

How the UPOV Convention provides incentives for breeding and access to new plant varieties for farmers

Workshop on Plant Variety Protection - Plant Breeders' Rights and Farmers' Benefits –

Cambodia, February 28, 2022

Yolanda Huerta,
Legal Counsel and Director of Training and Assistance, UPOV

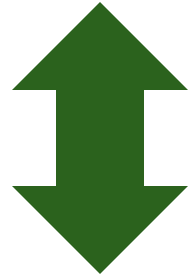


International Union for the Protection of New Varieties of Plants

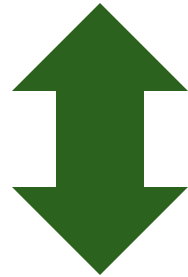
PREVIEW

1. Why an effective international system of plant variety protection **provides incentives for breeding and access to new plant varieties for farmers?**
2. Breeders' rights **protection and enforcement** under the UPOV Convention

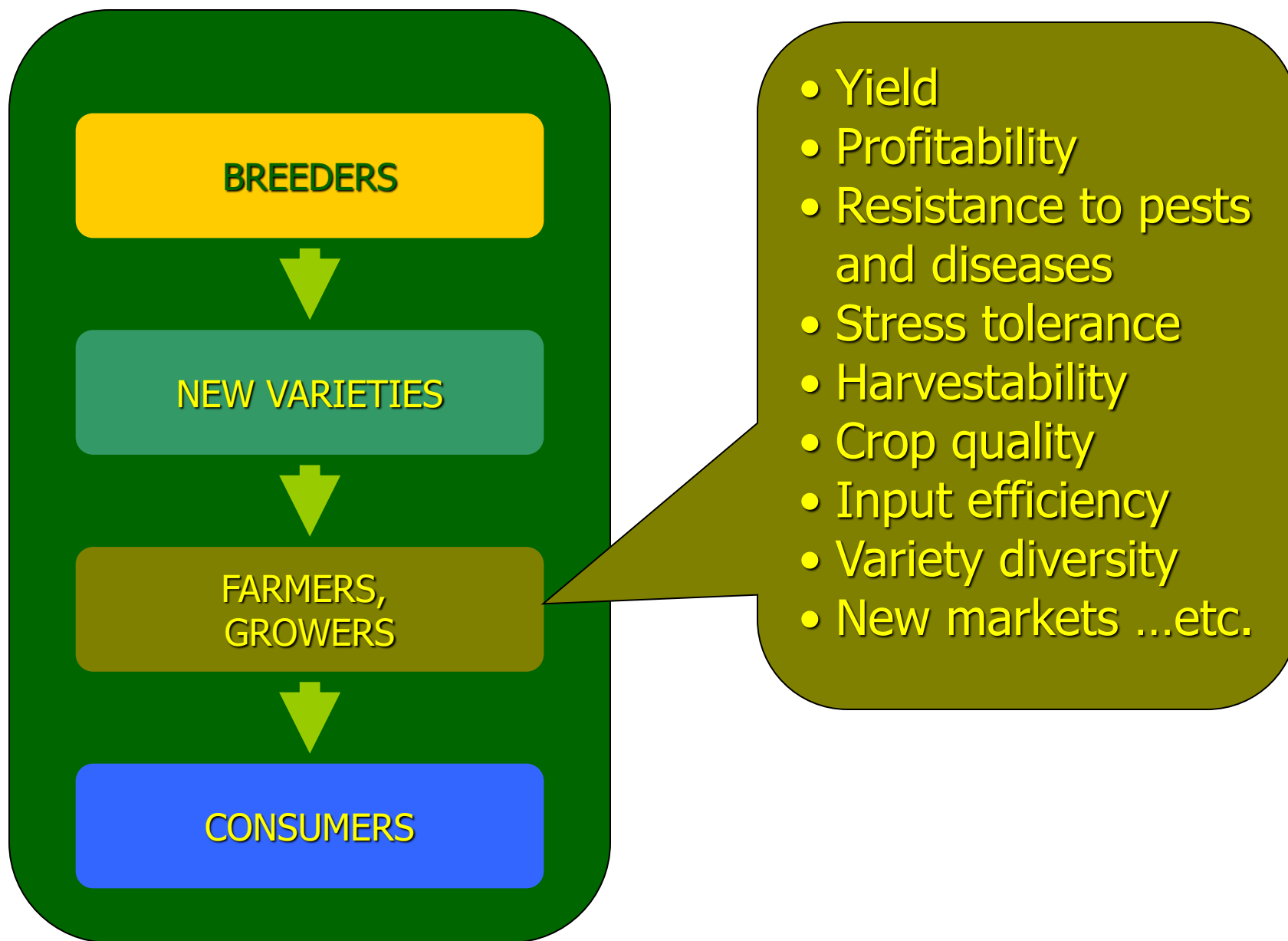
BREEDERS' RIGHTS



FARMERS' BENEFITS



NEEDS OF SOCIETY



BENEFITS OF PLANT VARIETY PROTECTION SYSTEM AND UPOV MEMBERSHIP

- Diversity and number of breeders
- Investment in breeding
- Delivering improved varieties to farmers, growers and consumers
- Development of business opportunities in foreign markets
- Access to foreign varieties and enhanced domestic programs

Successes/Impact Resulting from PVP cont'

Employment creation

- It is estimated that over 500,000 people (including over 90,000 flower farm employees) depend on the floriculture industry.



UPOV MEMBERSHIP PROCESS

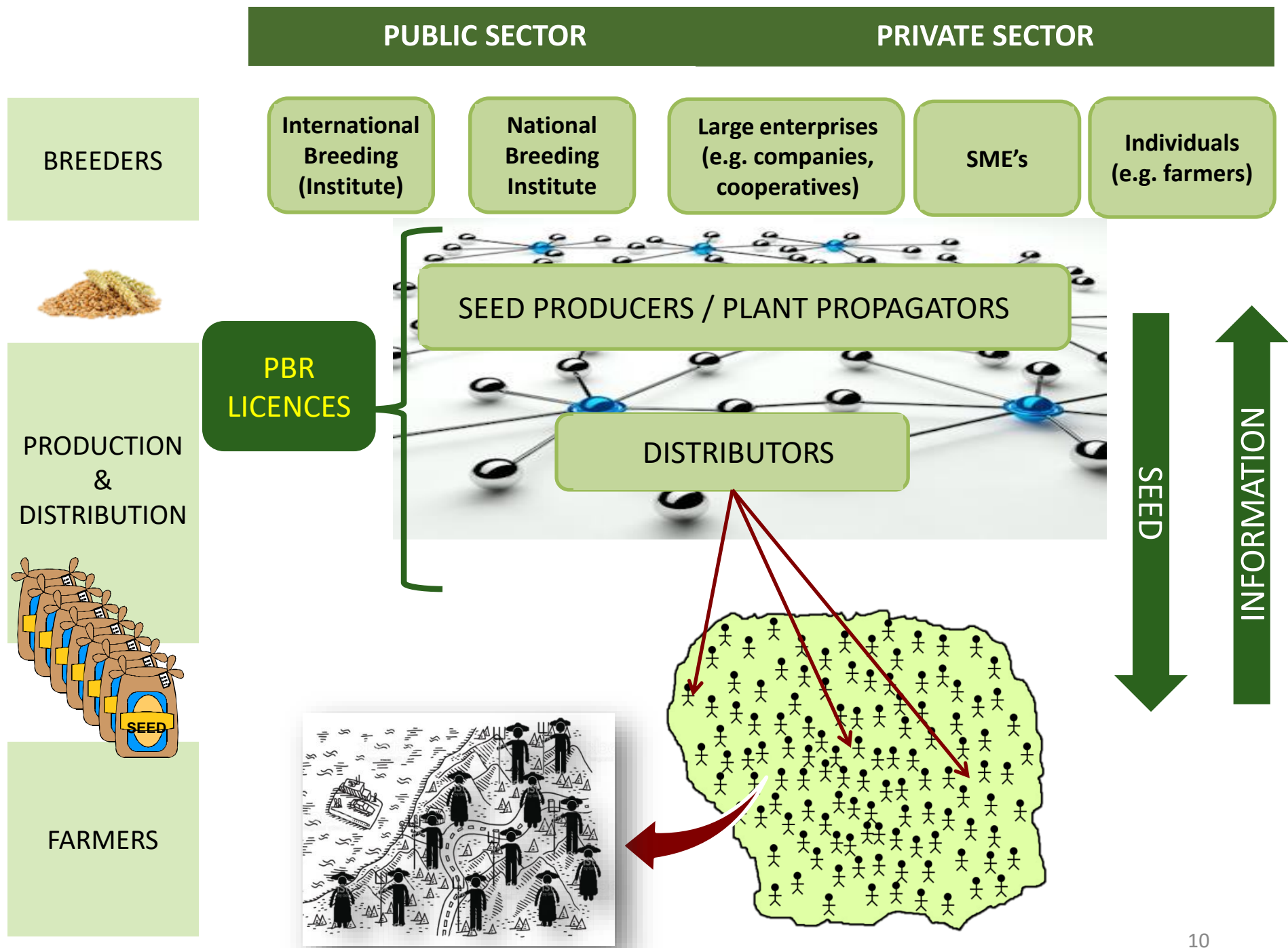
- Policy decision to draft legislation in accordance with the 1991 Act of the UPOV Convention
- Contact the Office of UPOV for assistance provision of the Drafting Guidance Document INF/6 and consultations
- Finalize the Draft Law for its examination by the Council of UPOV
- Ask advice of the Council of UPOV
- If advice positive and Law in force deposit instrument of accession to become a UPOV member

**What are the challenges in encouraging investment
in plant breeding?**

What are the practical challenges for technology transfer and commercialization?
or...

How to:

- identify important variety **performance** and **quality** characteristics for farmers and consumers
- breed **new varieties** with those characteristics
- deliver **good quality seed /propagating material** in a timely way
- professional **distribution**, SMEs engagement in national, regional and international **trade**



Change the mode on the agriculture production (Viet Nam (Minh 2017))

Seed distribution system of new varieties

BEFORE PVP

Breeders

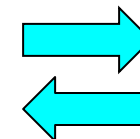


Farmer

Not professional
Seed quality control
difficult

AFTER PVP

Breeders



Company

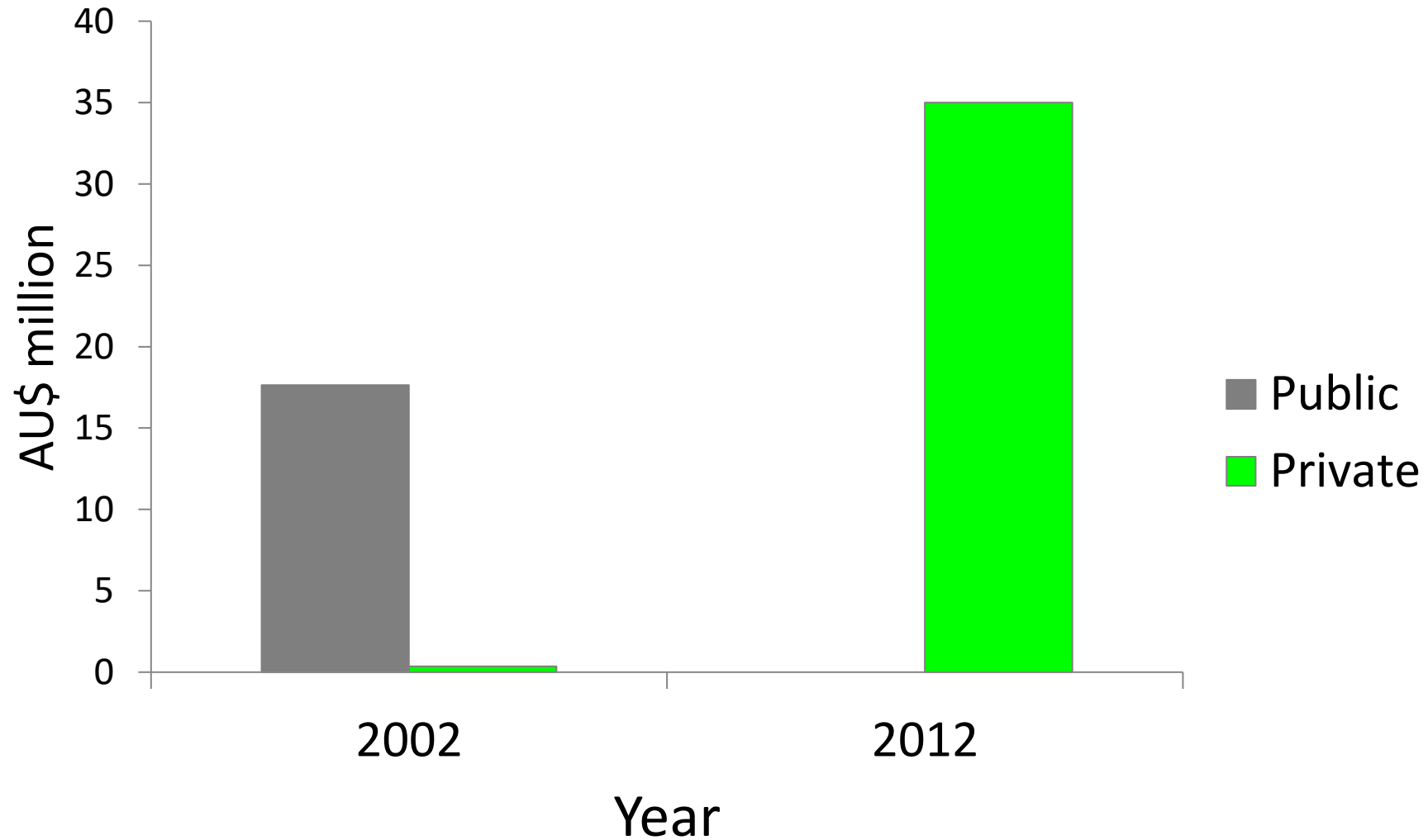


Farmer

Good service for the farmer;
Better seed quality due to
professional distribution



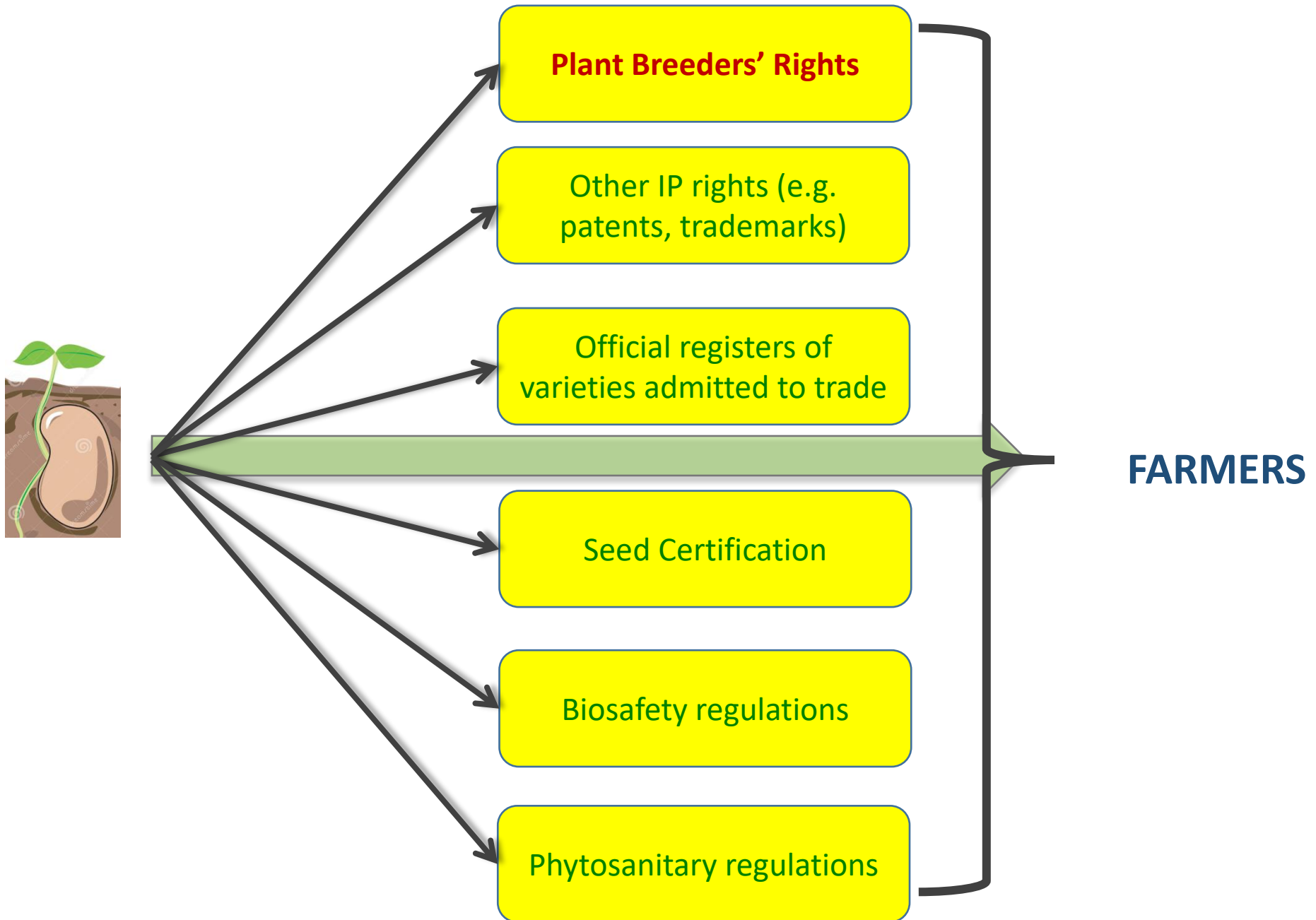
Plant breeding investment in Australia (Wheat)



PREVIEW

1. Why an effective international system of plant variety protection **provides incentives for breeding and access to new plant varieties for farmers?**
2. Breeders' rights **protection and enforcement** under the UPOV Convention

Other systems in the Seed Sector





Protected
plant varieties

Unprotected plant varieties

Not regulated by UPOV

(ITPGRFA, CBD, seed marketing regulations
etc.)

Wild populations

SOME KEY PROVISIONS OF THE UPOV CONVENTION (1991 Act)

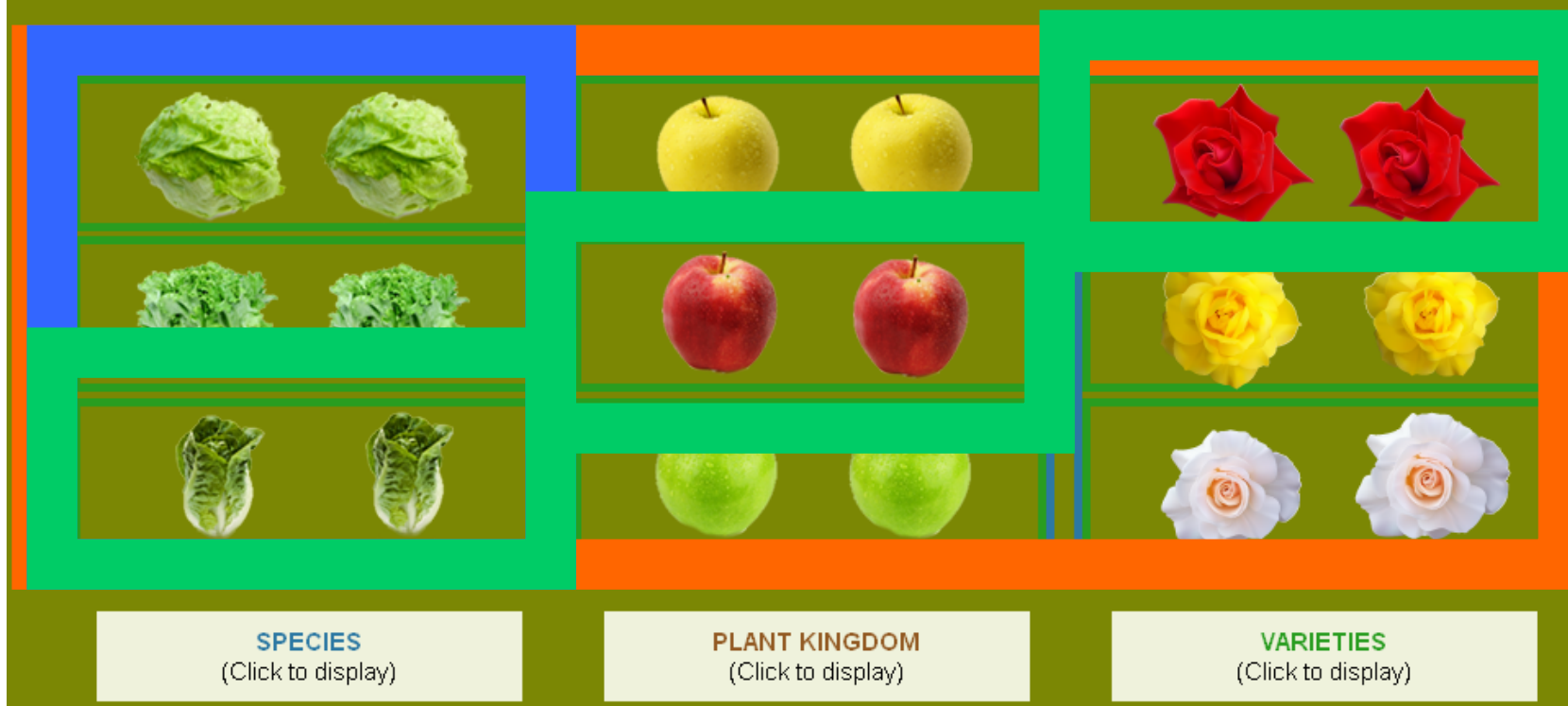
- Breeders and varieties
- Genera and species
- National treatment
- Conditions of protection
- Breeder's right, exceptions and enforcement



What is a Plant Variety?

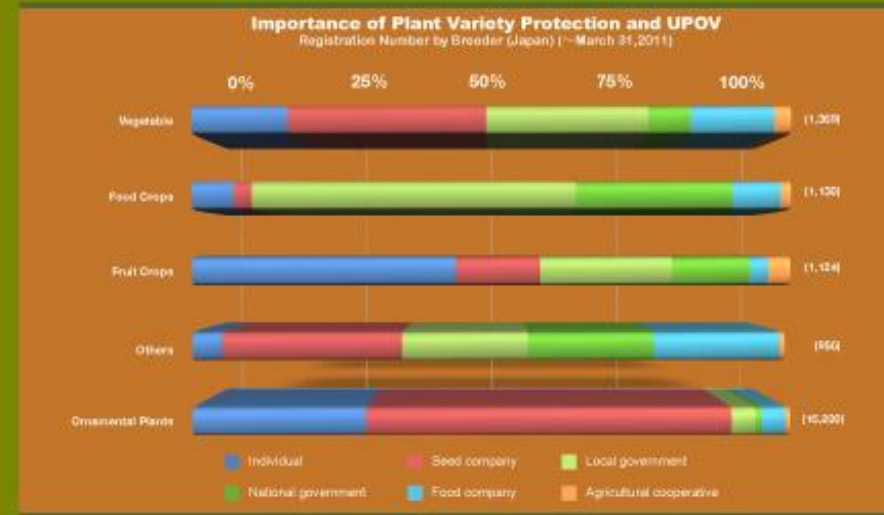
The term "species" is a familiar unit of botanical classification within the plant kingdom. However, it is clear that within a species there can be a wide range of different types of plant. Farmers and growers need plants with particular characteristics and that are adapted to their environment and their cultivation practices.

A plant variety represents a more precisely defined group of plants, selected from within a species, with a common set of characteristics.



Who can protect a plant variety?

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.



Japan Registration Case Study

(click to see full view)



CONDITIONS FOR GRANTING A BREEDER'S RIGHT

1991 Act Art. 5

Criteria to be satisfied

- NOVELTY
 - DISTINCTNESS
 - UNIFORMITY
 - STABILITY
- 
- DUS**
- VARIETY DENOMINATION
 - FORMALITIES and PAYMENT OF FEES

NO OTHER CONDITIONS!

Scope of breeders' rights

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

Exceptions to the breeders' rights

PBR: authorization of breeder required for the following acts in respect of the propagating material of protected variety

- **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**

Explanatory Notes on Conditions and Limitations Concerning the Breeder's authorization in respect of Propagating Material under the UPOV Convention UPOV/EXN/CAL

Examples of conditions and limitations:

- Remuneration
- Period
- Method of production or reproduction, export routes
- Material quality and quantity
- Territories concerning the authorization to export
- Conditions of license/sub-license

Symposium on the Benefits of Plant Variety Protection for Farmers and Growers



Vuyisile Phehane

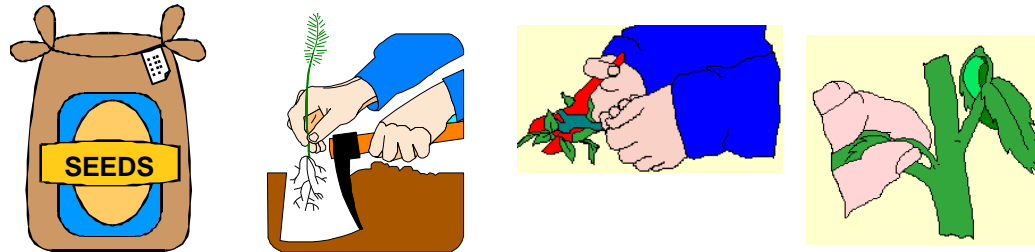


• Delivering high performance varieties to subsistence/smallholder farmers

- Local licensing agreement with a South African company
 - for the commercialization of some of the ARC's citrus varieties.
 - A condition of the license: ensure the participation of smallholder citrus producers in the commercialization value-chain.
- Facilitated partnership with the Citrus Growers' Association to access ARC

MATERIAL COVERED

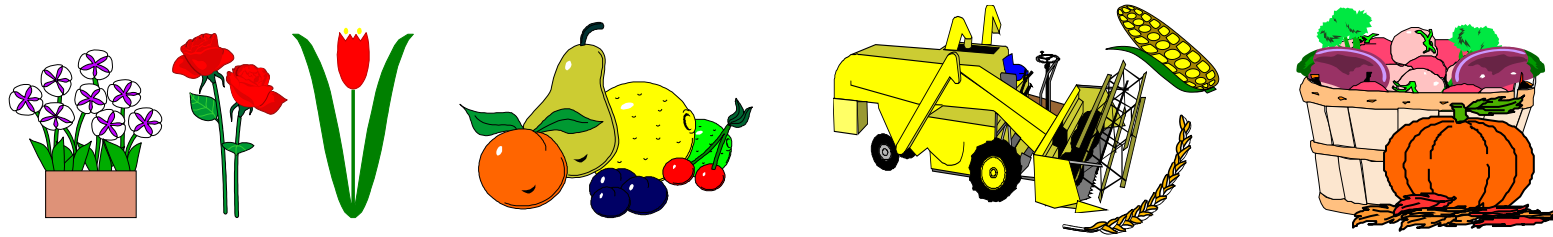
- All propagating material



- Harvested material under certain conditions
- Certain products (optional)

MATERIAL COVERED

- All propagating material
- **Harvested material**



if obtained through **unauthorized use** of propagating material **unless**, reasonable **opportunity** for breeder to **exercise his right**

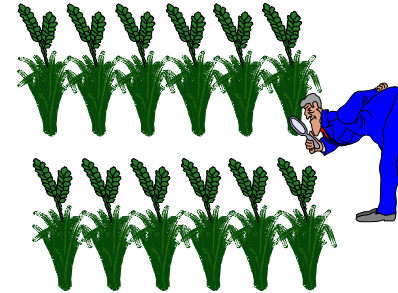
- **Certain products (optional)**

VARIETIES COVERED

In addition to the protected variety itself...

VARIETIES:

- **not clearly distinguishable** from the protected variety
- whose production **requires the repeated use** of the protected variety
e.g. hybrids
- which are **essentially derived** from the protected variety ...



EXCEPTIONS TO THE BREEDER'S RIGHT

(1991 Act)

Compulsory

Acts done:

- privately and for non-commercial purposes
- for experimental purposes
- breeding other varieties (breeder's exemption")

Optional

Farm-saved seed

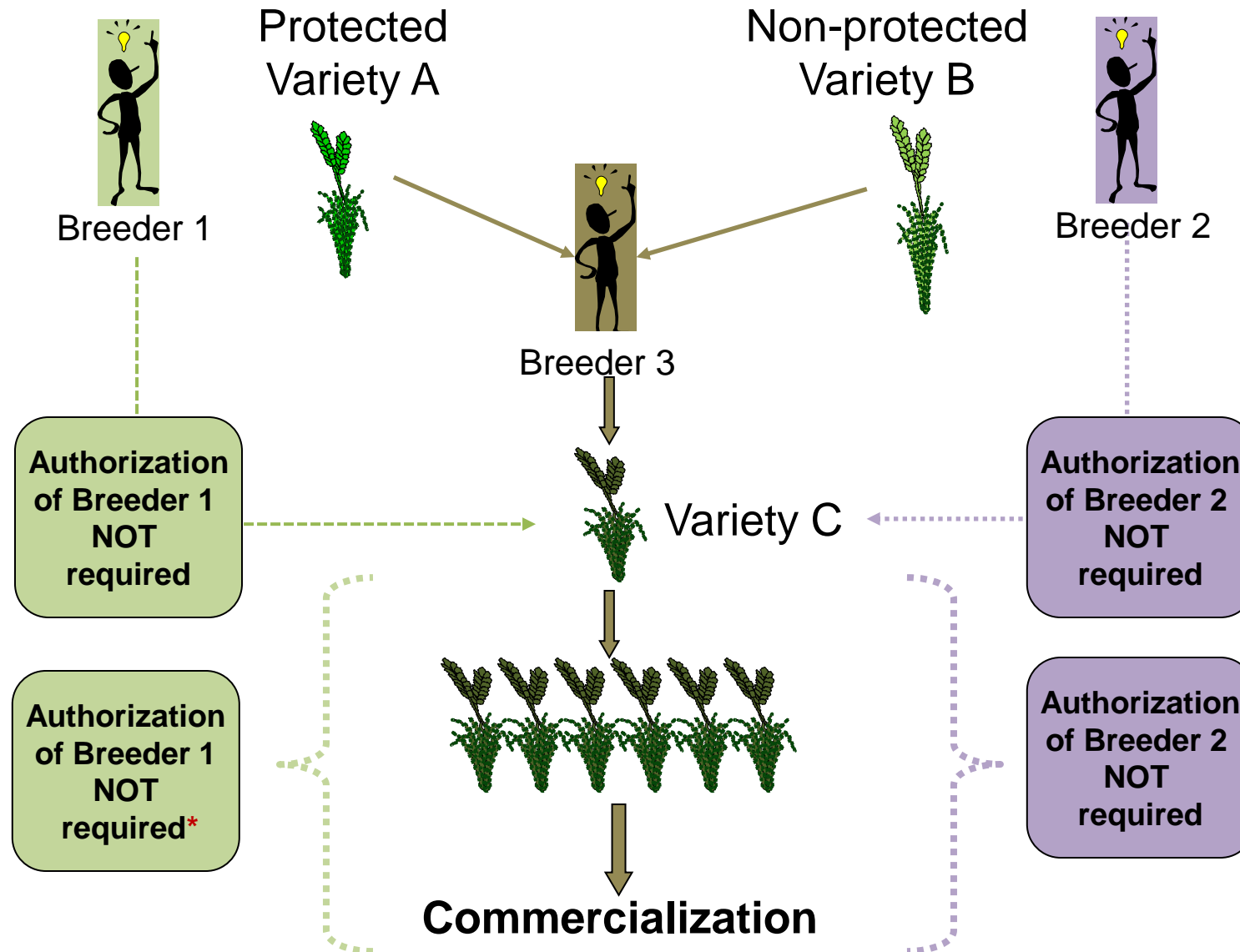
WORK IN UPOV ON SMALLHOLDER FARMERS

Development of guidance regarding the implementation of the exception of acts done privately and for non-commercial purposes in relation to smallholder farmers **(WG-SHF)**



UPOV members and UPOV observers have provided their experience and views – no legal action by breeders has been reported on acts concerning protected varieties by smallholder farmers not involving their commercial exploitation

The Breeder's Exemption



* Except for:

- (i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- (ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and
- (iii) varieties whose production requires the repeated use of the protected variety.

EXCEPTIONS TO THE BREEDER'S RIGHT

Compulsory (1991 Act)

Acts done:

- privately and for non-commercial purposes
- for experimental purposes
- breeding other varieties (breeder's exemption")

Optional

Farm-saved seed ?

OPTIONAL EXCEPTION TO THE BREEDER'S RIGHT

Farm-saved seed – Article 15(2)

A Contracting Party may restrict the breeder's rights in order to permit farmers to use:

- for propagating purposes on their own holdings
the product of the harvest
- obtained on their own holdings
from the protected variety
- within reasonable limits
- subject to safeguarding legitimate interests of the breeder

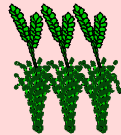
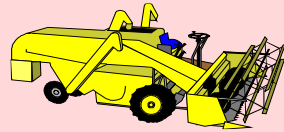
[Recommendation of the Diplomatic Conference on Article 15(2)]



OPTIONAL EXCEPTION TO THE BREEDER'S RIGHT

Product of the harvest can be used for propagating purposes

small grain cereals:



harvested product may = propagating material

Fruit, ornamentals and vegetables:



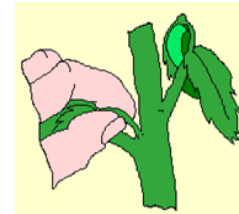
harvested product may \neq propagating material

IMPORTANCE OF ENFORCEMENT OF BREEDERS RIGHTS

- Plant breeding is long and expensive

BUT

- Plant varieties can be easily and quickly reproduced



- Breeders need effective protection and enforcement measures to recover investment

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

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

International Seminar on the Enforcement of Plant Breeders' Rights under the UPOV Convention, Hanoi, Viet Nam, 2016

Key findings

- 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

