



Open Letter to Member States of the International Union for the Protection of New Varieties of Plants (UPOV)

On October 27, 2005, the Thirty-Ninth Ordinary Session of the Council for the International Union for the Protection of New Varieties of Plants (UPOV) will address the rules governing public participation and access to information in UPOV. Adopting and publicizing concrete measures to expand and enhance civil society participation in UPOV discussions and activities is fundamental to improving UPOV's credibility and effectiveness. There is a growing recognition of the importance of effective civil society involvement in international fora, particularly on issues so closely linked to economic, social, cultural, and environmental concerns as agricultural innovation, research and development, transfer of technology, and access to genetic resources. Indeed, UPOV discussions and activities directly affect a range of issues of relevance and interest to many stakeholders, including farmers' groups, indigenous groups and other local communities, public research institutions, consumer groups, and non-governmental organizations working on sustainable development topics. As a result, it is hoped that the upcoming Session of the UPOV Council will make tangible progress in overcoming the lack of clear and objective guidelines for adequate access to information and public participation. In particular, the UPOV Council should:

- Ensure that guidelines or rules on access to information and public participation and in UPOV are clear, objective, and publicly available;
- Open UPOV discussions and activities to the observation and appropriate participation of civil society, establishing a process for permanent and *ad hoc* observership that allows and promotes the participation of diverse constituencies; and
- Make official UPOV documents available to the public through the Internet or other appropriate means, in a timely manner.

UPOV discussions and activities: Relevance for sustainable development

UPOV is an intergovernmental organization established by the International Convention for the Protection of New Varieties of Plants (UPOV Convention), which was adopted in 1961. The mission of UPOV is "to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society." In this regard, UPOV recognizes that intellectual property rights are based on the notion of balance. That is, intellectual property rights should reconcile private and public interests, rewarding innovators, but ensuring the dissemination of products and ideas along with other public policy objectives. This is particularly true regarding innovation in agriculture, which traditionally excluded intellectual property protection because public interests such as food security were considered to override the need to grant private rights over plant varieties.

Plant variety protection systems thus raise a broad range of issues relevant to sustainable development, including social, economic, and environmental concerns. These concerns are particularly important in developing countries, where the agricultural sector is a major source of food, incomes, employment, and finance. Plant variety protection systems must therefore consider the impact of protection on seed prices, the need to safeguard farmers' traditional

practices of saving, exchanging and planting seeds, the importance of supporting public agricultural research institutions, and the necessity of maintaining and developing varieties tailored to local conditions. Another concern is maintaining coherence with other international obligations arising, for instance, from the Convention on Biological Diversity (CBD) and the International Treaty for Plant Genetic Resources for Food and Agriculture (ITPGRFA).

In particular, UPOV is currently discussing or conducting activities on a number of issues relevant to sustainable development, including: expanding the coverage of protection of new varieties of plants; drafting explanatory notes on provisions on farm-saved seed; contributing to international discussions on access to genetic resources and benefit-sharing and on trade and transfer of technology; analyzing developments related to the review of Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement); and discussing topics related to plant biotechnology. Increased public participation in these discussions and activities would enhance their validity, equity, and balance by ensuring the consideration of the interests and the contribution of the expertise, experience, and insight of a variety of stakeholder groups.

Public participation in UPOV: Increasing balance and transparency

Adopting concrete measures to expand and enhance civil society participation in UPOV discussions and activities is particularly important given the current gaps in governance in the UPOV system. The 1978 and 1991 Acts of the UPOV Convention state that observers may be invited to UPOV Council meetings, but do not establish a clear or objective set of criteria for such participation. The rules of procedure of the UPOV Council determine that observers are invited by the Secretary-General with the previous authorization of the Council, which can be granted in the sessions of the Council or in writing. In addition, the rules of procedure affirm that these invitations may be limited to given sessions of the UPOV Council or to the discussion of specific agenda items.

Although the list of observers to UPOV is not public, we understand that observers to UPOV include intergovernmental organizations such as the African Regional Industrial Property Organization (ARIPO) and a limited number of non-governmental organizations. These non-governmental organizations represent two important sectors in agriculture: the seed industry (for instance, the International Seed Federation (ISF) and the European Seed Association (ESA) participated in the 2004 Session of the UPOV Council) and farmers' associations (for example, the Committee of Professional Agricultural Organizations in the European Union (COPA) and the International Federation of Agricultural Producers (IFAP) have been identified as UPOV observers). Nevertheless, the *Koordinationsstelle Agrarallianz* (KAA), an alliance of Swiss farmers, environmentalists, and consumer organizations, was recently denied observer status, as was a German network of small farmers, *Arbeitsgemeinschaft bäuerliche Landwirtschaft*. As a result, previous discussions at the UPOV Council and other UPOV meetings have not been adequately balanced – with active involvement from the seed industry but little involvement from user groups and organizations. Further participation from groups of small farmers and farmers from developing countries is essential for a more balanced discussion on the adequate scope and characteristics of plant variety protection. Given the mission and objectives of UPOV, promoting such a balanced discussion is in the core interest of the Union.

Clear and objective guidelines for public participation are fundamental in this regard. UPOV rules and policies on civil society participation are currently not public, which poses a significant hurdle for organizations seeking to partake and contribute in UPOV discussions and activities. Informally, the UPOV Office has indicated that organizations are asked to prove their competence in UPOV-related issues, or even an express reference to plant variety protection in their institutional objectives or bylaws. As mentioned, however, plant variety protection impacts

a broad range of interests, including cultural, social, economic, and environmental. The participation of groups and organizations representing a variety of perspectives is thus critical to achieve plant variety protection rules and implementation that are more responsive to the needs and circumstances of the key sectors of society affected by plant variety protection, such as indigenous people, women, small farmers, and rural communities.

Public participation in other agricultural and intellectual property-related fora

The need for international discussions and activities to draw on a wider group of constituencies has already been identified and addressed by a number of fora, including the Food and Agriculture Organization (FAO) and the World Intellectual Property Organization (WIPO). The FAO Policy and Strategy for Cooperation with Non-Governmental and Civil Society Organizations, for example, emphasizes the need for further cooperation with civil society, recognizing that many more actors have impacts on food security and agricultural development than in the past and, as a result, that the contribution of civil society to national and global food security is increasingly significant. Indeed, the categories of civil society organizations with which FAO relates include: rural and urban people's organizations (membership organizations including farmers' associations, cooperatives, women's groups, credit unions, consumers' organizations, etc.); development non-governmental organizations; advocacy non-governmental organizations; international networks of non-governmental organizations; professional associations; and academic/research institutions. The framework for closer collaboration with these and other civil society groups includes strategies such as preparing a public information disclosure policy and encouraging issue-based civil society groups and their participation in FAO technical committees.

In WIPO, where the increased participation of civil society was identified as a key element of the WIPO Development Agenda, a number of measures have been taken to involve a greater range of stakeholders in intellectual property discussions and other activities. The criteria for permanent observer status for international and national non-governmental organizations are openly listed on the WIPO website, and *ad hoc* observership is also possible for specific WIPO meetings or bodies. In addition, civil society organizations are allowed to organize side events in the WIPO building during meetings, providing additional information on their activities and perspectives on intellectual property-related issues, as well as to distribute relevant documents among WIPO Member States. Finally, a number of information sessions have been held by the WIPO International Bureau on issues of interest to civil society. It is critical for UPOV to similarly recognize the need and importance for more inclusive and balanced discussions and activities and to adopt and publicize measures to promote access to information and public participation.

Recommendations

As the upcoming UPOV Council considers the “Rules governing the Grant of Observer Status in UPOV Bodies and Access to UPOV Documents,” it is of the utmost importance that concrete measures are taken to adapt and structure UPOV discussions and activities to promote the meaningful and effective participation of a range of stakeholders, including small farmers’ groups, indigenous peoples and other local communities, public research institutions, consumer groups, and non-governmental organizations working on sustainable development topics. In particular, the following measures should be taken:

- The guidelines or rules on public participation and access to information in UPOV should be clear, objective, and publicly available.

- UPOV discussions and activities should be open to the observation and appropriate participation of the civil society. Special measures should be taken to promote a balanced and equitable representation of interests and perspectives.
- The public should be allowed to participate in a variety of ways, including permanent and ad hoc observer status and the right to circulate written statements and to speak at meetings, and to respond to general calls for comments. The public should be informed with adequate notice of the opportunities, procedures, and criteria for public participation.
- Access to all documents relevant to UPOV discussions and activities is an essential component of effective public participation. Official UPOV documents should be made available to the public through the Internet or other appropriate means, in a timely manner.
- Increased public participation in UPOV discussions and activities would enhance their validity, equity, and balance by ensuring the consideration of the interests and the contribution of the expertise, experience, and insight of a variety of stakeholder groups. The criteria for permanent and ad hoc observer status should allow and promote the participation of diverse constituencies. The procedure for observership applications should take into consideration the limited resources of civil society organizations, particularly in developing countries.

Center for International Environmental Law (CIEL)

Berne Declaration

Coordination Paysanne Européenne