

Working Group on Harvested Material and Unauthorized Use of Propagating Material
WG-HRV/7/3
**Seventh Meeting
Geneva, March 20, 2025**
Original: English
Date: July 23, 2025

REPORT
adopted by the Working group on harvested material and unauthorized use of propagating material
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OPENING OF THE MEETING

1. The Working Group on Harvested Material (WG-HRV) held its seventh meeting in Geneva, on March 20, 2025, in virtual format, chaired by Ms. Yolanda Huerta, Vice Secretary-General of UPOV.
2. The Chair opened the meeting, welcoming the participants and the authors of the study commissioned to support the work of the WG-HRV.
3. The Chair welcomed new participants to the WG-HRV and highlighted the participation of Nigeria as UPOV's 80th member, following its recent accession to the 1991 Act of the UPOV Convention.
4. The Terms of Reference of the study approved by the WG-HRV, at its sixth meeting¹, are reproduced in Annex I and the list of participants is provided in Annex II to this report.

ADOPTION OF THE AGENDA

5. The WG-HRV adopted the draft agenda as proposed in document WG-HRV/7/1.

REPORT ON THE PROGRESS MADE BY THE AUTHORS OF THE STUDY ON THE "SCOPE OF THE BREEDER'S RIGHT" AND THE RELATIONSHIP WITH THE "EXHAUSTION OF THE BREEDER'S RIGHT"

6. The Office of the Union provided background on the study, reiterating that the study was intended to support the work of the WG-HRV on explanatory notes concerning harvested material and the unauthorized use of propagating material, in line with the agreed terms of reference.
7. It was recalled that:
 - (a) The study should follow an independent academic approach.
 - (b) The purpose of the study is to assist the WG-HRV and that UPOV members are not bound by the content and/or conclusions drawn by the authors in the study.
 - (c) The report will be published on the UPOV website as a WG-HRV working document.
8. Mr. Huib Ghijsen presented the progress made by the authors (presentation available on the UPOV website, under: https://www.upov.int/meetings/en/details.jsp?meeting_id=85866) and that he had been appointed as coordinator. He also informed that their meetings would continue regularly until the delivery of the report on September 1, 2025.

¹ Held in Geneva on October 22, 2024.

9. Mr. Ghijsen emphasized that the authors were still in the early stages of research and coordination and that substantive conclusions had not yet been reached.

10. The Chair reminded participants of the background and rationale for the study, originating from challenges related to fruit trees and the relationship between Articles 14(2) and 16, which had been the focus of earlier seminars and working group discussions. The Office of the Union reported that the authors have declared, in the Progress Report of the Study (WG-HRV/7/2, Annex I), that they do not have a conflict to work on the Study. The Office will investigate whether there is a need for any further clarifications and possibly consult any practice of WIPO in that respect. The Chair reminded the participants and authors that the Terms of Reference (TORs) are clear and do not refer to interpretation, but to the analysis of the intentions of the drafters of the 1991 Act.

11. The Chair encouraged the authors to continue their internal coordination and to maintain consistency, while recognizing that including the authors' perspectives might enrich the analysis.

CONCLUSIONS

12. The main conclusions of the meeting are summarized below:

- (a) The final version of the study is to be delivered on September 1st, 2025, as mentioned in the Terms of Reference. The Office of the Union will publish the study on its website as one of the documents to be considered at the eighth meeting of the WG-HRV, on October 22, 2025.
- (b) The WG-HRV noted the progress made by the authors and took note of the structured approach and coordination in place to meet the study's objectives.
- (c) The WG-HRV noted the authors' intention to first address Article 14 and then consider the relationship with Article 16, as outlined in the terms of reference.
- (d) The WG-HRV reaffirmed that the study is to provide an analysis of the intentions of the drafters of the 1991 Act and that UPOV members are not bound by the content and/or conclusions drawn by the authors in the study.

DATE OF THE EIGHTH MEETING

13. The eighth meeting of the WG-HRV will take place in Geneva on Wednesday, October 22, 2025 (hybrid means), at a time to be announced.

[Annex I follows]

ANNEX I

TERMS OF REFERENCE OF THE STUDY ON THE "SCOPE OF THE BREEDER'S RIGHT" AND THE
RELATIONSHIP WITH THE "EXHAUSTION OF THE BREEDER'S RIGHT"

SCOPE:

The study to include:

- a first part with an analysis of the intentions of the drafters of the 1991 Act of the UPOV Convention in relation to the "Scope of the Breeder's Right" in Article 14(1) and (2) of the 1991 Act, including the notions of "unauthorized use" and "reasonable opportunity" and the relationship with the "Exhaustion of the Breeder's Right" in Article 16 of the 1991 Act; and
- a second part with summaries of relevant court cases from UPOV members bound by the 1991 Act.

COMPOSITION:

The study should be carried out by the five authors mentioned below. The authors should agree on one of them to be coordinating their work.

The working language of the authors should be English and the study should be drafted in English.

Experts (alphabetic order)
Mr. Huib Ghijsen
Ms. Vivianne Kunisawa
Mr. Charles Lawson
Mr. Axel Metzger
Mr. Joseph Straus

MODUS OPERANDI:

Independence:

The authors are independent in drafting the study, in the sense that the authors should not receive individual instructions from anyone and that the authors should be impartial and objective.

The five authors should draft one study and should follow a collaborative working method following academic standards. Following such standards, the authors should manage potential different perspectives or analysis and, if applicable, how such matters should be reflected in the study.

Having received the study, it is up to the WG-HRV to consider a possible follow-up and to request further guidance from the CAJ, as appropriate.

UPOV members are not bound by the content and/or conclusions drawn in the study.

Timeline:

The authors will be asked to deliver the draft study by latest February 28, 2025, for consideration at the seventh meeting of the WG-HRV, expected to take place in Geneva on March 20, 2025. The final version of the study to be delivered by latest September 1st, 2025.

The time could be prolonged upon request by the authors.

Financial support:

55,000 Swiss Francs which would include:

- Honorarium of 10,000 Swiss francs for each of the 5 authors.
- Travel expenses up to 5,000 Swiss francs in total for the 5 authors. The purpose of the travel could be to convene a meeting amongst the authors or to support travel to come to Geneva to present the findings of the study or any other unforeseen travel expenses.

The overall estimation of the cost to be shared as follows: UPOV regular budget would cover 30,000 Swiss francs and the Funds-in-Trust Agreement between the Government of Japan and UPOV (JP-FIT) would cover 25,000 Swiss francs.

[Annex II follows]

ANNEXE II / ANNEXII / ANEXO II

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

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