention and document UPOV/EXN/EXC/1)

The authorization of the breeder is required for the selling of seed of a protected variety by any person.

Under the 1978 Act of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for "the offering for sale" and "the marketing" of the reproductive or vegetative propagating material, as such, of the variety.

Under the 1991 Act of the UPOV Convention (see Article 14(1)) the "offering for sale" and "selling or other marketing" of the propagating material of the protected variety requires the authorization of the breeder.

- **Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability ("DUS")?**

(documents UPOV/INF/18/1 and TGP/15/1)

[answer proposed by the Enlarged Editorial Committee (TC-EDC)]

[Alternative 1:

It is important to note that, in some cases, varieties may have a different DNA profile but be morphologically identical whilst, in other cases, varieties which have a large phenotypic difference may have the same DNA profile for a particular set of molecular markers (e.g. some mutations).]

[Alternative 2ⁱⁱⁱ:

In principle, examination of DUS is to be done by phenotypic difference (or morphological and/or physiological characteristics).

It is important to note that, in some cases, varieties may have a different DNA profile but be morphologically identical whilst, in other cases, varieties which have a large phenotypic difference may have the same DNA profile for a particular set of molecular markers (e.g. some mutations).]

In relation to the use of molecular markers that are not related to phenotypic differences, the concern is that it might be possible to use a limitless number of markers to find differences between varieties. In particular, differences could be found at the genetic level that are not reflected in morphological characteristics.

On the above basis, UPOV has agreed the following uses of molecular markers in relation to DUS examination:

- (a) Molecular markers can be used as a method of examining DUS characteristics that satisfy the criteria for characteristics set out in the General Introduction if there is a reliable link between the marker and the characteristic.

(b) A combination of phenotypic differences and molecular distances can be used to improve the selection of varieties to be compared in the growing trial if the molecular distances are sufficiently related to phenotypic differences and the method does not create an increased risk of not selecting a variety in the variety collection which should be compared to candidate varieties in the DUS growing trial.

The situation in UPOV is explained in documents UPOV/IINF/18/1: "Possible use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)" and document TGP/15: "Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)".

[End of Annex II and of document]

ⁱ Text proposed by the United States of America

ⁱⁱ Comment by Japan: "Why is the subject of this question 'biopiracy' in the first place (Why not delete it? Neither the question nor the proposed answer does not seem to address the issue.)?"

ⁱⁱⁱ Text proposed by Japan