

# Workshop

**Proposed Amendment of the Law No  
Plant Breeders Right in accordance with  
the UPOV Convention and the Benefits of  
UPOV Membership for National  
Development Goals**

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# Overview

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## Topic 1

### Overview of the UPOV Convention;

- Why was the UPOV Convention adopted
- Criteria for protection
- Scope of protection and exceptions
- Proceedings after grant
  - Cancellation, nullity
  - Enforcement



UPOV

## Topic 4

### The importance of development legislation in accordance with the UPOV Convention



UPOV

## Topic 5

Benefits of UPOV membership and how can UPOV membership and plant variety protection contribute to achieving national development goals in the agriculture sector



UPOV

UPOV

# Topic 1

## Overview of the UPOV Convention;

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# Plant Variety Protection under the UPOV Convention

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## Why a separate IP Right for Plant Varieties

- No discussion that plant breeding is an intellectual action
- In a number of countries National systems for awarding breeders compensation for their breeding work existed in the 1960:ies
- Nature is a perfect copying machine

# Plant Variety Protection under the UPOV Convention

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## Existing IP Rights not applicable?

Discussions amongst founding countries:

- Reluctant to 'Patent Life'
- Fear for blocking progress through Patents
- There should be room for continued improvement
- How to create a meaningful description of the 'invention'
- Patent criteria not suitable for plant varieties

# Plant Variety Protection under the UPOV Convention

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## Solutions in the 1961 Diplomatic Conference

- IP-Right with a Breeders' Exemption
- Official decision on the criteria to describe a variety after a field test before the right is granted
- The UPOV Convention was adopted in 1961 and has been updated in 1972, 1978 and 1991

# Plant Variety Protection under the UPOV Convention

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## UPOV: INDEPENDENT INTERGOVERNMENTAL ORGANIZATION

The International Convention for the Protection of New Varieties of Plants

established in 1961

The International Union for the Protection of New Varieties of Plants

Union internationale pour la protection des obtentions végétales

UPOV

- (a) Breeders and varieties**
- (b) National treatment
- (c) Conditions of protection
- (d) Breeder's right and exceptions
- (e) Matters after grant



# Breeders and varieties

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## Breeder

- The person entitled to protection

## Variety

- The subject matter of the protection

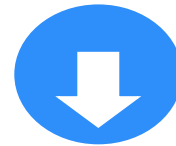
# Breeder

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The person that

- Bred, or
- Discovered and developed the variety

  
**Discovery or find**



**Development is  
necessary**

# Breeder

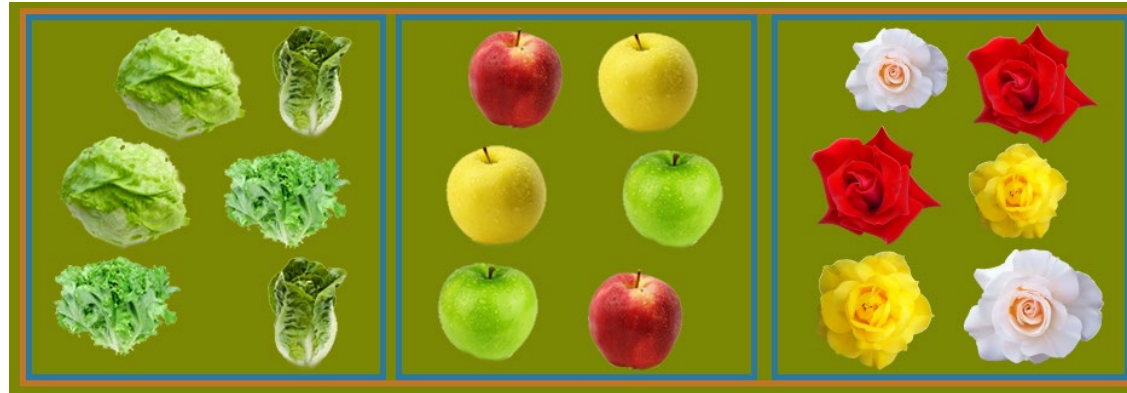
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- There are no restrictions on who can be considered to be a breeder under the UPOV system:
  - A breeder might be:
    - an individual
    - a farmer
    - a researcher
    - a public institute
    - a private company etc.

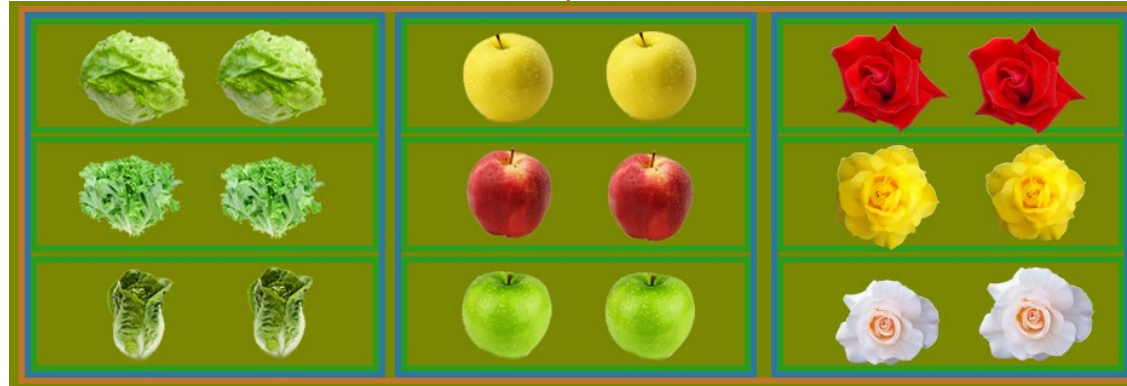
**PLANT**

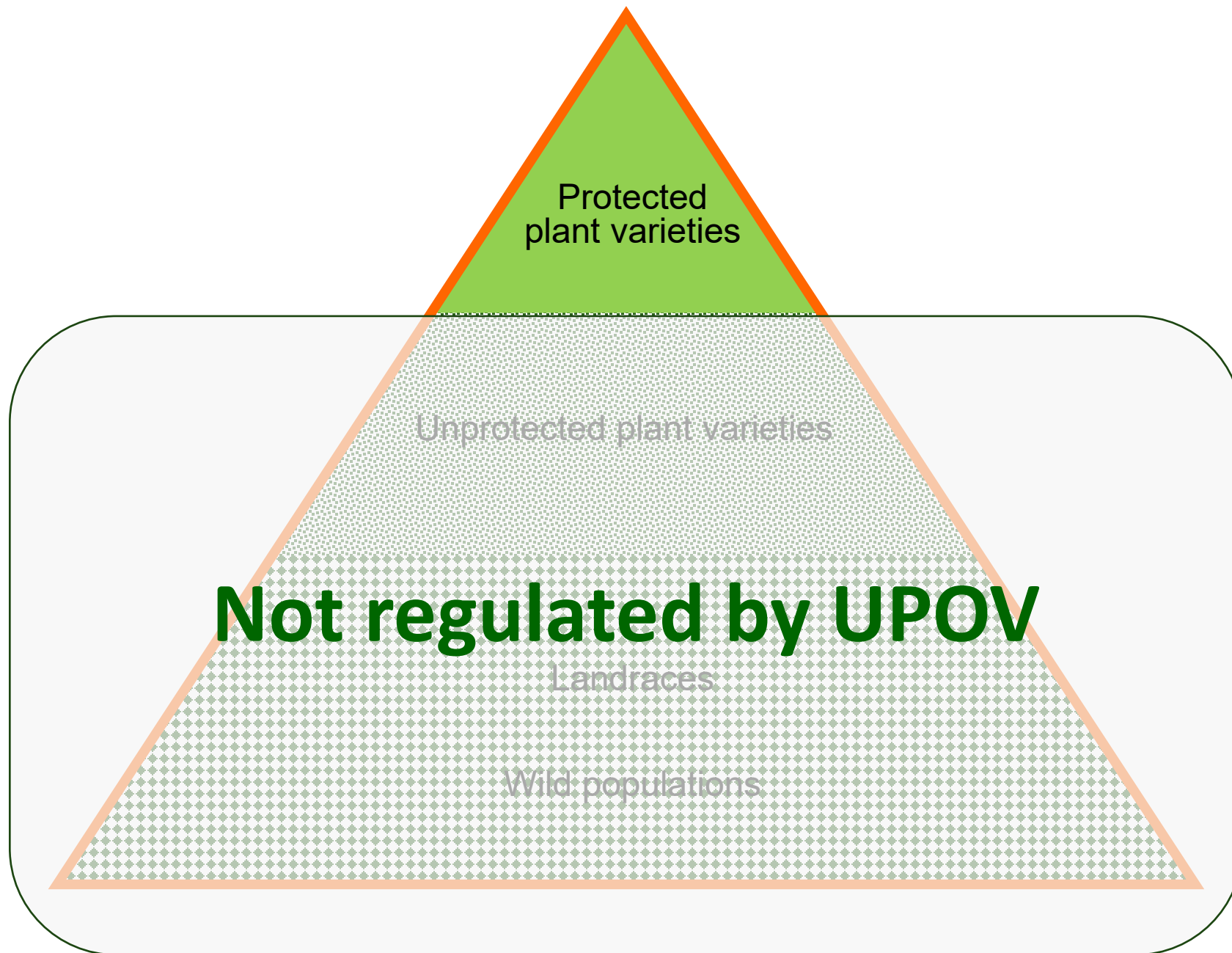


**SPECIES**



**VARIETIES**





## SOME KEY PROVISIONS OF THE UPOV CONVENTION (1991 Act)

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- (a) Breeders and varieties
- (b) National treatment**
- (c) Conditions of protection
- (d) Breeder's right and exceptions
- (e) Matters after grant

# National treatment

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National treatment, within the territory of a member of the Union, for nationals and residents of any other members of the Union

Enjoy the same treatment as nationals of a UPOV member insofar as the grant and protection of breeders' rights are concerned

## SOME KEY PROVISIONS OF THE UPOV CONVENTION (1991 Act)

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# CONDITIONS FOR GRANTING A BREEDER'S RIGHT

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- novelty
- distinctness
- uniformity
- stability
- variety denomination
- formalities
- payment of fees

**NO OTHER CONDITIONS!**

UPOV

# CONDITIONS FOR GRANTING A BREEDER'S RIGHT

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## Novelty :

No sale or disposal earlier than

- 1 year - own territory
- 4 years - other territories (6 years - trees/vine) from the filing date
- Exception for varieties of recent creation (new members / extension of protection to additional genera or species)

# The “DUS Test” (field trial)

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# DISTINCTNESS

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## Apple: Fruit color



# DISTINCTNESS

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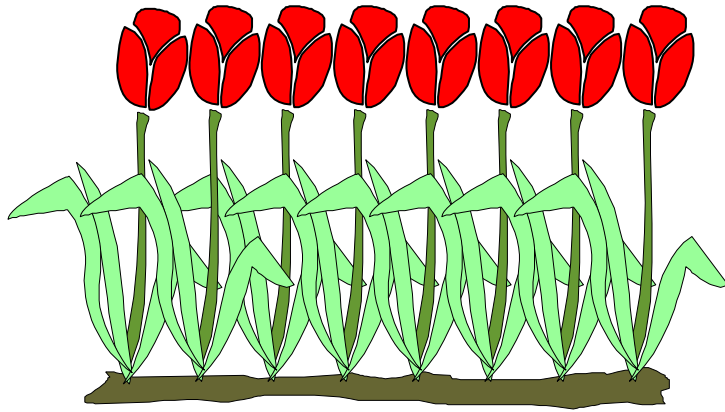
**Must be clearly distinguishable from** any other variety (whether protected or not) whose existence is a matter of common knowledge

...anywhere in the World

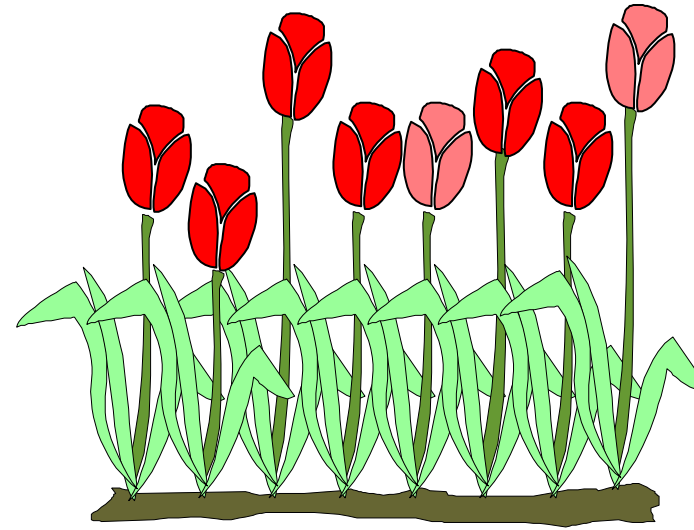


# UNIFORMITY

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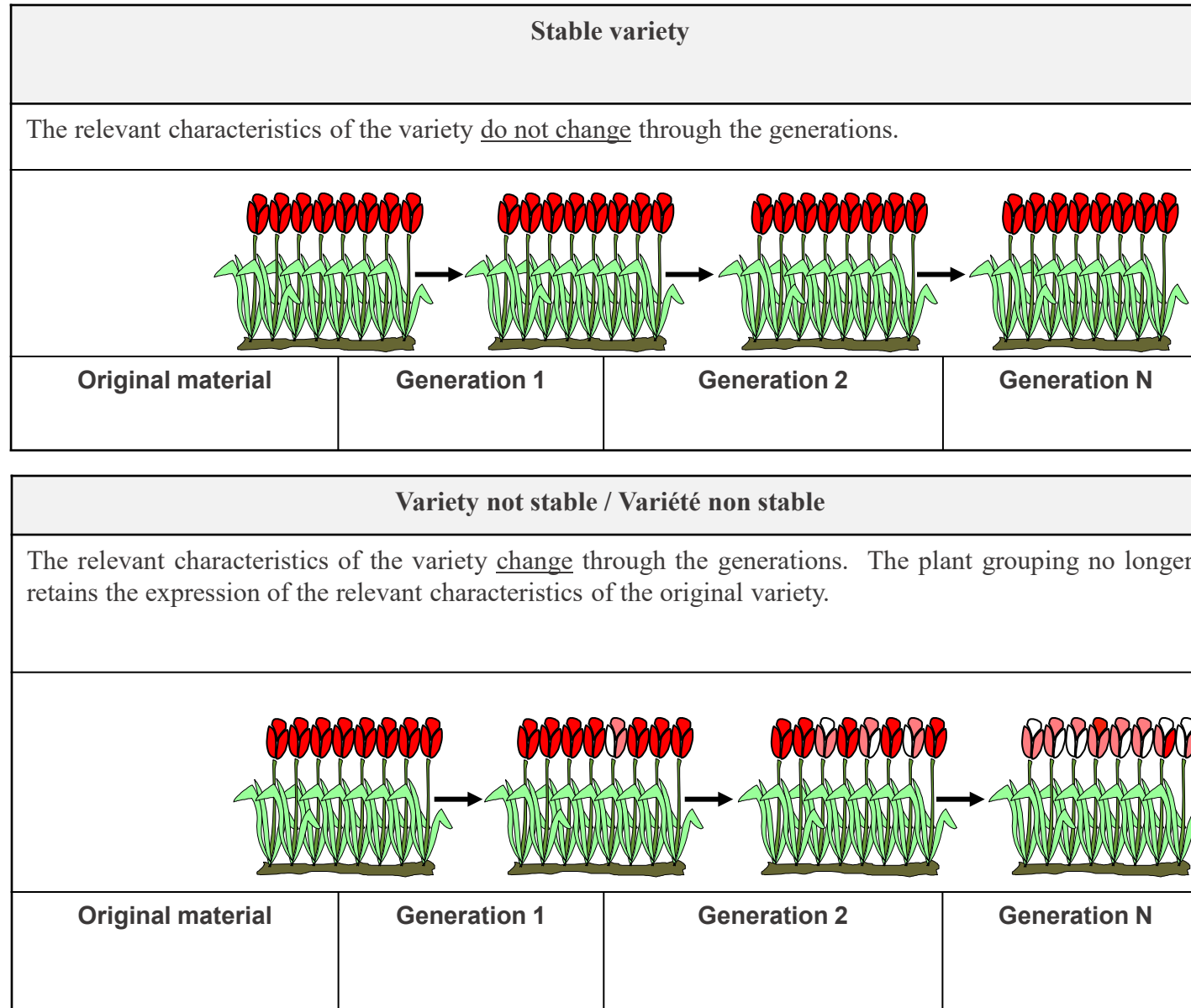


A uniform variety



A variety lacking uniformity

# STABILITY



# COOPERATION

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**Cooperation between UPOV members  
is a key benefit of UPOV membership**



*Practical DUS experience  
offered for >3,733 genera  
and species*

*Number of genera and species for  
which varieties protected by  
members of the Union: > 4,470*

*(14.860 titles granted in 2022)*

*Agreements for cooperation  
between members of the Union:  
> 1,799*

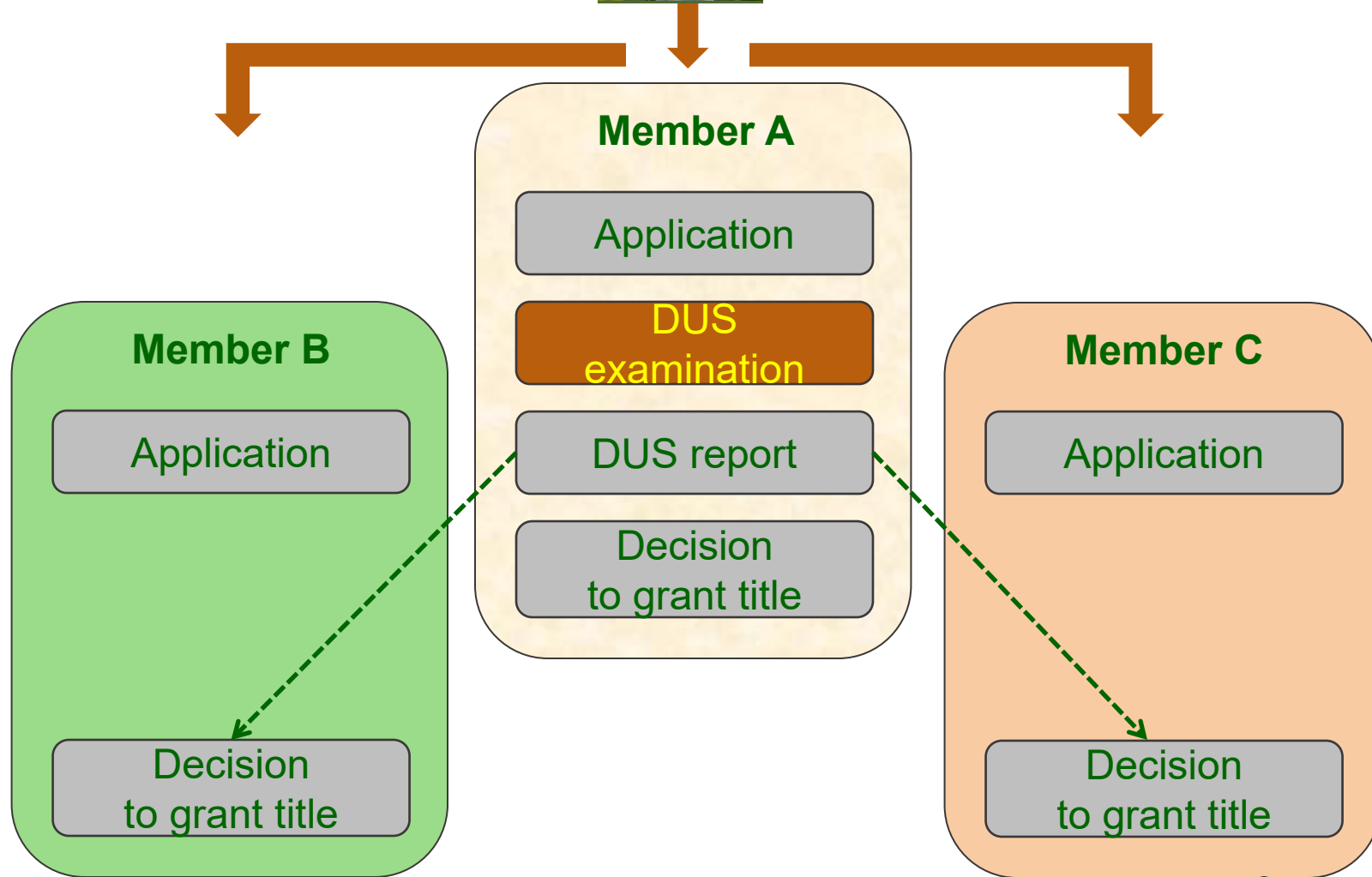


# Cooperation between Authorities

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Cooperation between Authorities can involve:

- use of existing DUS Test Reports from other Authorities
- bilateral arrangements to remove the need for duplication of DUS Tests
- centralized DUS testing at regional or global level



**UPOV Model administrative agreement (TGP/5): 350 CHF (prior application)**

# UPOV guidance on Article 20 of the 1991 Act:

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**“Explanatory Notes on Variety Denominations under the  
UPOV Convention”  
(document UPOV/EXN/DEN)**

# Article 20

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(1) [*Designation of varieties by denominations; use of the denomination*]

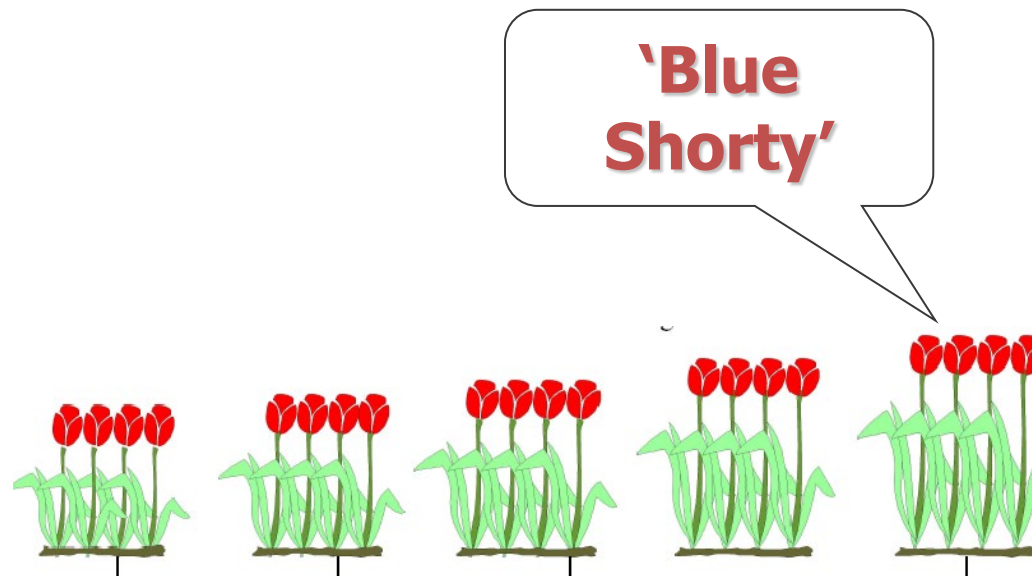
(2) (a) The variety shall be designated by a **denomination which will be its generic designation**

# Article 20

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(2) [*Characteristics of the denomination*]

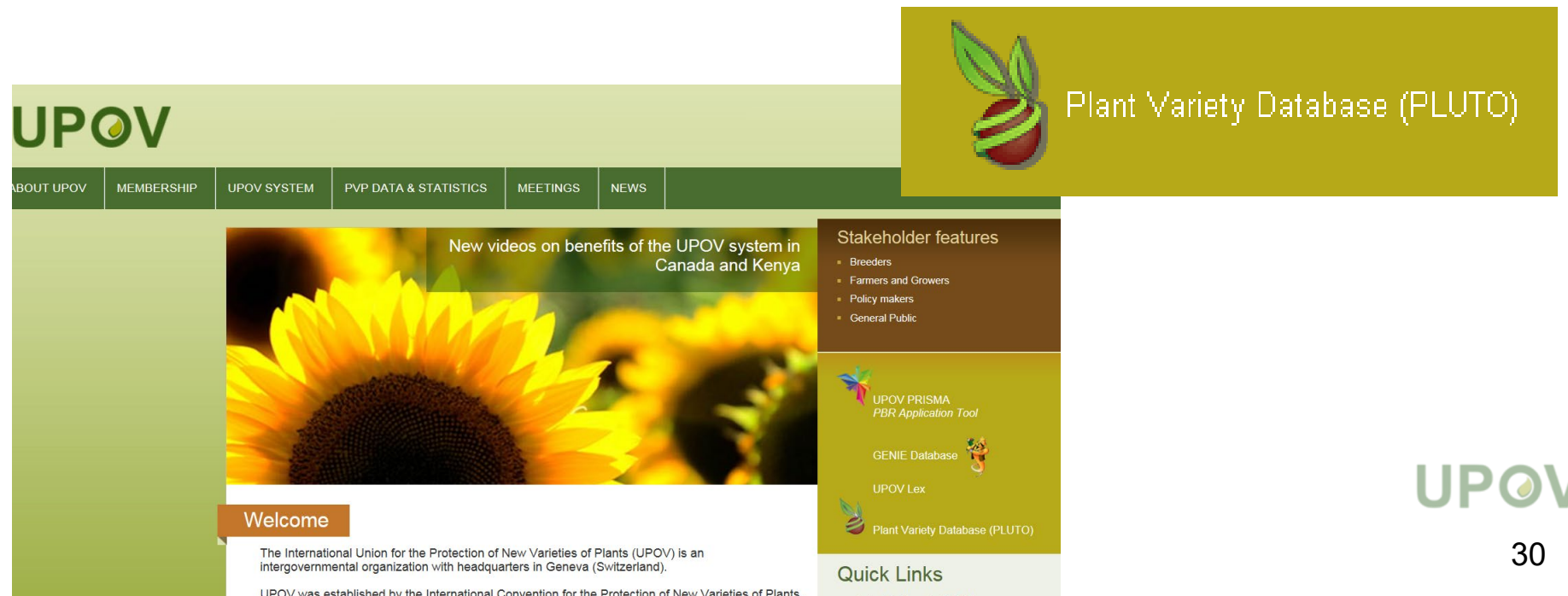
It **must not be liable to mislead or to cause confusion** concerning the characteristics, value or identity of the variety or the identity of the breeder.



# Article 20

## (2) [*Characteristics of the denomination*]

In particular, it **must be different from every denomination** which designates, in the territory of any Contracting Party, **an existing variety** of the same plant species or of a closely related species.



The image shows a screenshot of the UPOV website. The top navigation bar includes links for ABOUT UPOV, MEMBERSHIP, UPOV SYSTEM, PVP DATA & STATISTICS, MEETINGS, and NEWS. The main content area features a large image of sunflowers with the text "New videos on benefits of the UPOV system in Canada and Kenya". Below this is a "Welcome" section with a brief description of UPOV. On the right side, there is a "Stakeholder features" section with a list of users: Breeders, Farmers and Growers, Policy makers, and General Public. Below that is a "Quick Links" section with icons for UPOV PRISMA (PBR Application Tool), GENIE Database, UPOV Lex, and Plant Variety Database (PLUTO). A callout box on the right highlights the PLUTO logo and text: "Plant Variety Database (PLUTO)".

## Denomination search

Term search Denomination search

1

2

3

4

Enter UPOV code/botanical name/common name

Upov code Botanical name Common name Breeder's reference Denomination

Please enter here

ORYZA Oryza

tsuyahime

Search options

Exact match  Extend to upper level  Extend to lower levels  Denomination class

Contains  Starts  Phonetics  Similarity Factor

Fuzzy  Ends

Search Reset

## SOME KEY PROVISIONS OF THE UPOV CONVENTION (1991 Act)

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# MINIMUM DURATION OF PROTECTION

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**TREES and VINES**

**25 years**

**OTHER PLANTS**

**20 years**

**To be counted from the date of grant**



# Breeder's right and exceptions

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## Scope of breeders' rights

- a) Acts covered
- b) Material covered
- c) Varieties covered

## Exceptions to the breeders' rights

# SCOPE – Acts covered

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## Authorization of breeder required for:

- Production or reproduction (multiplication)
- Conditioning for the purpose of propagation
- Offering for sale
- Selling or marketing
- Exporting
- Importing
- Stocking for any of the above purposes

*.... for any protected variety*

# SCOPE – Material covered

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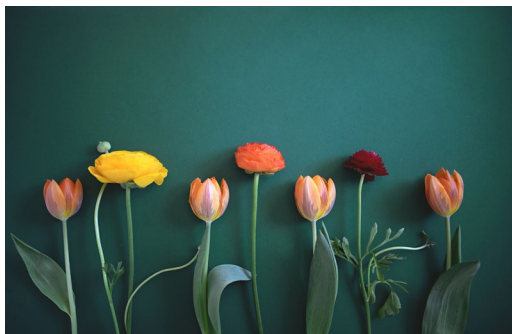
## All propagating material



# SCOPE – Material covered

- **Harvested material**

If obtained through unauthorized use of propagating material unless, reasonable opportunity for breeder to exercise his right in relation to the propagating material



# SCOPE – Material covered

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## Certain products (optional)

- if obtained through unauthorized use of harvested material unless, reasonable opportunity for breeder to exercise his right in relation to the harvested material



# SCOPE – Varieties covered

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In addition to the protected variety itself...

- **Essentially derived varieties**
- Varieties **not clearly distinguishable** from the protected variety
- Varieties whose production requires the repeated use of the protected varieties

