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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Eighth Session

Geneva, October 12 to 14, 1981

PLANT BREEDERS' RIGHTS AND DEVELOPING COUNTRIES

Note by the Office of the UnionIntroduction

1. At its twenty-third session, in May 1981, the Consultative Committee asked the Office of the Union to prepare a "brief paper on possible common lines of approach for member States to adopt towards the question of the introduction of plant variety protection in developing countries, with a view to assisting discussion at the next or next but one session of the Committee on the question of convening special meetings to exchange views with representatives of such countries, and taking into account the degree of interest that might exist among them with regard to such a possibility" (document CC/XXIII/8, paragraph 16(x)). Preceding that decision, the Office of the Union had remarked, in paragraph 11 of document CC/XXIII/3, that a "number of international organizations convene special meetings to discuss certain pending projects with representatives of developing countries. As far as UPOV is concerned, two items might usefully be discussed with representatives of developing countries in the near future (i.e. for the first time in 1982), namely the advantages for developing countries of the plant breeders' rights system and the UPOV Model Law. The Office of the Union would consider such meetings very desirable if a representative participation of developing countries could be ensured."

2. The question whether developing countries should introduce plant breeders' rights is of concern also to the international breeding centers. During the FAO Technical Conference for the Improvement of Seed, held in Nairobi in June 1981, the Vice Secretary-General of UPOV and the President of ASSINSEL met with representatives of the International Center for the Improvement of Maize and Wheat (CIMMYT), the International Center for Tropical Agriculture (CIAT) and the International Institute of Tropical Agriculture (IITA) and briefed them on the aims and activities of UPOV, and a more general discussion took place on the basis of a "Facts Sheet" which the Office of the Union had prepared for the purpose with the help of Mr. Kelly of the United Kingdom, who also participated in the FAO Conference. A copy of that Facts Sheet, together with an improved and more concise version prepared by Mr. Kelly after the FAO Seed Conference, is attached to this document (Annexes I and II).

3. The Office of the Union was informed that the usefulness of plant breeders' rights for developing countries had also been discussed at a meeting of the Directors of the international breeding centers which took place in June this year at the headquarters of the IITA in Nigeria. A Delegation from the Netherlands, which included Mr. Heuver, representative of the Netherlands on the UPOV Council, took part in that meeting and the Office of the Union was informed that a further meeting of that kind was to take place in Mexico later in the year. The Delegation of the Netherlands is preparing a paper on the question under discussion for the Consultative Group on International Agricultural Research (CGIAR), copies of which will be distributed by the Office of the Union.

4. On a suggestion made by the Delegation of the Netherlands and with the agreement of the President of the Council and of the Chairman of the Administrative and Legal Committee, the question of the impact of plant breeders' rights in developing countries has been added to the agenda of the forthcoming session of the Administrative and Legal Committee. This will allow the consideration of this question with the representatives of future member States, and it might be possible to agree on a harmonized line of approach well in advance of the 1981 Symposium, during which certain aspects of the problem could be discussed before a wider public.

5. The following observations of the Office of the Union may serve as a basis for the discussion in the Administrative and Legal Committee. They will also be submitted to the Consultative Committee, if need be in a supplemented or amended form in the light of the discussions in the Administrative and Legal Committee.

Role of UPOV

6. There seems to be general agreement that the question whether or not to introduce plant breeders' rights has to be decided--and can only be decided--by each developing country itself. UPOV and its member States can only assist in the process of decision-making by furnishing information and advice and, if the question is answered in the affirmative, by offering help in the drafting of legislative texts and the establishment of the necessary institutions, and by training experts in stations of member States. In some countries, UPOV and its member States can also help by initiating the discussion.

UPOV Convention and Developing Countries

7. It should be noted at the outset that the UPOV Convention was drafted and UPOV established on the assumption that plant breeders' rights would eventually spread over the whole world. UPOV was envisaged as an international organization with a world-wide vocation, and plant breeders' rights were seen as a concept which would have a beneficial effect everywhere. The UPOV Convention is not restricted to States with a particular kind of economic system or to those which have reached a certain degree of development. Nothing in the UPOV Convention can be construed as an implied limitation to a certain type of State.

8. The aims of UPOV and of the UPOV Convention are clearly stated in the Preamble to the Convention. As the first aim, the Preamble mentions that the Contracting States of the UPOV Convention wish to promote the development of agriculture in the broadest sense. Farmers and horticulturists should have at their disposal high quality seed of the best varieties that can be developed. This is certainly an aim to which developing countries can also subscribe. As a second aim, the Preamble says that the protection of new varieties of plants will also safeguard the interest of breeders. In other words, member States will guarantee just remuneration to their breeders, thereby encouraging them to continue their breeding activities. Achieving justice in society and rewarding initiative and skill is unlikely to be contrary to the policy of developing countries. The Convention furthermore points out that it might be necessary to impose certain limitations on the free exercise of plant breeders' rights in the public interest. This principle seems to be equally important to both developing and developed countries. Finally, it is said that the Contracting States of the UPOV Convention found it desirable that the problems should be resolved in accordance with uniform principles. In other words, the Contracting States wished to achieve harmony between the various national legislations. Such harmonization of legislation is of special importance to developing countries, which in the field of high quality seed on the one hand depend largely on imports from other countries, while on the other hand their ultimate goal is also to export seed. Differences in legislation, in the field of plant breeders' rights as elsewhere, are the main enemy of such trade across borders. In conclusion it can be said that the aims of the plant breeders' rights system embodied in the UPOV Convention, and in particular as expressed in its Preamble, are fully compatible with the interests of developing countries.

9. It should furthermore be noted that the revision of the UPOV Convention by the Diplomatic Conference of 1978 aimed mainly at increasing the number of member States. Indeed, in a few Articles of the Revised Text, special provisions were adopted in favor of developing countries wishing to become members of UPOV. Reference is made in this respect to paragraph 4 of Article 4 (Reduction of the minimum conditions for countries wishing to become members of UPOV) and Article 26 (Finances).

Possible Conditions for the Introduction of Plant Breeders' Rights in Developing States

10. It has often been stated that plant breeders' rights do not stand at the beginning, but rather at the end of a country's development in the field of agriculture. It has been said that the country's infrastructure must have reached a certain level. In this respect, certain minimum conditions have been mentioned: presence of breeders in the country, presence of a functioning seed trade, existence of seed quality legislation and certification.

11. It cannot be denied that plant breeders' rights develop their full potential in a country where plant breeding is already practised on a large scale; this was the case in most of the present member States of UPOV when plant breeders' rights were introduced. Indeed, in those States, plant breeding stood at the "end" of their development. However, plant breeders' rights can also fulfill a useful function in countries where no plant breeding has yet taken place. As happened in some of the present UPOV member States, the introduction of a plant breeders' rights system might induce persons who are so far merely marketing seeds to extend their activities to plant breeding (see Murphy, "Plant Breeders' Rights and the Improvement of Plant Varieties" in the Records of the 1980 Symposium (UPOV publication number 336(E), page 32)). The plant breeders' rights system would work as a shield behind which private individuals could take the risk of investing in plant breeding. Even if, initially, it is mainly foreign breeders who benefit from the system, it increases the chances of improved varieties reaching the country and being available to the country's farmers. Foreign breeders may also have done multiplication work in the country or increased the multiplication work already done there, thereby creating new employment. Finally, experience has shown that such a situation is unlikely to last. Sooner or later, the success of the foreign breeder will stimulate nationals of the country to try their hand at breeding (see Murphy, loc. cit. page 33). At least, this development is likely to occur where foreign breeders perform some of the breeding activities or the multiplication work in the country itself; nationals of the country will receive the necessary training on the job to enable them to do breeding work themselves and will thus form the nucleus of a circle of future national breeders. Thus, the fact that (as yet) there are no plant breeders in a developing country should not discourage that country from introducing plant breeders' rights. Developing countries should judge the general situation in the country. In a situation as described, they should assess (i) whether it is desirable to attract foreign breeders to introduce their valuable new varieties into the country or even to start special breeding programs for the country, (ii) whether it is desirable to attract foreign breeders to initiate or extend multiplication work done in the country, or (iii) whether it is likely that sooner or later national breeding work will start in the country as a result of the protection offered or of the example and challenge of the activities of foreign breeders.

12. It has also been said that a country should at least have a functioning seed trade before it introduces a plant breeders' rights system. Again it must be said that with a well-functioning seed trade a plant breeders' rights system will indeed display greater efficiency than without such a trade, but it is also possible for plant breeders' rights to be one of the contributory factors in the development of a seed trade.

13. The fact that breeding activities are performed in a given country by governmental institutes alone does not necessarily argue against the introduction of plant breeders' rights. In the current UPOV member States, governmental breeding institutes also make use of and appreciate the plant breeders' rights system even in sectors where no private plant breeders are working at the same time.

14. It is sometimes said that plant breeders' rights can only succeed if supported by governmental seed quality control. It cannot be denied that plant breeders may derive certain advantages from the existence of a seed quality control system. On the other hand, a plant breeders' rights system also works without a supporting system of seed quality control. This is illustrated by the fact that there is no UPOV member State in which the existing seed quality legislation covers the whole vegetable kingdom. A great number of ornamental plant species are eligible for protection in the UPOV member States even though the existing seed quality control legislation is not applicable. One State that has already ratified the UPOV Convention has made it very clear that it does not intend to introduce a seed quality control system comparable to that of the European UPOV member States.

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15. What has been said of seed quality control can also be said of certification. Certification is sometimes a help to the owner of a plant breeders' right. On the other hand, it cannot be said that plant breeders' rights are of no use at all without a system of seed certification.

16. Plant breeders' rights systems only make sense where seed can be expected to be sold. Where, for the development of agriculture, seed is furnished free of charge to farmers over lengthy periods, either by international breeding centers or by national government institutes, or by both, plant breeders' rights might be less desirable. Where such a situation exists, the question whether the furnishing of seed, free of charge, is considered a permanent practice or is only practised for a transitional period should be carefully examined. Where the latter is the case, the plant breeders' rights system, being one incentive for the encouragement of plant breeding, could play a useful role in speeding up the process of moving to a normal commercial relationship.

17. Although, according to the view taken by the Office of the Union in the preceding paragraphs, certain imperfections of a country's infrastructure with regard to seed should not be considered an absolute barrier to the introduction of plant breeders' rights, UPOV should not, when asked for advice, fail to refer to the interdependence of plant breeders' rights and a number of flanking measures in the present member States of UPOV, and to suggest that the need for such measures should also be discussed for the developing country in question. UPOV should also extend any assistance that it offers developing countries to such measures.

Reasons why UPOV Might be Interested in Promoting Plant Breeders' Rights in Developing Countries

18. The introduction of plant breeders' rights in developing countries would first of all be of advantage to the breeders, the safeguarding of whose interests is one of the aims of the UPOV Convention. In countries without plant breeders' rights, breeders run the risk of their varieties being produced and sold by anyone without consent and without payment of any royalty. Breeders would not even be able to prevent a low quality material of the variety being sold, with dire consequences for the reputation of the variety. Furthermore, seed of the protected variety might be exported from countries in which no protection is granted to other countries and sold there, legally in countries that also have no plant variety protection, illegally in countries with plant variety protection. Plants of the protected variety might be multiplied in a country without plant variety protection for the purpose of producing final products (cut flowers, fruit) which are then imported into countries with plant variety protection and sold there without any royalty being paid to the breeder. This can only be prevented where in the latter countries national legislation has extended plant variety protection to the final product. Such a development would be liable not only to undermine the value of the new variety concerned, but also to make the whole system of plant variety protection illusory, at least for a number of species or for certain groups of plants.

19. The protection of new varieties of plants by at least some developing countries would help to build up the world-wide recognition of plant breeders' rights as a legal concept. Plant breeders' rights are a rather recent achievement. To be fully respected, their necessity or at least their usefulness should be generally acknowledged. In a world where the other basic legal concepts, including most other intellectual property rights, have found almost world-wide recognition, plant breeders' rights will never win full acknowledgement (and therefore full observance) if they are restricted to a certain group of countries.

20. It is one of the major requests of the activist groups agitating against plant breeders' rights that plant breeders' rights should not be introduced in developing countries. This must not prevent UPOV from using unbiased judgement in assessing the usefulness of such rights in developing countries. On the other hand, there is the obvious danger that any undue reserve on the part of UPOV in relation to developing countries will certainly be misinterpreted as acknowledgement of the allegedly harmful character of plant breeders' rights, and this not by the activist groups alone. It would help those groups to build up a public view that plant breeders' rights are something dubious, something that not even its protagonists dare to defend in the open before a critical and attentive public. Once such a public view has become firmly established, it will not remain restricted to developing countries, but will certainly spread to others.

21. UPOV is the only intergovernmental organization concerned with plant breeders' rights. It is for this reason that it is recognized, even by its adversaries, as the spokesman for plant breeders' rights at intergovernmental level. If UPOV remains an organization representing only a small group of developed States, it may be difficult for it to maintain that role. Other organizations might then take over, and it is significant that certain activist groups have already asked other organizations to intervene (for instance the Environmental Liaison Center in Nairobi).

22. The Administrative and Legal Committee is invited to examine and, if it agrees with them, endorse the views expressed in this document.

[Annexes follow]

FACTS SHEET ON PLANT BREEDERS' RIGHTS (NAIROBI)

The concept of plant breeders' rights (also referred to as plant variety protection) has given rise to a number of basic questions in the minds of Directors of international research centers and others. In order to avoid misunderstandings, the following clarifications and general explanations seem to be called for:

1. Plant breeders' rights are granted according to provisions of national legislation. The national legislation of UPOV member States (at present: Belgium, Denmark, France, Germany (Federal Republic of), Israel, Italy, Netherlands, South Africa, Spain, Sweden, Switzerland, United Kingdom) follow certain common rules which are laid down in the UPOV Convention. These rules mainly deal with the conditions required for protection, the conditions for annulment or forfeiture of the right granted, the scope of protection, the minimum periods of protection, restrictions for reasons of public interest in the exercise of the rights recognized, details concerning the variety denomination, and the independence of the protection system in relation to measures regulating the production, certification and marketing of seeds and other propagating material.

2. Plant breeders' rights aim at stimulating investment in plant breeding--whether by private industry or by cooperatives or even by public institutes--and thereby the development of better varieties, i.e. varieties with higher yield, higher quality, greater resistance to pests and diseases or in other ways better adapted to man's needs. The ultimate aim is the promotion of agriculture, horticulture and forestry. The incentive is created by the fact that only the holder of the plant breeder's right has--and then only for a limited period--the exclusive right to commercialize, or to authorize others to commercialize, the variety (which mainly means to produce propagating material of the variety for the purpose of its commercial marketing or to sell propagating material as such). Authorization to others is normally given by means of a license requiring, as one of its conditions, payment of a royalty. This exclusive position gives the holder of the plant breeder's right the possibility of obtaining some return for his achievements and capital investment and thus to obtain the means for further breeding activities. In the present UPOV member States, in particular in those in which plant breeders' rights have existed for quite some time, plant breeders' rights legislation has proved a rather efficient incentive for increased breeding activities in general and for breeding activities in crops that were formerly neglected in those countries.

3. Plant breeders' rights apply to varieties ready to be marketed, not to the "breeders' material." The new variety must be homogeneous, stable and capable of being reproduced. Reproduction may take place according to a predetermined cycle as in "hybrid" varieties. On the other hand, material in an unselected state, e.g. F₂ material in a self-pollinating species, would not be eligible for protection.

4. Only the breeder (including the discoverer) of the variety, or his successor in title, is entitled to apply for protection. Someone who acquires material of a variety bred by others is not entitled to apply for protection. In most legislation the applicant for plant breeders' rights is assumed to be the breeder of the variety or his successor in title. Plant breeders' rights laws contain legal remedies for cases where a right was granted to a person other than the breeder of the variety or his successor in title.

5. Even material of a variety which is protected by a plant breeder's right may be used as an initial source of variation for the purpose of creating another new variety and for the subsequent marketing of that new variety. This is also true for "breeders' material" which has not yet reached the stage of being a variety and which has not been granted protection. Thus plant breeders' rights can never be said to stand in the way of the development of new varieties or to block progress in plant breeding.

6. Plant breeders' rights are not granted for a variety that is already commonly known. Protection may only be obtained where the variety is distinct from any other variety whose existence is a matter of common knowledge. Where protection is granted for a variety which was not distinct in that sense on the date of the application for protection, the right must be annulled.

7. To be eligible for protection the variety must be new, which means that it must not have been marketed or offered for sale before certain deadlines laid down in the Convention and in the national legislation based on it. A right granted for a variety which did not qualify as being new under those rules must also be annulled.

8. The system of plant breeders' rights is a completely voluntary one. It is up to the breeder of a new variety to decide whether or not he wishes to apply for protection. He cannot be forced to obtain protection. Even if he does not apply for protection legal provisions exist to prevent others from misappropriating his variety and trying to obtain protection for it themselves. Only if two breeders were to breed the 'same' variety simultaneously, which would be very rare, could one of those breeders find himself unable to obtain protection for his variety (because the other had already duly filed an application for protection).

9. It is true that, for a variety to be eligible for protection, it must also be homogeneous or uniform. This is essential because otherwise the limits of the exclusive right cannot be effectively defined. This might cause some delay in the marketing of the variety but, on the other hand, there are usually other constraints that have nothing to do with plant breeders' rights, which make it necessary for breeders to work towards a certain uniformity of the variety. Non-uniform varieties will not sell. Certainly the plant breeders' rights system does not require that varieties "attain near genetic purity usually achieved about F₁₂ - F₁₄," as was recently stated by a representative of one of the international centers. Under normal conditions an earlier generation of the variety would be considered reasonably uniform.

10. Plant breeders' rights are very often confused with national or supranational measures regulating production, certification and marketing of varieties such as various National Lists, the Canadian licensing regulations, EEC Seed Directives or the EEC Common Catalogues. Any national or supranational seed quality control regulations, especially those that require registration of a variety before marketing is permitted, pursue different purposes and are outside the realm of plant breeders' rights. Article 14 of the UPOV Convention expressly states that plant breeders' rights shall be independent of such measures and member States of UPOV shall as far as possible avoid hindering the application of the provisions of the UPOV Convention by such measures. Often-heard remarks that plant breeders' rights prevent non-protected varieties from being marketed thus lack all justification. On the other hand, it is permissible and customary in many countries to combine the administration of both systems, i.e. to conduct the tests for distinctness, uniformity and stability both for the purposes of plant variety protection and for the purposes of any seed quality control measures.

11. A variety, to be eligible for protection, must be designated by a denomination destined to be its generic designation. In principle the denomination of a variety should be the same in all UPOV member States and should always be used when propagating material of the variety is commercialized. This rule seems to be necessary for the protection of the consumer and should even be advantageous to international centers in helping them to control the danger of misappropriation of their varieties.

12. Legislation on plant breeders' rights inevitably makes some administrative activities necessary. According to the UPOV Convention no plant breeders' rights can be granted without prior examination of the new plant variety to ensure that it fulfils the legal conditions for protection, which are in particular distinctness, homogeneity and stability. These administrative measures ensure that the system is not misused in the sense very often cited by critics of the system. A country contemplating the introduction of plant breeders' rights legislation will need to weigh the likely benefits from greater investment in plant breeding and from better supervision of the system against possible delays deriving from testing requirements.

13. There is no evidence that plant breeders' rights form an obstacle to the exchange of genetic material. Should a breeding enterprise, for commercial reasons, withhold certain material which it plans to use for developing new varieties, it would do so whether or not plant breeders' rights legislation existed. On the contrary, there is some likelihood that the protection deriving from plant breeders' rights legislation tends to encourage commercial enterprises to be more generous in releasing material or in making samples available to research centers.

14. Naturally breeders make use of the results of basic research available to them. This helps to ensure that progress arising from basic research reaches the eventual consumers, and reaches them in an efficient way, since private enterprise normally has better possibilities available to it in this respect than do purely scientific institutions. Of course, all enterprises involved in commercial breeding, including cooperatives and even public institutes, will expect a certain profit, but this does not mean to say that the public is

required to pay twice for the development of a new variety, first to the institute performing the basic research, and secondly to the breeding enterprise. Where an enterprise, using material developed and released by a research institute, produces a variety which is eligible for protection, it must have performed additional breeding activities to develop that material and it will also have to bear the expense of marketing and maintaining the variety (a task sometimes foreign to a public research institute).

15. In UPOV member States plant breeders' rights have not eliminated public breeding activities. It might be that some breeding activities, formerly conducted by public institutes, have shifted to the private plant breeders, thereby enabling public institutes to concentrate on other important activities. There is no apparent reason why it should be frustrating for scientists working on public research to see the results of their work put to practical use by commercial breeding enterprises, as was recently claimed by a representative of a research center. Government-funded basic research is not conducted for its own sake but for the benefit of society at large. Basic research in breeding is conducted first for everyone's benefit, only secondly for the specific benefit of farmers, and last but not least for the benefit of the seed producing industry and the seed trade, which is part of the national economy of a country and thus of the country's prosperity.

16. In many UPOV member States there are public breeding institutes that regularly obtain legal protection for their varieties. This is considered perfectly acceptable as long as they are in a position to maintain their varieties and have the necessary experience to operate commercially (for example, the necessary experience to defend plant breeders' rights and to enter into license negotiations).

17. Although the UPOV system was initially designed for countries where private plant breeding was performed, and although the benefits of a plant breeders' rights system are more obvious in such States, it cannot be said that the system is of no use to States where only public breeding is performed. First of all, many public institutes in UPOV member States make considerable use of the advantages offered by the plant breeders' rights system, which helps them to prove their efficiency and balance their budgets, and provides them with a certain control over the way in which their varieties are used. Furthermore, the example of some UPOV member States shows that private plant breeding only came into existence for certain genera and species after the introduction of plant breeders' rights legislation. This in turn had a stimulating effect on the activities of the public breeding institutes. Plant breeders' rights legislation also provides an incentive for valuable new varieties bred in one country to be introduced into other countries.

18. So far UPOV does not include any member State that may be called a developing country. Plant breeders' rights legislation is either non-existent in developing countries or, in those few cases where it does exist, still limited in its application. Thus, plant breeders' rights can hardly be blamed for the occasional examples of misuse that may be observed in developing countries. Any criticism of this kind thus seems to be quite unjustified. Whether plant breeders' rights should or should not be introduced in a developing country requires the most careful consideration. Their introduction is only warranted where a certain infrastructure already exists or can be quickly created. UPOV and the UPOV member States are always prepared to give assistance, to serve as discussion partners and to offer advice on the introduction of efficient plant breeders' rights legislation, including the establishment of the necessary infrastructure. Although believing in the benefits of plant breeders' rights, UPOV and the UPOV member States would never encourage the introduction of such rights in countries that could not be expected, in the foreseeable future, to create the necessary basis for the efficient working of the system.

19. In the present UPOV member States plant breeders' rights are appreciated not only by individual and corporate breeders alike. There is also evidence that farmers' organizations have themselves sought the extension of plant breeders' rights to certain genera and species in order to stimulate investment by private or public circles in the breeding of new varieties of those genera or species. This seems to be the best kind of proof of the value of the system in the present UPOV member States. Criticism of plant breeders' rights often comes from circles which, regardless of the efforts of UPOV and others, are insufficiently informed about the system, or even from circles that have little or nothing to do with agriculture.

FACTS SHEET ON PLANT BREEDERS' RIGHTS
(Concise Version)

PLANT BREEDERS' RIGHTS - Some of Your Questions Answered

The following are some of the main facts about plant breeders' rights (also referred to as plant variety protection). For fuller information please apply to UPOV, 34, chemin des Colombettes, 1211 Geneva 20, Switzerland.

What States Currently Provide for Plant Variety Protection Under Their National Laws?

Argentina, Belgium, Denmark, German Democratic Republic, Germany (Federal Republic), France, Hungary, Ireland, Italy, Israel, Japan, Kenya, Netherlands, New Zealand, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America.

What is UPOV?

UPOV is the International Union for the Protection of New Varieties of Plants. The members of UPOV are States that have national laws based on the provisions of the International Convention for the Protection of New Varieties of Plants.

Why is Plant Variety Protection Considered Necessary?

Primarily to support plant breeding as a vital economic activity and to provide farmers and growers with plant varieties offering:

- (i) better yield;
- (ii) better quality;
- (iii) better resistance to hazards;
- (iv) ease of production;
- (v) climatic adaptation.

How Does Variety Protection Support Plant Breeding?

By giving to the creator of a new plant variety certain defined rights for a limited period (normally 15 to 25 years) which enable him to obtain royalties on the sale of reproductive material (seed) of his variety. This provides the opportunity for a return on investment and encourages more people to invest in plant breeding.

What Requirements Must be Met by the Applicant for Plant Breeders' Rights and His Variety?

The applicant must be the breeder or discoverer of the variety or that person's successor in title.

The variety must be "new" that is, subject to certain conditions as provided in national legislation, it must not have been placed on the open market before the application for plant breeders' rights is made. The variety must also be shown to be:

- (i) distinct from all other known varieties;
- (ii) sufficiently uniform;
- (iii) stable in its essential characteristics throughout successive multiplications or, where a breeder prescribes a cycle of reproduction, at the end of each cycle.

Why Were These Criteria Established?

For the benefit of the breeder and the user of the variety. The breeder must be able to exercise and defend his right, while the user of the material must be assured that the variety will be capable of reproducing the characteristics he requires for his particular needs. For both, it is essential to be able to identify the variety as one entity that is stable. Note that these criteria take no account of "breeder's material" in an unselected state.

Do Breeders Have to Apply for Plant Breeders' Rights in Their New Varieties?

No; participation is entirely voluntary, but, once a breeder decides to submit his variety for plant breeders' rights, he and his variety must comply with the rules laid down in national legislation.

Is There any Connection Between Plant Breeders' Rights and Other National Laws Regulating Seed Marketing and Quality?

No; the UPOV Convention expressly states that plant breeders' rights shall be independent of such measures. However, many member States find it convenient to combine the administration of plant breeders' rights and seed legislation and to conduct common tests for distinctness, uniformity and stability.

Do Plant Breeders' Rights Contribute To The "Loss" of Genetic Material?

No; the introduction of improved varieties under the stimulus of plant breeders' rights may even broaden the genetic base. Gene banks and plant breeders' rights are two separate issues which should not be confused. National authorities throughout the world (whether offering plant breeders' rights or not) are aware of the need to preserve genetic material for the future. FAO currently lists 62 major national seed stores and many others are in preparation.

Are Plant Breeders' Rights an Obstacle To The Exchange of Genetic Material?

There is no evidence of this. If a plant breeding enterprise wishes, for commercial reasons, to withhold material that it plans to use in future breeding programmes, it will do so whether plant breeders' rights exist or not.

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