



APBREBES Report on the 2025 UPOV Session

The 2025 UPOV Session, held from 20 to 24 October, once again demonstrated that certain countries are seeking to shape UPOV to their preferences and those of industry. For instance, they are attempting to use a new study to deconstruct a European Court of Justice decision unfavourable to industry and amend the Explanatory Notes on Harvested Material accordingly. They are also persevering in their attempts to undermine the work on exceptions for smallholder farmers by organising a seminar that is primarily intended as a promotional tool for UPOV.

Administrative and Legal Committee (CAJ/82), October 22, 2025

The [Documents for the meeting](#) and the [Report](#) of the Administrative and Legal Committee (CAJ) with all the decisions taken can be found on the UPOV website. The short meeting was held in the morning without controversial issues.

Recent developments in UPOV

The session opened with a [presentation](#) by UPOV Vice-Secretary General Yolanda Huerta on recent developments in the organization. A [30-minute video](#) on the same topic is available on the UPOV website. The presentation introduced the case of a successful raspberry grower in Chile. What the presentation failed to mention is that Chile is a member of UPOV-78 and has never ratified the 1991 version of the convention. Was it an intentional decision to demonstrate that UPOV-78 is a better option for many countries?

The development of UPOV e-PVP, was a focus of Huerta's presentation. UPOV e-PVP includes various tools for digitising and harmonising the PVP administration. It is worth noting that the African Regional Intellectual Property Organization (ARIPO), which is not a UPOV member, now uses UPOV PRISMA, the e-PVP module to file plant variety protection applications online under the Arusha Protocol for the Protection of New Varieties of Plants. In October 2024, a Council decision mentioned in document [CC/103/INF/2](#) stated that *"States and organizations in the process of becoming UPOV members could benefit from using UPOV PRISMA and other UPOV e-PVP modules to implement a PVP system in line with the UPOV Convention, under condition that they have a positive advice from the Council on the conformity of the legislation with the UPOV Convention. The use of UPOV e-PVP would be authorized during a trial period of three years"*. The same document also stated that *"The changes introduced to Article 4(1) and Article 37 of the Arusha Protocol, [...], would mean that the positive decision of the*

Council would no longer be relevant." It seems this flouting of UPOV's rules might be a goodwill gesture to secure another member in the medium term.

Seminar on Cooperation with Breeders in DUS Examination, October 22, 2025

In the afternoon of October 22, a Seminar on cooperation with breeders in DUS examination was held in the WIPO Conference Hall. In preparation for the seminar, three webinars were held to share experiences from Canada, Chile, Kenya, Australia, New Zealand, and Japan. Recordings, presentations, and summaries of the webinars are [posted](#) on the UPOV website, as well as the recording of the seminar.

Working Group on Harvested Material and Unauthorized Use of Propagating Material (WG-HRV/8), October 22, 2025

All documents of this Working Group can be found [here](#).

The only item on the WG-HRV agenda was to take note of an [interim report](#) on the study concerning the "Scope of the Breeder's Right" and its relationship with the "Exhaustion of the Breeder's Right." The study was commissioned by the Working Group and was expected to be discussed at this meeting. Still, the authors required additional time and now intend to present a "concept" of the final report before the end of 2025. The final report would then be discussed at the next WG-HRV meeting on 19 March 2026. However, the draft version already reflects what the countries that championed the study, with Japan covering a large share of the costs, wanted to see. The intention of the whole exercise was explained in an article by Huib Ghijen, the authors' coordinator, on 2 May 2024 in SeedWorld, even before the study began. In the article, Ghijen detailed his interpretation of the UPOV Convention and argued that the European Court of Justice's decision in the Nadorcott case was flawed. He concluded, *"As the Court's judgment cannot be reversed, it is therefore very important for the UPOV Member States to work on a correct interpretation of the cascade, which is still continuing in the UPOV working group for the 'Explanatory Notes on Harvested Material.'*" The study seems to be a mere vehicle for challenging a European Court of Justice decision that did not serve the interests of the seed industry, and to pave the way for a new interpretation of the UPOV Convention.

The interpretation of "unauthorized use" is crucial in this context. The current Explanatory Notes about harvested material (UPOV/EXN/HRV/1) states that *"'Unauthorized use' refers to the acts in respect of the propagating material that require the authorization of the holder of the breeder's right in the territory concerned (Article 14(1) of the 1991 Act), but where such authorization was not obtained. Thus, unauthorized acts can only occur in the territory of the member of the Union where a breeder's right has been granted and is in force."* The study's authors now propose the following interpretation, deduced from the history of UPOV-91 negotiations: *"The notion 'unauthorized' in Article 14 (2) UPOV 1991 relates to the authorization of the holder of the breeder's right at issue and not to the legal status of the propagating material used for obtaining the harvested material. It is irrelevant whether the use of the propagating material outside the territory where the respective breeder's right is granted, valid and enforced, is covered by any proprietary right or not, i.e. legally or illegally used."* The contradiction with the current Explanatory Notes is obvious, and it will come as no surprise that

industry and some countries want to use the study to introduce the change into the Explanatory Notes. The proposed change is decisive for the enforcement of breeders' rights over harvested material under Art. 14.2 of the UPOV Convention, which states: *“Subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.”*

However, the interim report's outcome was not entirely in line with the wishes of the industry and the countries that initiated the study. In analysing the history of UPOV-91's development, the authors reached an interpretation of “propagating material” and “harvested material” that is less far-reaching than that already adopted by some. At the request of Japan and with the support of Canada and Argentina, this section was then removed from the study and will no longer appear in the final version. Ghijsen argued that the authors looked at these terms because they were important for the interpretation of Article 14 on the scope of the Breeder's Right but that argument did not prevent the deletion.

The report of the last meeting states that “The Office of the Union reported that the authors have declared, in the Progress Report of the Study, that they do not have a conflict to work on the Study. The Office will investigate whether there is a need for any further clarifications and possibly consult any practice of WIPO in that respect”. APBEBES asked the Office about their investigations. They replied that they had consulted WIPO's Ethics Office and that everything was fine. It should nevertheless be noted that both Vivianne Kunisawa and Huib Ghijsen spent a substantial part of their careers in the seed industry. Vivianne Kunisawa worked for nearly 8 years as in-house counsel at Syngenta, and Huib Ghijsen, who has been retired for some time, was the IP manager at Bayer Bioscience and was active in various working groups and committees in the seed industry.

Consultative Committee (CC/103), October 23, 2025

As usual, the Consultative Committee meeting was closed to observers, but under the new rules implemented last year, the [meeting documents](#), including the [report](#), are now available on the UPOV Website.

Council(C/59), October 24, 2025

Below are a few highlights from the Council Meeting discussion. The documents and the report of the meeting can be found [here](#).

Nigeria was welcomed as the 80th member of UPOV at the beginning of the meeting. In his speech, the Nigerian representative explicitly thanked AGRA (the Alliance for a Green Revolution in Africa, launched by the Bill & Melinda Gates Foundation and the Rockefeller Foundation) for its financial support, as well as the Netherlands for its support. It is interesting to observe how seed-exporting countries in the North assert their commercial interests in countries in the South.

Examination of the conformity of the Draft Amendments to the Protection of New Plant Varieties Act 2004 [Act 634] of Malaysia with the 1991 Act of the UPOV Convention

The Council decided to take a positive decision on the conformity of the Draft Law with the provisions of the 1991 Act, which allows Malaysia, once the Draft Law is adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act;

APBREBES made the following intervention:

"We note that you will take a positive decision on the conformity of the Draft Law of Malaysia with the provisions of the 1991 Act. But is this law also in conformity with the needs of Malaysian Farmers? No! Farmers and civil society organizations have been opposed to amending the current Act to bring it in line with UPOV 1991. The Malaysian Food Sovereignty Forum has stated that the existing PVP Act strikes a careful balance — protecting breeders' rights while also safeguarding farmers, Indigenous Peoples and Local Communities, biodiversity, as well as constitutional rights. Implementing UPOV 1991 would require dismantling the current law, stripping away critical protections and undermining Malaysia's sovereignty. They have repeatedly expressed their deep concern over the lack of meaningful consultation processes regarding the proposed amendments to the new Act.

Certainly, several UPOV members and the UPOV Secretariat have played an important role pressuring Malaysia to amend its law – whether through the East Asian Plant Variety Protection Forum, Trade Agreements or lobbying activities disguised as technical advice. The outcome of this pressure is deeply troubling: the removal of modest but essential safeguards for small farmers. In order to comply with UPOV 91, an exception allowing the exchange of reasonable amounts of propagating material among small farmers with less than 0.2 hectares of land, has been deleted from the existing law. Another provision deleted, allowed "the sale of farm-saved seeds in situations where a small farmer cannot make use of the farm-saved seeds on his own holding due to natural disaster or emergency".

Clearly UPOV's goal is to deprive small farmers of practices vital to their food security and livelihoods. Thus, it should come as no surprise that UPOV continues to be denounced by small farmer organizations and civil society, human rights experts, academics as an institution that advances the interests of the seed industry while disregarding the rights and needs of farmers and the broader public good."

In another statement the International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), encouraged Malaysia to explicitly exclude vegetatively reproduced fruits and ornamental crops from Section 31 (1)(d) concerning the optional exception (farmers privilege), although the Malaysian draft law is already in line with UPOV 91.

Report by the President on the work of the hundred and third session of the Consultative Committee

The whole Report is available [here](#). We would like to mention two topics:

Under the agenda item '**Measures to improve the efficiency and effectiveness of the UPOV sessions**', the Consultative Committee (CC) discussed the publication of the list of participants, which Germany raised in the Technical Committee (TC) following concerns of misuse of personal data. The Council noted that the TC agreed that the list of participants should not be included in the session report or published on the UPOV website until a decision on this matter is taken by all UPOV bodies. Both the CAJ and the CC agreed to follow the TC's approach, as did the Council. The Office of the Union will investigate how to proceed for future UPOV sessions and will make a proposal at the next UPOV sessions, in October 2026. During the Council session, the APBREBES representative expressed surprise at the decision to stop making UPOV delegates' names public on the UPOV website. He argued that there is a public interest in knowing who represents countries in UPOV and who makes decisions. He pointed out that this non-

disclosure is not a common practice among international organisations. He said that if the purpose of this non-disclosure is to fight cybercrime, there are alternative methods.

Under the agenda item '**Proposals for a seminar to take place in 2026**', the CC discussed a seminar idea that arose at the last meeting of the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF). During that meeting, it was stated that *"gathering further information could be beneficial for future discussions. In that context, the organization of a seminar could be a way to obtain additional information."* (See also our [report](#) on the 2024 UPOV Session.) The [CC document](#) on the proposed seminar states: *"By fostering dialogue and collaboration among breeders, farmers, researchers, and other stakeholders, the seminar would seek to build bridges that strengthen mutual understanding and cooperation."* In his statement during the Council, the APBEBES representative expressed his disappointment with the proposal.

"When I look at the proposed case studies and topics, I see that some of them are already on the UPOV website. This is more like a monologue than a dialogue. Listening to arguments that you are familiar with and agree with will not advance the discussion about smallholder farmers. You should invite those whose views you do not like to hear, those who have stories you might not know." He proposed inviting several organisations, including La Via Campesina, the largest global smallholder organisation; AFSA, the largest coalition working on agroecology and farmers' rights in Africa; and the UN Special Rapporteur on the Right to Food. *"All these have something to say about the impact of plant variety protection on the lives of smallholder farmers and farmer-managed seed systems. If you really want to build bridges, the seminar could be a good place to start. However, if you simply present your own argument about the so-called benefits of UPOV, it will just be another promotional event."*

The Consultative Committee agreed with the proposed topics for the Seminar and preparatory webinars mentioned in the CC document, with the addition that *"a topic or speaker pertinent to the subject-matter expressed in the Terms of Reference of the work of the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF)"* should be added. This is a somewhat surprising addition, as we assumed that the entire event, not just one speaker, would be devoted to the Working Group's topic. This process shows once again how some UPOV members shun an essential issue and divert it to serve their interests. Instead of discussing how the interpretation of private and non-commercial use can be adapted to meet the needs of small farmers, which is the topic of the Working Group, the event is now geared to celebrate the benefits of UPOV.

Strategic Business Plan 2026-2029

The Council adopted the Strategic Business Plan (SBP) 2026-2029 and noted that the Consultative Committee had agreed to establish a Consultative Group of the Consultative Committee on UPOV Resources Strategy (CG-URS) with the objective of identifying options to achieve UPOV's financial sustainability. APBEBES finds it interesting to see how UPOV perceives the role of NGOs and criticism of UPOV in its Horizon Scanning, on which the SPB was based. It states:

- *Public Trust and Legitimacy: misconceptions persist about PVP. UPOV must improve communication, highlighting economic, food security, and sustainability benefits for smallholder farmers and SMEs.*
- *Civil Society and Public Perceptions: NGOs and consumer groups are increasingly vocal. Transparent, inclusive procedures and communication strategies are needed to counter misinformation and secure social license.*

We note that criticism of UPOV appears to be dismissed as mere misinformation or a misconception. This seems to us to be a very one-sided view, unlikely to help UPOV move in the right direction. Those who do not take criticism seriously will never become aware of their mistakes.

Election of new Chairpersons

The Council elected, in each case for a term of three years ending in 2028:

Mr. Anthony Parker (Canada), President of the Council;

Ms. Grace Ama Issahaque (Ghana), Vice-President of the Council;

Ms. Minori Hagiwara (Japan), Chair of the Administrative and Legal Committee;

Ms. Bernadette Reeger (Netherlands), Vice-Chair of the Administrative and Legal Committee;

Ms. Nuria Urquía Fernández (Spain), Chair of the Technical Committee;

Ms. Stefânia Palma Araujo (Brazil) Vice-Chair of the Technical Committee.

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