

**Seminar on the  
Enforcement of Plant Breeders' Rights  
under the UPOV Convention**

**OVERVIEW OF ENFORCEMENT OF BREEDERS'  
RIGHTS UNDER THE UPOV CONVENTION**

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*Hanoi, Viet Nam - September 7, 2016*

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**WHY IS THE ENFORCEMENT  
OF BREEDERS' RIGHTS  
IMPORTANT?**

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## Improved Varieties

### Hot pepper

Development of disease resistant variety



🟡 **Dok-Ya-Cheong-Cheong**  
Resistant to phytophthora blight/virus

Phytophthora blight (Fungal disease):  
- above : **Resistant variety**  
- below: **Susceptible variety**

Chang Hyun Kim, Second World Seed Conference

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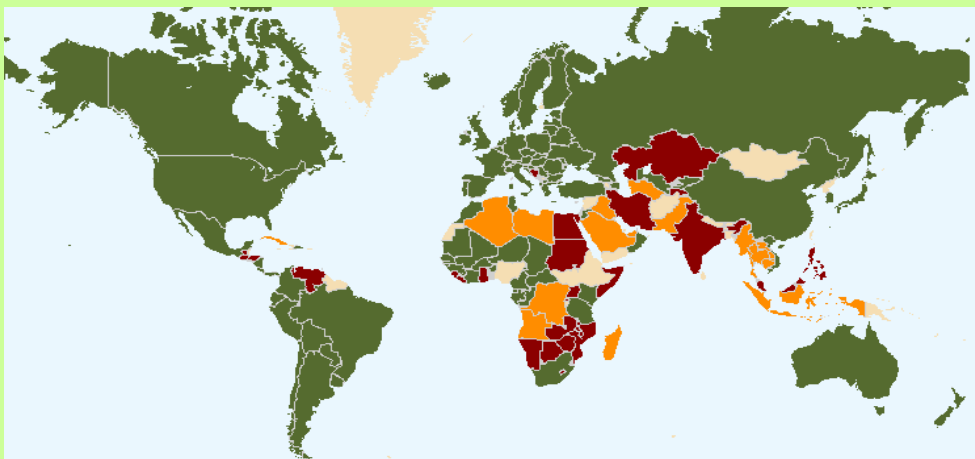
# UPOV

## 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 in 2016



Members of UPOV (74)

Initiating States (15) and Organization (1)

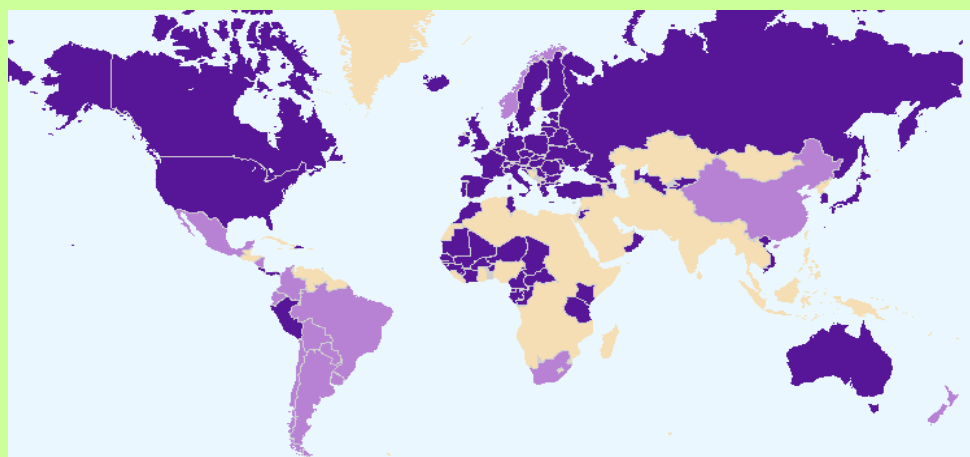
States (24) and Organization (1) in contact with the UPOV Office

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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

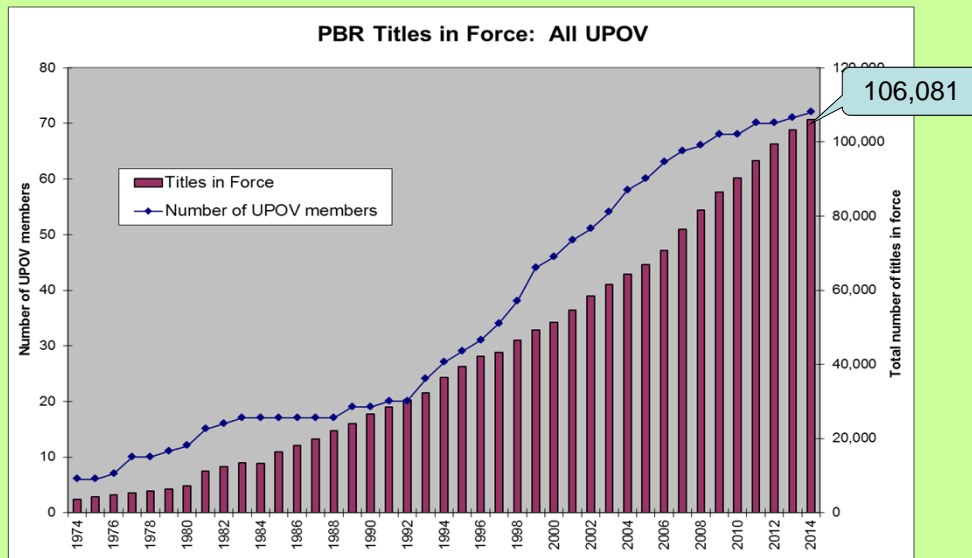
## UPOV Membership Territories covered

1991 Act: 56 members – Other Acts: 18 members



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## Plant variety protection statistics



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## Enforcement of Breeders' Rights

### Article 30(1)(i) Implementation of the Convention

(1) [*Measures of implementation*]

**Each Contracting Party shall** adopt all measures necessary for the implementation of this Convention; in particular, it shall:


(i) **provide for appropriate legal remedies for the effective enforcement of breeders' rights;**  
[...]

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- **Why was it necessary to work on PBR enforcement at the UPOV level?**
- **How was achieved the development of the UPOV explanatory notes on enforcement?**

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### **Why was it necessary to work on PBR enforcement at the UPOV level?**

- **2005 – UPOV Meeting on Enforcement Geneva ISF, CIOPORA**
- Issues raised by breeders' organizations: **without effective enforcement**  **PBR titles no value**
- **2006 – Enforcement Seminar in Japan and BMT Republic of Korea**
- **2009 – adoption UPOV guidance on PBR enforcement**

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## OVERVIEW OF UPOV ACTIVITIES ON ENFORCEMENT

- UPOV Council **examination on laws of future members**
- **BMT**: use of biochemical and molecular techniques for EDV & variety identification
- **Exchange of experiences and information: Seminars, UPOV website, breeders' initiatives**

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## Enforcement of Breeders' Rights

### Explanatory notes UPOV/EXN/ENF/1

UPOV Convention requires **members** of the Union to **provide for appropriate legal remedies** for the effective enforcement of breeders' rights

**It is a matter for breeders to enforce their rights**

Non exhaustive **list of enforcement measures**

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## OVERVIEW OF UPOV GUIDANCE

UPOV/EXN/ENF/1 List of enforcement measures:

- (a) Civil measures
- (b) Customs measures
- (c) Administrative measures
- (d) Criminal measures
- (e) Measures resulting from alternative dispute settlement mechanisms
- (f) Specialized courts

## Enforcement of Breeders' Rights

Explanatory notes UPOV/EXN/ENF/1

### (a) Civil measures

- (i) provisional measures (e.g. collect samples of infringing material from greenhouses)
- (ii) measures to allow a civil action
- (iii) measures to provide damages

## Enforcement of Breeders' Rights

### Explanatory notes UPOV/EXN/ENF/1

#### (a) Cont. Civil measures

[...]

- (iv) destruction or disposal of infringing material
- (v) payment by the infringer of the expenses (e.g. attorney's fees);
- (vi) information on persons producing and distributing infringing material

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## Enforcement of Breeders' Rights

### Explanatory notes UPOV/EXN/ENF/1

#### (b) Customs measures

##### *Importation*

- (i) suspension of the release into free circulation, forfeiture, seizure or destruction of infringing material

##### *Exportation*

- (ii) suspension of the release of the infringing material destined for exportation

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## Enforcement of Breeders' Rights

### Explanatory notes UPOV/EXN/ENF/1

#### (c) Administrative measures

- (i) provisional measures
- (ii) measures to prohibit the committing, or continuation of the committing, of an infringement
- (iii) destruction or disposal of infringing material
- (iv) information on persons producing and distributing infringing material

## Enforcement of Breeders' Rights

### Explanatory notes UPOV/EXN/ENF/1

#### (c) Cont. Administrative measures

- (v) forfeiture, seizure of infringing material
- (vi) testing and certification authorities to provide information to the breeder regarding propagating material of his varieties
- (vii) sanctions or fines for non-compliance with provisions on, or misuse of, variety denominations

## Enforcement of the Breeders' Rights

### Explanatory notes UPOV/EXN/ENF/1

#### (d) Criminal measures

cases of [wilful] violation of the breeder's right [on a commercial scale]

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## Enforcement of the Breeders' Rights

### Explanatory notes UPOV/EXN/ENF/1

#### (e) Measures resulting from alternative dispute settlement mechanisms

arbitration, mediation, etc...

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## Enforcement of Breeders' Rights

Explanatory notes UPOV/EXN/ENF/1

(f) Specialized courts

for matters concerning breeders' rights

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## SUMMARY

UPOV/EXN/ENF/1 List of enforcement measures:

- (a) Civil measures
- (b) Customs measures
- (c) Administrative measures
- (d) Criminal measures
- (e) Measures resulting from alternative dispute settlement mechanisms
- (f) Specialized courts

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### WHAT ARE THE LESSONS LEARNT AND BEST PRACTICES FOR EFFECTIVE ENFORCEMENT?



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