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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

## CONSULTATIVE COMMITTEE

### Eighty-Eighth Session Geneva, October 15, 2014

#### DEVELOPMENTS OF RELEVANCE TO UPOV IN OTHER INTERNATIONAL FORA

*Document prepared by the Office of the Union*

*Disclaimer: this document does not represent UPOV policies or guidance*

1. This document reports on developments of relevance to UPOV in other international fora since the eighty-seventh session of the Consultative Committee, held in Geneva on April 11, 2014, as follows:

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## I. EAST ASIA PLANT VARIETY PROTECTION FORUM (EAPVP FORUM)

2. The background to the East Asia Plant Variety Protection Forum (EAPVP Forum) is provided in document CC/84/9 Rev. "Developments of Relevance to UPOV in Other International Fora", paragraphs 7 to 9.

3. The Office of the Union participated in the Seventh EAPVP Forum Meeting, held in Vientiane, Lao People's Democratic Republic, on August 7, 2014, and made a presentation on "Developments in UPOV". In conjunction with the Seventh EAPVP Forum Meeting, the Office of the Union made a presentation on the "Benefits of the UPOV System for Farmers and Growers" at the "Symposium on Plant Variety Protection: Plant Breeding and Protection of Breeders' Right are Key to Agricultural Development", held on August 8, 2014, also in Vientiane.

4. Each of the EAPVP Forum countries submitted activity proposals and adopted the document "Proposals for approval by the 7<sup>th</sup> EAPVP Forum Meeting" as a common basis for the proposals. The following priorities were identified in the document:

- Priority 1: In-country training activities (Training organized by host country)
- Priority 2: Harmonization of test guidelines and other tools for examination in the region
- Priority 3: Information sharing including through the Forum Website
- Priority 4: Awareness raising for key person in decision making (Seminars, Workshops)
- Priority 5: Support for PVP law development and other activity to assist accession to UPOV

In relation to "Priority 5: Support for PVP law development and other activity to assist accession to UPOV", the following points were included:

- Activities related to PVP law development will in principle be implemented by UPOV
- Official request to UPOV will be required

The document will be available at <http://www.eapvp.org/>.

5. The Eighth EAPVP Forum Meeting is planned to be held in the Republic of Korea in 2015. The Office of the Union plans to attend that meeting.

## II. DEVELOPMENTS UNDER THE AUSPICES OF THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

6. On August 14, 2014, the Office of the Union received a CBD notification (No. 2014-090) with an invitation from the CBD to comment, until August 13, 2014, on two studies related to synthetic biology, prepared in response to CBD decision XI/11, which have been considered by the eighteenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 18), in the context of new and emerging issues relating to the conservation and sustainable use of biodiversity. The studies are available at: <http://www.cbd.int/emerging/> and the text of the CBD notification is also available at: <http://www.cbd.int/doc/notifications/2014/ntf-2014-090-new-emerging-issues-en.doc>

7. The Office of the Union was informed separately that UPOV had been unintentionally omitted from the original notification.

8. On August 21, 2014, after consultation with the President of the Council, the Office of the Union sent a reply to the CBD. On the same date, the reply was notified to the members of the Union with an indication that it will also be reported at the eighty-eighth session of the Consultative Committee (see UPOV Circular E-14/208). The reply of the Office of the Union is reproduced in Annex I of this document (in English only).

[Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the Convention on Biological Diversity \(Nagoya Protocol\)](#)

9. The first Meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access and Benefit-sharing (COP-MOP/1) will be held in Pyeongchang, Republic of Korea, from October 13 to 17, 2014. The coincidence of COP-MOP/1 with the dates of the UPOV sessions, means that it will not be possible for the Office of the Union to participate on this occasion.

### III. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

10. At the Technical Working Group Meeting of the OECD Forest Seed and Plant Scheme, held in Paris, on April 29, 2014, the Office of the Union was invited to make a presentation on the definition of “variety” under the UPOV Convention under agenda item “Classification of forest plants: taxonomy, nomenclature”. The Technical Working Group agreed to propose the following addition of a reference to plant breeders’ rights and UPOV to Appendix XI “Complementary definitions” to the Rules of the Scheme:

“Plant Breeder’s Rights:

“A Plant Breeder’s Right is a form of intellectual property by which a plant breeder can obtain protection for their new plant variety.

“More information about Plant Breeder’s Rights is available on the official website of the International Union for the Protection of New Varieties of Plants (UPOV): [www.upov.int](http://www.upov.int).”

11. The Annual Meeting of the OECD Forest Seed and Plant Scheme will consider the above proposal during its session, to be held in Paris, on September 24 and 25, 2014. The Office of the Union plans to attend the Annual Meeting.

### IV. DEVELOPMENTS UNDER THE AUSPICES OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

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

12. Matters concerning the ITPGRFA are reported under agenda item 17 “Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)” (see document CC/88/10).

#### Commission on Genetic Resources for Food and Agriculture (CGRFA)

##### *Seventh Session of the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture (WG-PGR)*

13. The Office of the Union participated in the Seventh Session of the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture (WG-PGR) of the Commission on Genetic Resources for Food and Agriculture (CGRFA) of the FAO, held in Rome from July 9 to 11, 2014.

14. The WG-PRG elected Mr. Luis Salaces Sánchez (Spain) as Chair.

15. For the item “Reports from international organizations and instruments”, the Office of the Union provided a report for document CGRFA/WG-PGR-7/14/Inf.10 “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”, a copy of which is attached as Annex II to this document (in English only).

16. Item 3 of the agenda “Implementation and monitoring of the Second Global Plan of Action for Plant Genetic Resources for Food and Agriculture” included consideration of the “Draft Guide for National Seed Policy Formulation” (see document CGRFA/WG-PGR-7/14/Inf.2 at <http://www.fao.org/agriculture/crops/thematic-sitemap/theme/seeds-pgr/itwg/7th/en/>). Section D “Key Elements of National Seed Policy, Seed legislation” of the document “Draft Guide for National Seed Policy Formulation” contained references to intellectual property, including plant breeders’ rights (PBR) and UPOV. A copy of relevant parts of Section D is reproduced in Annex III to this document (in English only). The Office of the Union offered to contribute information concerning UPOV and plant breeders’ rights in the development of any new draft.

17. The WG-PRG reviewed the “Draft Guide for National Seed Policy Formulation” and agreed that CGRFA members and observers could further submit written comments to the Secretariat of the WG-PGR by September 15, 2014. It recommended that any newly proposed inputs should be as specific as possible, with a precise wording, and that the Secretariat of WG-PGR would introduce them to the extent possible or

propose them for discussion, and compile them in an annex to the draft guide for its finalization and endorsement by the CGRFA at its Fifteenth Regular Session.

18. Under agenda item 8 “Access and benefit-sharing for plant genetic resources for food and agriculture”, a report was made of a joint session of the WG-PRG and the Commission’s Team of Technical and Legal Experts on Access and Benefit-sharing (TTLE ABS). The report of the joint session, as included in the “Report of the 7th Session of the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture”, document CGRFA/WG-PGR-7/14/REPORT (see <http://www.fao.org/agriculture/crops/thematic-sitemap/theme/seeds-pgr/itwg/7th/en/>), is reproduced in Annex IV to this document (in English, French and Spanish only).

*Side event “UPOV: Encouraging the use of Plant Genetic Resources for the Benefit of Society”*

19. At the invitation of the CGRFA, UPOV organized a side event entitled “UPOV: Encouraging the use of Plant Genetic Resources for the Benefit of Society”, which was held on July 10, from 13:30 to 14:45. The event was attended by around 35 participants. A copy of the program and of UPOV’s presentation, are attached as Annexes V and VI (in English only) to this document, respectively. As a part of the event, Mr. Shakeel Bhatti, Secretary of the ITPGRFA, was invited to report on developments concerning cooperation between the ITPGRFA and UPOV.

## V. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

### WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

20. The background to the IGC is provided in document CC/84/9 Rev. “Developments of Relevance to UPOV in Other International Fora”, paragraphs 44 to 51.

21. The IGC held three sessions in Geneva in 2014, as follows:

Session / Date	Subject
Twenty-Sixth Session (IGC/26) February 3 to 7	Genetic Resources
Twenty-Seventh Session (IGC/27) March 24 to April 4	Traditional Knowledge and Traditional Cultural Expressions
Twenty-Eighth Session (IGC/28) July 7 to 9	Crosscutting session/stocktaking

22. The IGC, at its twenty-sixth session held in Geneva, from February 3 to 7, 2014, considered document WIPO/GRTKF/IC/26/4 “Consolidated Document Relating to Intellectual Property and Genetic Resources” under the agenda item 7 “Genetic Resources”, from which it developed a text “Consolidated Document Relating to Intellectual Property and Genetic Resources Rev.2”. The IGC decided that the text, as at the close of agenda item 7 on February 7, 2014, be transmitted to the WIPO General Assembly subject to any agreed adjustments or modifications arising on cross-cutting issues at the twenty-eighth session of the IGC, in accordance with the IGC’s mandate (see document “Decision of the Twenty-Sixth Session of the Committee” at [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=266143](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=266143)).

23. The IGC, at its twenty-seventh session held in Geneva, from March 24 to April 4, 2014, considered document WIPO/GRTKF/IC/27/4 “The Protection of Traditional Knowledge: Draft Articles “ under the agenda item 6 “Traditional Knowledge”, from which it developed a text “The Protection of Traditional Knowledge: Draft Articles Rev. 2” and document WIPO/GRTKF/IC/27/5 “The Protection of Traditional Cultural Expressions: Draft Articles” under the agenda item 7 “Traditional Cultural Expressions”, from which it developed a text “The Protection of Traditional Cultural Expressions: Draft Articles Rev. 2”. The Committee decided that these texts, as at the close of the agenda items on March 28 and April 4 respectively, 2014, be transmitted to the WIPO General Assembly taking place in September 2014, subject to any agreed adjustments or modifications arising on cross-cutting issues at the Twenty-Eighth session of the Committee, taking place in July 2014, in accordance with the Committee’s mandate (see document “Decision of the Twenty-Seventh Session of the Committee” at: [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=270979](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=270979)).

24. The IGC, at its twenty-eighth session held in Geneva, from July 7 to 9, 2014, took note of and discussed the cross-cutting elements of the texts contained in the annex to document WIPO/GRTKF/IC/28/4 "Consolidated Document Relating to Intellectual Property and Genetic Resources" ([http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_28/wipo\\_grtkf\\_ic\\_28\\_4.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_28/wipo_grtkf_ic_28_4.pdf)), WIPO/GRTKF/IC/28/5 "The Protection of Traditional Knowledge: Draft Articles" and WIPO/GRTKF/IC/28/6 "The Protection of Traditional Cultural Expressions: Draft Articles", and confirmed that these texts, as developed during the Twenty-Sixth and Twenty-Seventh session of the IGC, be transmitted to the WIPO General Assembly taking place in September 2014, in accordance with the IGC's mandate for 2014-2015 and the work program for 2014, as contained in document WO/GA/43/22. The text to be transmitted to the WIPO General Assembly is available from the WIPO website at: [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=32091](http://www.wipo.int/meetings/en/details.jsp?meeting_id=32091).

25. The fifty-fourth series of meetings of the Assemblies of the Member States of WIPO will be held in Geneva, from September 22 to 30, 2014. Document WO/GA/46/6 "Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)" is available from the WIPO website at: [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=33291](http://www.wipo.int/meetings/en/details.jsp?meeting_id=33291).

## VI. WORLD TRADE ORGANIZATION (WTO)

### Council for TRIPS (Trade-Related Aspects of Intellectual Property Rights)

26. The background to this item is provided in documents CC/84/9 Rev. and CC/85/9 both entitled "Developments of relevance to UPOV in other international fora", paragraphs 58 to 60 and paragraphs 30 and 31, respectively.

#### *Meeting of the Council for TRIPS of June 11, 2014*

27. The Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS") met on June 11, 2014.

28. The meeting was opened by Ambassador H.E. Mr. Mothusi B. Palai (Botswana), Chair of the Council for TRIPS. The minutes of the meeting are contained in documents IP/C/M/76, IP/C/M/76 Add.1 which will become available at the following address of the WTO website: <http://docsonline.wto.org/?language=1>.

29. The Council for TRIPS dealt with the agenda items "Review of the Provisions of Article 27.3(b)", "Relationship between the TRIPS Agreement and the Convention on Biological Diversity" and "Protection of Traditional Knowledge and Folklore" simultaneously. The Council for TRIPS did not receive any new submissions in relation to these agenda items. The Council for TRIPS took note of the statements made by the delegations and agreed to continue discussions at its next meeting.

30. The Chair of the Council for TRIPS continued his predecessor's consultations on the proposal made by Ecuador at the TRIPS Council's meeting in November 2012, that the Secretariat be requested to update the three factual notes that summarized the points delegations had made in the TRIPS Council's past discussions on the review of the provisions of Article 27.3(b); on the relationship between TRIPS and CBD; and protection of traditional knowledge and folklore. However, he reported that he was not yet in a position to report adequate convergence on this matter. Furthermore, the Chair of the Council for TRIPS had continued consultations on the suggestion that the CBD Secretariat be invited to brief the Council on the Nagoya Protocol that had been adopted at the tenth meeting of the Conference of the Parties to the CBD held in Nagoya, Japan in October 2010. A possible approach mentioned during his consultations was that the CBD Secretariat would provide a briefing at a side event. However, at this stage he was not in a position to report agreement between interested delegations on that matter.

31. The Council agreed to request the Chair of the Council for TRIPS to continue consulting on the suggestions that the CBD Secretariat be invited to brief the Council on the outcome of the Nagoya Protocol to the CBD, and agreed that the Secretariat be requested to update three factual notes that summarized the points delegations had made in the Council's past discussions on the relevant three agenda items.

*Future meeting*

32. The next meeting of the Council for TRIPS, which the Office of the Union plans to attend, is scheduled to take place on October 28 and 29, 2014.

33. The Council for TRIPS October meeting will have a special focus on technical cooperation. The Council for TRIPS agreed to invite WTO members and intergovernmental organization observers to the Council for TRIPS, including UPOV, to provide information on their technical cooperation activities relevant to the implementation of the TRIPS Agreement by October 7, 2014 (notification WTO/AIR/4337 of July 24, 2014).

34. As in previous years, the Office of the Union intends to prepare a contribution with relevant extracts from documents C/48/2 "Annual report of the Secretary-General for 2013" and C/48/3 "Report on activities during the first nine months of 2014". The document containing the submission of UPOV, which will be entitled "Technical cooperation activities: information from other intergovernmental organizations – International Union for the Protection of New Varieties of Plants", will become available at the following address of the WTO website: <http://docsonline.wto.org/?language=1>.

## VII. EXPO 2015

35. The Consultative Committee at its eighty-fifth session, noted the information concerning the EXPO 2015, which would take place in Milan, from May 1 to October 31, 2015, under the theme "Feeding the Planet, Energy for Life", as set out in document CC/85/9, paragraphs 33 to 37. The Consultative Committee noted that the approval of the Consultative Committee would be sought before a final commitment to UPOV's participation in EXPO 2015 was made (see document CC/85/10 "Report on the Conclusions", paragraph 51).

36. The Office of the Union has continued to monitor developments concerning EXPO 2015 with a view to UPOV's participation. However, it has not been feasible to participate in the initiatives offered to date.

*37. The Consultative Committee is invited to note the developments of relevance to UPOV in other international fora reported in this document.*

[Annexes follow]



ANNEX I / ANNEXE I / ANLAGE I / ANEXO I

[In English only / En anglais seulement /  
Nur auf Englisch / En Inglés solamente]

REPLY OF THE OFFICE OF THE UNION TO CBD NOTIFICATION (No. 2014-090)



INTERNATIONALER  
VERBAND  
ZUM SCHUTZ VON  
PFLANZENZÜCHTUNGEN  
GENÈVE, SCHWEIZ

UNION INTERNATIONALE  
POUR LA PROTECTION  
DES OBTENTIONS  
VÉGÉTALES  
GENÈVE, SUISSE

UNIÓN INTERNACIONAL  
PARA LA PROTECCIÓN  
DE LAS OBTENCIONES  
VEGETALES  
GINEBRA, SUIZA

INTERNATIONAL UNION  
FOR THE PROTECTION  
OF NEW VARIETIES  
OF PLANTS  
GENEVA, SWITZERLAND

Mr. Bráulio Ferreira de Souza Dias  
Executive Secretary  
Secretariat of the Convention on  
Biological Diversity (CBD)  
United Nations Environment Programme  
(UNEP)  
413, Saint-Jacques Street, Suite 800  
Montreal  
Quebec H2Y 1N9  
Canada

Email: [secretariat@cbd.int](mailto:secretariat@cbd.int)

CBD

August 20, 2014

Dear Executive Secretary Dias,

Thank you for your e-mail of August 13, 2014, inviting UPOV to review the following two studies related to synthetic biology, prepared in response to decision XI/11, which have been considered by the eighteenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 18):

- New and emerging issues relating to the conservation and sustainable use of biodiversity - possible gaps and overlaps with the applicable provisions of the Convention, its Protocols and other relevant agreements related to components, organisms and products resulting from synthetic biology techniques
- New and emerging issues relating to the conservation and sustainable use of biodiversity - potential positive and negative impacts of components, organisms and products resulting from synthetic biology techniques on the conservation and sustainable use of biodiversity

In the time available, I regret that it was not possible for the studies to be considered within UPOV. However, I am pleased to provide editorial comments from the Office of the Union with regard to references to UPOV and would welcome any future possibilities for UPOV to consider the document and to provide its comments.

./. The comments of the Office of the Union in the attachment to this letter relate only to the study "New and emerging issues relating to the conservation and sustainable use of biodiversity - possible gaps and overlaps with the applicable provisions of the Convention, its Protocols and other relevant agreements related to components, organisms and products resulting from synthetic biology techniques", which makes reference to UPOV.

I hope that the attached comments will be of assistance and would be glad to provide further information or clarification with regard to those comments, if considered appropriate.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "P. Button".

Peter Button  
Vice Secretary-General

TEMPLATE FOR COMMENTS DOCUMENTS ON NEW AND EMERGING ISSUES RELATING TO  
THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY

Contact information		
<b>Name</b>	Please see attached letter from Peter Button, Vice Secretary-General, UPOV (20-8-2014)	
<b>Government (if applicable):</b>		
<b>Organization:</b>		
<b>E-mail:</b>		
Comments on:		
<input type="checkbox"/> Possible gaps and overlaps with the applicable provisions of the Convention, its Protocols and other relevant agreements related to components, organisms and products resulting from synthetic biology techniques		
Page	Paragraph	Comment
7/8	16	It is not apparent why it has been concluded that the results of synthetic biology could only “qualify as essentially derived varieties and therefore be protected by the breeder’s right”, rather than being protected as initial varieties. For example, paragraph 232 alludes to the possibility to obtain a breeder’s right without mention of EDV. It should also be noted that provisions for essentially derived varieties are only included in the 1991 Act of the UPOV Convention.
50	228	<p>Please amend to read “[...] The UPOV Convention came into force on 1968 and was revised in 1972, 1978, and 1991, in order to reflect technological developments in plant breeding and experience acquired with the application of the Convention. It has 72 members [...]. (see <a href="http://www.upov.int/export/sites/upov/members/en/pdf/pub423.pdf">http://www.upov.int/export/sites/upov/members/en/pdf/pub423.pdf</a>).</p> <p>It would be useful to clarify in the text that, unless otherwise stated, reference to the UPOV Convention refers to the 1991 Act of the UPOV Convention, if that is the intention.</p>
50	229	Please amend to read “The UPOV Convention sets forth standards, including national treatment, for the granting of “breeders’ rights” as a sui generis form of protection for new plant varieties. A plant variety in accordance with Article 1, paragraph (vi) of the Convention [...]”
50	230	<p>The current wording has been modified from the explanation given in the quoted reference “UPOV 2010, 4-5” (Explanatory notes on the definition of variety under the 1991 Act of the UPOV Convention).</p> <p>The Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention (document UPOV/EXN/VAR/1) states as follows:</p> <p style="padding-left: 40px;">“4. The definition of “variety” under the 1991 Act of the UPOV Convention starts by stating that it is “a plant grouping within a single botanical taxon of the lowest known rank, ... ” thereby confirming that a variety may not, for example, consist of plants of more than one species.</p> <p style="padding-left: 40px;">“5. The definition that a variety means a “plant grouping” clarifies that the following, for example, do not correspond to the definition of a variety:</p> <ul style="list-style-type: none"> <li>- a single plant; (however, an existing variety may be represented by a single plant or part(s) of a plant, provided that such a plant or part(s) of the plant could be used to propagate the variety)</li> <li>- a trait (e.g. disease resistance, flower color)</li> <li>- a chemical or other substance (e.g. oil, DNA)</li> <li>- a plant breeding technology (e.g. tissue culture).”</li> </ul>



50/51	231	<p>The text appears to have been based on the articles of the 1991 Act of the UPOV Convention, but with some discrepancies. If the intention is to relate to the 1991 Act of the UPOV Convention, the following wording could be used:</p> <ul style="list-style-type: none"> <li>• “Novelty - propagating or harvested material of the variety must not have been sold or otherwise disposed of to others, by or with the consent of the breeder in the territory of the UPOV member where the applicant seeks protection for more than one year, nor for more than four years in any other territory and six years in the case of vines and trees (Article 6).</li> <li>• “Distinctness - the variety must be clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application (Article 7).</li> <li>• “Uniformity - subject to the variation that may be expected from the particular features of its propagation, the variety must be sufficiently uniform in its relevant characteristics (Article 8).</li> <li>• “Stability - the variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle (Article 9 UPOV Convention). [...]”</li> </ul>
51	232	To amend to read “Where plant varieties resulting from synthetic biology techniques fulfil these criteria, the breeder has the possibility to obtain a breeder’s right, [...]”
51	233	To amend to read “In addition, the breeder’s right can be obtained for varieties which are essentially derived from the protected variety, a variety that requires the repeated use of the protected variety, or a variety which was not clearly distinguishable from the protected variety (Article 14, paragraph 5(a)) [...]”.
51	234	To amend to read “ To qualify for the breeder’s right, essentially derived varieties need to (i) be predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; (ii) be clearly distinguishable from the initial variety; and (iii) except for the differences which result from the act of derivation ,conform to the initial variety in essential characteristics that result from the genotype or combination of genotypes of the initial variety. Where both the essentially derived variety and the initial variety are protected by breeders’ rights, the activities listed in Article 14, paragraph 1 with regard to the essentially derived variety require the authorization of both breeders (UPOV 2009a).”
51/52	236	To amend to read “Article 15 to the UPOV Convention provides for certain exceptions to the breeder’s right. According to paragraph 1, compulsory exemptions address (i) acts which are of both private and for non-commercial purposes; (ii) the use of a protected variety for experimental purposes; and (iii) the use of protected varieties for the purpose of breeding new plant varieties. The commercialization of a new variety would not require the authorization of the breeder of the protected variety, except where the new variety is an essentially derived variety, a variety that requires the repeated use of the protected variety or was a variety which was not clearly distinguishable from the protected variety in accordance with Article 14, paragraph 5 of the UPOV Convention. UPOV members may, under an optional exception in Article 15, paragraph 2 of the UPOV Convention, allow farmers to save harvested material for further propagation under certain circumstances (UPOV 2009b). [...]”

[Annex II follows /  
L’annexe II suit /  
Anlage II folgt /  
Sigue el Anexo II]

## ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /  
Nur auf Englisch / En Inglés solamente]

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

May 2014

CGRFA/WG-PGR-7/14/Inf.10



联合国  
粮食及  
农业组织

Food and Agriculture  
Organization of the  
United Nations

Organisation des Nations  
Unies pour l'alimentation  
et l'agriculture

Продовольственная и  
сельскохозяйственная организации  
Объединенных Наций

Organización de las  
Naciones Unidas para la  
Alimentación y la Agricultura

منظمة  
الغذية والزراعة  
للأمم المتحدة

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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

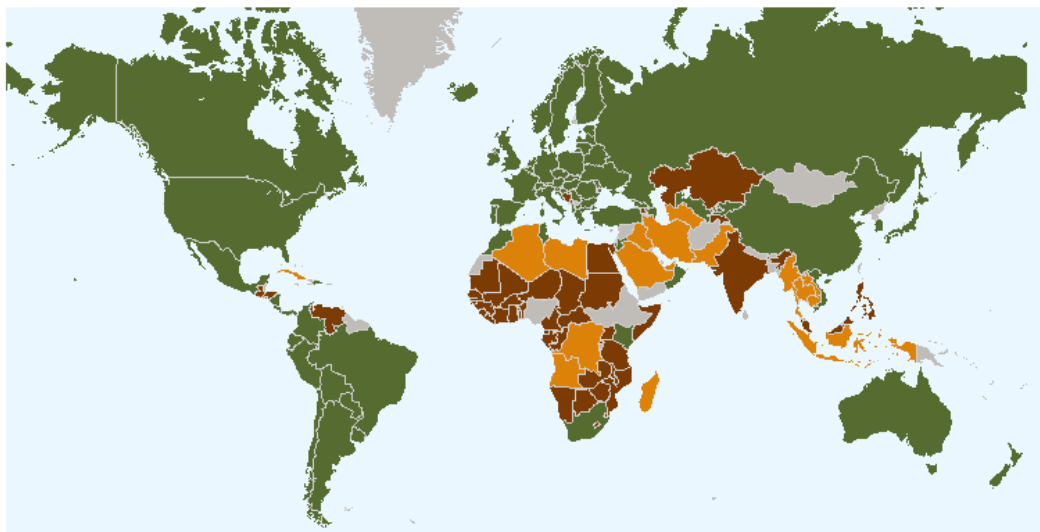
#### REPORT FROM THE INTERNATIONAL UNION FOR THE PROTECTION OF THE NEW VARIETIES OF PLANTS (UPOV) TO THE INTERGOVERNMENTAL TECHNICAL WORKING GROUP ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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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](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/](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/](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/](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.<sup>1</sup>
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”.

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<sup>1</sup> See [http://www.upov.int/export/sites/upov/news/en/2003/pdf/cbd\\_response\\_oct232003.pdf](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](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](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](mailto:upov.mail@upov.int) Website: [www.upov.int](http://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 <sup>3</sup>	China <sup>2</sup>	Germany <sup>3</sup>	Morocco <sup>3</sup>	Romania <sup>3</sup>	Tunisia <sup>3</sup>
Argentina <sup>2</sup>	Colombia <sup>2</sup>	Hungary <sup>3</sup>	Netherlands <sup>3</sup>	Russian Federation <sup>3</sup>	Turkey <sup>3</sup>
Australia <sup>3</sup>	Costa Rica <sup>3</sup>	Iceland <sup>3</sup>	New Zealand <sup>2</sup>	Serbia <sup>3</sup>	Ukraine <sup>3</sup>
Austria <sup>3</sup>	Croatia <sup>3</sup>	Ireland <sup>3</sup>	Nicaragua <sup>2</sup>	Singapore <sup>3</sup>	United Kingdom <sup>3</sup>
Azerbaijan <sup>3</sup>	Czech Republic <sup>3</sup>	Israel <sup>3</sup>	Norway <sup>2</sup>	Slovakia <sup>3</sup>	United States of America <sup>3</sup>
Belarus <sup>3</sup>	Denmark <sup>3</sup>	Italy <sup>2</sup>	Oman <sup>3</sup>	Slovenia <sup>3</sup>	Uruguay <sup>2</sup>
Belgium <sup>1</sup>	Dominican Republic <sup>3</sup>	Japan <sup>3</sup>	Panama <sup>3</sup>	South Africa <sup>2</sup>	Uzbekistan <sup>3</sup>
Bolivia	Ecuador <sup>2</sup>	Jordan <sup>3</sup>	Paraguay <sup>2</sup>	Spain <sup>3</sup>	Viet Nam <sup>3</sup>
(Plurinational State of) <sup>2</sup>	Estonia <sup>3</sup>	Kenya <sup>2</sup>	Peru <sup>3</sup>	Sweden <sup>3</sup>	
Brazil <sup>2</sup>	European Union <sup>3,4</sup>	Kyrgyzstan <sup>3</sup>	Poland <sup>3</sup>	Switzerland <sup>3</sup>	
Bulgaria <sup>3</sup>	Finland <sup>3</sup>	Latvia <sup>3</sup>	Portugal <sup>2</sup>	The former Yugoslav	
Canada <sup>2</sup>	France <sup>3</sup>	Lithuania <sup>3</sup>	Republic of Korea <sup>3</sup>	Republic of Macedonia <sup>3</sup>	
Chile <sup>2</sup>	Georgia <sup>3</sup>	Mexico <sup>2</sup>	Republic of Moldova <sup>3</sup>	Trinidad and Tobago <sup>2</sup>	

(Total 71)

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

<sup>2</sup> 1978 Act is the latest Act by which 19 States are bound.

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

<sup>4</sup> 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)

[Annex III follows /  
L'annexe III suit /  
Anlage III folgt /  
Sigue el Anexo III]

## ANNEX III / ANNEXE III / ANLAGE III / ANEXO III

[In English only / En anglais seulement /  
Nur auf Englisch / En Inglés solamente]

DRAFT GUIDE FOR NATIONAL SEED POLICY FORMULATION  
(extract from document CGRFA/WG-PGR-7/14/Inf.2)

## VI. SECTION D. KEY ELEMENTS OF NATIONAL SEED POLICY

92. Variety testing, release and registration. Prior to defining the scope and objective of legislation on variety control, it is important to clearly distinguish variety control systems and registration from Intellectual Property Rights (IPRs) systems and more specifically plant breeders' rights (PBRs).

93. The process for registering a new variety for the purpose of protecting the intellectual property rights of the breeder requires a full description of the variety and confirmation that it is different from other varieties known worldwide. In more detail, to be eligible for protection, varieties have to be (i) distinct from existing, commonly known varieties (common knowledge is not restricted to national or geographical borders), (ii) sufficiently uniform, (iii) stable and (iv) new in the sense that they must not have been commercialized prior to certain dates before the application for protection.

94. In the realm of seed legislation, establishing a variety list is also a form of registration, but its objective and consequences are completely different. The registration process of a variety for the National List aims at generating information for the user about the characteristics and performance of the variety and that the new variety is different from others known in the country.

95. Variety testing enables the screening, selection and characterization of a crop variety and the availability of valid information pertaining to that variety. The criteria normally used is distinctness, uniformity and stability (DUS) testing. The best performing variety is selected using value for cultivation and use (VCU) testing.

96. Capacity for enforcing the seed legislation: Governments need to ensure that there is an adequate capacity and appropriate provision in their seed laws for enforcement and consistent implementation. Enforcement mechanisms will include inspection bodies with the mandate to undertake monitoring and control activities, most often under the direct or indirect responsibility of the national seed authority. The powers of inspectors should be clearly defined in the primary legislation. Legislation should also clearly define infringements and provide for proportional sanctions and dispute settlement mechanisms.

97. Closing provisions. The seed legislation should contain provisions for an interim period, including transitional measures, to avoid overlapping and contradictory legislation.

98. National seed policies should take account of legal instruments which respond to different regulatory objectives but have a direct impact on seed production and trade. The regulatory protection of intellectual property rights in plant varieties is particularly relevant for the seed sector.

99. Intellectual property: Intellectual property rights (IPRs) are legal rights granted by governmental authorities to control certain products of human intellectual effort and ingenuity (FAO, 2004a). To protect new plant varieties, countries may apply general IPR protection. They may also approve specific legislation to protect Plant Breeders Rights (PBRs), which protect new varieties of plants that are distinct, uniform and stable. The breeders' right means that, during the period of protection, the authorization of the breeder is required to propagate the variety for commercial purposes. The breeder may make his authorization subject to conditions and limitations, which can include the payment of a royalty. Sound legal frameworks protecting breeder's rights can promote plant breeding as well as progress in agriculture.

100. The mission of the Union for the Protection of New Varieties of Plants (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 provides the basis for UPOV members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeders' right.

101. The two major treaty systems that regulate rights issues are those established under the auspices of UPOV, and the WTO Trade-Related Aspects of Intellectual Property (TRIPS) Agreement. The UPOV treaties adopt a sui generis system of protection especially tailored to the needs of plant breeders. The TRIPS Agreement article 27.3(b) requires WTO Members to protect plant varieties using patent law, an effective sui

generis system or a combination of elements from both systems. These major treaty systems need to be taken into consideration in the national seed legislation framework.

102. The sui generis system that is more widely used is the UPOV system. Patents are granted normally on inventions that have fulfilled the three cumulative eligibility requirements for patentability (novelty, inventive step and industrial application). There are significant differences in approach between sui generis plant breeders' rights systems and patents.

103. The main difference is the so called "breeding exemption" in Plant Breeders Rights legislation. It means that access for research and breeding to the new protected variety is totally free for other breeders and farmer-breeders which is not the case with patents.

104. The legislation governing patents and plant breeders' rights have different subject matter of protection, conditions for protection, scope and exceptions.

105. Most countries and intergovernmental organizations which have introduced a plant variety protection system have chosen to base their system on the UPOV Convention in order to provide an effective, internationally recognized system.

106. Under TRIPS Article 27.3(b), countries that are not signatory members of the UPOV Convention may choose to approve a different sui generis system or to apply general patent law or a combination thereof. Countries under regular patent systems may also recognize a farmers' exemption through specific provisions

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ANNEX IV / ANLAGE IV

(in English, French and Spanish only)

REPORT OF THE SEVENTH SESSION OF THE INTERGOVERNMENTAL TECHNICAL WORKING GROUP  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

(extract from document CGRFA/WG-PGR-7/14/REPORT)

VIII. ACCESS AND BENEFIT-SHARING FOR PLANT GENETIC RESOURCES FOR FOOD AND  
AGRICULTURE

40. A joint session of the Working Group and the Commission's Team of Technical and Legal Experts on Access and Benefit-sharing (TTLE ABS) was held in the afternoon of 9 July 2014. The joint session was co-chaired by the Chair of the Working Group and the Chair of the ABS Expert Team, Mr Javad Mozafari Hashjin (Islamic Republic of Iran).

41. Ms Kathryn Garforth, Secretariat of the Convention on Biological Diversity (CBD) provided information on the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol). Mr Kent Nnadozie, Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty), gave an overview of the Treaty, including the on-going process under the Treaty to enhance the functioning of the Multilateral System of Access and Benefit-Sharing (MLS).

42. The Working Group and the TTLE ABS considered the document, Plant Genetic Resources and Access and Benefit-Sharing<sup>1</sup>, and took note of the documents, Government submissions on conditions under which specific genetic resources for food and agriculture are exchanged and utilized<sup>2</sup>, Submissions of stakeholders on voluntary codes of conduct, guidelines and best practices, and/or standards in relation to access and benefit-sharing for all subsectors of genetic resources for food and agriculture<sup>3</sup>, and Explanatory notes to the distinctive features of genetic resources for food and agriculture<sup>4</sup>.

43. The Working Group recalled its work on the distinctive features of PGRFA, as reflected in the report of the Commission's Fourteenth Regular Session<sup>5</sup>. The Working Group took note of the on-going process under the Treaty.

44. The Working Group recommended that, with regard to PGRFA, the Draft Elements:

i. Refer to the Treaty and encourage countries that have not yet done so, to consider the option of ratifying or acceding to the Treaty, to promote its full implementation, including by encouraging the private sector to include PGRFA in the MLS, and to recognize the importance of providing support to countries for this purpose, in particular through capacity-building activities; and

ii. Refer to the special nature of agricultural biodiversity and encourage countries in their domestic access and benefit-sharing (ABS) regimes to ensure that: (a) this special nature is adequately recognized; (b) the goal of global food security and sustainable agricultural development are supported; (c) appropriate ministries, including for agriculture and PGRFA issues, are closely involved in the development of domestic ABS regimes for genetic resources more generally; (d) the development of domestic ABS regimes is done in coordination with appropriate stakeholders, including users of PGRFA across various subsectors, to accommodate existing exchange practices; (e) exchange of PGRFA across national boundaries is enhanced given its importance to global food security; (f) capacity building and technology transfer are enhanced to increase the capacity of developing countries to use PGRFA; (g) the distinctive features of PGRFA, as compared with other subsectors of genetic resources for food and agriculture, are described and taken into account, as appropriate; (h) utilization of PGRFA for purposes other than food and agriculture are addressed as part of wider ABS systems

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<sup>1</sup> CGRFA/WG-PGR-7/14/8.

<sup>2</sup> CGRFA/WG-PGR-7/14/Inf.6.

<sup>3</sup> CGRFA/WG-PGR-7/14/Inf.7 Rev.1.

<sup>4</sup> CGRFA/WG-PGR-7/14/Inf.8.

<sup>5</sup> CGRFA-14/13/Report, Appendix E.

dealing with Prior Informed Consent, Mutually Agreed Terms (MTA) and compliance, as appropriate; (i) monetary and non-monetary benefit-sharing arrangements are established for ABS pertaining to PGRFA outside the MLS of the Treaty, as appropriate; (j) the importance of crop wild relatives in breeding for the purpose of food security and sustainable agriculture is recognized and their use is promoted; and (k) ABS contracts should be simple and streamlined with low transaction costs.

iii. Leave considerations regarding the need for and modalities of a global multilateral benefit-sharing mechanism as referred to in Article 10 of the Nagoya Protocol to the Contracting Parties of the Protocol.

iv. Take into consideration that: (a) the MLS of the Treaty provides an instrument to deal with the complex issue of identifying one or more countries of origin; (b) standardization of access procedures for PGRFA is necessary in order to sustain the international flow and use of PGRFA as well as to provide solutions to small medium enterprises (SME) and small-scale farmers; (c) the relevance of taking into account established exchange practices in communities of providers and users, including in the form of codes of conduct, guidelines and sectorial MTAs; (d) options to develop and use model contractual clauses or standard MTAs for certain sets of PGRFA; (e) the importance of international collaboration to promote capacity building in genetic resources for food and agriculture (GRFA) management and use, and established practices governing the international exchange of GRFA in the context of such international collaboration; (f) the need to accommodate customary uses of GRFA in developing domestic measures for GRFA, in particular the use by traditional and local communities, access for the purpose of private/ non-commercial use, use by small-scale farmers and livestock keepers and use in common pools and research networks; (g) the possibility of decoupling access and benefit-sharing in order to avoid complex processes in which the use of all PGRFA in a certain product has to be attributed to individual sources; (h) the importance of non-monetary forms of benefit-sharing and the need to open up such modalities in the development of national measures on ABS for GRFA.

45. The Working Group recommended that the Commission request FAO to continue to collect relevant voluntary codes of conduct, guidelines and best practices, and/or standards and model contractual clauses in relation to ABS for GRFA, including, in particular, PGRFA.

[Annex V follows /  
Anlage V folgt]



SIDE EVENT PROGRAM DURING THE SEVENTH SESSION OF THE INTERGOVERNMENTAL  
TECHNICAL WORKING GROUP ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
Geneva

**Side event during the 7th Session of the ITWG**

**Rome, Italy, July 10, 2014**

**UPOV: ENCOURAGING THE USE OF PLANT GENETIC RESOURCES FOR THE  
BENEFIT OF SOCIETY**

Venue:

Room: MALAYSIA ROOM, B-227, 2nd floor of the Building B

Date: July 10, 2014

Time: 12:00 to 14:00

Remarks: Refreshments will be provided  
The meeting will be only in English

Program:

- Welcome by Mr. Peter Button, Vice Secretary-General of UPOV
- Opening remark by Dr. Shakeel Bhatti, Secretary of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture
- Presentation on the role of the UPOV system of plant variety protection in:
  - o encouraging plant breeding by different types of breeders
  - o facilitating technology transfer to farmers
  - o supporting public-private partnerships
  - o enabling farmers to improve their incomes
- Questions and discussion

[Annex VI follows /  
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Sigue el Anexo VI]

**UPOV:  
encouraging the use of plant  
genetic resources for the benefit  
of society**

Peter Button (Vice Secretary-General, UPOV)  
Jun Koide (Technical/Regional Officer (Asia))

*Rome,  
July 10, 2014*

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**PREVIEW**

1. Introduction to UPOV
2. Encouraging plant breeding
3. Facilitating technology transfer to farmers
4. Enabling farmers to improve their incomes
5. Questions & discussion

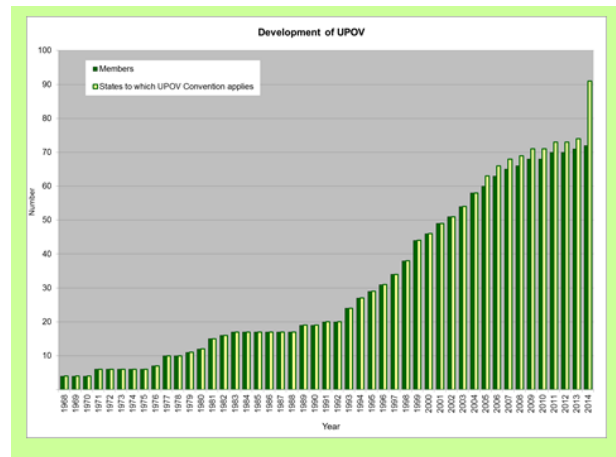
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**UPOV**

**UPOV MISSION STATEMENT**

**“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”**

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**UPOV status**

Members of UPOV (72)  
Initiating States (16) and Organization (1)  
States (24) and Organization (1) in contact with the UPOV Office

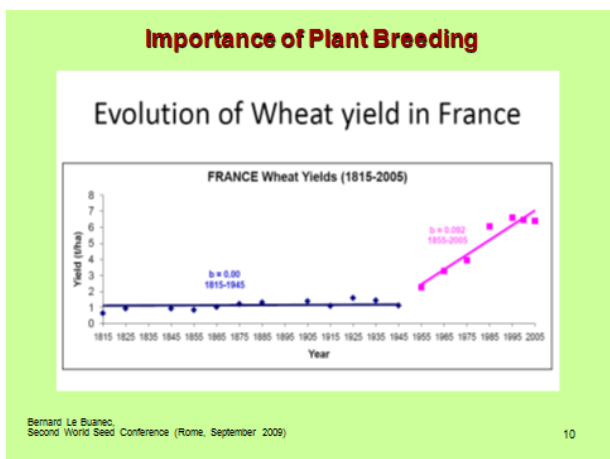
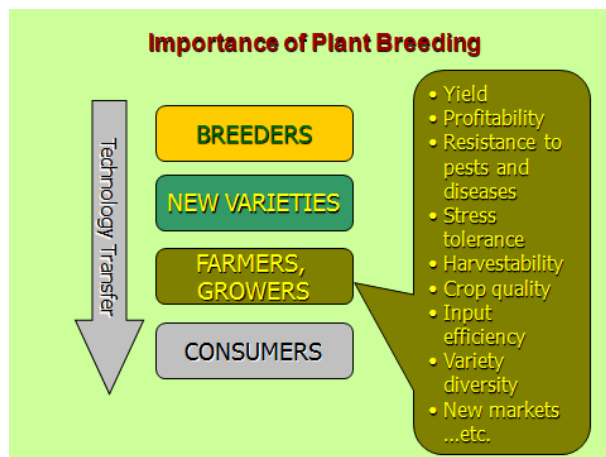
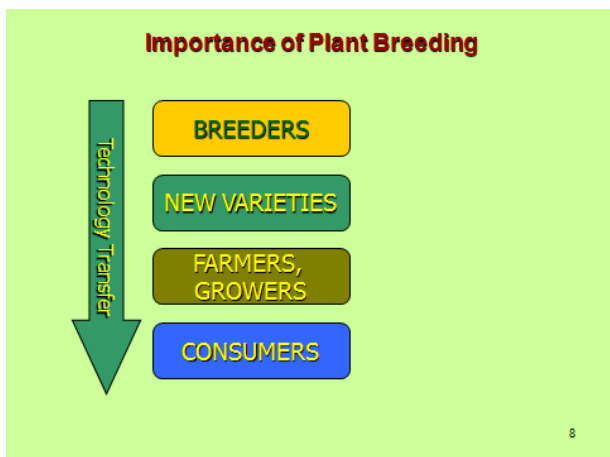
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The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory.

**PREVIEW**

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SEMIAR ON PLANT VARIETY PROTECTION AND TECHNOLOGY TRANSFER: THE BENEFIT OF PUBLIC-PRIVATE PARTNERSHIP

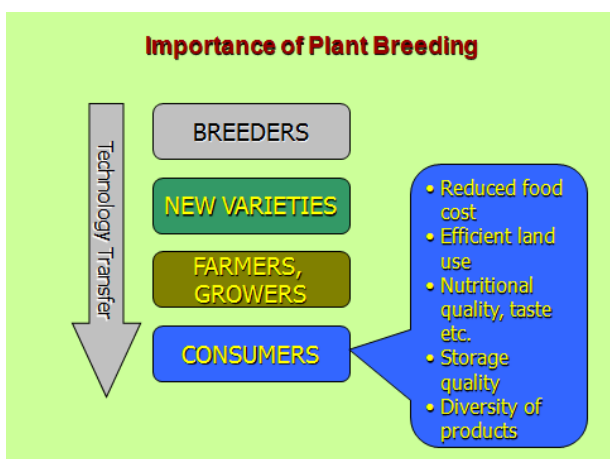
Yves Lespinasse

Glucosinolate content  
 from 100  $\mu$ moles ('Jetneuf') to 12  $\mu$ moles ('Samourai')

LEAR: Low Erucic Acid

HOLLI: High Oleic and Low Linolenic

Canola



## UPOV

### UPOV MISSION STATEMENT

**“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”**

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- Plant breeding is long and expensive
- BUT**
- Plant varieties can be easily and quickly reproduced

→ Breeders need protection to recover investment

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**UPOV**

**UPOV MISSION STATEMENT**

“To provide and promote an **effective system of plant variety protection (PVP), [...]**”

→ **Plant Breeder's Right (PBR)**

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**Impact of Plant Variety Protection**

**Reports on Studies Conducted in Individual Countries:**  
 Argentina, China, Kenya, Poland and the Republic of Korea

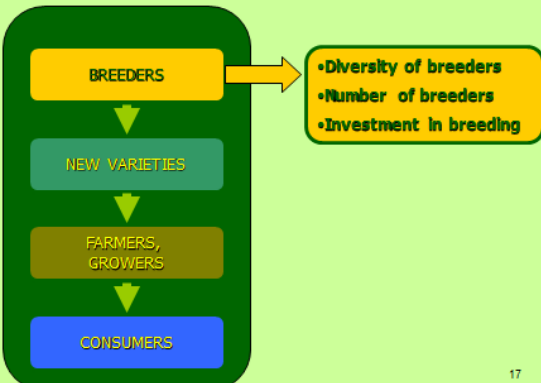


**CANADA: 10 YEAR REVIEW**



<http://www.inspection.gc.ca/english/plaveg/pbrpov/10yre.shtml>

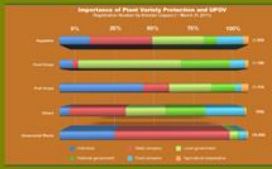
**Impact of Plant Variety Protection**




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**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.

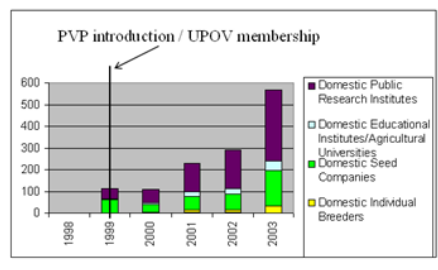


**Japan Registration Case Study**  
 (click to see full view)

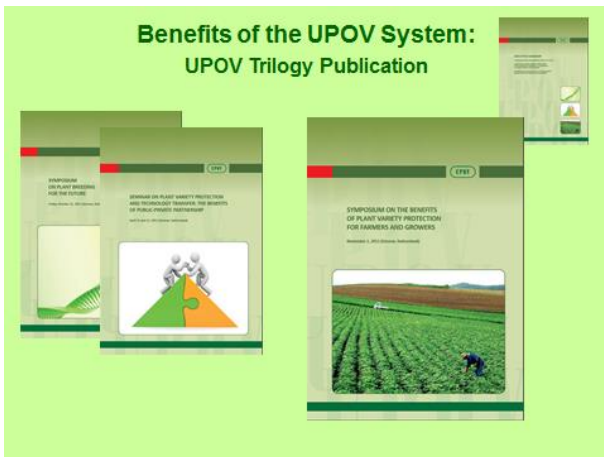
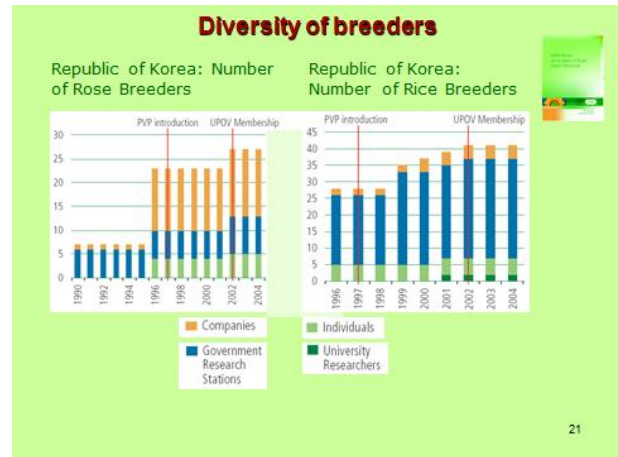
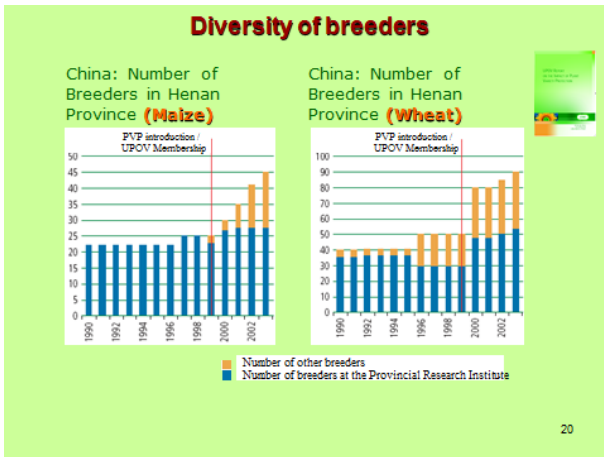


**Diversity of breeders**  
 China

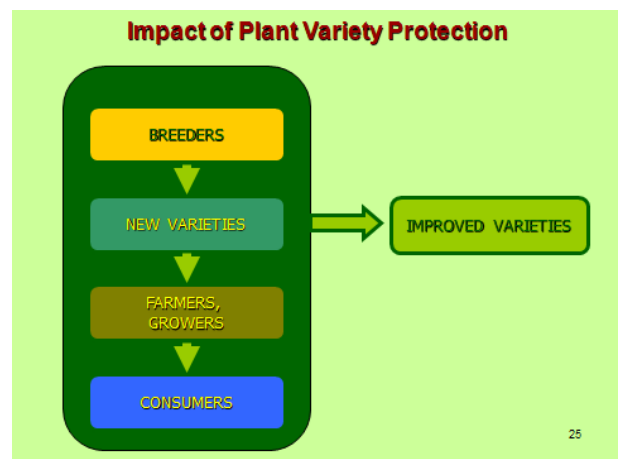
Figure 33. China: Number of Applications by Categories of Applications (Agriculture)



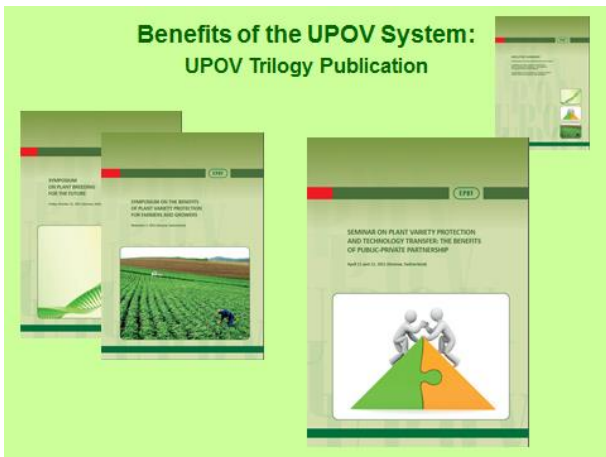
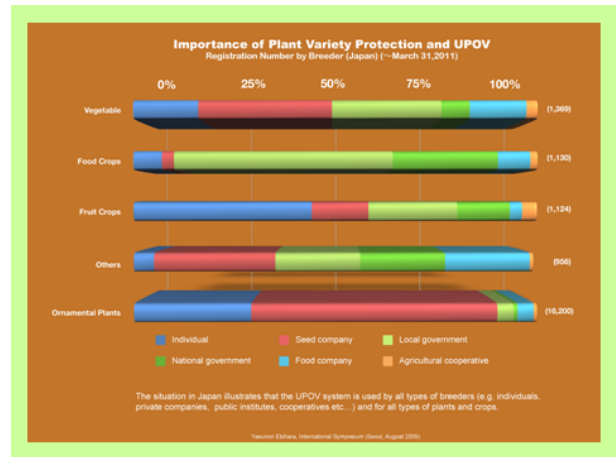
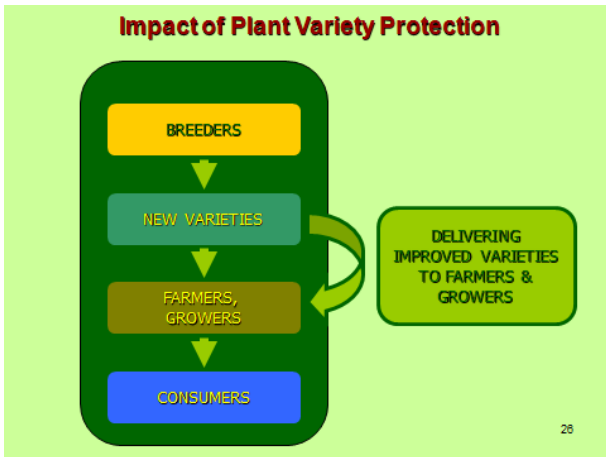
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- ### PREVIEW
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  5. Questions & discussion
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### International Research Centers

Chair: David Boreham Conclusions – Session 3

- **PVP provides a mechanism to facilitate dissemination of varieties to farmers: open access does not ensure widespread dissemination or use**

1. Lloyd Le Page, CGIAR
2. Ruairaidh Sackville Hamilton, IRRI
3. Ian Barker, Syngenta Foundation

Chair: David Boreham



### ARC • LNR

Excellence in Research and Development

### AGRICULTURAL RESEARCH COUNCIL IN PLANT VARIETY PROTECTION AND TECHNOLOGY TRANSFER IN SOUTH AFRICA

DR. S. R. Moephuli, Ms. M. A. Moselakgomo  
 & Dr. V. Pehane



## USE OF PVP FOR BENEFIT – SHARING

- As a public entity ARC utilizes PVP to enhance benefit sharing:
  - Effective technology transfer – mainly for agriculture development and growth
  - Enable competitiveness of the agriculture sector
  - Contribute cultivars that are important for food security
  - Incentivise innovation through:
    - Further investments into Research and Development
    - Providing a share of the revenue generated to inventor
    - Stimulate enterprise development
    - Facilitate access to poor farmers for development



## 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...



Michael D. Carriere, Ph.D.  
 Business Development and Intellectual Property Manager  
 UC Davis InnovationAccess  
 mdcarriere@ucdavis.edu

## UC Davis - international agriculture - UPOV PBR - strawberry variety licensing

- » UPOV PBR-protected UC Davis strawberry varieties are foundational for master licensees
- » Master licensees are conduit of horticultural know-how and newest varieties from UC Davis
- » Horticultural know-how leads to improved production, higher value, and improved rural economics
- » In the context of strawberry horticulture, UPOV PBR is foundational to UC Davis' ability to improve agriculture internationally



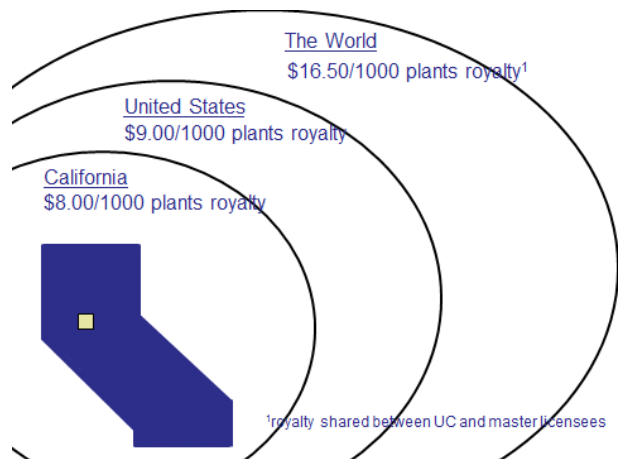
A UNIT OF THE OFFICE OF RESEARCH

## UC Davis - international agriculture - UPOV PBR - strawberry variety licensing - value added examples

- » California industry value - \$2.5 B (70% UC Davis)
- » Spanish industry from zero to \$1B in 25 years – UC Davis strawberry varieties and know-how
- » Other examples;
  - Chile, Mexico, Morocco, South Africa, Turkey



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**UPOV SEMINAR ON PLANT VARIETY PROTECTION AND TECHNOLOGY TRANSFER: THE BENEFITS OF PUBLIC-PRIVATE PARTNERSHIP**  
Geneva, April 13 and 14, 2011

**Wilhem Wicki**

Task sharing and part of public and private funding of the Swiss wheat breeding program

Public funding (Agroscope)

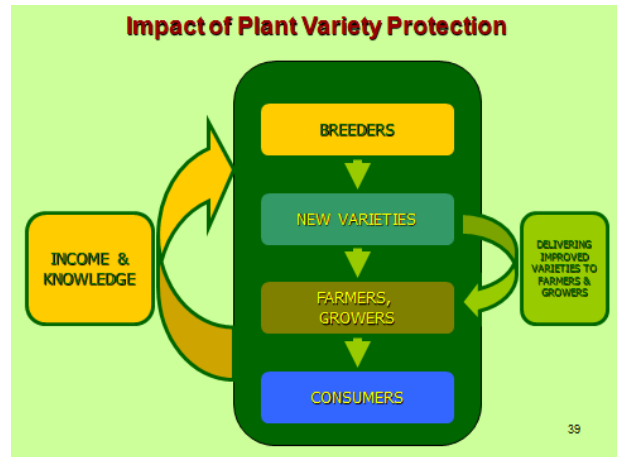
Variety development → Final Evaluation



Maintenance breeding, Basic seed production, PVR protection, Variety representation in Switzerland, in Europe and worldwide

Private funding (DSP Ltd), source: Royalty fees from protected varieties

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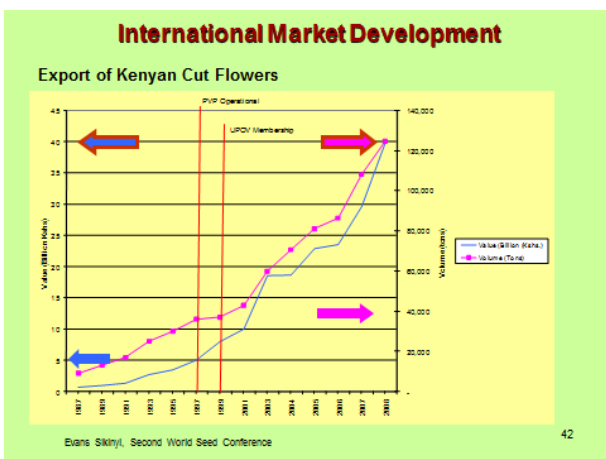


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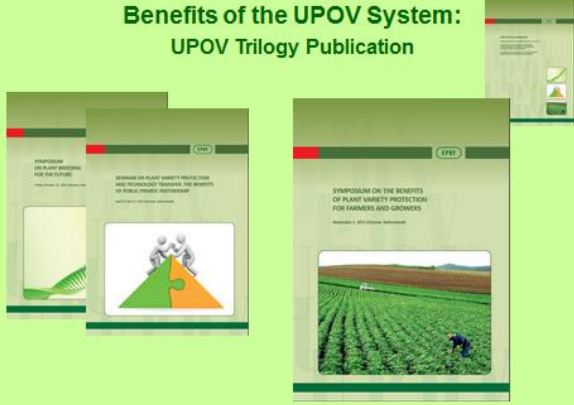
Plant Variety Protection:  
Improving Income for Farmers and Growers

variety **CHOICE**  
+ **INFORMATION** on performance  
+ **DELIVERY** of good quality planting material  
= Opportunities for **ADDED VALUE**

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**Benefits of the UPOV System:  
UPOV Trilogy Publication**



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## Opportunities for Added Value

Philippe Toulemonde  
President of Star Fruits (France)



The use of plant variety protection to add value for fruit growers

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**REMINDER OF THE ADDED VALUE FOR PROTECTION OF VEGETAL BREEDINGS**

- BREEDING creates the INNOVATION source of capital gain for PRODUCERS
  - Differentiation with competitors
  - Improvement with fruit quality
  - Improvement on cultural practices
- VIRTUOUS CIRCLE: capital gain generated by producers allows a return to BREEDER. It allows him, in his turn, to continue to invest in his variety creation program.
- Quality approach by organizing the distribution
- Fight against the imitation/infringement, synonym of capital loss

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**star fruits** Projects

⊕ Initiator, directly or indirectly, of development projects,

- Global industry approaches, breeders and breeders rights management companies

*Pink Lady* *Pink Lady* *Ariane*

*Nectavigne* *JOYA*

**fruit.select** *AC Fruit*

## Opportunities for Added Value

Eduardo Baamonde  
Director General, Cooperativas Agroalimentarias (Spain)



Adding value for grower cooperatives

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## Opportunities for Added Value

...for many years now, cooperatives have been demonstrating the importance of backing and committing to new plant varieties: Limagrain, Lantmännen, Maisadour, etc. Those groups opted to develop varieties for their members and are now world-famous in this field, **offering not just new and improved varieties but also a high level of added value to their growers.**



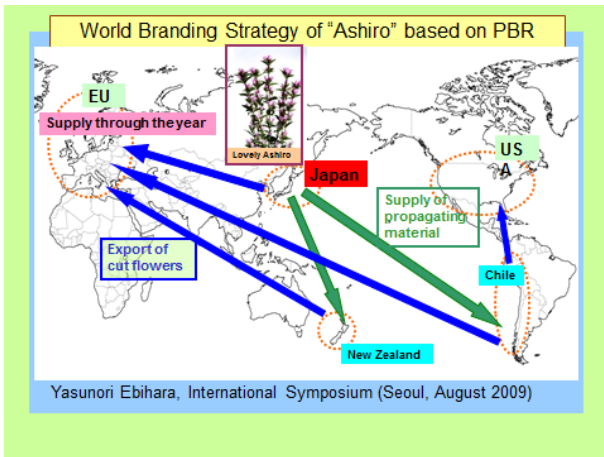
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## Opportunities for Added Value

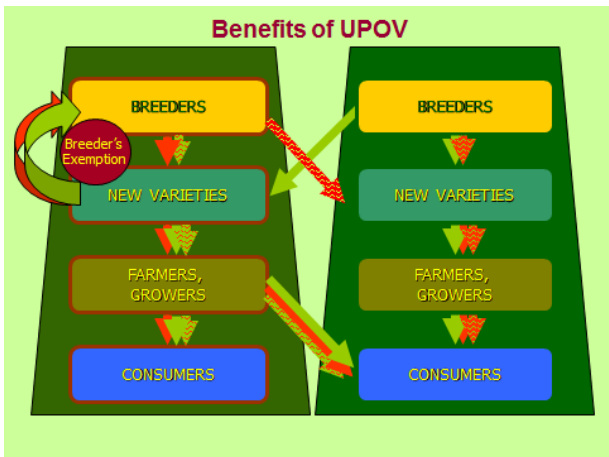
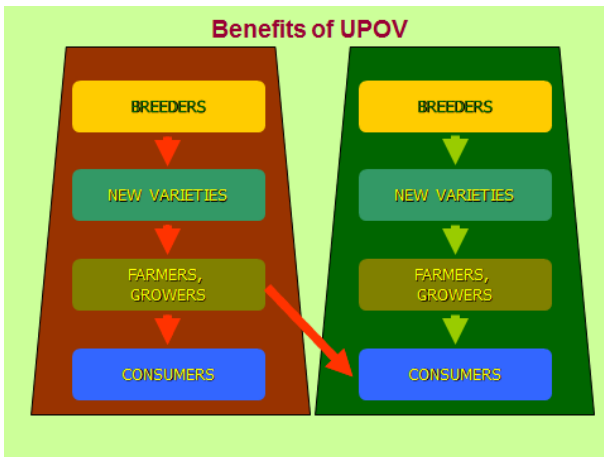
Working from Spain, we are trying to create synergies between grower cooperatives and breeders... As to supporting domestic programmes, we have initiatives such as Agrovegetal, which, after barely more than 10 years developing varieties of durum wheat, has now become a reference point for farmers.



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**Summary...**



**International Treaty on Genetic Resources for Food and Agriculture**  
**Platform for the Co-Development and Transfer of Technologies**

**FAO**

Contribution to the work of multi-stakeholder team on enhancing public-private partnerships in pre-breeding

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 Ende der Anlage VI und des Dokuments /  
 Fin del Anexo VI y del documento]