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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Item 9 of the Provisional Agenda

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

Seventh Session

Rome, 9 – 11 July 2014

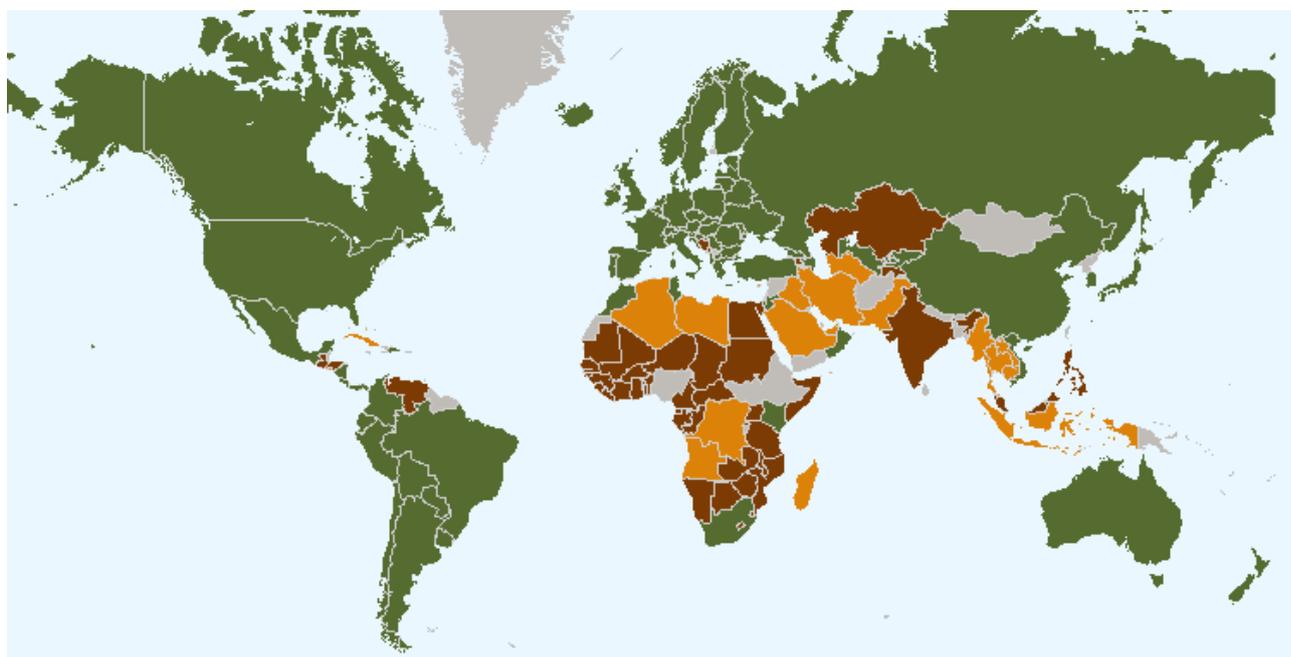
REPORT FROM THE INTERNATIONAL UNION FOR THE PROTECTION OF THE NEW VARIETIES OF PLANTS (UPOV) TO THE INTERGOVERNMENTAL TECHNICAL WORKING GROUP ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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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. The UPOV Convention and membership of UPOV provides an effective, internationally recognized system of plant variety protection. As of May 16, 2014, UPOV has 71 members (shown in green). Sixteen States and two intergovernmental organizations have initiated the procedure for acceding to the UPOV Convention (shown in brown), and 24 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). Details are provided in the Annex to this report.



2. 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.

3. The UPOV Convention provides the basis for members (see <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.

4. 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.

5. 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).

6. 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/>.

7. 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.
8. 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” (see Test Guidelines at 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/). 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).

Commission on Genetic Resources for Food and Agriculture (CGRFA)

11. From April 15 to 19, 2013, in Rome, the Office of the Union attended the Fourteenth Regular Session of the Commission (CGRFA-14).

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

Platform for the Co-Development and Transfer of Technologies

12. The UPOV Council, at its forty-sixth ordinary session, held in Geneva on November 1, 2012, approved the participation of the Office of the Union in the ITPGRFA Platform for the Co-Development and Transfer of Technologies.
13. The Office of the Union attended the second meeting of the Platform, which was held in Bandung, Indonesia on June 30 and July 1, 2013. With regard to UPOV’s participation, it was clarified that UPOV’s involvement in the Platform would be in the capacity of one of the “technical advisors whose experience and expertise are relevant in the context of the different facilities of the Platform”.

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

14. The Office of the Union attended the third meeting of the Platform, in conjunction with the Fifth Session of the Governing Body of the ITPGRFA, held in Muscat, Oman, from September 24 to 28, 2013.

Consultation to Promote a Public-Private Partnership in Pre-breeding

15. Following a request from the Plant Genetic Resources and Seeds Team of the Food and Agriculture Organization of the United Nations (FAO) and a number of other functional units, especially the ITPGRFA, UPOV members agreed to the UPOV Office working as part of a multi-stakeholder team on the “definition of mechanisms for enhancing public-private partnerships in pre-breeding”.

16. On May 30 and 31, 2013, in Rome, Italy, the Office of the Union attended a meeting co-organized by the Italian National Academy of Sciences and the ITPGRFA under the auspices of the Global Partnership Initiative for Plant Breeding Capacity Building, a multi-stakeholder platform convened by FAO.

Possible areas of interrelations among the international instruments of the ITPGRFA, WIPO and UPOV

17. In January 2014, following a request from the Governing Body of the ITPGRFA at its Fifth Session, UPOV was invited by the Secretary of the ITPGRFA to jointly identify with the ITPGRFA and the Secretariat of the World Intellectual Property Organization (WIPO) possible areas of interrelations among the international instruments of the ITPGRFA, WIPO and UPOV.

18. The UPOV Council, at its thirty-first extraordinary session, held in Geneva, on April 11, 2014, decided to explore the idea of a joint publication on interrelated issues regarding innovation and plant genetic resources and other suitable initiatives.

III. GENERAL DEVELOPMENTS IN UPOV

Situation in UPOV

New member

19. Serbia deposited its instrument of accession to the 1991 Act of UPOV Convention on December 5, 2012, and became the seventy-first member of the Union on January 5, 2013.

Examination of laws

United Republic of Tanzania

20. The UPOV Council, at its thirtieth extraordinary session, held in Geneva, on March 22, 2013, decided that the Plant Breeders' Rights Bill for Zanzibar, subject to certain modifications, was in conformity with the provisions of the 1991 Act of the UPOV Convention. The Council noted that, once the Draft Law for Zanzibar was adopted, breeders' rights would cover the whole territory and the United Republic of Tanzania could become a UPOV member.

Bosnia and Herzegovina

21. The UPOV Council, at its forty-seventh ordinary session, held in Geneva, on October 24, 2013, decided that the Law for the Protection of New Varieties of Plants of Bosnia and Herzegovina was in conformity with the provisions of the 1991 Act of the UPOV Convention. Bosnia and Herzegovina is now in a position to deposit its instrument of accession to the 1991 Act of the UPOV Convention.

African Regional Intellectual Property Organization (ARIPO)

22. The UPOV Council, at its thirty-first extraordinary session, held in Geneva, on April 11, 2014, took a positive decision on the conformity of the ARIPO Draft Protocol for the Protection of New Varieties of Plants with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV Convention). The Draft Protocol, once adopted with no

changes and in force, would allow the Contracting States to the Protocol and ARIPO, in relation to the territories of the Contracting States bound by the Protocol, to deposit their instruments of accession to the UPOV Convention.

Seminars and Symposia

23. Between 2011 and 2012, UPOV organized the following events in Geneva, the proceedings of which have been compiled into a “UPOV Trilogy Publication”, which, together with an Executive Summary, can be found on the UPOV website (see http://www.upov.int/about/en/benefits_upov_system.html):

- Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership (April 11 and 12, 2011)
- Symposium on Plant Breeding for the Future (October 21, 2011)
- Symposium on the Benefits of Plant Variety Protection for Farmers and Growers (November 2, 2012)

24. On October 22, 2013, UPOV organized a Seminar on Essentially Derived Varieties (EDVs) in Geneva. Copies of the presentations and a video of the Seminar are available on the UPOV website at: http://www.upov.int/meetings/en/details.jsp?meeting_id=29782

Frequently Asked Questions (FAQs)

25. As part of the UPOV communication strategy, a set of answers to the following frequently asked questions (FAQs) has been published on the UPOV website (see <http://www.upov.int/about/en/faq/>):

- Who can attend UPOV meetings?
- What is UPOV?
- What does UPOV do?
- Who can attend UPOV meetings?
- What is a plant variety?
- Why do farmers and growers need new plant varieties?
- Why is plant variety protection necessary?
- How does plant variety protection work?
- What are the requirements for protecting a new plant variety?
- Why does UPOV require varieties to be uniform and stable; doesn't that lead to a loss of diversity?
- Can breeders use a protected variety in their breeding programs
- Who can protect a plant variety?
- Where do I apply for protection of a variety?
- Can I obtain protection for more than one country from a single application?
- What are the benefits of plant variety protection and UPOV membership?
- What is the effect of plant variety protection on varieties that are not protected (e.g. traditional varieties, landraces etc.)?
- What is the relationship between the UPOV Convention and international treaties concerning genetic resources, e.g. the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)
- What is the relationship between patents and plant breeders' rights
- What is the relationship between plant breeders' rights and measures regulating commerce, e.g. seed certification, official registers of varieties admitted to trade (e.g. National List, Official Catalogue) etc.?
- Can I protect an existing plant or variety that I discover?
- Does the UPOV Convention allow a variety to be refused protection because it is genetically modified?

- Can I use plant variety protection to protect the following: - a trait (e.g. disease resistance, flower colour) - a chemical or other substance (e.g. oil, DNA) - a plant breeding technology (e.g. tissue culture)?
- Can I protect a hybrid variety under the UPOV system?
- Can a farmer replant seed of a protected variety without the authorization of the breeder?
- Can a farmer sell seed of a protected variety without the authorization of the breeder?
- How do I know if a variety is protected?
- Who is responsible for enforcing plant breeders' rights?
- Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability ("DUS")?
- Is it true that UPOV only promotes commercially bred plant varieties geared to industrialized farmers?

Distance Learning Courses

26. 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: October 6 to November 9, 2014
(registration from July 28 to September 7, 2014)

The launch of the advanced distance learning courses DL-305-1 "Administration of Plant Breeders' Rights" and DL-305-2 "DUS Examination" will be as follows:

February/March 2015:	DL-305-1 (English, French, Spanish)
April/May 2015	DL-305-2 (English, French, Spanish)

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: CHF1,000

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.

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:

E-mail: upov.mail@upov.int Website: www.upov.int

Tel: (+41-22) 338 9153 Fax: (+41-22) 733 0336

ANNEX: UPOV as of May 16, 2014

I. Members of UPOV

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

(Total 71)

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

² 1978 Act is the latest Act by which 19 States are bound.

³ 1991 Act is the latest Act by which 50 States and one organization are bound.

⁴ Operates a (supranational) Community plant variety rights system which covers the territory of its 28 members. (*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*)

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

States (16):

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

Organizations (2):

African Intellectual Property Organization (OAPI)

(*member States of OAPI (17): Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, Togo.*)

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*)

III. 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, Iran (Islamic Republic of), 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*)