

**Working Group on Harvested Material and Unauthorized Use of Propagating Material****WG-HRV/9/3****Ninth Meeting  
Geneva, March 19, 2026****Original: English  
Date: June 8, 2026**

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**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 ninth meeting in Geneva, on March 19, 2026, by virtual means, 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 WG-HRV noted that the authors would be present only during the first part of the meeting for the presentation of the study and to reply to questions and, during the second part of the meeting, the WG-HRV would continue its deliberations on its future work.
4. The WG-HRV noted that the list of participants would be distributed directly to participants via email.

**ADOPTION OF THE AGENDA**

5. The WG-HRV adopted the draft agenda as proposed in document WG-HRV/9/1.

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

6. Mr. Huib Ghijsen presented, on behalf of the authors, the main elements of the final version of the study, reproduced in Annex I of document WG-HRV/9/2 and answered questions received in advance of the meeting that were notified to the WG-HRV and posted in the WG-HRV/9 webpage. He also replied with the support of the other authors to the questions posed during the meeting on the information provided in the study. The WG-HRV noted that the presentation was available on the UPOV website under: [https://www.upov.int/meetings/en/details.jsp?meeting\\_id=90361](https://www.upov.int/meetings/en/details.jsp?meeting_id=90361).
7. The representative of the International Association of Horticultural Producers (AIPH) requested additional analysis on whether the outcome of the court cases summarized in the study were in line with the conclusions of the study.
8. The Chair noted that requesting the authors to undertake additional analysis of the cases summarized in the study would go beyond the scope of the study, as specified in the terms of reference. She further explained that further work of the authors would require the development and agreement by the WG-HRV on new terms of reference and that matter was not anticipated in the agenda of the meeting.
9. The WG-HRV noted that the version of the study published in Annex I of document WG-HRV/9/2 was the final version of the study and that the purpose of the questions and answers on the study was to facilitate the understanding of the study and not to modify its contents.

10. Before the authors left the meeting, the WG-HRV expressed its appreciation to Huib Ghijsen, Viviane Kunisawa, Charles Lawson, Axel Metzger and Joseph Straus, for their work on the analysis of intentions of the drafters of the 1991 Act of the UPOV Convention and the summaries of relevant court cases from UPOV members bound by the 1991 Act.

#### NEXT STEPS OF THE WORK OF THE WG-HRV

11. The WG-HRV agreed that the discussions at the meeting and the information in the study provided a good basis for the preparation of proposals for certain topics for the revision of the “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” (document UPOV/EXN/HRV/1).

12. The WG-HRV considered matters that would benefit from clarification and agreed to focus on the following topics for its future work:

- (a) the notion of the inseparable whole of the two cumulative preconditions for the extension of the breeder’s right to harvested material conditions in Article 14(2) of the 1991 Act of the UPOV Convention:
  - (i) the unauthorized use of the propagating material of the protected variety requires the authorization of the breeder; and
  - (ii) that the breeder has had “no” reasonable opportunity to exercise the right in relation to the said propagating material.
- (b) the notion of unauthorized use
  - (i) to explain a situation(s) when harvested material comes back into a territory in which the variety is covered by protection;
  - (ii) to explain a situation(s) when unauthorized use takes place entirely within the territory of protection.
- (c) the notion of reasonable opportunity
  - (i) if the breeder had a reasonable opportunity to exercise his right commercially; and/or
  - (ii) if the breeder had a reasonable opportunity to enforce his rights by way of legal remedies;
- (d) the notion of the “cascade principle”
- (e) the notion of exercising the breeder’s right at the earliest possible stage
- (f) the relationship between Article 14(2) and Article 16 of the 1991 Act of the UPOV Convention on the exhaustion of the breeder’s right.

13. The WG-HRV agreed to focus its work on developing guidance on the list of topics identified in paragraph 12 above and noted that it did not represent an exhaustive list of topics.

14. The WG-HRV was in favor of starting work with topics where there was more opportunity to achieve common understanding and progressively build towards clarifying more complex or less clear concepts.

15. The WG-HRV agreed that the Office of the Union would prepare draft proposals, for the revision of document UPOV/EXN/HRV/, on the topics referred to in paragraph 12 above for consideration by the WG- HRV at its next meeting.

16. Following the experience of the preparatory work for the WG-HRV/9 meeting, the WG-HRV agreed that, in the circular announcing the posting of the working document, the Office of the Union would invite comments on the draft proposals. The comments received in reply to the circular would be notified to the WG-HRV and posted in the WG-HRV/10 webpage, in advance of the meeting, to facilitate discussions and enhance efficiency during the meeting in October.

#### DATE OF THE TENTH MEETING

17. The tenth meeting of the WG-HRV will take place in Geneva on Wednesday, October 21, 2026 (hybrid format) from 18:00 to 20:00 (Geneva time).

[End of Report]