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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Item 8 of the Provisional Agenda

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

Sixth Session

Rome, 14 – 16 November 2012

REPORT FROM 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

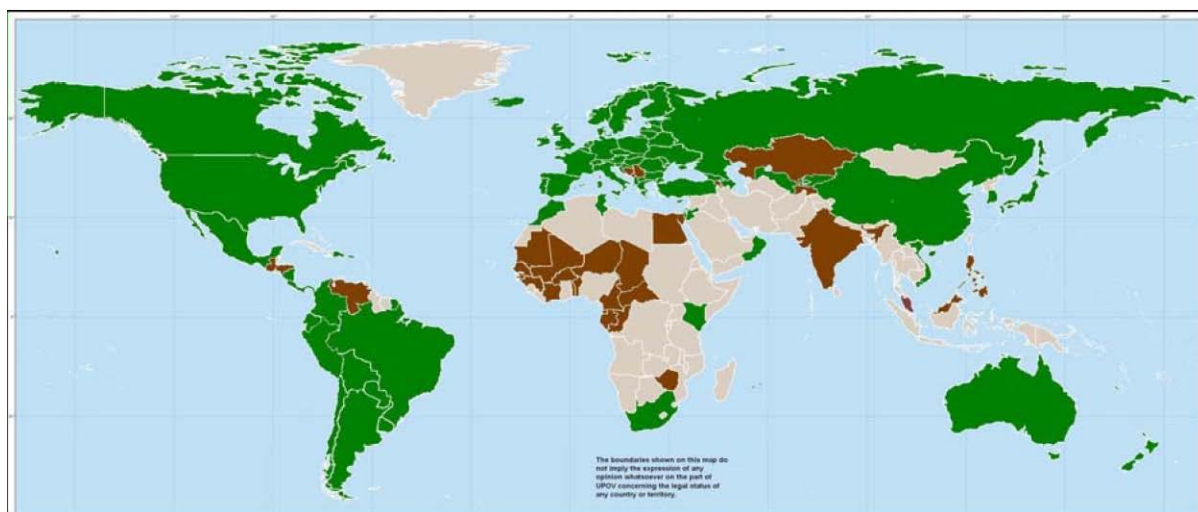
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I. INTRODUCTION

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 (PVP). As of 10 September 2012, UPOV has 70 members (shown in green), and 15 States and one Organization have initiated the procedure for becoming UPOV members (shown in brown).



2. A further 22 States and two intergovernmental organizations have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention. Details are provided in the Annex to this report.

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

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. The breeder’s right means that the authorization of the breeder is required to propagate the variety for commercial purposes.

5. Under the UPOV Convention, the breeder’s right is only granted where the variety is (i) new, (ii) distinct, (iii) uniform, (iv) stable and has a suitable denomination.

6. The breeder’s right does not extend to acts done (i) privately and for non-commercial purposes, (ii) for experimental purposes and (iii) for the purpose of breeding other varieties. The 1991 Act of the UPOV Convention also contains an optional exception, under which UPOV members may permit farmers, on their own farms, to use part of their harvest of a protected variety for the planting of a further crop.

7. In order to become a UPOV member the advice of the UPOV Council in respect of the conformity of the law of a future member with the provisions of the UPOV Convention is required. 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/>.

8. The effectiveness of the UPOV system 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/).

9. 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/>).

10. For training on the UPOV Convention see <http://www.upov.int/resource/en/training.html>

II. UPOV AND PLANT GENETIC RESOURCES¹

Access to Genetic Resources

11. 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.

Benefit-Sharing

12. The “breeder’s exemption”, established in the UPOV Convention, means that acts done for the purpose of breeding other varieties are not, under the UPOV Convention, subject to any restriction and the breeders of protected varieties (initial varieties) are not entitled to financial benefit-sharing with breeders of varieties developed from the initial varieties, except in the case of essentially derived varieties (EDV).

13. The Food and Agriculture Organization of the United Nations (FAO) at its 31st Conference, on 3 November 2001, adopted the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which recognizes the concept of the breeder’s exemption, in that breeders are exempted from mandatory financial benefit-sharing whenever their products are “available without restriction to others for further research and breeding ...” (see ITPGRFA, Article 13.2. (d)(ii)).

14. In addition to the breeder’s exemption and the research exemption, the UPOV Convention contains a compulsory exception to the breeder’s right whereby the breeder’s right does not extend to acts done privately and for non-commercial purposes. Therefore, activities of subsistence farmers, where these constitute acts done privately and for non-commercial purposes, are excluded from the scope of the breeder’s right and such farmers freely benefit from the availability of protected new varieties.

15. The inclusion of the optional exception in the 1991 Act of the UPOV Convention recognizes that, for some crops, there has been a common practice of farmers saving the product of the harvest for

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

propagating purposes, and this provision allows each member of the Union to take account of this practice and the issues involved on a crop-by-crop basis, when providing plant variety protection. The use of the words “within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder” is consistent with an approach whereby, if the optional exception is implemented, it is done in a way which does not undermine the incentives provided by the UPOV Convention for breeders to develop new varieties.

III. UPOV INFORMATION AND ACTIVITIES

Website resources

16. The redesigned UPOV website, which was launched on 1 November 2011, includes the following new features:

- Freely accessible PLUTO database of plant varieties (see <http://www.upov.int/pluto/en/>);
- Multimedia presentation on UPOV (see <http://www.upov.int/overview/en/>);
- Video on the use of plant variety protection by gentian farmers in the Ashiro region of Japan (“the Ashiro Rindo story”) (see http://www.upov.int/multimedia/en/2011/ashiro_rindo.html);
- UPOV Collection of materials explaining the UPOV system (see http://www.upov.int/upov_collection/en/);
- UPOV Lex database of UPOV members’ laws (<http://www.upov.int/upovlex/en/>);
- Documents of the Administrative and Legal Committee (CAJ), Technical Committee (TC) and Technical Working Parties (TWPs), which were formerly only accessible to members and observers, have been made publicly accessible (<http://www.upov.int/meetings/en/topic.jsp>); and
- UPOV Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability (Test Guidelines) in Word format (see http://www.upov.int/test_guidelines/en/).

Seminars and Symposia

17. UPOV has recently organized the following events in Geneva, the presentations for which can be found on the UPOV website (http://www.upov.int/meetings/en/topic.jsp?group_id=73):

- Symposium on Plant Breeding for the Future (held in Geneva on 21 October 2011).
- Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership (held in Geneva from 11 – 12 April 2011).

18. On 2 November 2012, UPOV will organize the following event in Geneva:

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

IV. COOPERATION WITH THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

Commission on Genetic Resources for Food and Agriculture (CGRFA)

19. The Office of the Union attended the Fifth Session of the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture of the Commission on Genetic Resources for Food and Agriculture (Commission), held in Rome from 27 – 29 April 2011, and the Thirteenth Regular Session of the Commission (CGRFA-13), held in Rome, from 18 – 22 July 2011.

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

20. The Council of UPOV, at its forty-fifth ordinary session, held in Geneva on October 20, 2011, agreed with the request of the Secretariat of the ITPGRFA for the Office of the Union to cooperate with ITPGRFA on a research project on the economics of the Multilateral System of the ITPGRFA, based on information available from the Plant Variety Database (PLUTO).

21. At the invitation of the Secretary of the ITPGRFA, the Office of the Union attended a meeting on 7 – 8 August 2012, in Brasilia, to discuss the options for the establishment and intended activities of a “Platform for the Co-Development and Transfer of Technologies” within the context of the ITPGRFA.

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

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V. APPENDIX
INTERNATIONAL UNION FOR THE PROTECTION OF NEW
VARIETIES OF PLANTS (UPOV)
as of 10 September 2012

Members of UPOV

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

(Total 70)

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 20 States are bound.

³ 1991 Act is the latest Act by which 48 States and one organization are bound. 4 Operates a (supranational) Community plant variety rights system which covers the territory of its 27 members.

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

States (15):

Armenia, Bosnia and Herzegovina, Egypt, Guatemala, Honduras, India, Kazakhstan, Malaysia, Mauritius, Montenegro, Philippines, Serbia, Tajikistan, Venezuela and Zimbabwe.

Organization (1):

African Intellectual Property Organization (OAPI)

(member States of OAPI (16): Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, Togo).

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 (22):

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

Organizations (2):

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)

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).