



APBREBES Report from the 2020 UPOV Session

17 November 2020

UPOV meetings this year were particularly affected by the COVID-19 pandemic, as they all took place in a virtual environment. The meetings drew more participants than usual, yet some of them were unable to speak due to technical difficulties. This happened three times during the Administrative and Legal Committee for example, despite the professional management of the Conference.

These technical mishaps prove the limitations of virtual meetings, which cannot become the norm. Participants with poor internet connection should not be excluded from democratic processes. This would be unacceptable.

New Secretary-General

The new UPOV Secretary-General, Daren Tang from Singapore, attended the meetings for the first time. Mr. Tang was appointed as Director General of the World Intellectual Property Organization (WIPO) in May 2020 and took office on 1 October. The Agreement between WIPO and UPOV, signed in 1982 provides that «The Council of UPOV shall appoint as Secretary-General of UPOV the Director General of WIPO». The election of the new Secretary-General for a period of 6 years was thus only a formality. Mr. Tang decided to waive his indemnity as Secretary-General of UPOV (20% of the salary he receives as Director General of WIPO) so it could be used in the UPOV Program and Budget for financing activities of particular interest to developing countries.

Adoption of documents by correspondence

The COVID-19 measures also included the adoption of various documents by correspondence in all UPOV Bodies. Documents to be considered by correspondence had been posted on the UPOV website by the end of August. Members (and in some cases observers) had a month to send comments. In the absence of comments, the relevant UPOV body approved the proposed decision(s) within 30 days, provided there were no further objections-. If straightforward comments were received on the documents, the Office of the Union produced a revised version with a request for approval of the proposed decision(s) by correspondence. If comments received on a document could not be addressed, the document was forwarded to the concerned UPOV body for discussion. See [Circular E-20/094](#) for detailed description of the process.

Administrative and Legal Committee (CAJ), October 28, 2020

The Report of the CAJ with all the decisions taken can be found [here](#). We are describing a small selection of the topics discussed and the decisions taken.

Essentially Derived Varieties

At the last meeting it was decided to start a process for the revision on the Explanatory Note on Essentially Derived Varieties. During the intersessional process 65 issues concerning specific aspects of the current Explanatory Notes were identified by members and observers. An overview of the issues can be found in [CAJ/77/4 REV.](#) The sheer number of issues is a massive task for the upcoming working group, especially as submissions reflect conflicting interests on several issues. One of these conflicting questions concerns the disclosure of the breeding history. Russia proposes that *«an applicant (breeder) shall indicate the history of breeding (creation) of the variety in the application materials (the application form)»*. The United States argues that *«it would not be appropriate to discuss any requirement for variety origination disclosure requirements to be included in the Explanatory Note on EDV»*.

The decision for the continuation of the process was already decided by correspondence before the CAJ Meeting. The Terms of Reference of the Working Group were approved. The composition of the Working Group (WG-EDV) was also defined after member countries and observers could express interest to participate in the WG-EDV. It comprises 13 member countries and the European Union, 6 breeder organisations, and APBEBES. Other members of the Union would be free to participate at any meeting of the WG-EDV and make comments. We would have wished to see a more balanced composition of the group. Interestingly, Russia, which introduced many topics to be discussed, did not apply to participate in the working group so far. The first meeting of the WG-EDV will be held virtually on 8 December.

Harvested Material

The CAJ agreed to propose to the Council to organize a seminar in the first half of 2021, to exchange information on matters concerning harvested material and unauthorized use of propagating material. For more information on the topic and various views of member countries of member countries see [CAJ/77/5](#).

Novelty of parent lines with regard to the exploitation of the hybrid variety

The information collected in the intersessional period from 56 members of the Union showed large differences. Some 30 members answered that the novelty of the parent lines would NOT be lost if the hybrid is sold, while 12 members answered that the novelty would be lost. Separately, 14 members answered that that they have limited experience on this topic; their policy was being reviewed; or their policy contained specific exceptions. In its reply Canada, which considers that the novelty of parent lines is lost in case of sale, explains why *“this aspect could have the effect of dramatically extending novelty and protection for a given variety. For example, a breeder protects hybrid C, the resulting cross of parents A x B. After 20 years of protection, the term for hybrid C ends and it is no longer protected. However, if exploitation of the parental lines is not considered to be within the scope of novelty, the breeder could then decide to protect the parental lines (A and/or B). As per Article 14 (5)(a)(iii), the benefits and exclusive rights of protecting A and/or B would be extended to the hybrid C. The net result, conceivably hybrid C could benefit from two full terms protection. »*

The CAJ decided to invite members of the Union and breeders' organizations to make presentations on the novelty of parent lines with regard to the exploitation of the hybrid variety at the next CAJ session, with a view to prepare a common guidance on that matter.

Consultative Committee (CC), October 29, 2020

As usual the proceedings of the Consultative Committee were closed to observers and its documents are not publicly available. Nevertheless, using the Right of Information Act, APBEBES gets access to the documents and make them available on its [Website](#). Decisions taken by the Committee are reported to the UPOV Council and this [report](#) is publicly available from the UPOV's website. Here are some details on some of the CC's decisions.

Developments of relevance to UPOV in other international fora

A matter of great concern is the way members of the UPOV Secretariat present biased positions in other International fora, not representing a consolidated view of its members. For example, in the Ad Hoc Technical Experts Group on Farmers' Rights (AHTEG) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the UPOV representative objected proposals made by some experts from UPOV member states but supported other ones. For more details see the [APBEBES intervention](#) during the Council. It appears that the CC is now responding to this situation by clarifying that the interventions and contributions made by the Secretariat need to reflect the UPOV Convention. We hope that this clarification will change the future positioning of the Secretariat in international negotiations.

At the last Governing Body of the ITPGRFA, the following decision was taken in Resolution [4/2019](#), Implementation of the Global Information System: "Encourages the International Union for the Protection of New Varieties of Plants (UPOV) to explore possibilities for free access to and use of the information in the [UPOV]PLUTO database, including downloading information, for example by linking PLUTO to GLIS [Global Information System of the ITPGRFA]» However, UPOV so far did not respond to this request. APBEBES already questioned the nature of paid access to this public data in its [report](#) of last year's meeting. This year the CC noted that the Delegation of Norway would propose that the Secretariat of the ITPGRFA contact the Office of the Union to explore the request in Resolution 4/2019. The result of those explorations will be presented to the Consultative Committee next year.

In 2017, the Council decided to review the FAQ on the relationship between UPOV and other international bodies such as the ITPGRFA and CBD. So far, no progress has been made on this matter.

Report on an initiative concerning smallholder farmers

This agenda item is about the longstanding discussion on a new interpretation of acts done privately and for non-commercial purposes, which are not affected by the Breeder's Rights. A proposal to change the corresponding Explanatory Note was put forward back in 2016 by several stakeholders, including APBEBES. Since then the discussion on this topic has consistently been postponed. At the last CC meeting it was decided to invite Oxfam, Plantum and Euroseeds (the project team) for a joint presentation concerning smallholder farmers based on their [project results](#). After the presentation at the meeting this year the CC decided to:

- invite members of the Union to share their experiences and views on the implementation of the exception of acts done privately and for non-commercial purposes in relation to smallholder farmers;
- ask the Office of the Union to draft a guidance text taking into consideration the findings of the presented project by Oxfam, Plantum and Euroseeds in conjunction with the contributions by members.
- circulate the first draft of the guidance to the CC for comments by correspondence in conjunction with a compendium of the contributions received in reply to the circular;
- based on the comments received on the first draft of the guidance, ask the Office of the Union to prepare an updated version for consideration of the Consultative Committee at its session in 2021,

together with consideration of the status (e.g. explanatory note, guidance document, FAQ) that any agreed guidance should have.

FAQ “How the UPOV system supports sustainable development”

The CC adopted a new FAQ “How the UPOV System supports sustainable development”. The style and weaknesses of other UPOV FAQs are also clear in this one. Along the same lines, as in previous FAQs, UPOV seems merely interested in promoting its system despite any evidence. In the text, the achievements of plant breeding are attributed to the UPOV system without further questioning. The FAQs consistently omit to mention that there are other types of plant variety protection systems, which are presumably better adapted to developing countries. Norway had made various suggestions for improvement in its submission (see [CC/97/6 Rev](#)). Unfortunately, only a few of them were retained in the final version.

Seminar on “broad policy issues”

Following a proposal by the European Union in the context of its Green Deal and the Farm to Fork strategy, the CC decided to recommend to the Council the organization of a seminar during the UPOV sessions in 2021. The seminar, which would be based on presentations by members of the Union, is expected to facilitate an exchange of information and experiences on strategies involving plant breeding and plant variety protection that addressed broad policy issues.

Council(C), October 30, 2020

Here are some comments on the Council discussion regarding the Report of the Consultative Committee. The official report of the Council Session can be found [here](#).

Report by the President on the work of the ninety-seventh session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee

Marien Valstar (Netherlands), President of the Council, reported to the Council about the CC which was held behind closed doors the day before. After the report by the President APBEBES made an Intervention, with the following requests:

- To emphasise the need for revision of the Explanatory Note on Exceptions to the Breeder’s Right (interpretation of acts done privately and for non-commercial purposes) with an inclusive process. As a first step allowing all observers to share their experiences and views on this policy issue. (The decision prepared by the CC only invited members to comment.)
- APBEBES especially emphasized that even a new, improved definition of private and non-commercial use does not amount to an implementation of Farmers' Rights, in particular the right recognised in the ITPGRFA to save, use, exchange and sell farm-saved seed and other propagating material. The implementation of these rights cannot be "provided for" under a "private and non-commercial use" exception, but would require a substantial revision of the UPOV Convention.
- To ask what was the mandate given to the UPOV Secretariat for the negotiations in the Ad Hoc Technical Experts Group on Farmers’ Rights (AHTEG) of the Treaty? And who gave the mandate?
- To know if the secretariat is prepared to report next year on the extent to which paid access to the database has proven to be a source of income (since the additional income was the reason

to implement the paid access). We think that this information would be valuable to hold an informed discussion.

The full APBEBES intervention can be found [here](#).

The International Seed Federation (ISF) and CIOPORA also expressed their willingness to contribute to the process on the interpretation of acts done privately and for non-commercial purposes.

In his reply, the UPOV Vice Secretary-General made the following remarks:

- in relation to the interest of contributing to the work on possible guidance on smallholder farmers, he noted that it was a matter for consideration by the members of the Union;
- in relation to PLUTO, he confirmed that the Office of the Union would provide information on the use of the premium service of the database in its reports on PLUTO to the relevant UPOV bodies;
- in relation to the mandate of the Office of the Union in other international fora, the Vice Secretary-General did not answer the question about the mandate given. He just noted that the interventions and contributions of the Office of the Union would need to reflect the UPOV Convention.

Subsequently the Delegation of Switzerland proposed to also invite observers to provide comments on acts done privately and for non-commercial purposes. This proposal was supported by Norway.

The Council decided to change paragraph 25(a) of document C/54/13, as follows:

“(a) a circular to be sent to members of the Union and observers requesting contributions on their experience and on their views on the implementation of the exception of acts done privately and for non-commercial purposes in relation to smallholder farmers;

Seminars approved

The Council approved the Seminar recommended by the CC to exchange information and experiences on strategies involving plant breeding and plant variety protection that addressed broad policy issues. The Council also approved the Seminar recommended by the CAJ on matters concerning harvested material and unauthorized use of propagating material.