



TC/51/10

ORIGINAL: English

DATE: March 4, 2015

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

TECHNICAL COMMITTEE

Fifty-First Session
Geneva, March 23 to 25, 2015

REPORT ON DEVELOPMENTS IN UPOV INCLUDING RELEVANT
MATTERS DISCUSSED IN THE LAST SESSIONS OF THE ADMINISTRATIVE
AND LEGAL COMMITTEE, THE CONSULTATIVE COMMITTEE AND THE COUNCIL

Document prepared by the Office of the Union

Disclaimer: this document does not represent UPOV policies or guidance

1. The purpose of this document is to report on developments in UPOV since the fiftieth session of the Technical Committee (TC) that are not presented under specific items on the agenda of the fifty-first session of the Technical Committee, including relevant matters discussed in the last sessions of the Administrative and Legal Committee, the Consultative Committee and the Council.
2. A presentation summarizing the items in this document will be made at the fifty-first session of the TC, a copy of which (in English only) will be provided as an addendum to this document.

MEMBERSHIP	3
MEMBERS OF THE UNION.....	3
SITUATION IN RELATION TO THE VARIOUS ACTS OF THE CONVENTION.....	3
EXAMINATION OF LAWS	3
African Regional Intellectual Property Organization (ARIPO).....	3
Developments on the Plant Breeders' Rights Act for Zanzibar	3
OBSERVERS	3
OFFICE OF THE UNION.....	4
APPOINTMENT OF SECRETARY-GENERAL	4
STATISTICS ON PLANT VARIETY PROTECTION.....	4
LIST OF THE TAXA PROTECTED BY THE MEMBERS OF THE UNION	4
PLANT VARIETY PROTECTION STATISTICS.....	4
COOPERATION IN THE EXAMINATION OF NEW PLANT VARIETIES	4
FINANCIAL SITUATION.....	4
SPECIAL PROJECT FUND	4
CHAIR OF UPOV BODIES.....	4
UPOV COLLECTION.....	5
PROGRAM FOR DEVELOPMENT OF EXPLANATORY NOTES ON THE UPOV CONVENTION.....	5
UPOV DOCUMENTS	6
HISTORIC DOCUMENTS ON THE UPOV WEBSITE	6
CAJ SESSION DOCUMENTS.....	7
PUBLICATIONS, ACTIVITIES & TRAINING	7
COMMUNICATION STRATEGY	7
TRILOGY PUBLICATION	8
SEMINAR ON ESSENTIALLY DERIVED VARIETIES (EDVs)	8
DISTANCE LEARNING COURSES	8
PROPOSAL FOR AN INTERNATIONAL FILING SYSTEM, QUALITY ASSURANCE AND VARIETY DENOMINATION SEARCH.....	9
DEVELOPMENTS OF RELEVANCE TO UPOV IN OTHER INTERNATIONAL FORA	9
INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (ITPGRFA).....	9
Interrelations between ITPGRFA, UPOV and WIPO	9
Organisation for Economic Co-operation and Development (OECD)	9
TRIBUTE TO MR. FRANÇOIS BOULINEAU (FRANCE), CHAIRMAN OF THE TECHNICAL WORKING PARTY FOR VEGETABLES (TWV).....	9

MEMBERSHIP

Members of the Union

3. The African Intellectual Property Organization (OAPI) became the second intergovernmental organization and the seventy-second member to join the International Union for the Protection of New Varieties of Plants (UPOV) on July 10, 2014.

4. OAPI operates a plant variety protection system which covers the territory of its 17 member States: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Mauritania, Niger, Senegal and Togo. The headquarters of OAPI are in Yaoundé, Cameroon (see <http://www.oapi.int/>).

5. As of March 1, 2015, the Union comprised 72 members: African Intellectual Property Organization, Albania, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Bolivia (Plurinational State of), Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Estonia, European Union, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Israel, Italy, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lithuania, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Oman, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan and Viet Nam.

Situation in Relation to the Various Acts of the Convention

6. Fifty-two members were bound by the 1991 Act as of March 1, 2015.

7. As of March 1, 2015, one member was bound by the 1961 Convention as amended by the 1972 Act and 19 members were bound by the 1978 Act.

Examination of Laws

African Regional Intellectual Property Organization (ARIPO)

8. At its thirty-first extraordinary session, held in Geneva on April 11, 2014, the Council took a positive decision on the conformity of the African Regional Intellectual Property Organization (ARIPO) Draft Protocol for the Protection of New Varieties of Plants with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV Convention). The Draft Protocol, once adopted with no changes and in force, would allow the Contracting States to the Protocol and ARIPO, in relation to the territories of the Contracting States bound by the Protocol, to deposit their instruments of accession to the UPOV Convention.

Developments on the Plant Breeders' Rights Act for Zanzibar

9. The Council noted that the Plant Breeders' Rights Act of Zanzibar, which was adopted by the Zanzibar House of Representatives, incorporated the changes in the decision of the Council of March 22, 2013, and agreed that the additional changes did not concern the substantive provisions of the 1991 Act of the UPOV Convention. The legislation governing breeders' rights now covers the whole territory of the United Republic of Tanzania and the United Republic of Tanzania can become a UPOV member.

OBSERVERS

10. The Council, at its forty-eighth ordinary session, noted that the Consultative Committee had granted observer status:

- to the South Centre in the Council and the Administrative and Legal Committee (CAJ);
- to the World Farmers' Organisation (WFO) in the Council, the CAJ and the Technical Committee (TC).

OFFICE OF THE UNION

Appointment of Secretary-General

11. The Council, at its forty-eighth ordinary session, held in Geneva on October 16, 2014, appointed Mr. Francis Gurry by acclamation as the Secretary-General of UPOV for the period from October 16, 2014, to September 30, 2020.

STATISTICS ON PLANT VARIETY PROTECTION

List of the taxa protected by the members of the Union

(see document C/48/6 "List of the Taxa Protected by the Members of the Union")

12. A total of 58 members of the Union now offer protection to all plant genera and species (56 in 2013), with 14 members of the Union offering protection to a limited number of plant genera and species. Of those 14, three countries (Brazil, China and South Africa) extended protection to additional plant genera and species in 2014.

Plant variety protection statistics

(see document C/48/7 "Plant variety protection statistics for the period 2009-2013")

13. In 2013, the number of titles in force exceeded 100,000 for the first time. The total of 103,261 titles in force in 2013 represented a 3.8 percent increase on figures for 2012 (99,501).

14. The Council noted that there had been a 6.3 percent increase in the number of applications for plant variety protection (14,788 in 2013; 13,908 in 2012), comprising an 8.7 percent increase in the number of applications by residents (9,502 in 2013; 8,739 in 2012) and a 2.3 percent increase in the number of applications by non-residents (5,286 in 2013; 5,169 in 2012). The number of titles granted increased from 9,822 in 2012 to 10,052 in 2013 (2.3 percent increase).

Cooperation in the examination of new plant varieties

(see document C/48/5 "Cooperation in examination")

15. In 2014, 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 2,005, compared to 1,997 in 2013.

FINANCIAL SITUATION

Special Project Fund

16. The Council, at its thirty-first extraordinary session, decided to create a special project fund for amount of the reserve fund exceeding 15 percent of the total income for the 2012-2013 Biennium. At its forty-eighth ordinary session, the Council decided to use the special project fund for training purposes.

CHAIR OF UPOV BODIES

17. At its forty-eighth ordinary session, the Council elected, in each case for a term of three years ending with the fifty-first ordinary session of the Council, in 2017:

- (a) Mr. Tanvir Hossain (Australia), Chairman, Technical Working Party for Agricultural Crops (TWA);
- (b) Mr. Adrian Roberts (United Kingdom), Chairman, Technical Working Party on Automation and Computer Programs (TWC);
- (c) Mr. Katsumi Yamaguchi (Japan), Chairman, Technical Working Party for Fruit Crops (TWF);

- (d) Mr. Kenji Numaguchi (Japan), Chairman, Technical Working Party for Ornamental Plants and Forest Trees (TWO);
- (e) Ms. Swenja Tams (Germany), Chairperson, Technical Working Party for Vegetables (TWV); and
- (f) Mr. Kees van Ettehoven (Netherlands), Chairman, Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular (BMT).

UPOV COLLECTION

(see http://www.upov.int/upov_collection/en/)

18. The Council adopted the following documents at its forty-eighth ordinary session:

- TGP/2/2 List of Test Guidelines Adopted by UPOV (Revision)
- TGP/5 Experience and Cooperation in DUS Testing: Section 10/3: Notification of Additional Characteristics and States of Expression (Revision)
- TGP/7/4 Development of Test Guidelines (Revision)
- TGP/8/2 Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Revision)
- TGP/14/2 Glossary of Terms Used in UPOV Documents (correction of Spanish version)
- TGP/0/7 List of TGP documents and latest issue dates (Revision)
- UPOV/INF/16/4 Exchangeable Software (Revision)
- UPOV/INF/22/1 Software and Equipment Used by Members of the Union
- UPOV/INF-EXN/6 List of UPOV/INF-EXN Documents and Latest Issue Dates

19. All adopted documents have been included in the UPOV Collection

Program for Development of Explanatory Notes on the UPOV Convention

20. The CAJ, at its seventieth session, agreed that all matters under consideration by the CAJ-AG at its ninth session should, following the ninth session of the CAJ-AG, be considered by the CAJ and that the CAJ-AG should only be convened, on an *ad hoc* basis, as considered appropriate by the CAJ.

21. On that basis, the CAJ requested the CAJ-AG, at its ninth session, to advise the CAJ on those documents to be considered at the seventy-first session of the CAJ, in March 2015.

22. In that regard, the CAJ-AG advised as follows in relation to items "Development of information materials concerning the UPOV Convention" and "Variety denominations" of the seventy-first session of the CAJ:

Development of information materials concerning the UPOV Convention

- (a) Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision) (document CAJ/71/2: proposed way forward, with a view to the discussion of a new draft of document UPOV/EXN/EDV/2 in the CAJ in October 2015)
- (b) Explanatory Notes on Propagating Material under the 1991 Act of the UPOV Convention (document UPOV/EXN/PPM/1 Draft 4)
- (c) Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (Revision) (document CAJ/71/2: CAJ-AG proposal to discontinue the development of a revision of UPOV/EXN/HRV/1)
- (d) Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention (Revision) (document UPOV/EXN/CAN/2 Draft 3)

- (e) Explanatory Notes on Nullity of the Breeder's Right under the UPOV Convention (Revision) (document UPOV/EXN/NUL/2 Draft 3)
- (f) Matters concerning variety descriptions (document CAJ/71/2: to present the conclusion of the CAJ-AG)
- (g) Explanatory Notes on Provisional Protection under the UPOV Convention (Revision) (document UPOV/EXN/PRP/2 Draft 3)

Variety denominations

Explanatory Notes on Variety Denominations under the UPOV Convention (Revision) (CAJ to be invited to consider a plan for the revision of document UPOV/INF/12/5)

23. The program for the development of information materials will be considered by the CAJ at its seventy-first session, to be held in Geneva on March 26, 2015, includes the following proposals:

Explanatory Notes

Reference	Explanatory Notes on:	Status
UPOV/EXN/CAN	Cancellation of the Breeder's Right under the UPOV Convention	UPOV/EXN/CAN/2 Draft 3 to be considered by the CAJ in March 2015
UPOV/EXN/EDV	Essentially Derived Varieties under the 1991 Act of the UPOV Convention	UPOV/EXN/EDV/2 Draft 6 to be considered by the CAJ in October 2015
UPOV/EXN/HRV	Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention	development of UPOV/EXN/HRV/2 to be discontinued
UPOV/EXN/NUL	Nullity of the Breeder's Right under the UPOV Convention	UPOV/EXN/NUL/2 Draft 3 to be considered by the CAJ in March 2015
UPOV/EXN/PPM	Propagating Material under the 1991 Act of the UPOV Convention	UPOV/EXN/PPM/1 Draft 4 to be considered by the CAJ in March 2015
UPOV/EXN/PRP	Provisional Protection under the UPOV Convention	UPOV/EXN/PRP/2 Draft 3 to be considered by the CAJ in March 2015

Information Documents

Latest reference	INF documents	Status
UPOV/INF-EXN	List of UPOV/INF-EXN Documents and Latest Issue Dates	UPOV/INF-EXN/7 to be considered by the Council in March 2015
UPOV/INF/4	Financial Regulations and Rules of UPOV	UPOV/INF/4/4 to be considered by the Council in March 2015
UPOV/INF/15	Guidance for Members of UPOV on Ongoing Obligations and Related Notifications	UPOV/INF/15/3 to be considered by the Council in March 2015
UPOV/INF/16	Exchangeable Software	UPOV/INF/16/5 to be considered by the Council in October 2015
UPOV/INF/22	Software and Equipment Used by Members of the Union	UPOV/INF/22/2 to be considered by the Council in October 2015

UPOV DOCUMENTS

Historic documents on the UPOV website

24. Around 7,000 UPOV documents, which were previously not available on the UPOV website, have been scanned and reproduced as electronic, word-recognizable documents. The records of the diplomatic conferences on the revisions of the UPOV Convention, documents of meetings of UPOV with international organizations (IOM documents) and issues of the Plant Variety Protection Gazette and Newsletter had also previously uploaded on the UPOV website. In parallel with that process, a systematic review has been made

of the existing documents posted under the UPOV “Meeting Documents” section to identify and rectify errors and omissions that had occurred during the migration to the redesigned website in 2011-2012. With regard to the remaining work, to upload older UPOV session documents and older documents from UPOV seminars, the work will be done on an *ad hoc* basis as resources allowed.

CAJ session documents

25. With regard to the format and style of CAJ documents, and their presentation at CAJ sessions, the CAJ agreed at its seventieth session, held in Geneva on October 13, 2014, as appropriate, to:

- include an executive summary;
- make reference to previous documents in footnotes;
- combine decision paragraphs relating to matters for information; and
- present a summary of the main points of the document in the form of a PowerPoint presentation at the CAJ session.

PUBLICATIONS, ACTIVITIES & TRAINING

Communication strategy

26. The Council, at its thirty-first extraordinary session, agreed the answers to the following frequently asked questions:

- Who can attend UPOV meetings?
- What is UPOV?
- What does UPOV do?
- Who can attend UPOV meetings?
- What is a plant variety?
- Why do farmers and growers need new plant varieties?
- Why is plant variety protection necessary?
- How does plant variety protection work?
- What are the requirements for protecting a new plant variety?
- Why does UPOV require varieties to be uniform and stable; doesn't that lead to a loss of diversity?
- Can breeders use a protected variety in their breeding programs?
- Who can protect a plant variety?
- Where do I apply for protection of a variety?
- Can I obtain protection for more than one country from a single application?
- What are the benefits of plant variety protection and UPOV membership?
- What is the effect of plant variety protection on varieties that are not protected (e.g. traditional varieties, landraces etc.)?
- What is the relationship between the UPOV Convention and international treaties concerning genetic resources, e.g. the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)?
- What is the relationship between patents and plant breeders' rights?
- What is the relationship between plant breeders' rights and measures regulating commerce, e.g. seed certification, official registers of varieties admitted to trade (e.g. National List, Official Catalogue) etc.?
- Can I protect an existing plant or variety that I discover?
- Does the UPOV Convention allow a variety to be refused protection because it is genetically modified?
- Can I use plant variety protection to protect the following: - a trait (e.g. disease resistance, flower color) - a chemical or other substance (e.g. oil, DNA) - a plant breeding technology (e.g. tissue culture)?
- Can I protect a hybrid variety under the UPOV system?
- Can a farmer replant seed of a protected variety without the authorization of the breeder?
- Can a farmer sell seed of a protected variety without the authorization of the breeder?
- How do I know if a variety is protected?
- Who is responsible for enforcing plant breeders' rights?
- Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability (“DUS”)?
- Is it true that UPOV only promotes commercially bred plant varieties geared to industrialized farmers?

27. The Council, at its forty-eighth ordinary session, agreed answers to the following FAQs:

- Does the UPOV Convention regulate varieties that are not protected by plant breeders' rights?
- Is it possible for subsistence farmers to exchange propagating material of protected varieties against other vital goods within the local community?
- Under the UPOV system, breeders decide the conditions and limitations under which they authorize the exploitation of their protected varieties. Can farmers, for instance, be allowed to exchange seeds of protected varieties freely within the local community?

and also agreed a revision to the following FAQ:

- Why is plant variety protection necessary?

Trilogy Publication

The Trilogy¹ publication, including the Executive Summary has been published in French (see http://www.upov.int/about/fr/benefits_upov_system.html) and Spanish (see http://www.upov.int/about/es/benefits_upov_system.html).

Seminar on Essentially Derived Varieties (EDVs)

28. The Spanish, French and German versions of the proceedings of the "Seminar on essentially derived varieties", (UPOV Publication No. 358) held in Geneva on October 22, 2013, have been posted on the UPOV website at http://www.upov.int/meetings/en/details.jsp?meeting_id=29782.

Distance Learning Courses

29. In 2015, UPOV will launch a new DL-305 course "Examination of Applications for Plant Breeders' Rights", both as a single course, and also as two component courses: DL-305A "Administration of Plant Breeders' Rights"; and DL-305B "DUS Examination", in English, French and Spanish, according to the following schedule:

Code	Course	Study period	Registration period
DL-205	Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention	19-Oct to 23-Nov 2015	1-Jan to 29-Mar 2015 and 17-Aug to 27-Sept 2015
DL-305A	Administration of Plant Breeders' Rights (Part A of DL-305 course: Examination of applications for plant breeders' rights)	16-Feb to 22-Mar 2015	1-Jan to 31-Jan 2015
DL-305B	DUS Examination (Part B of DL-305 course: Examination of applications for plant breeders' rights)	20-Apr to 24-May 2015	1-Jan to 29-Mar 2015
DL-305	Examination of applications for plant breeders' rights	20-Apr to 24-May 2015	1-Jan to 29-Mar 2015

(see <http://www.upov.int/resource/en/training.html>)

30. The German version of DL-305 will be launched in 2016.

¹ 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".

PROPOSAL FOR AN INTERNATIONAL FILING SYSTEM, QUALITY ASSURANCE AND VARIETY DENOMINATION SEARCH

31. The Consultative Committee, at its eighty-eighth session, held in Geneva on October 15, 2014, noted the information provided on the WIPO International Patent System (PCT), International Trademark System (Madrid) and International Design System (Hague) and considered the written contribution by the International Seed Federation (ISF), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) and CropLife International, in conjunction with their joint presentation at the eighty-eighth session of the Consultative Committee.

32. The Consultative Committee requested the Office of the Union to prepare a document to clarify the issues raised and possible ways forward with regard to an international system of cooperation, for consideration by the Consultative Committee at its eighty-ninth session, in March 2015.

DEVELOPMENTS OF RELEVANCE TO UPOV IN OTHER INTERNATIONAL FORA

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

Interrelations between ITPGRFA, UPOV and WIPO

33. The Council, at its thirty-first extraordinary session, expressed its appreciation to the Governing Body of the ITPGRFA (GB) for the thanks the GB had offered to UPOV for the practical support UPOV had provided to the ITPGRFA and the Council confirmed its continuing commitment to mutual supportiveness. In response to an invitation by the GB to identify with the Secretary of the ITPGRFA and the Secretariat of the World Intellectual Property Organization (WIPO) possible areas of interrelations among the international instruments of the ITPGRFA, WIPO and UPOV, the Council decided to explore the idea of a joint publication on interrelated issues regarding innovation and plant genetic resources and other suitable initiatives.

Organisation for Economic Co-operation and Development (OECD)

34. The OECD Forest Seed and Plant Certification Scheme, at its Annual Meeting, held in Paris, on September 24 and 25, 2014, agreed to amend the Rules of the Certification Scheme to introduce a definition of plant breeder's right and to make a reference to the definition of "variety" under the UPOV Convention.

TRIBUTE TO MR. FRANÇOIS BOULINEAU (FRANCE), CHAIRMAN OF THE TECHNICAL WORKING PARTY FOR VEGETABLES (TWV)

35. The Council, at its thirty-first extraordinary session, expressed its condolences for the sad loss of Mr. François Boulineau, Chairman of the Technical Working Party for Vegetables (TWV), who had died on December 23, 2013. In addition to being Chairman of the TWV, Mr. Boulineau had brought great experience and expert knowledge to UPOV's technical work and was a leading expert for a number of important UPOV Test Guidelines. The Council expressed its appreciation for the important contribution that Mr. Boulineau had made to UPOV.

36. *The TC is invited to note the developments in UPOV including relevant matters discussed in the last sessions of the Administrative and Legal Committee, the Consultative Committee and the Council, as set out in paragraphs 3 to 35 of this document.*

[End of document]