

**Seminar on the
Enforcement of Plant Breeders' Rights
under the UPOV Convention**

CONCLUDING REMARKS

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**ENFORCEMENT OF
BREEDERS' RIGHTS**

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Key findings

- **Recalled that:**

- To obtain the full benefit of the UPOV PVP system it is necessary to have effective enforcement measures
- It is primarily the responsibility of breeders to enforce their rights
- UPOV members are required to provide for appropriate legal remedies for effective enforcement

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Cont. Key findings

- **Impact of lack of, or insufficient, effective enforcement**

- Agricultural productivity endangered
- Livelihood of farmers and rural economies put at risk
- Introduction of improved varieties and genetics delayed
- Investment in breeding reduced
- Disease problems increased
- Reduced tax income

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Cont. Key Findings

- Noted that the list of enforcement measures in the Explanatory Notes on the Enforcement of Breeders' Rights under the UPOV Convention (UPOV/EXN/ENF/1 see at http://www.upov.int/upov_collection/en/) are still relevant for UPOV members and have proven to be useful in the development of laws of existing and future members
- Reinforced the importance of continuing the exchange of experiences and information through:
 - Seminars, UPOV website, breeders' initiatives
 - Information reported in the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT). The BMT is a group open to DUS experts, biochemical and molecular specialists and plant breeders (see in BMT papers in "Breeders Day" concerning the use of molecular techniques in examining essential derivation and in variety identification at <http://www.upov.int/meetings/en/topic.jsp>)

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Session 1- challenges and opportunities

Some examples of PBR infringements identified

- Propagation beyond authorized quantities
- Unauthorized exports/imports
- Packaging of harvested crop (e.g. grain, ware potatoes) for sale as propagating material (e.g. brown/white bagging)
- Use of farm-saved seed in a way that does not comply with relevant legislation
- Sale of a protected variety under another name
- Other companies selling propagating material of protected varieties as their own
- Unprotected inbred lines used to produce protected hybrids
- Protected inbred lines used to produce protected hybrids or hybrids that are not granted protection in their own right
- Unauthorized vegetative propagation of hybrid varieties
- Unauthorized propagation from "stubs" (i.e. plants with tops removed)⁶

Cont. Session 1- challenges and opportunities

- **Challenges breeders are facing**
 - very easy to reproduce a variety. Cost of reproduction is low
 - hard to differentiate between illegitimate and legitimate propagating material and very difficult to obtain evidence of infringing material
- **Initiatives endorsed by breeders**
 - work with end users
 - work with relevant authorities (including certification agencies, phytosanitary services, customs, police, tax authorities, anti-fraud agencies, etc.)
 - invest in gaining understanding by farmers
 - organizations acting on behalf of breeders
 - Investigate possibilities for markers to be included in protected varieties⁷

Session 2 – Experiences of UPOV members demonstrated

- Benefits of including breeders' rights in other measures for intellectual property enforcement
- Role of relevant bodies and authorities in the provision of information to the breeder regarding propagating material of varieties
- DNA-Profiling has an important role to play (e.g. *prima facie* evidence, suspicion of possible infringement)