

Via e-mail

INTERNATIONAL UNION FOR THE PROTECTION OF
NEW VARIETIES OF PLANTS (UPOV)
Consultative Committee and COUNCIL

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CIOPORA comments on the Legislation of Peru regarding Plant Breeders' Rights

Dear members of the Consultative Committee and the Council,

CIOPORA appreciates it that Peru intends to accede the UPOV 1991 Act and that it has submitted to UPOV the *Decision 345 of the Commission of the Cartagena Agreement on the Common Provisions for the Protection of the Rights of Breeders of Plant Varieties of 21 October 1993* and a draft Supreme Decree.

In principle, CIOPORA shares the opinion of the UPOV office that the Decision 345 and the draft Supreme Decree incorporate the substantive provisions of the UPOV 1991 Act.

However, CIOPORA would like to point out that – with the exception of the “official action for violation”, executed by OINT and PRONARGEB, as described in Articles 25 to 32 - the provisions on enforcement are described rather vague in the draft Decree. It is not clear which civil and criminal procedures are in force in Peru in regard to Plant Breeders' Rights.

Additionally, based on our state of knowledge, currently there are no customs procedures in place in Peru which include Plant Breeders' Rights. In this context Article 27 (d) of the draft Decree only makes reference to customs actions to prevent the infringing products from *entering* the country. No reference is made to customs activities for the enforcement of the right of the PBR title holder to *export* material of the protected variety (as mentioned in Article 24 (e) of Decision 345). However, having customs procedures applicable for both the export and the import of PBR-protected plant material is an indispensable requirement for the compliance of the Peruvian PBR legislation with Article 30 (1) (i) of the UPOV 1991 Act.

CIOPORA suggest that the Council asks Peru to clarify the civil and criminal enforcement procedures. In regard to customs law Peru should be asked to either include a respective provision into its Decree or to make a reference to the respective national customs law, which has to be applicable for Plant Breeders' Rights. At least the government of Peru should prove that customs activities for export and import are in force and are applicable for Plant Breeders' Rights in Peru.

Respectfully yours,

CIOPORA

A handwritten signature in blue ink, appearing to read 'E. Krieger', with a stylized flourish at the end.

Dr. Edgar Krieger
Secretary General