



C/46/18

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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 ON THE DECISIONS

*adopted by the Council*Opening of the session

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its forty-sixth ordinary session in Geneva on November 1, 2012, chaired by Mr. Choi Keun-Jin (Republic of Korea), President of the Council.
2. The list of participants is reproduced in Annex I to this report.
3. The session was opened by the President who welcomed the participants.
4. The President informed the Council that France had deposited its instrument of ratification of the 1991 Act of the UPOV Convention on April 27, 2012, and had become bound by the 1991 Act on May 27, 2012, and that Panama had deposited its instrument of accession to the 1991 Act of the UPOV Convention on October 22, 2012, and would become bound by the 1991 Act on November 22, 2012.
5. The Council noted the intervention made by the Delegation of Panama.
6. The Vice Secretary-General introduced Mr. Ben Rivoire, a national of France, and Mr. Leontino Taveira, a national of Brazil, who had joined the Office of the Union as Consultants in May 2012.
7. The Council took the decisions recorded below under each relevant agenda item.
8. The draft detailed report on the session will be submitted to the Council for adoption by correspondence.

Adoption of the agenda

9. The Council noted the intervention made by the representative of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants (CIOPORA).
10. The Council adopted the revised draft agenda, as presented in document C/46/1 Rev., with the inclusion of document C/45/7 Rev. under agenda item 14 (b).

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

11. The Council considered document C/46/14.

12. The Council decided 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.

13. The Delegation of Ghana thanked the Council for the positive decision on the conformity of the Plant Breeders' Bill of Ghana with the provisions of the 1991 Act of the UPOV Convention. The Delegation looked forward to Ghana becoming a member of the Union in the near future.

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

14. The Council considered document C/46/15.

15. The Council decided 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~~ latter 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.

16. The Delegation of the United Republic of Tanzania thanked the Council for the positive decision on the conformity of the Plant Breeders' Rights Bill for Mainland Tanzania with the provisions of the 1991 Act of the UPOV Convention. The Delegation informed the Council that the Government of the United Republic of Tanzania had the intention to submit the legislation for Zanzibar for the examination by the Council in 2013.

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

17. The Council noted the work of the Consultative Committee, at its eighty-fourth session, as set out in document C/46/16.

Adoption of documents

18. The Council considered document C/46/13.

(a) TGP documents:

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

19. The Council adopted 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)

20. The Council adopted 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.

(b) Information documents:

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

21. The Council adopted 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)

22. The Council noted the intervention made by the Delegation of Bolivia that Bolivia did not object to the adoption of document UPOV/INF/19/1, but requested that there be a review with a view to a possible revision.

23. The Council noted the intervention made by the representative of the Association for Plant Breeding for the Benefit of Society (APBREBES).

24. The Council adopted 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.

25. The Council 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)

26. The Council noted the intervention made by the representative of APBREBES.

27. The Council adopted 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.

28. The Council 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)

29. The Council adopted 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)

30. The Council adopted 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.

Annual report of the Secretary-General for 2011; Report on activities during the first nine months of 2012

31. The Council noted the intervention made by the Delegation of Kenya concerning the legislative progress in relation to the accession to the 1991 Act.

32. The Council noted the intervention made by the representative of the African Regional Intellectual Property Organization (ARIPO), who reported on latest developments concerning the ARIPO Draft Legal Framework on the Protection of New Varieties of Plants. The Delegation informed the Council that the Draft Legal Framework would be considered at the thirty-sixth session of the Administrative Council of ARIPO, to be held in Zanzibar, United Republic of Tanzania, from November 26 to 30, 2012.

33. The Council noted the report of the Secretary-General on the activities of the Union in 2011 and the performance report for the 2010-2011 Biennium, as provided in document C/46/2.

34. The Council noted the report on activities during the first nine months of 2012, as provided in document C/46/3.

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

35. The Council approved the accounts for the 2010-2011 financial period. It noted the report of the auditor on the accounts of the 2010-2011 biennium, contained in document C/46/4, Annex B, and expressed its gratitude to the Government of Switzerland for its cooperation in that matter.

Arrears in contributions as of September 30, 2012

36. The Council noted the status of payment of contributions and the Working Capital Fund participations as provided in document C/46/11 and noted that, due to recent payments, Belarus, Italy, Morocco, Panama and Spain had no arrears.

Progress report of the work of the Administrative and Legal Committee

37. The Council noted the work of the CAJ, as provided in document C/46/9 and in the oral report made by the Chair of the CAJ on the sixty-sixth session of the CAJ, which was held on October 29, 2012, and approved the work program for the sixty-seventh session of the CAJ, to be held on March 21, 2013, as presented in the oral report of the Chair of the CAJ (see document CAJ/66/8 "Report on the Conclusions").

Progress report of the work of the Technical Committee, the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular

38. The Council noted the work of the Technical Committee, the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular, as provided in document C/46/10, and approved the programs of work set out in document C/46/10.

Calendar of meetings in 2013

39. The Council approved the calendar of meetings, as set out in document C/46/8, with the following correction to be made to document C/46/8, Annex II:

"JANUARY

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

Election of the new President and the new Vice-President of the Council

40. The Council elected, in each case for a term of three years ending with the forty-ninth ordinary session of the Council, in 2015:

- (a) Ms. Kitisri Sukhapinda (United States of America), President of the Council;
- (b) Mr. Luis Salaices (Spain), Vice-President of the Council.

41. The Council expressed its appreciation to the outgoing President, Mr. Choi Keun-Jin (Republic of Korea), for the work carried out during his term.

Situation in the legislative, administrative and technical fields

42. The Council noted the intervention made by the Delegation of Colombia concerning the adoption of the law in relation to the accession to the 1991 Act of the UPOV Convention.

43. The Council considered documents C/46/12, C/46/5, C/46/6 and C/46/7. It noted that an addendum of document C/46/12 would be produced and that a revision of document C/45/7 concerning statistics for the period 2006-2010 had been published on the UPOV website (document C/45/7 Rev.).

List of the taxa protected by the members of the Union

44. The Council noted that a total of 53 members of the Union now offer protection to all plant genera and species (48 in 2011), with 17 members of the Union offering protection to a limited number of plant genera and species.

Plant variety protection statistics for the period 2007-2011

45. The Council noted that there had been a 5.2% increase in the number of applications for plant variety protection (13,714 in 2011; 13,038 in 2010), representing a 1.4% decrease in the number of applications by residents (8,813 in 2011; 8,937 in 2010) and a 19.5% increase in the number of applications by non-residents (4,901 in 2011; 4,101 in 2010). The Council noted that the numbers of applications by non-residents and overall number of applications were record numbers.

46. The Council noted that the number of titles granted decreased from 11,115 in 2010 to 10,065 in 2011 (9.4% decrease).

47. The Council noted that a new record number of titles in force – 94,413 – was recorded in 2011, representing a 4.5% increase on figures for 2010 (90,344).

Cooperation in the examination of new plant varieties

48. The Council noted that in 2012, the number of plant genera and species for which there were agreements between members of the Union for cooperation in the examination of distinctness, uniformity and stability totaled 1,991, compared to 1,990 in 2011. The Council noted that although the total number of genera and species did not significantly increase, there was a significant number of new agreements for cooperation within those genera and species.

Press Release

49. The Council considered and approved the draft press release that was distributed at the end of its forty-sixth ordinary session (see document C/46/17). The press release approved by the Council is reproduced in Annex II to this report.

50. *This report was adopted by the Council at the close of its session on November 1, 2012.*

[Annexes follow]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

(dans l'ordre alphabétique des noms français des membres/
in the alphabetical order of the names in French of the members/
in alphabetischer Reihenfolge der französischen Namen der Mitglieder/
por orden alfabético de los nombres en francés de los miembros)

I. MEMBRES / MEMBERS / VERBANDSMITGLIEDER / MIEMBROS

ALLEMAGNE / GERMANY / DEUTSCHLAND / ALEMANIA



Hermann STÜRMER, Ministerialrat/Referatsleiter, Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz, Rochusstr. 1, 53123 Bonn
(tel.: +49-22899-5294180)



Udo VON KRÖCHER, Präsident, Bundessortenamt, Osterfelddamm 80, 30627 Hannover
(tel.: +49 511 9566 5603 fax: +49 511 9566 5904
e-mail: udo.vonkroecher@bundessortenamt.de)



Michael KÖLLER, Referent, Ministerium für Ernährung, Landwirtschaft und Verbraucherschutz, Wilhelmstrasse 54, 10117 Berlin
(tel.: +49 30 18529 4044 e-mail: Michael.Koeller@bmelv.bund.de)

ARGENTINE / ARGENTINA / ARGENTINIEN / ARGENTINA



Raimundo LAVIGNOLLE, A/C Dirección de Registro de Variedades, Instituto Nacional de Semillas (INASE), Venezuela 162, Ciudad Autónoma de Buenos Aires C1095AAD
(tel.: + 54 11 3220 5424 e-mail: rlavignolle@inase.gov.ar)

AUSTRALIE / AUSTRALIA / AUSTRALIEN / AUSTRALIA



Doug WATERHOUSE, Chief, Plant Breeder's Rights Office, IP Australia, 47 Bowes Street, Phillip ACT 2606
(tel.: +61 2 6283 7981 fax: +61 2 6283 7999 e-mail:
doug.waterhouse@ipaustralia.gov.au)

BÉLARUS / BELARUS / BELARUS / BELARÚS



Uladzimir BEINIA, Director, State Inspection for Testing and Protection of Plant Varieties, Kazintsa str. 90/1, 220108 Minsk
(tel.: +375 17 212 7551 fax: +375 17 278 3530 e-mail: belsort@mail.ru)



Tatsiana SIAMASHKA (Mrs.), Deputy Director of DUS Testing, State Inspection for Testing and Protection of Plant Varieties, 90/1 Kazintsa str., 220108 Minsk
(tel.: +375 17 212 7551 fax: +375 17 278 3530 e-mail: tatianasortr@mail.ru)



Helen RABOUSHKO (Mrs.), Main Specialist of International Cooperation Department, State Inspection for testing and protection of plant varieties, Kazintsa Str., 90, 220108 Minsk
(tel.: +375172127551 fax: +375172783530 e-mail: belsort@mail.ru)

BELGIQUE / BELGIUM / BELGIEN / BÉLGICA



Françoise DE SCHUTTER (Mme), Attachée, Office belge de la Propriété intellectuelle (OPRI), Bruxelles
(tel.: 32 2 277 9555 e-mail: francoise.deschutter@economie.fgov.be)

BOLIVIE (ÉTAT PLURINATIONAL DE) / BOLIVIA (PLURINATIONAL STATE OF) /
BOLIVIEN (PLURINATIONALER STAAT) / BOLIVIA (ESTADO PLURINACIONAL DE)



Sergio Rider ANDRADE CÁCERES, Director Nacional de Semillas del INIAF, Instituto Nacional de Innovación Agropecuaria y Forestal (INIAF), Avenida 6 de agosto, Nro. 2170, Edificio Hoy, Mezanine, 4793 La Paz
(tel.: +591 2 2441153 fax: +591 2 2441153 e-mail: rideran@yahoo.es)



Freddy CABALLERO LEDEZMA, Responsable: Unidad de Fiscalización y Registros, Fiscalización y Registros de Semillas, Instituto Nacional de Innovación Agropecuaria y Forestal (INIAF), Capitán Ravelo No. 2329, Belisario Salinas, No. 490, 4793 La Paz
(tel.: +591 2 2441153 fax: +591 2 2441153 e-mail: calefred@yahoo.es)

Luis Fernando ROSALES LOZADA, Primer Secretario, Misión Permanente, 139, rue de Lausanne, 1202 Ginebra
(tel.: +41 22 908 0717 fax: +41 22 908 0722 e-mail: fernando.rosales@bluewin.ch)

BRÉSIL / BRAZIL / BRASILIEN / BRASIL



Helcio CAMPOS BOTELHO, Director, Department of Intellectual Property and Agricultural Technology, Secretariat of Agricultural Development and Cooperativism, Ministério da Agricultura, Livestock and Food Supply, Esplanada dos Ministérios, Bloco 'D', Anexo A, Sala 233, Brasilia, D.F.70043-900
(tel.: +55 61 3218 5202 fax: +55 61 3321 4524 e-mail: helcio.botelho@agricultura.gov.br)



Luís Gustavo ASP PACHECO, Federal Agricultural Inspector, National Plant Variety Protection Office (SNPC), Ministry of Agriculture, Livestock and Food Supply, Esplanada dos Ministerios, Bloco 'D', Anexo A, sala 250, CEP 70043-900 Brasilia , D.F.
(tel.: +55 61 3218 2461 fax: +55 61 3224 2842 e-mail: luis.pacheco@agricultura.gov.br)

CANADA / CANADA / KANADA / CANADÁ



Sandy MARSHALL (Ms.), Senior Policy Specialist, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), 59 Camelot Drive, Ottawa Ontario K1A 0Y9
(tel.: +1 613 773 7134 fax: +1 613 773 7261 e-mail: sandy.marshall@inspection.gc.ca)

CHILI / CHILE / CHILE / CHILE



Jaime IBIETA S., Director, División Semillas, Servicio Agrícola y Ganadero (SAG), Ministerio de Agricultura, Avda. Presidente Bulnes 140, piso 2, Santiago de Chile
(tel.: +56 2 345 1561 fax: +56 2 697 2179 e-mail: jaime.ibieta@sag.gob.cl)

CHINE / CHINA / CHINA / CHINA



LV Bo, Director, Division of Variety Management, Bureau of Seed Management, Ministry of Agriculture, No. 11 Nongzhanguannanli, Beijing
(tel.: +86 10 59193150 fax: +86 10 59193142 e-mail: lvbo@agri.gov.cn)



Xiaohong YAO (Mrs.), Deputy Division Director, State Intellectual Property Office of P.R. China, International Cooperation Department SIPO, 6 Xitucheng Road Haiden District, 100088 Beijing
(tel.: +86 10 59193150 fax: +86 10 59193142 e-mail: yaoxiaohong@sipo.gov.cn)

COLOMBIE / COLOMBIA / KOLUMBIEN / COLOMBIA



Ana Luisa DÍAZ JIMÉNEZ (Sra.), Directora Técnica de Semillas, Dirección Técnica de Semillas, Instituto Colombiano Agropecuario (ICA), Carrera 41 No. 17-81, Piso 4°, Bogotá D.C.
(tel.: +57 1 3323700 fax: +57 1 3323700 e-mail: ana.diaz@ica.gov.co)

Catalina GAVIRIA BRAVO, Consejera Comercial, Misión de Colombia ante la OMC, Rue de lausanne 80-82, 1202 Ginebra
(tel.: +41 22 919 05 14 fax: +41 22 734 60 94 e-mail: catalina.gaviria@colombiaomc.ch)

Juan Camilo SARETZKI-FORERO, Primer Secretario, Misión Permanente de Colombia, Chemin Champ d'Anier 17-19, 1209 Ginebra
(tel.: 41 22 789 4718 fax: 41 22 791 0787 e-mail: juan.saretzki@cancilleria.gov.co)

DANEMARK / DENMARK / DÄNEMARK / DINAMARCA



Gerhard DENEKEN, Head, Department of Variety Testing, The Danish AgriFish Agency (NaturErhvervstyrelsen), Ministry of Food, Agriculture and Fisheries, Teglvaerksvej 10, Tystofte, DK-4230 Skaelskoer
(tel.: +45 5816 0601 fax: +45 58 160606 e-mail: gde@naturerhverv.dk)



Antonio ATAZ, Adviser to the Presidency of the European Union, Council of the European Union, Brussels
(tel.: +32 2 281 4964 fax: +32 2 281 6198 e-mail: antonio.ataz@consilium.europa.eu)

ESPAGNE / SPAIN / SPANIEN / ESPAÑA



Luis SALAICES, Jefe de Área del Registro de Variedades, Oficina Española de Variedades Vegetales (OEVV), Ministerio de Agricultura, Alimentación y Medio Ambiente, Calle Alfonso XII, No. 62, 2a Planta, E-28014 Madrid
(tel.: +34 91 3476712 fax: +34 91 3476703 e-mail: luis.salaices@magrama.es)

José Ignacio CONTRERAS, Consejero, Misión Permanente, 53, avenue Blanc, 1202 Ginebra
(tel.: +41 22 909 2830 fax: +41 22 738 4537 e-mail: ignacio.contreras@ties.itu.int)

ESTONIE / ESTONIA / ESTLAND / ESTONIA



Renata TSATURJAN (Ms.), Chief Specialist, Plant Production Bureau, Ministry of Agriculture, 39/41 Lai Street, EE-15056 Tallinn
(tel.: +372 625 6507 fax: +372 625 6200 e-mail: renata.tsaturjan@agri.ee)

ÉTATS-UNIS D'AMÉRIQUE / UNITED STATES OF AMERICA /
VEREINIGTE STAATEN VON AMERIKA / ESTADOS UNIDOS DE AMÉRICA



Kitisri SUKHAPINDA (Ms.), Patent Attorney, Office of Policy and External Affairs, United States Patent and Trademark Office (USPTO), Madison Building, West Wing, 600 Dulany Street, MDW 10A30, Alexandria VA 22313
(tel.: +1 571 272 9300 fax: + 1 571 273 0085 e-mail: kitisri.sukhapinda@uspto.gov)



Paul M. ZANKOWSKI, Commissioner, Plant Variety Protection Office, United States Department of Agriculture (USDA), National Agricultural Library (NAL), 10301, Baltimore Ave., Beltsville MD 20705
(tel.: +1 301 504 5518 fax: +1 301 504 5291 e-mail: paul.zankowski@ams.usda.gov)



Minna MOEZIE (Ms.), Patent Attorney, Office of External Affairs, U.S. Patent and Trademark Office (USPTO), U.S. Department of Commerce, United States Patent and Trademark Office (USPTO), Department of Commerce, P.O. Box 1450, Alexandria VA 22313-1450
(tel.: +1 571 272 9300 fax: +1 571 273 0085 e-mail: minna.moezie@uspto.gov)



Ruihong GUO, Associate Administrator, Agricultural Marketing Service, 1400 Independence Avenue, SW, Room 3071, Washington D.C. D.C.
(tel.: 202 720 5115 fax: 202 720 8477 e-mail: ruihong.guo@ams.usda.gov)

FRANCE / FRANCE / FRANKREICH / FRANCIA



Mlle Virginie BERTOUX, Ingénieur GEVES, Instance nationale des obtentions végétales (INO), Groupe d'étude et de contrôle des variétés et des semences (GEVES), 25 Rue Georges Morel, CS 90024
(tel.: +33 2 41 22 86 49 fax: +33 2 41 22 86 01 e-mail: virginie.bertoux@geves.fr)

HONGRIE / HUNGARY / UNGARN / HUNGRÍA



Ágnes Gyözöné SZENCI (Mrs.), Senior Chief Advisor, Agricultural Department, Ministry of Agriculture and Rural Development, Kossuth Tér. 11, H-1055 Budapest, Pf. 1
(tel.: +36 1 7953826 fax: +36 1 7950498 e-mail: gyozone.szenci@vm.gov.hu)



Szabolcs FARKAS, Head, Patent Department, Hungarian Intellectual Property Office (HIPO), 2, Garibaldi utca, H-1054 Budapest
(tel.: +36 1 4745902 fax: +36 1 474 5596 e-mail: szabolcs.farkas@hipo.gov.hu)



Katalin MIKLÓ (Ms.), Head, Agriculture and Plant Variety Protection Section, Hungarian Intellectual Property Office, Garibaldi U. 2., H-1054 Budapest
(tel.: 36 1 474 5898 fax: 36 1 474 5850 e-mail: katalin.miklo@hipo.gov.hu)

IRLANDE / IRELAND / IRLAND / IRLANDA



Donal COLEMAN, Controller of Plant Breeders' Rights, Department of Agriculture, National Crops Centre, Backweston Farm, Leixlip, Co. Kildare
(tel.: +353 1 630 2902 fax: +353 1 628 0634 e-mail: donal.coleman@agriculture.gov.ie)

ISLANDE / ICELAND / ISLAND / ISLANDIA



Thorsteinn TÓMASSON, Director, Agricultural Research Institute, Ministry of Fisheries and Agriculture, Skulagata 4, IS-150 Reykjavik
(tel.: +354 545 8352 fax: +354 552 1160 e-mail: thorsteinn.tomasson@slr.stjr.is)

ISRAËL / ISRAEL / ISRAEL / ISRAEL



Omar ZEIDAN, Chairman of PBR Council, Deputy Director Extension Services, Ministry of Agriculture, P.O. Box 28, Beit-Dagan 50250
(tel.: +972 3 9485948 fax: +972 3 9485668 e-mail: ozaidan@shaham.moag.gov.il)

Michal GOLDMAN (Mrs.), Registrar, Plant Breeder's Rights Council, Ministry of Agriculture, P.O. Box 30, Beit-Dagan 50250
(tel.: +972 3 9485902 fax: +972 3 9485903 e-mail: michalg@moag.gov.il)

ITALIE / ITALY / ITALIEN / ITALIA

Tiberio SCHMIDLIN, First Secretary, Permanent Mission, Chemin de l'Impératrice 10, 1292 Pregny, Switzerland
(tel. +41 22 9180253 e-mail: tiberio.schmidlin@esteri.it)

JAPON / JAPAN / JAPAN / JAPÓN



Takashi UEKI, Director, Plant Variety Protection Office, New Business and Intellectual Property Division, Food Industry Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries, 1-2-1 Kasumigaseki, Chiyoda-ku, 100-8950 Tokyo
(tel.: +81 3 6738 6444 fax: +81 3 3502 5301 e-mail: takashi_ueki@nm.maff.go.jp)



Akiko NAGANO (Ms.), Associate Director, New Business and Intellectual Property Division Food Industry Affairs Bureau Ministry of Agriculture, Forestry and Fisheries (MAFF),
(tel.: +81-3-6738-6444 fax: +81-3-3502-5301 e-mail: akiko_nagano@nm.maff.go.jp)

KENYA / KENYA / KENIA / KENYA



Simon Mucheru MAINA, Senior Inspector, Kenya Plant Health Inspectorate Service (KEPHIS), P.O. Box 8145, 30100 Eldoret
(tel.: +254 722 427 718 e-mail: smaina@kephis.org)

LETONIE / LATVIA / LETTLAND / LETONIA



Sofija KALININA (Mrs.), Senior Officer, Seed Control Department, Division of Seed Certification and Plant Variety Protection, State Plant Protection Service, Lielvarde iela 36/38, LV-1006 Riga
(tel.: +371 673 65568 fax: +371 673 65571 e-mail: sofija.kalinina@vaad.gov.lv)

LITUANIE / LITHUANIA / LITAUEN / LITUANIA



Arvydas BASIULIS, Deputy Director, State Plant Service under the Ministry of Agriculture of the Republic of Lithuania, Ozo 4A, LT-08200 Vilnius
(tel.: +370 5 237 5611 fax: +370 5 273 0233 e-mail: arvydas.basiulis@vatzum.lt)



Sigita JUCIUVIENE (Mrs.), Head, Division of Plant Variety, Registration and Legal Protection, State Plant Service under the Ministry of Agriculture of the Republic of Lithuania, Ozo St. 4a, LT-08200 Vilnius
(tel.: +370 5 234 3647 fax: +370 5 237 0233 e-mail: sigita.juciuviene@vatzum.lt)

Virginia VINCIUNIENE (Ms.), First Secretary, Mission permanente de Lituanie auprès de l'Office des Nations Unies à Genève, 15, chemin Louis Dunand, CH-1202 Genève
(tel. +41 22 7482475 fax : +41 22 7482477)

MAROC / MOROCCO / MAROKKO / MARRUECOS



Amar TAHIRI, Chef de la Division du contrôle des semences et plants, Office National de Sécurité sanitaire des Produits alimentaires (ONSSA), Ministère de l'Agriculture et de la Pêche Maritime, Rue Hafiane Cherkaoui, B.P. 1308, Rabat-Instituts
(tel.: +212 537 771085 fax: +212 537 779852 e-mail: amar.tahiri@gmail.com)

MEXIQUE / MEXICO / MEXIKO / MÉXICO



Enriqueta MOLINA MACÍAS (Srta.), Directora General, Servicio Nacional de Inspección y Certificación de Semillas (SNICS), Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación (SAGARPA), Av. Presidente Juárez, 13, Col. El Cortijo, Tlalnepantla, Estado de México 54000
(tel.: +52 55 3622 0667 fax: +52 55 3622 0670
e-mail: enriqueta.molina@sagarpa.gob.mx)



Eduardo PADILLA VACA, Subdirector, Registro y Control de Variedades Vegetales, Servicio Nacional de Inspección y Certificación de Semillas (SNICS), Av. Presidente Juárez 13, Col. El Cortijo, 54000 Tlalnepantla, Estado de México
(tel.: +52 55 3622 0667 fax: +52 55 3622 0670 e-mail: eduardo.padilla@snics.gob.mx)

NORVÈGE / NORWAY / NORWEGEN / NORUEGA



Marianne SMITH (Ms.), Senior Executive Officer, Royal Ministry of Agriculture, P.O. Box 8007 Dep., N-0030 Oslo
(tel.: +47 22 24 9264 fax: +47 22 24 9559 e-mail: marianne.smith@lmd.dep.no)



Tor Erik JØRGENSEN, Head of Section, Norwegian Food Safety Authority, Felles postmottak, P.O. Box 383, N-2381 Brumunddal
(tel.: +47 6494 4393 fax: +47 6494 4411 e-mail: tor.erik.jorgensen@mattilsynet.no)



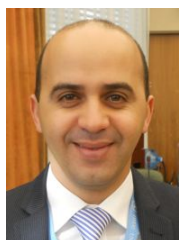
Bell Batta TORHEIM (Mrs.), Programme Coordinator, The Development Fund, Grensen 9b, Miljøhuset, N-0159 Oslo
(tel.: +47 23 109600 fax: +47 23 109601 e-mail: bell@utviklingsfondet.no)

NOUVELLE-ZÉLANDE / NEW ZEALAND / NEUSEELAND / NUEVA ZELANDIA



Christopher J. BARNABY, Assistant Commissioner / Principal Examiner, Plant Variety Rights Office, Intellectual Property Office of New Zealand, Private Bag 4714, Christchurch 8140
(tel.: +64 3 9626206 fax: +64 3 9626202 e-mail: Chris.Barnaby@pvr.govt.nz)

OMAN / OMAN / OMAN / OMÁN



Khalid FAIZ, Coordinator – Ministry of Commerce & Industry, Permanent Mission, 3^a, chemin de Roilbot, 1292 Chambésy
(e-mail: oman_wto@bluewin.ch)

PANAMA / PANAMA / PANAMÁ

Alfredo Suescum, Ambassador and Permanent Representative of Panama, Misión Permanente de Panamá ante la Organización Mundial del Comercio, 94 rue de Lausanne, CH-1202 Ginebra
(tel.: +41 22 906 4999 fax: +41 22 906 4990 e-mail: mission.panama-omc@itu.ties.int)

PARAGUAY / PARAGUAY / PARAGUAY



Dolía Melania GARCETE GONZALEZ (Sra.), Directora, Dirección de Semillas (DISE), Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas (SENAVE), Gaspar Rodríguez de Francia No. 685, e/ Julia Miranda Cueto y R. Mariscal Estigarribia, Asunción
(tel.: +595 21 577243 / 584645 fax: +595 21 582201
e-mail: dolia.garcete@senave.gov.py)



Roberto ROJAS GONZALEZ, Director, Asesoría Jurídica del Servicio Nacional de Calidad Sanidad Vegetal y de Semillas (SENAVE), Humaita No. 145 entre Nstra, Señora de Asunción e Independencia, Asunción
(tel.: 595 21 496072 fax: 595 21 496072 e-mail: roberto.rojas@senave.gov.py)

PAYS-BAS / NETHERLANDS / NIEDERLANDE / PAÍSES BAJOS



Krieno Adriaan FIKKERT, Secretary, Plant Variety Board (Raad voor Plantenrassen), Postbus 40, NL-2370 AA Roelofarendsveen
(tel.: +31 71 3326310 fax: +31 71 3326363 e-mail: k.fikkert@naktuinbouw.nl)



Groenewoud KEES JAN, Secretary to the Plant Variety Board (Raad voor Plantenrassen), Postbus 40, NL-2370 AA Roelofarendsveen
(tel.: +31713326310 fax: +31713326363)



Louisa VAN VLOTEN-DOTING (Mrs.), Chairperson, Board for Plant Varieties (Raad voor Plantenrassen), Generaal Foulkesweg, 79, NL-6703 BP Wageningen
(tel.: +31 317 416400 e-mail: lous.thuis@planet.nl)

POLOGNE / POLAND / POLEN / POLONIA



Edward S. GACEK, Director, Research Centre for Cultivar Testing (COBORU), PL-63-022 Slupia Wielka
(tel.: +48 61 285 2341 fax: +48 61 285 3558 e-mail: e.gacek@coboru.pl)



Marcin BEHNKE, Vice Director General, Research Centre for Cultivar Testing (COBORU),
PL-63-022 Slupia Wielka
(tel.: +48 61 285 2341 fax: +48 61 285 3558 e-mail: m.behnke@coboru.pl)

RÉPUBLIQUE DE CORÉE / REPUBLIC OF KOREA / REPUBLIK KOREA / REPÚBLICA DE COREA



CHOI Keun-Jin, Director of Variety Testing Division, Korea Seed & Variety Service (KSVS),
Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF), 39 Taejang-ro,
Yeongtong-gu, Gyeonggi-do, Suwon-si 443-400
(tel.: +82 31 8008 0200 fax: 82 31 203 7431 e-mail: kjchoi1001@korea.kr)



Oksun KIM (Ms.), Plant Variety Protection Division, Korea Seed & Variety Service (KSVS)
/ MIFAFF, 328, Jungang-ro, Manan-gu, Anyang, 430-016 Gyeonggi-do
(tel.: +82 31 467 0191 fax: +82 31 467 0160 e-mail: oksunkim@korea.kr)



Min Jung KIM (Ms.), Patent Examiner, Korean Intellectual Property Office (KIPO),
Government Complex Daejeon, Building 4, 189, Cheongsa-ro, Seo-gu, Daejeon
Metropolitan City 302-701
(tel. +82 42 4815550 fax: +82 42 4723514 e-mail: koremily99@kipo.go.kr)

RÉPUBLIQUE DE MOLDOVA / REPUBLIC OF MOLDOVA / REPUBLIK MOLDAU /
REPÚBLICA DE MOLDOVA



Mihail MACHIDON, President, State Commission for Crops Variety Testing and
Registration (SCCVTR), Bd. Stefan cel Mare, 162, C.P. 1873, MD-2004 Chisinau
(tel.: +373 22 220300 fax: +373 2 211537 e-mail: mihail.machidon@yahoo.com)



Ala GUȘAN (Mrs.), Head, Inventions and Plant Varieties Department, State Agency on
Intellectual Property (AGEPI), 24/1 Andrei Doga str., MD-2024 Chisinau
(tel.: +373 22 400582 fax: +373 22 440119 e-mail: office@agepi.md)

RÉPUBLIQUE DOMINICAINE / DOMINICAN REPUBLIC / DOMINIKANISCHE REPUBLIK /
REPÚBLICA DOMINICANA

Agnes CISHEK HERRERA (Sra.), Viceministra de Planificación Sectorial Agropecuaria,
Ministerio de Agricultura, Km. 6 1/2 de la Autopista Duarte, Urbanización Jardines del
Norte, Santo Domingo D.N.
(tel.: +1 809 547 388 e-mail: agnes.cishek@agricultura.gob.do)

Dora Luisa SÁNCHEZ BOROMINO (Sra.), Directora, Oficina de Tratados Comerciales
Agrícolas (OTCA), Ministerio de Agricultura, Km. 6 1/2 de la Autopista Duarte,
Urbanización Jardines del Norte, Santo Domingo D.N.
(tel.: +1 809 547 3888 fax: +1 809 227 3164 e-mail: dsanchez@otcasea.gob.do)



Ysset ROMAN (Sra.), Ministro Consejero, Misión Permanente, 63 Rue de Lausanne, Ginebra, Suiza
(tel.: +41 22 715 3910 e-mail: mission.repdom@rep-dominicana.ch)

RÉPUBLIQUE TCHÈQUE / CZECH REPUBLIC / TSCHECHISCHE REPUBLIK / REPÚBLICA CHECA



Daniel JUREČKA, Director, Plant Production Section, Central Institute for Supervising and Testing in Agriculture (ÚKZÚZ), Hroznová 2, 656 06 Brno
(tel.: +420 543 548 210 fax: +420 543 217 649 e-mail: daniel.jurecka@ukzuz.cz)

ROUMANIE / ROMANIA / RUMĂNIEN / RUMANIA



Mihaela-Rodica CIORA (Mrs.), Head of Technical Department, State Institute for Variety Testing and Registration (ISTIS), 61, Marasti, Sector 1, P.O. Box 32-35, 011464 Bucarest
(tel.: +40 213 184380 fax: +40 213 184408 e-mail: mihaela_ciora@yahoo.com)



Mirela Dana CINDEA (Mrs.), Expert, State Institute for Variety Testing and Registration Romania, 61, Marasti, Sector 1, Bucarest
(tel.: 021 318 43 80 fax: 021 318 44 08 e-mail: istis@easynet.ro)



Teodor Dan ENESCU, Expert Soya, Potato and other Agronomical species, State Institute for Variety Testing and Registration (ISTIS), 61, Marasti, sector 1, P.O. Box 32-35, 011464 Bucarest
(tel.: +40 21 318 43 80 fax: +40 21 318 44 08 e-mail: teonscu@yahoo.com)

ROYAUME-UNI / UNITED KINGDOM / VEREINIGTES KÖNIGREICH / REINO UNIDO



Andrew MITCHELL, Controller of Plant Variety Rights, The Food and Environment Research Agency (FERA), Whitehouse Lane, Huntingdon Road, Cambridge CB3 0LF
(tel.: +44 1223 342 384 fax: +44 1223 342 386 e-mail: andrew.mitchell@fera.gsi.gov.uk)

SLOVAQUIE / SLOVAKIA / SLOWAKEI / ESLOVAQUIA



Bronislava BÁTOROVÁ (Mrs.), National Coordinator, Senior Officer, Department of Variety Testing, Central Controlling and Testing Institute in Agriculture (ÚKSÚP), Akademická 4, SK-949 01 Nitra
(tel.: +421 37 655 1080 fax: +421 37 652 3086 e-mail: bronislava.batorova@uksup.sk)

SUÈDE / SWEDEN / SCHWEDEN / SUECIA



Olof JOHANSSON, Head, Plant and Environment Department, Swedish Board of Agriculture, S-551 82 Jönköping
(tel.: +46 36 155703 fax: +46 36 710517 e-mail: olof.johansson@jordbruksverket.se)

SUISSE / SWITZERLAND / SCHWEIZ / SUIZA



Manuela BRAND (Frau), Leiterin, Büro für Sortenschutz, Fachbereich Zertifizierung, Pflanzen- und Sortenschutz, Bundesamt für Landwirtschaft, Mattenhofstrasse 5, CH-3003 Bern
(tel.: +41 31 322 2524 fax: +41 31 322 2634 e-mail: manuela.brand@blw.admin.ch)

TURQUIE / TURKEY / TÜRKİE / TURQUÍA



Kamil YILMAZ, Director, Variety Registration and Seed Certification Centre, Ministry of Agriculture and Rural Affairs, P.O. Box 30, 06172 Yenimahalle - Ankara
(tel.: +90 312 315 4605 fax: +90 312 315 0901 e-mail: kyilmaz60@hotmail.com)

UKRAINE / UKRAINE / UKRAINE / UCRANIA



Nataliya YAKUBENKO (Ms.), Head, Department of International Cooperation and Publishing Activities, Ukrainian Institute for Plant Variety Examination, 15, Henerala Rodimtseva str, 03041 Kyiv
(tel.: +380 44 258 2846 fax: +380 44 258 2846 e-mail: nataliya@sops.gov.ua)



Iryna TSYOMA (Ms.), Leading specialist of accounting, audit, financial support and reporting Department, Ukrainian Institute for Plant Variety Examination, 15, Henerala Rodimtseva Str., 03041 Kyiv
(tel.: +380442583456 fax: +380442579963 e-mail: iren_tsyoma@mail.ru)

UNION EUROPÉENNE / EUROPEAN UNION / EUROPÄISCHE UNION / UNIÓN EUROPEA



Dana-Irina SIMION (Mme), Chef de l'Unité E7, Direction Générale Santé et Protection des Consommateurs, Commission européenne, 200 Rue de la Loi, 1040 Bruxelles
(tel.: +32 2 296 2345 e-mail: dana-irina.simion@ec.europa.eu)



Päivi MANNERKORPI (Ms.), Chef de secteur - Seed and Plant Propagating Material, Direction Générale Santé et Protection des Consommateurs, Commission européenne (DG SANCO), Rue Froissart 101, 2/180, 1040 Bruxelles, Belgium
(tel.: +32 2 299 3724 fax: +32 2 296 9399 e-mail: paivi.mannerkorpi@ec.europa.eu)



Martin EKVAD, President, Community Plant Variety Office (CPVO), 3, boulevard Maréchal Foch, CS 10121, 49101 Angers Cedex 02
(tel.: +33 2 4125 6415 fax: +33 2 4125 6410 e-mail: ekvad@cpvo.europa.eu)



Muriel LIGHTBOURNE (Mme), Head of Legal Affairs, Community Plant Variety Office (CPVO), 3, Bd. Maréchal Foch, CS 10121, 49101 Angers Cedex
(tel.: +33 2 41 256414 fax: +33 2 41 256410 e-mail: lightbourne@cpvo.europa.eu)



Isabelle CLEMENT-NISSOU (Mrs.), Policy Officer, Direction Générale Santé et Protection des Consommateurs, Commission européenne (DG SANCO), rue Froissart 101, 1040 Bruxelles
(tel.: +32 229 87834 fax: +32 229 60951 e-mail: isabelle.clement-nissou@ec.europa.eu)

VIET NAM / VIET NAM / VIETNAM / VIET NAM



Nguyen Quoc MANH, Deputy Chief of PVP office, Plant Variety Protection Office of Viet Nam, No 2 Ngoc Ha Street, Ba Dinh Dist, (84) 48 Hanoi
(tel.: +84 4 38435182 fax: +84 4 37344967 e-mail: quocmanh.pvp.vn@gmail.com)

II. OBSERVATEURS / OBSERVERS / BEOBACHTER / OBSERVADORES

BRUNÉI DARUSSALAM / CAMBODIA / BRUNEI DARUSSALAM / BRUNEI DARUSSALAM



Farah Atiyah ZAINAL ABIDIN (Ms.), Assistant Registrar, Patent Registry Office, Knowledge Hub, Block B26, Simpang 32-37, Anggerek Desa, Bandar Seri Begawan
(tel.: +673 2380965 e-mail: farah.zainal@bedb.com.bn)

CAMBODGE / BRUNEI DARUSSALAM / KAMBODSCHA / CAMBOYA



Chan Travuth PHE, Deputy Director, Department Industrial Property, Ministry of Industry, Mines Energy, #45, Preah Norodom Blvd, Khan Daun Penh, Phnom Penh
(fax: 855 23 428 263 e-mail: phechantravuth@yahoo.com)



Puthea HO, Director, Department of Horticulture, General Directorate of Agriculture, 54B/49F, 656 St, Sangkat Teouk LaakIII, Khan Chamcamorn, Phnom Penh
(tel.: 23 883 267 fax: 23 883 267 e-mail: hoputhea1@live.com)

CHYPRE / CYPRUS / ZYPERN / CHIPRE



Yiango-George YIANGOULLIS, Expert, Legal Affairs, Permanent Mission of Cyprus to the United Nations Office at Geneva, 66, rue de Grand-Pré, CH-1202 GENÈVE
(e-mail: yangos.yiangoulis@cyprusmission.ch)

GHANA / GHANA / GHANA / GHANA

Ahmed YAKUBU ALHASSAN, Chairman Select Committee on Agric and Cocoa Affairs, Parliament
(e-mail: pagnaa@yahoo.com)

Emmanuel BANDUA, Chairman Legal and Constitutional Affairs, Parliament



Hans ADU DAPAAH, Director, CSIR-Crops Research Institute, P.O. Box 3785, Kumasi, Ghana
(tel.: +233 03220 60396 fax: +233 03220 60396 e-mail: hadapaah@cropsresearch.org)

Suleiman AHMED, Chief Director, Ministry of Justice
(e-mail: tsgahmed@yahoo.co.uk)

Mavis AMOA (Mrs.), Chief State Attorney, Legislative Drafting, Ministry of Justice
(e-mail: mavisamoah@yahoo.com)

Jemima M. OWARE (Mrs.), Chief State Attorney, Registrar-General's Department, Ministry of Justice, P.O. Box 118, Accra
(tel.: +233 21 664 279 fax: +233 21 666 081 e-mail: jemimaoware@yahoo.co.uk)



Grace Ama ISSAHAQUE (Mrs.), Principal State Attorney, Registrar-General's Department, Ministry of Justice, P.O. Box 118, Accra
(tel.: +233 21 666 469 fax: +233 21 666 081 e-mail: graceissahaque@hotmail.com)

MALAISIE / MALAYSIA / MALAYSIA / MALASIA



Halimi BIN MAHMUD, Director, Crop Quality Control Division, Ministry of Agriculture and Fisheries, Kuala Lumpur
(tel.: +603-8870 3447 fax: 603-8888 7639 e-mail: halimi@doa.gov.my)



Foong Lian SOO (Ms.), Assistant Director, Crop Quality Control Division, Department of Agriculture, Level 7, Wisma Tani, Lot 4G2, No. 30, Presint 4, Persiaran Perdana, 62624 Putrajaya
(tel.: +603 8870 3568 fax: +603 8888 7639 e-mail: lian@doa.gov.my)

PHILIPPINES / PHILIPPINES / PHILIPPINEN / FILIPINAS

Maria Araceli ALBARECE (Ms), Senior Agriculture Attache, Permanent Mission to the WTO, 80 rue de Lausanne, 1202 Geneva
(e-mail: m.albarece@philippinewto.org)

RÉPUBLIQUE-UNIE DE TANZANIE / UNITED REPUBLIC OF TANZANIA /
VEREINIGTE REPUBLIK TANSANIA / REPÚBLICA UNIDA DE TANZANÍA

Lucas N. SARONGA, Charge d'Affaires a.i., Permanent Mission, 47, avenue Blanc,
1202 Geneva
(tel. : +41 22 9091081 fax : +41 22 7328255 e-mail : mission.tanzania@ties.itu.int)



Juma Ali JUMA, Deputy Principal Secretary, Ministry of Agriculture and Natural
Resources, P.O. Box 159, Zanzibar
(tel.: +255242230986 fax : +255242234650 e-mail: i_alsaady@yahoo.com)



Audax Peter RUTABANZIBWA, Chairman, PBR Advisory Committee and Head of Legal
Unit, Ministry of Agriculture, Food Security and Cooperatives (MAFC), P.O. Box 9192,
Dar es Salaam
(tel.: +255 22 2865392 fax: +255 22 862077 e-mail: udax.rutabanzibwa@kilimo.go.tz)



Patrick NGWEDIAGI, Registrar, Plant Breeders' Rights Office, Ministry of Agriculture,
Food Security and Cooperatives, P.O. Box 9192, Dar es Salaam
(tel.: +255 22 2861404 fax: +255 22 286 1403 e-mail: ngwedi@yahoo.com)



Sidra Juma AMRAN (Ms.), Head of Legal Unit, Ministry of Agriculture and Natural
Resources, P.O. Box 159, Zanzibar
(tel.: +255242230986 fax: +255242234650)

THAÏLANDE / THAILAND / THAILAND / TAILANDIA



Pan PANKHAO, Agricultural Scientist, Plant Variety Protection Group, Plant Variety
Protection Division, Ministry of Agriculture and Cooperatives, Phochakorn Bdg, 50
Phaholyothin Rd, Bangkok 10900
(tel.: +66 2561 4665 fax: +66 2561 4665 e-mail: ppk1969@hotmail.com)



Chutima RATANASATIEN (Mrs.), Senior Agricultural Scientist, Plant Variety Protection
Division, Ministry of Agriculture and Cooperatives, Ministry of Agriculture and
Cooperatives, Phochakorn Building, 50 Phaholyothin Road, Ladyao, Chatuchak, 10900
Bangkok
(tel.: +66 2 940 5418 fax: +66 2 579 7855 e-mail: chutima_ratanasatien@yahoo.com)

III. ORGANISATIONS / ORGANIZATIONS / ORGANISATIONEN / ORGANIZACIONES

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE (FAO) /
FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) /
ERNÄHRUNGS- UND LANDWIRTSCHAFTSORGANISATION DER VEREINTEN NATIONEN (FAO) /
ORGANIZACIÓN DE LAS NACIONES UNIDAS PARA LA ALIMENTACIÓN Y LA AGRICULTURA



Thomas Arthur OSBORN, Senior Agricultural Officer Seed Policy, Via delle Terme di Caracalla, 00100 Roma , Italy
(tel.: +39 06 57055407 fax: +39 06 570 56 347 e-mail: Thomas.Osborn@fao.org)

ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI) /
WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) /
WELTORGANISATION FÜR GEISTIGES EIGENTUM (WIPO) /
ORGANIZACIÓN MUNDIAL DE LA PROPIEDAD INTELECTUAL (OMPI)



Rolf JÖRDENS, Special Advisor, Global Issues Sector, World Intellectual Property Organization (WIPO), 34, chemin des Colombettes, 1211 Genève 20, Suisse
(tel.: +41 22 338 9155 fax: +41 22 338 7500 e-mail: rolf.joerdens@wipo.int)

ASSOCIATION FOR PLANT BREEDING FOR THE BENEFIT OF SOCIETY



François MEIENBERG, Board Member, Berne Declaration, P.O. Box 8026, Zürich , Suisse
(tel.: +41 44 277 7004 fax: +41 44 277 7001 e-mail: food@evb.ch)



Sachesh SILWAL, Project Officer, The Development Fund, Grensen 9b, 0159 Oslo , Norway
(tel.: +47 23 109600 e-mail: sachesh2utviklingsfondet.no)

ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE (ARIPO) /
AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO) /
AFRIKANISCHE REGIONALORGANISATION ZUM SCHUTZ GEISTIGEN EIGENTUMS (ARIPO)
ORGANIZACIÓN REGIONAL AFRICANA DE LA PROPIEDAD INTELECTUAL (ARIPO)



Emmanuel SACKEY, Head, Technical Department, African Regional Intellectual Property Organization (ARIPO), P.O. Box 4228, Harare, Zimbabwe
(tel.: +263 479 4065/6 fax: +263 4794072/2 e-mail: esackey@aripo.org)



Flora Kokwihyukya MPANJU (Mrs.), Senior Examiner, Technical Department,
P.O. Box 4228, Harare, Zimbabwe
(tel.: +263 4 794065/6 fax: +263 4 794072/3 e-mail: fmpanju@aripo.org)

ASSOCIATION INTERNATIONALE DES PRODUCTEURS HORTICOLES (AIPH) /
INTERNATIONAL ASSOCIATION OF HORTICULTURAL PRODUCERS (AIPH) /
INTERNATIONALER VERBAND DES ERWERBSGARTENBAUES (AIPH) /
ASOCIACIÓN INTERNACIONAL DE PRODUCTORES HORTÍCOLAS (AIPH)



Mia HOPPERUS BUMA (Mrs), Secretary, Committee for Novelty Protection, International
Association of Horticultural Producers (AIPH), Oude Herenweg 10, 2215 RZ Voorhout,
Netherlands
(tel.: +31 651547355 e-mail: buma@aiph.org)

ASSOCIATION INTERNATIONALE D'ESSAIS DE SEMENCES (ISTA) / INTERNATIONAL SEED TESTING
ASSOCIATION (ISTA) / INTERNATIONALE VEREINIGUNG FÜR SAATGUTPRÜFUNG (ISTA) /
ASOCIACIÓN INTERNACIONAL PARA EL ENSAYO DE SEMILLAS (ISTA)

Michael MUSCHICK, Secretary General, International Seed Testing Association (ISTA),
Zürichstrasse 50, Postfach 308, 8303 Bassersdorf, Switzerland
(tel.: +41 44 838 6000 fax: +41 44 838 6001 e-mail: executive.office@ista.ch)

COMMUNAUTÉ INTERNATIONALE DES OBTENTEURS DE PLANTES ORNEMENTALES ET
FRUITIÈRES À REPRODUCTION ASEXUÉE (CIOPORA) / INTERNATIONAL COMMUNITY
OF BREEDERS OF ASEXUALLY REPRODUCED ORNAMENTAL AND FRUIT PLANTS
(CIOPORA) / INTERNATIONALE GEMEINSCHAFT DER ZÜCHTER VEGETATIV VERMEHRBARER ZIER-
UND OBSTPFLANZEN (CIOPORA) / COMUNIDAD INTERNACIONAL DE OBTENTORES DE
VARIETADES ORNAMENTALES Y FRUTALES DE REPRODUCCIÓN ASEXUADA (CIOPORA)



Edgar KRIEGER, Secretary General, CIOPORA - International Community of Breeders of
Asexually Reproduced Ornamental and Fruit Plants (CIOPORA), Postfach 13 05 06,
20105 Hamburg , Germany
(tel.: +49 40 555 63702 fax: +49 40 555 63703 e-mail: edgar.krieger@ciopora.org)

INTERNATIONAL SEED FEDERATION (ISF)



Marcel BRUINS, Secretary General, International Seed Federation (ISF), 7, chemin du
Reposoir, 1260 Nyon, Switzerland
(tel.: +41 22 365 4420 fax: +41 22 365 4421 e-mail: isf@worldseed.org)



Stevan MADJARAC, Global Germplasm IP Head, Monsanto Company, 700 Chesterfield
Pkwy, BB1B, Chesterfield 63017, United Kingdom
(tel.: +1 636 7374395 e-mail: stevan.madjarac@monsanto.com)



Michael ROTH, Intellectual Property Consultant, 4393 Westminster Place, E2NA, 63108
St. Louis, MO, United States of America
(tel.: +1 314 210 1832 e-mail: seed.law@gmail.com)

ASIA AND PACIFIC SEED ASSOCIATION (APSA)



François BURGAUD, APSA Standing Committee on Intellectual Property Rights, Asia and Pacific Seed Association (APSA), P.O. Box 1030, Kasetsart Post Office, 10903 Bangkok, Thailand
(tel.: +66 2 9405464 fax: +66 2 9405467 e-mail: francois.burgaud@gnis.fr)



Uday SINGH, Chairman, APSA Intellectual Property Working Group, Asia and Pacific Seed Association (APSA), P.O. Box 1030, Kasetsart Post Office, 10903 Bangkok, Thailand
(tel.: +66 2 940 5465 fax: +66 2 940 5467 e-mail: tom.burns@apsaseed.org)

EUROPEAN SEED ASSOCIATION (ESA)



Mr. Bert SCHOLTE, Technical Director, European Seed Association (ESA), 23, rue Luxembourg, B-1000, Brussels, Belgium
(tel.: +32 2 743 2860 fax: +32 2 743 2869 e-mail: bertscholte@euroseeds.org)

IV. BUREAU DE L'OMPI / OFFICE OF WIPO / BÜRO DER WIPO / OFICINA DE LA OMPI

Philippe FAVATIER, Chief Financial Officer (Controller), Department of Finance and Budget

Janice COOK ROBBINS (Ms.), Head of Finance Services, Department of Finance and Budget

V. BUREAU / OFFICER / VORSITZ / OFICINA

CHOI Keun-Jin, President



Kitisri SUKHAPINDA (Ms.), Vice-President



VI. BUREAU DE L'UPOV / OFFICE OF UPOV / BÜRO DER UPOV / OFICINA DE LA UPOV



Francis GURRY, Secretary-General



Peter BUTTON, Vice Secretary-General



Yolanda HUERTA (Mrs.), Legal Counsel



Julia BORYS (Mrs.), Senior Technical Counsellor



Fuminori AIHARA, Counsellor



Ben RIVOIRE, Consultant



Leontino TAVEIRA, Consultant

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Annex II follows /
Anlage II folgt /
Sigue el Anexo II]

PRESS RELEASE



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

UPOV Press Release 92

Geneva, November 1, 2012

UPOV Council Holds its Forty-Sixth Ordinary Session

The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its forty-sixth ordinary session on November 1, 2012.

Round-up of key developments:

Report on the Ratification of the 1991 Act by France and Accession to the 1991 Act by Panama

France had deposited its instrument of ratification of the 1991 Act of the UPOV Convention on April 27 2012, and had become bound by the 1991 Act on May 27, 2012, and that Panama had deposited its instrument of accession to the 1991 Act of the UPOV Convention on October 22, 2012, and would become bound by the 1991 Act on November 22, 2012.

Positive decisions on the Plant Breeders' Bill of Ghana and the Plant Breeders' Rights Bill for Mainland Tanzania (United Republic of Tanzania)

Ghana

The Council decided that the Plant Breeders' Bill of Ghana, subject to certain modifications, was in conformity with the provisions of the 1991 Act of the UPOV Convention. Once the relevant Law, on which the conformity was decided, is in force, Ghana will be in a position to deposit its instrument of accession to the 1991 Act of the UPOV Convention.

United Republic of Tanzania

The Council decided that the Plant Breeders' Rights Bill of Mainland Tanzania (United Republic of Tanzania), subject to certain modifications, was in conformity with the provisions of the 1991 Act of the UPOV Convention. The Council noted that the Government of the United Republic of Tanzania had the intention to submit, at a later stage, the Draft Law or adopted Law for Zanzibar for examination by the Council. The Council informed 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.

Performance Assessment Report for the 2010-2011 biennium

- UPOV adopted a considerable number of information and guidance documents that enhance the understanding and the implementation of the provisions of the Convention in an internationally harmonized and effective way, thereby reinforcing the quality of protection and helping to reduce the cost of obtaining protection.
- In 2011, the adopted Test Guidelines covered 90% of all PBR-related entries in the Plant Variety Database.
- New measures have been taken to enhance cooperation between members of the Union through improvements to the Plant Variety Databaseⁱ and GENIE Databaseⁱⁱ.
- UPOV has assisted a number of States in the implementation of plant variety protection based on the UPOV Convention and has provided advice to governments in the preparation of legislation.
- Cooperation with members of the Union, particularly with regard to training courses, has provided substantial benefits for outreach.
- The use of the distance learning course "Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention" and training of trainers have been of increasing importance in providing assistance to a wide range of experts.
- The launch of the newly designed website was an important development that will increase the understanding of UPOV's role and activities and will increase public awareness of how an effective system of plant variety protection provides benefit to society.
- The organization of the "Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership" and the "Symposium on Plant Breeding for the Future" provided information on the importance of plant variety protection for dynamic and sustainable agriculture.

Participation of the Office of the Union in the International Treaty on Genetic Resources for Food and Agriculture (ITPGRFA) Platform for the Co-Development and Transfer of Technologies

Members of the Union 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.

Plant Variety Protection Statistics

A total of 53 members of the Union now offer protection to all plant genera and species (48 in 2011), with 17 members of the Union offering protection to a limited number of plant genera and species.

The Council noted that there had been a 5.2% increase in the number of applications for plant variety protection (13,714 in 2011; 13,038 in 2010), representing a 1.4% decrease in the number of applications by residents (8,813 in 2011; 8,937 in 2010) and a 19.5% increase in the number of applications by non-residents (4,901 in 2011; 4,101 in 2010). The numbers of applications by non-residents and overall number of applications were record numbers.

The number of titles granted decreased from 11,115 in 2010 to 10,065 in 2011 (9.4% decrease).

A new record number of titles in force – 94,413 – was recorded in 2011, representing a 4.5% increase on figures for 2010 (90,344).

Cooperation in the Examination of New Plant Varieties

In 2012, the number of plant genera and species for which there were agreements between members of the Union for cooperation in the examination of distinctness, uniformity and stability totaled 1,991, compared to 1,990 in 2011. Although the total number of genera and species did not significantly increase, there was a significant number of new agreements for cooperation within those genera and species.

Election of the new President and the new Vice-President of the Council

The Council elected, in each case for a term of three years ending with the forty-ninth ordinary session of the Council, in 2015:

- (a) Ms. Kitisri Sukhapinda (United States of America), President of the Council;
- (b) Mr. Luis Salaices (Spain), Vice-President of the Council.

Adoption of information and guidance documents

Including document UPOV/INF/19/1 "Rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies" (Revision) and document UPOV/INF/20/1 "Rules governing access to UPOV documents" (Revision). Document UPOV/INF/20/1 confirms that documents of the Administrative and Legal Committee (CAJ), Technical Committee (TC) and Technical Working Parties (TWPs), which were formerly only accessible to members and observers, are now made publicly accessible.

Symposium on the benefits of plant variety protection for farmers and growers

November 2, 2012 (Geneva, Switzerland)

The aim of the Symposium is to provide illustrations of how plant variety protection can improve incomes for farmers and growers by supporting the development and supply of new, improved varieties that are suited to their needs. The Symposium will also provide examples of how farmers and growers can use plant variety protection as breeders.

A video of the Symposium will be made available on the website as from November 6, 2012.

For further information about UPOV, please contact the UPOV Secretariat:

Tel: (+41-22) 338 9155
Fax: (+41-22) 733 0336

E-mail: upov.mail@upov.int
Website: www.upov.int

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ⁱ The Plant Variety Database is a compilation of data supplied by the competent authorities of the members of the Union. A significant part of the information relates to plant breeder's rights, plant patents or to national listings.

ⁱⁱ The GENIE database has been developed to provide online information on GENera and specIEs (hence GENIE) in relation to protection offered by members of the Union, cooperation in examination, experience in DUS testing and the existence of UPOV Test Guidelines. In addition, the GENIE database is the repository of the UPOV codes and provides information concerning alternative botanical and common names.