



COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Item 7 of the Provisional Agenda

INTERGOVERNMENTAL TECHNICAL WORKING GROUP ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Eighth Session

Rome, 8-10 June 2016

REPORT OF THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV) TO THE INTERGOVERNMENTAL TECHNICAL WORKING GROUP ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

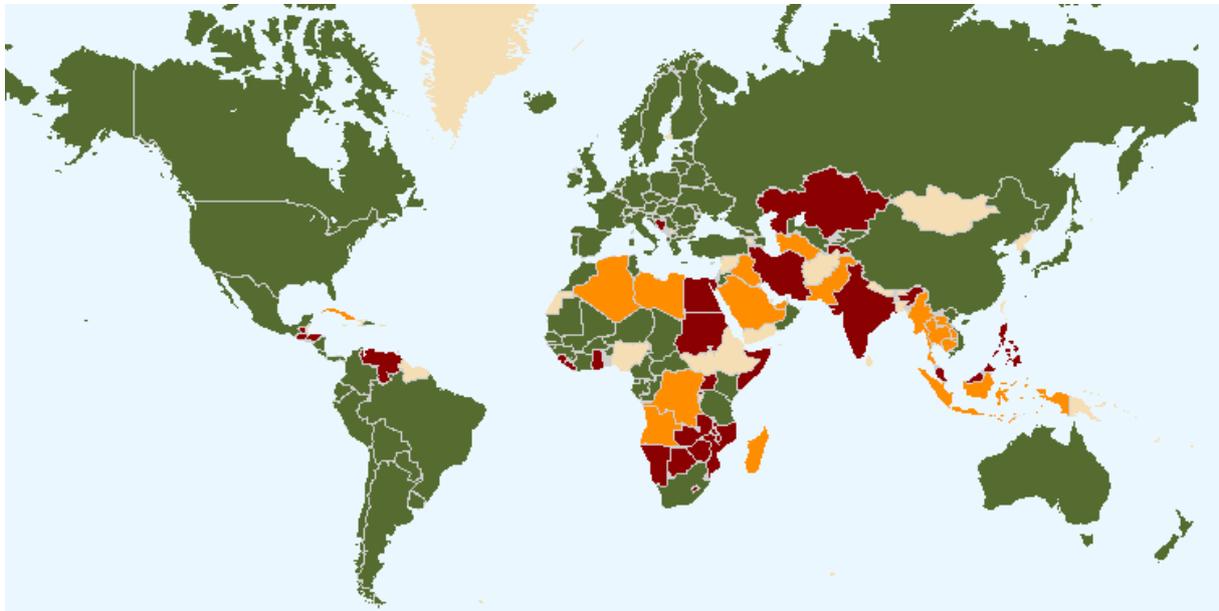
Table of Contents

	Pages
I. INTRODUCTION.....	2
II. UPOV AND PLANT GENETIC RESOURCES	3
A. Commission on Genetic Resources for Food and Agriculture (CGRFA).....	3
B. International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).....	4
III. GENERAL DEVELOPMENTS IN UPOV	6
A. Situation in UPOV	6
B. Distance Learning Courses.....	7

I. INTRODUCTION

1. The International Union for the Protection of New Varieties of Plants (UPOV) was established in 1961 by the International Convention for the Protection of New Varieties of Plants (the “UPOV Convention”). The mission of UPOV is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. As of May 30, 2016, UPOV had 74 members (shown in green). Fifteen States and one intergovernmental organization had initiated the procedure for acceding to the UPOV Convention (shown in brown), and 23 States and one intergovernmental organization have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention (shown in orange) (see <http://www.upov.int/members/en/>).

Details are provided in the Annex to this report.



The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory.

2. The UPOV Convention provides the basis for members (<http://www.upov.int/members/en/>) to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeder’s right.

3. The UPOV Convention specifies the acts that require the breeder’s authorization in respect of the propagating material of a protected variety and, under certain conditions, in respect of the harvested material. UPOV members may also decide to extend protection to products made directly from harvested material, under certain conditions.

4. In order to obtain protection, the breeder needs to file individual applications with the authorities of UPOV members entrusted with the task of granting breeders’ rights (see http://www.upov.int/members/en/pvp_offices.html).

5. A State or intergovernmental organization that wishes to become a UPOV member needs to seek the advice of the UPOV Council in respect of the conformity of its laws with the provisions of UPOV Convention. This procedure leads, in itself, to a high degree of harmony in those laws, thus

facilitating cooperation between members in the implementation of the system. Guidance documents on how to develop legislation and become a UPOV member can be found at http://www.upov.int/upov_collection/en/. The legislation of UPOV members can be consulted in UPOV Lex at <http://www.upov.int/upovlex/en/>.

6. The main objectives of UPOV are, in accordance with the UPOV Convention, to:
 - provide and develop the legal, administrative and technical basis for international cooperation in plant variety protection;
 - assist States and organizations in the development of legislation and the implementation of an effective plant variety protection system; and
 - enhance public awareness and understanding of the UPOV system of plant variety protection.
7. The effectiveness of the UPOV system of plant variety protection is enhanced by the provision of guidance and information materials such as Explanatory Notes (“UPOV/EXN” series), Information Documents (“UPOV/INF” series), the General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants, with its associated TGP documents, and the “Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability” (Test Guidelines http://www.upov.int/test_guidelines/en/). Such materials provide the basis for harmonization and, thereby, facilitate cooperation between UPOV members (see UPOV Collection at http://www.upov.int/upov_collection/en/).
8. Further measures to support and enhance cooperation between members relate to information available in the PLUTO Plant Variety Database (see <http://www.upov.int/pluto/en/>) and in the GENIE database (see <http://www.upov.int/genie/en/>).

II. UPOV AND PLANT GENETIC RESOURCES

9. UPOV considers that plant breeding is a fundamental aspect of the sustainable use and development of genetic resources. It is of the opinion that access to genetic resources is a key requirement for sustainable and substantial progress in plant breeding. The concept of the “breeder’s exemption” in the UPOV Convention, whereby acts done for the purpose of breeding other varieties are not subject to any restriction, reflects the view of UPOV that the worldwide community of breeders needs access to all forms of breeding material to sustain greatest progress in plant breeding and, thereby, to maximize the use of genetic resources for the benefit of society.¹
10. The following paragraphs report on some recent areas of cooperation between UPOV and the Commission on Genetic Resources for Food and Agriculture (CGRFA) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

A. Commission on Genetic Resources for Food and Agriculture (CGRFA)

11. From July 9 to 11, 2014, in Rome, at FAO headquarters, the UPOV Office attended the Seventh Session of the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture of the CGRFA and provided a report of the activities undertaken by UPOV in relation to plant genetic resources. On July 10, 2014, the UPOV Office held a side-event entitled “UPOV: Encouraging the use of Plant Genetic Resources for the Benefit of Society”.
12. From January 19 to 23, 2015, at FAO headquarters in Rome, the UPOV Office attended the Fifteenth Regular Session of the CGRFA.

¹ See http://www.upov.int/export/sites/upov/news/en/2003/pdf/cbd_response_oct232003.pdf

B. International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

International Workshop to Promote Public-Private Partnerships in Pre-breeding

13. From February 2 to 4, 2015, in Montpellier, France, the UPOV Office participated in an International Workshop on the promotion of Public-Private Partnerships for Pre-breeding, organized under the aegis of the ITPGRFA.

Possible areas of interrelations among the international instruments of the ITPGRFA, the World Intellectual Property Organization (WIPO) and UPOV

14. The Sixth Session of the Governing Body (GB) of the ITPGRFA was held in Rome from October 5 to 9, 2015 (see documents at <http://www.planttreaty.org/content/gb6>). The Report of the Sixth Session of the GB is available at <http://www.planttreaty.org/content/gb6>.

15. Resolution 5/2015 “Implementation of Article 9, Farmers’ Rights” adopted by the GB at the Sixth Session stated as follows (document IT/GB-6/15/Res 5):

" THE GOVERNING BODY,

"*Recalling* the recognition in the International Treaty of the enormous contribution that the local and indigenous communities and farmers of all regions of the world have made, and will continue to make, for the conservation, development and use of plant genetic resources as the basis of food and agriculture production throughout the world,

" *Recalling* its Resolutions 2/2007, 6/2009, 6/2011 and 8/2013,

[...]

"12. *Requests* the Secretary to continue engaging, in a mutually supportive manner with UPOV and WIPO to jointly, and including through a participatory and inclusive process, as appropriate and subject to availability of resources, finalize the process for identification of possible areas of interrelations between their respective instruments and the Treaty and report on the outcomes to the 7th Session of the Governing Body;

[...]"

16. As a first step, the UPOV Council, at its forty-ninth ordinary session, held in Geneva, on October 28, 2015, noted the invitation to the Secretary of the ITPGRFA to make a presentation at the UPOV Consultative Committee, at its ninety-first session in October 2015, on possible areas of interrelations between the ITPGRFA and the UPOV Convention. The Council also noted the idea of a symposium in which Contracting Parties would present information on their experiences in implementing the UPOV Convention and the ITPGRFA.

17. The Consultative Committee, at its ninety-first session, held in Geneva, on March 17, 2016, welcomed the presentation made by the Secretary of the ITPGRFA on possible areas of interrelations between the ITPGRFA and the UPOV Convention.

18. The Consultative Committee considered the possible elements of a symposium program presented by the Secretary of the ITPGRFA, as follows:

Welcome remarks by UPOV and ITPGRFA

Session 1: Overview of UPOV and the ITPGRFA

➤ Overview of UPOV

➤ Overview of the ITPGRFA

Session 2: Analysis of the Inter-relations between Farmers' Rights and Plant Breeders' Rights Under the ITPGRFA and the UPOV Convention

➤ Presentation by 4 experts

➤ Discussion

Session 3: Experiences of the Contracting Parties in Implementing the UPOV Convention and the ITPGRFA

➤ Experiences shared by 4 Contracting Parties

➤ Discussion

Session 4: Overview of initiatives involving the ITPGRFA and UPOV

➤ Information initiatives (joint workshops)

➤ Practical initiatives (Platform for Co-development and Transfer of Technology; Public Private Partnership on Pre-breeding)

➤ Mutual attendance, participation, and information exchange (Committees, enhancement, etc)

➤ Discussion

Closing Remarks by UPOV and ITPGRFA

19. The Consultative Committee endorsed the above elements of the program whilst noting that more than four presentations by Contracting Parties might be necessary and noting that it would be useful to provide information on real problems experienced by farmers and breeders.

20. The Consultative Committee noted that the draft program would need to be considered within the ITPGRFA. If there were substantial changes proposed by the ITPGRFA, the Consultative Committee would be consulted by correspondence. If agreement could not be reached by correspondence, the Consultative Committee agreed that it would need to reconsider the matter further at its ninety-second session.

21. The Consultative Committee recommended to the Council to approve the organization of a "Symposium on possible interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention)", to be held at UPOV Headquarters in Geneva, on October 26, 2016, as follows:

- 1) the draft program for a symposium, as presented by the Secretary of the ITPGRFA;
- 2) four experts, to be agreed by the Office of the Union, in consultation with the President of the Council, and the Secretary of the ITPGRFA, to be invited to present their views at the Symposium;
- 3) Contracting Parties to the UPOV Convention and the ITPGRFA would present information on their experiences in implementing the UPOV Convention and the ITPGRFA;
- 4) invitations to the Symposium to be sent to members and observers in UPOV bodies and to Contracting Parties and observers to the ITPGRFA and the Symposium to be open to the public with advance registration, with the presentations and a video of the Symposium being made available on the UPOV website after a suitable broadcast delay;

- 5) a joint publication of the proceedings of the Symposium to be produced by the ITPGRFA, containing the speakers' written contributions and a summary of discussions, to be made available on the UPOV website at a later date;
- 6) UPOV to provide the venue for the Symposium and to cover the interpretation costs in English, French, German and Spanish.

22. The Consultative Committee agreed to consider the outcome of the Symposium at its ninety-second session to be held on October 27, 2016, and to consider any possible further action concerning interrelations at that time.

23. The UPOV Council, at its thirty-third extraordinary session, held in Geneva, on March 17, 2016, approved the organization of a "Symposium on possible interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention)", to be held at the UPOV Headquarters in Geneva, on October 26, 2016.

III. GENERAL DEVELOPMENTS IN UPOV

A. Situation in UPOV

New members

24. The African Intellectual Property Organization (OAPI) became the seventy-second member of UPOV on July 10, 2015. OAPI is the second intergovernmental organization to become a UPOV member and operates a plant breeders' rights system that covers the territory of its 17 Member States.

25. Montenegro became the seventy-third member of UPOV on September 24, 2015.

26. The United Republic of Tanzania became the seventy-fourth member of UPOV on November 22, 2015.

27. Ratification of/Accession to the 1991 Act of the UPOV Convention.

28. Canada became bound by the 1991 Act of the UPOV Convention on July 19, 2015.

29. Kenya became bound by the 1991 Act of the UPOV Convention on May 11, 2016.

Examination of laws

Zanzibar

30. The Council, at its forty-eighth ordinary session, held in Geneva, on October 16, 2014, noted that the Plant Breeders' Rights Act of Zanzibar, which was adopted by the Zanzibar House of Representatives, incorporated the changes in the decision of the Council of March 22, 2013, and agreed that the additional changes did not concern the substantive provisions of the 1991 Act of the UPOV Convention. The legislation governing breeders' rights covers the whole territory of the United Republic of Tanzania and the United Republic of Tanzania became the seventy-fourth member of UPOV on November 22, 2015.

Egypt

31. The Council, at its thirty-second extraordinary session, held in Geneva, on March 27, 2015, took a positive decision on the conformity of the "Draft provisions of Book Four 'Plant Variety Protection' of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights" ("Draft Law") of Egypt with the provisions of the 1991 Act of the UPOV Convention, which allows Egypt once the Draft Law is adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act.

Islamic Republic of Iran

32. The Council, at its forty-ninth ordinary session, held in Geneva, on October 29, 2015, recommended that the Islamic Republic of Iran incorporate certain additional provisions and amendments in the “Act of Plant Varieties Registration, Control And Certification of Seeds And Plant Materials of 2003”, and recommended that once the additional provisions and amendments had been incorporated in the Law, the amended Law should be submitted to the Council for examination in conformity with Article 34(3) of the 1991 Act.

B. Distance Learning Courses

33. The next running of the UPOV Distance Learning Course DL-205 “Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention” in English, French, German and Spanish will be as follows:

Study period: September 26 to October 30, 2016
(registration from August 15 to September 17, 2016)

34. The next running of the UPOV Distance Learning Course DL-305 “Examination of applications for plant breeders' rights”, DL-305A “Administration of Plant Breeders' Rights” and DL-305B “DUS Examination” in English, French, German and Spanish will be as follows:

Study period: September 26 to October 30, 2016
(registration from August 15 to September 17, 2016)

35. The categories of participants for the UPOV distance learning courses are as follows:

Category 1: Government officials of members of the Union endorsed by the relevant representative to the UPOV Council
No fee

Category 2: Officials of observer States / intergovernmental organizations endorsed by the relevant representative to the UPOV Council
(One non-fee paying student per State / intergovernmental organization; Additional students: CHF1,000 per student)

Category 3: Others
Fee: CHF 1 000

36. Registration of participants in categories 1 and 2 must be accompanied by an endorsement from the representative to the UPOV Council of the UPOV member or observer, as appropriate, formally nominating the participant.

37. More detailed information concerning the UPOV distance learning courses' content and on-line registration is provided on the UPOV website (see <http://www.upov.int/resource/en/training.html>).

For further information about UPOV, please contact the Office of the Union:

Email: upov.mail@upov.int
Telephone: (+41-22) 338 9153;

Website: www.upov.int
fax: (+41-22) 733 0336

ANNEX

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)
as at May 30, 2016

Members of UPOV

I. Members of UPOV

African Intellectual Property Organization ^{3, 5}	Colombia ²	Israel ³	Panama ³	Switzerland ³
Albania ³	Costa Rica ³	Italy ²	Paraguay ²	The former Yugoslav Republic of Macedonia ³
Argentina ²	Croatia ³	Japan ³	Peru ³	Trinidad and Tobago ²
Australia ³	Czech Republic ³	Jordan ³	Poland ³	Tunisia ³
Austria ³	Denmark ³	Kenya ³	Portugal ²	Turkey ³
Azerbaijan ³	Dominican Republic ³	Kyrgyzstan ³	Republic of Korea ³	Ukraine ³
Belarus ³	Ecuador ²	Latvia ³	Republic of Moldova ³	United Kingdom ³
Belgium ¹	Estonia ³	Lithuania ³	Romania ³	United Republic of Tanzania ³
Bolivia (Plurinational State of) ²	European Union ^{3, 4}	Mexico ²	Russian Federation ³	United States of America ³
Brazil ²	Finland ³	Montenegro ³	Serbia ³	Uruguay ²
Bulgaria ³	France ³	Morocco ³	Singapore ³	Uzbekistan ³
Canada ^{3, 6}	Georgia ³	Netherlands ³	Slovakia ³	Viet Nam ³
Chile ²	Germany ³	New Zealand ²	Slovenia ³	
China ²	Hungary ³	Nicaragua ²	South Africa ²	
	Iceland ³	Norway ²	Spain ³	
	Ireland ³	Oman ³	Sweden ³	(Total 74)

¹ 1961 Convention as amended by the Additional Act of 1972 is the latest Act by which 1 State is bound.

² 1978 Act is the latest Act by which 17 States are bound.

³ 1991 Act is the latest Act by which 54 States and 2 organizations are bound.

⁴ Operates a plant breeders' rights system which covers the territory of its 28 member States.

(member States of the European Union: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom)

⁵ Operates a plant breeders' rights system which covers the territory of its 17 member States.

(member States of OAPI: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, Togo)

States and intergovernmental organizations which have initiated the procedure for
acceding to the UPOV Convention

States (15):

Armenia, Bosnia and Herzegovina, Egypt, Ghana, Guatemala, Honduras, India, Islamic Republic of Iran, Kazakhstan, Malaysia, Mauritius, Philippines, Tajikistan, Venezuela (Bolivian Republic of) and Zimbabwe.

Organizations (1):

African Regional Intellectual Property Organization (ARIPO)

(member States of ARIPO (18): Botswana, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, Somalia, Sudan, Swaziland, Uganda, United Republic of Tanzania, Zambia, Zimbabwe)

States and intergovernmental organizations which have been in contact with the Office of the
Union for assistance in the development of laws based on the UPOV Convention

States (24):

Algeria, Bahrain, Barbados, Brunei Darussalam, Cambodia, Cuba, Cyprus, El Salvador, Indonesia, Iraq, Lao People's Democratic Republic, Libya, Mozambique, Myanmar, Namibia, Pakistan, Saudi Arabia, Sudan, Thailand, Tonga, Turkmenistan, United Republic of Tanzania and Zambia.

Organization (1):

Southern African Development Community (SADC)

(member States of SADC (15): Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia, Zimbabwe)