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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

COUNCIL**Forty-Sixth Ordinary Session
Geneva, November 1, 2012**

REPORT BY THE PRESIDENT ON THE WORK OF THE EIGHTY-FOURTH SESSION
OF THE CONSULTATIVE COMMITTEE; ADOPTION OF RECOMMENDATIONS,
IF ANY, PREPARED BY THAT COMMITTEE

Document prepared by the President of the Council

1. The Consultative Committee held its eighty-fourth session in Geneva on October 31, 2012.
2. The recommendations made by the Consultative Committee on the following items, as set out in this report, will be considered by the Council under the relevant agenda items (see document C/46/1 Rev.):
 - (a) Examination of the conformity of the Plant Breeders' Bill of Ghana with the 1991 Act of the UPOV Convention (document C/46/14)
 - (b) Examination of the conformity of the Plant Breeders' Rights Bill of the United Republic of Tanzania with the 1991 Act of the UPOV Convention (document C/46/15)
 - (c) Adoption of documents (document C/46/13)
 - (d) Financial situation of the International Union for the Protection of New Varieties of Plants as at December 31, 2011 (document C/46/4)
 - (e) Arrears in contributions as of September 30, 2012 (document C/46/11)
 - (f) Calendar of meetings in 2013 (document C/46/8)
 - (g) Press Release (document C/46/17)
3. The work of the Consultative Committee at its eighty-fourth session is summarized in the following paragraphs.

Preliminary examination of the conformity of the Plant Breeders' Bill of Ghana with the 1991 Act of the UPOV Convention

4. The Consultative Committee recommended to the Council that it may wish to:
- (a) note the analysis in document C/46/14 and the following changes proposed by the Delegation of Ghana in the Plant Breeders' Bill of Ghana (Draft Law):
 - (i) the deletion of the word "conclusively" in Section 15(2);
 - (ii) the replacement of the words "Plant Breeders Advisory Committee" by "Plant Breeders Technical Committee" in Section 30; and
 - (iii) the deletion of the word "seed" in Section 43(g);
 - (b) take a positive decision on the conformity of Draft Law with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Ghana, once the Draft Law is modified as recommended in paragraphs 10, 18 and 24 of document C/46/14, and in subparagraph (a) above, with no additional changes, and the Draft Law is adopted and the Law is in force, to deposit its instrument of accession to the 1991 Act; and
 - (c) authorize the Secretary-General to inform the Government of Ghana of that decision.

Preliminary examination of the conformity of the Plant Breeders' Rights Bill of the United Republic of Tanzania with the 1991 Act of the UPOV Convention

5. The Consultative Committee recommended to the Council that it may wish to:
- (a) note the analysis in document C/46/15 and that the Plant Breeders' Rights Bill for Mainland Tanzania (Draft Law) would incorporate in Section 2 the text "Ministry" means Ministry responsible for agriculture";
 - (b) subject to the incorporation in the Draft Law (see Annex II to document C/46/15) of the Minister's Amendments (see Annex III to document C/46/15), as set out in paragraphs 14, 16, 18, 24, 26, 28, 33, 36, 40, 42 and 43 of document C/46/15, the modifications recommended in paragraphs 22 and 34 of document C/46/15, and in subparagraph (a) above, and the following proposals agreed with the Delegation of the United Republic of Tanzania in Section 14 and Section 22(1) and (4) of the Draft Law:
 - "14.-(1) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to any person by or with the consent of the breeder for purposes of exploitation of the variety
 - "(a) in the territory of the United Republic of Tanzania, earlier than one year before the date of filing the application;
 - "(b) in a territory other than that of the United Republic of Tanzania ~~in which the application has been filed-~~
 - "(i) earlier than four years; or
 - "(ii) in the case of trees or of vines, earlier than six years before the said date."
 - "22.-(1) Any breeder who has duly filed an application for the protection of a variety in one of the members of an international organization dealing with plant breeders' rights matters which Tanzania is a party shall enjoy a right of priority for a maximum period of twelve months. This period ~~which~~ shall be computed from the date of filing the first application. The day of filing date shall not be included in the ~~later application~~ later period.
 - "[...]
 - "(4) The applicant shall, within a period of two years after the expiration of the period of priority, or a period of six months where the first application is rejected or withdrawn, be allowed to furnish to the Registrar any necessary information, document or material required in this Act for the purpose of the examination."

and with no additional changes, take a positive decision on the conformity of the Plant Breeders' Rights Bill for Mainland Tanzania with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants;

(c) note that the adoption of the Draft Law for Mainland Tanzania and of the Draft Law for Zanzibar are necessary for breeders' rights to cover the whole territory of the United Republic of Tanzania;

(d) note that the Government of the United Republic of Tanzania has the intention to submit, at a later stage, the Draft Law or adopted Law for Zanzibar for examination by the Council;

(e) inform the Government of the United Republic of Tanzania that its instrument of accession may be deposited after positive decisions of the Council on the Laws for Mainland Tanzania and Zanzibar; and

(f) authorize the Secretary-General to inform the Government of the United Republic of Tanzania of that decision.

Documents proposed for adoption by the Council

TGP/12/2 *Guidance on Certain Physiological Characteristics (Revision)*
(document TGP/12/2 Draft 3)

6. The Consultative Committee recommended to the Council to adopt the revision of document TGP/12 "Guidance on Certain Physiological Characteristics" (document TGP/12/2) on the basis of document TGP/12/2 Draft 3.

TGP/0/5 *List of TGP Documents and Latest Issue Dates (Revision)*
(document TGP/0/5 Draft 1)

7. The Consultative Committee recommended to the Council to adopt the revision of document TGP/0 "List of TGP Documents and Latest Issue Dates" (document TGP/0/5) on the basis of document TGP/0/5 Draft 1.

UPOV/INF/12/4 *Explanatory Notes on Variety Denominations under the UPOV Convention*
(*Revision*) (document C/46/13, Annex)

8. The Consultative Committee recommended to the Council to adopt the revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention" (document UPOV/INF/12/4), on the basis of the amendments to document UPOV/INF/12/3, as presented in the Annex to document C/46/13.

UPOV/INF/19/1 *Rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies*
(*Revision*) (document UPOV/INF/19/1 Draft 2)

9. The Consultative Committee recommended to the Council to adopt the revision of the rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies (document UPOV/INF/19/1) on the basis of document UPOV/INF/19/1 Draft 2.

10. The Consultative Committee noted that document UPOV/INF/19/1 would replace the rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies, as set out in the Annex to document C/39/13.

UPOV/INF/20/1 *Rules governing access to UPOV documents (Revision)*
(document UPOV/INF/20/1 Draft 2)

11. The Consultative Committee recommended to the Council to adopt the revision of the rules governing access to UPOV documents (document UPOV/INF/20/1) on the basis of document UPOV/INF/20/1 Draft 2.

12. The Consultative Committee noted that document UPOV/INF/20/1 would replace the rules governing access to UPOV documents, as set out in the Annex to document C/39/13.

UPOV/INF/21/1 Alternative Dispute Settlement Mechanisms
(document UPOV/INF/21/1 Draft 1)

13. The Consultative Committee recommended to the Council to adopt document UPOV/INF/21/1 "Alternative Dispute Settlement Mechanisms" on the basis of document UPOV/INF/21/1 Draft 1.

UPOV/INF-EXN/3 List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision)
(document UPOV/INF-EXN/3 Draft 1)

14. The Consultative Committee recommended to the Council to adopt the revision of document UPOV/INF-EXN "List of INF-EXN Documents and Latest Issue Dates" (document UPOV/INF-EXN/3) on the basis of document UPOV/INF-EXN/3 Draft 1.

Access to UPOV documents and publication of information

15. The Consultative Committee noted the developments on access to UPOV documents and publication of information as follows:

UPOV documents

16. The Consultative Committee noted the new features of the PLUTO Plant Variety Database as presented by Mr. Glenn Mac Stravic, Head of the Brand Database Section at the World Intellectual Property Organization (WIPO) at its eighty-fourth session. In particular, the Consultative Committee noted that the requirement for users to register to use the PLUTO database would be extended to the GENIE database and that the registration procedure would be used to require users to acknowledge the relevant disclaimers for those databases. It further noted that the requirement for users to register to use the PLUTO database would be implemented in November 2012.

17. The Consultative Committee noted that the Technical Committee had agreed to add a cover page to all previous adopted versions of the Test Guidelines, indicating their status, before those documents were published on the UPOV website.

18. The Consultative Committee agreed to consider at its eighty-fifth session in March 2013:

(a) a proposal for the revision of the disclaimer text, as presented on the UPOV meeting section of the UPOV website, in order to refer to documents adopted by the Council, that are in force at the time;

(b) the possibility of adding a disclaimer to each UPOV session document, indicating the status of those documents.

Documents on the UPOV Website

19. The Consultative Committee noted that the resources of the Office of the Union had not yet allowed the scanning and posting on the UPOV website of all important documents that were only available in paper format and that the Office of the Union was continuing to verify the correct inclusion of documents on the redesigned UPOV website.

Database of laws of members of the Union ("UPOV Lex")

20. The Consultative Committee noted that UPOV Lex had been modified in order to include notifications by members of the Union on plant genera and species and would, by November 2012, include all information provided by members of the Union in response to the invitation in December 2011.

Publication of the list of observers in UPOV bodies

21. The Consultative Committee noted that, to date, the resources of the Office of the Union had not allowed the posting on the UPOV website of the date of granting of observer status in the list of observers in UPOV bodies.

Information on Council President and Chairpersons of UPOV bodies

22. The Consultative Committee noted that, in conjunction with the publishing of the information concerning the President and Vice-President of the Council and the Chairs and Vice-Chairs of the UPOV bodies, the appropriate contact information and photograph of the Secretary-General and of the Vice Secretary-General had been published on the UPOV website in October 2012.

Social media

23. The Consultative Committee noted the report on the plans for the establishment of a UPOV channel on YouTube and invited the Office of the Union to prepare a proposed communication strategy, that would include consideration of the possible use of social media, for consideration by the Consultative Committee at its eighty-fifth session, to be held in March 2013.

Seminars and symposia

24. The Consultative Committee noted the draft program for the "Symposium on the benefits of plant variety protection for farmers and growers".

25. The Consultative Committee noted that the proceedings of the "Symposium on Plant Breeding for the Future" had been combined with the program of activities for the Fiftieth Anniversary in a document that would be provided to participants during the forty-sixth session of the Council.

26. The Consultative Committee noted that a publication combining the proceedings of the "UPOV Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership", the "Symposium on Plant Breeding for the Future" and the "Symposium on the benefits of plant variety protection for farmers and growers", would be published in early 2013 and that, in addition, all those proceedings would be published on the UPOV website.

Use of electronic communication for meetings

Multiple interactive web conferencing

27. The Consultative Committee noted the use of web conferencing by the Enlarged Editorial Committee (TC-EDC), the Technical Working Parties (TWPs) and the Office of the Union.

28. The Consultative Committee approved the use of web conferencing by UPOV bodies, as considered appropriate by the UPOV body concerned, to facilitate participation by members of the Union and observers in accordance with the existing procedures. The Consultative Committee recalled that the procedures concerning the invitations to the sessions of the UPOV bodies were contained in the UPOV Convention, rules of procedure, guidance for members of UPOV on ongoing obligations and related notifications, rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies and the rules governing access to UPOV documents. In accordance with those procedures, web conferencing participation would be by means of a password issued to the designated persons in the relevant UPOV body and participation would be monitored by the Office of the Union.

29. The Consultative Committee approved the use of web conferencing by the Office of the Union to facilitate participation by invited participants to its meetings, as considered appropriate by the Office of the Union.

Webcasting

30. The Consultative Committee approved the use of webcasting of sessions of UPOV bodies for viewing by members of the Union and observers in accordance with the existing procedures, as considered appropriate by the UPOV body concerned. The Consultative Committee noted that the procedures concerning the invitations to the sessions of the UPOV bodies were contained in the UPOV Convention, rules of procedure, guidance for members of UPOV on ongoing obligations and related notifications, rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies and the rules governing access to UPOV documents. In accordance with those procedures, webcasting viewing would be by means of a password issued to the

designated persons in the relevant UPOV body and participation would be monitored by the Office of the Union.

31. The Consultative Committee agreed that, in all other cases of webcasting, the Consultative Committee would be invited to approve any arrangements for a possible webcast.

32. The Consultative Committee agreed that the webcast of the "Symposium on the benefits of plant variety protection for farmers and growers", to be held in Geneva on November 2, 2012, be made available on the UPOV website after a suitable broadcast delay.

UPOV Distance Learning Course

33. The Consultative Committee noted that the advanced distance learning course DL-305 "Examination of Applications for Plant Breeders' Rights" would contain an additional module on "Trial Design and Data Analysis" and approved the plans for the launch of the advanced distance learning course DL-305.

34. The Consultative Committee also noted that a Memorandum of Understanding and a Letter of Understanding would be signed between UPOV and Naktuinbouw for the development of the modules in Section IV "DUS Examination".

Assistance webpage on the UPOV website

35. The Consultative Committee approved the launch of the "Assistance" webpage, on the basis of the prototype, on an area of the UPOV website that would be accessible via the restricted area and via a separate link and password that would be issued to the representative and alternate of each member of the Union to the Council.

Financial situation of the International Union for the Protection of New Varieties of Plants as at December 31, 2011

36. The Consultative Committee recommended to the Council to approve the accounts for the 2010-2011 financial period. It noted the report of the auditor on the accounts of the 2010-2011 biennium, as contained in document C/46/4.

37. The Consultative Committee noted the information on the reserve fund in relation to the 2010-2011 Biennium and noted the preview of the situation with regard to the reserves at the end of the 2012-2013 Biennium on the basis of the financial results for the 2010-2011 Biennium, the Program and Budget for the 2012-2013 Biennium and the adoption of the International Public Sector Accounting Standards (IPSAS).

Arrears in contributions as of September 30, 2012

38. The Consultative Committee noted the status of payment of contributions as at September 30, 2012, and noted that, due to recent payments, Belarus, Italy, Morocco, Panama and Spain had no arrears.

UPOV policy for financing speakers and participants

39. The Consultative Committee noted that UPOV planned to follow the WIPO policy for financing third-party expenses, except that UPOV would:

- (a) continue to cover the cost of air travel in economy class only;
- (b) continue to pay a reduced DSA that is different from the DSA rate applied by WIPO, where UPOV arranges to pay for accommodation directly;
- (c) request that relevant third parties from the private sector be encouraged to participate at their own cost but, as considered appropriate by the Office of the Union, provide travel and related expenses; and
- (d) continue not to pay honoraria.

Observers in UPOV bodies

40. The Consultative Committee noted the granting of observer status to Ghana in the Technical Committee (TC) and in the Technical Working Parties (TWPs).

41. The Consultative Committee was of the view that the name change from "Association for Plant Breeding for the Benefit of Society (APBEBES)" to "Seeds for All", with no other substantive changes to the purpose or statutes, would, in principle, not affect the observer status of APBEBES. However, the Consultative Committee noted that the matter would need to be considered by the Consultative Committee when APBEBES notified to the Office of the Union any change to APBEBES' statutes.

Situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention or which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention

42. The Consultative Committee approved the publication of a document in the UPOV website with the list of UPOV members, list of States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention and the list of 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.

Reports from new members of the Union

43. The Consultative Committee welcomed the presentations by the Dominican Republic, Turkey and Viet Nam.

44. The Consultative Committee approved the issue of an invitation to Georgia to make a presentation at the eighty-sixth session of the Consultative Committee, to be held in October 2013.

Developments of relevance to UPOV in other international fora

45. The Consultative Committee noted the developments concerning the World Seed Project, the East Asia Plant Variety Protection Forum (EAPVP Forum), the Organisation for Economic Co-operation and Development (OECD), the Convention on Biological Diversity (CBD) and the Food and Agriculture Organization of the United Nations (FAO).

46. The Consultative Committee approved the participation of the Office of the Union in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) Platform for the Co-Development and Transfer of Technologies.

47. The Consultative Committee noted the report provided by the Office of the Union to the Sixth Session of the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture of the Commission on Genetic Resources for Food and Agriculture (CGRFA) and approved the provision of similar reports to future sessions, which would relate to all Acts of the UPOV Convention.

48. The Consultative Committee noted the developments concerning WIPO, and in particular concerning the WIPO Framework for Designing National Intellectual Property Strategies for Development, the WIPO Questionnaire "Tool 2: Baseline Survey Questionnaire – Assessing the current state of the national intellectual property system and its links with national development priorities" and the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

49. The Consultative Committee approved the participation of UPOV in the WIPO initiative on sustainable wheat production in the United Republic of Tanzania.

50. The Consultative Committee noted the developments concerning the World Trade Organization (WTO).

Preparation of the Calendar of Meetings

51. The Consultative Committee noted the proposals in document C/46/8 "Calendar of Meetings in 2013" and noted that the following correction would be made to document C/46/8, Annex II:

"JANUARY

~~Tuesday~~ Wednesday, 9 and ~~Wednesday~~ Thursday, 10 Editorial Committee"

Draft press release

52. The Consultative Committee recommended to the Council to approve the draft press release contained in document C/46/17.

53. The Council is invited to note the work of the Consultative Committee at its eighty-fourth session, as reported in this document.

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