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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

CONSULTATIVE COMMITTEE**Ninety-First Session
Geneva, March 17, 2016****INTERRELATIONS WITH THE INTERNATIONAL TREATY ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (ITPGRFA)***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 present comments by members of the Union on the areas of interrelations identified by the Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) in document CC/90/11 Corr. "Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)", Annex I "Letter from the Secretary of the ITPGRFA dated March 27, 2015", and suggestions made by members of the Union on other areas of interrelations.
2. The comments and suggestions received from members of the Union have been compiled in this document as a basis for discussion at the ninety-first session of the Consultative Committee in conjunction with a presentation to be made by the Secretary of the ITPGRFA. The Consultative Committee will also be invited to further discuss the idea of a symposium in which Contracting Parties would present information on their experiences in implementing the UPOV Convention and the ITPGRFA.

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BACKGROUND

3. The Consultative Committee, at its ninetieth session, held in Geneva on October 28 and 29, 2015, considered the following documents:

- CC/90/11 Corr. "Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)", including:
 - Annex I: Letter from the Secretary of the ITPGRFA dated March 27, 2015 (in English only)
 - Appendix I: Report of the Second Meeting of the ITPGRFA *Ad Hoc* Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture (ACSU), held in Rome on March 2 and 3, 2015
 - Appendix II: Preliminary list of issues on interrelations of the International Treaty and the relevant international instruments of UPOV and WIPO, as processed by the *Ad Hoc* Technical Committee on Sustainable Use at its second meeting in March 2015
- CC/90/11 Add. "Addendum - Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)", including Resolution 5/2015 "Implementation of Article 9, Farmers' Rights" adopted by Governing Body of the ITPGRFA (GB) at its Sixth Session, held in Rome, from October 5 to 9, 2015, which concerned interrelations between the respective instruments of UPOV, WIPO and the ITPGRFA.

4. The Consultative Committee, at its ninetieth session, considered documents CC/90/11 Corr. and CC/90/11 Add., and noted the developments concerning possible areas of interrelations among the international instruments of the ITPGRFA, the World Intellectual Property Organization (WIPO) and UPOV (see document CC/90/19 "Report on the Conclusions", paragraph 70). A copy of document CC/90/11 Corr., Annex I "Letter from the Secretary of the ITPGRFA dated March 27, 2015", excluding Appendices I and II, is reproduced as Annex I to this document. Copies of Appendices I "Report of the Second Meeting of the ITPGRFA *Ad Hoc* Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture (ACSU), held in Rome on March 2 and 3, 2015" and II "Preliminary list of issues on interrelations of the International Treaty and the relevant international instruments of UPOV and WIPO, as processed by the *Ad Hoc* Technical Committee on Sustainable Use at its second meeting in March 2015" to Annex I are reproduced in Annex II to this document.

5. As a first step, the Consultative Committee agreed to invite the Secretary of the ITPGRFA to make a presentation at its ninety-first session on possible areas of interrelations between the ITPGRFA and the UPOV Convention. The Consultative Committee also agreed that members of the Union should be invited to comment on the areas of interrelations identified by the Secretary of the ITPGRFA in document CC/90/11 Corr., Annex I, and suggest any other areas of interrelations. The Consultative Committee agreed that the information should be compiled by the Office of the Union for discussion at the ninety-first session in conjunction with the presentation by the Secretary of the ITPGRFA. The Consultative Committee also discussed the idea of a symposium in which Contracting Parties would present information on their experiences in implementing the UPOV Convention and the ITPGRFA (see document CC/90/19 "Report on the Conclusions", paragraph 71).

6. On November 11, 2015, Mr. Francis Gurry, Secretary-General of UPOV, wrote to Mr. Bhatti, Secretary of the ITPGRFA, inviting him to attend the relevant part of the ninety-first session of the Consultative Committee in order to make a presentation on possible areas of interrelations between the ITPGRFA and the UPOV Convention.

7. A table and a map of Contracting Parties to the UPOV Convention / ITPGRFA are attached as Annex IX for information in relation to the possible symposium.

COMMENTS AND SUGGESTIONS BY MEMBERS OF THE UNION

8. On November 18, 2015, the Office of the Union issued Circular E-15/264 "Interrelation with the ITPGRFA: invitation for comments and suggestions" to the designated persons of the Consultative Committee, with an invitation to comment on the areas of interrelations identified by the ITPGRFA in document CC/90/11 Corr., Annex I, and suggest any other areas of interrelations. The Office of the Union

received contributions from Denmark, Germany, Norway, Turkey and the United States of America, copies of which are presented in Annexes III to VII, respectively.

9. The Consultative Committee is invited to consider the contributions from Denmark, Germany, Norway, Turkey and the United States of America, as presented in Annexes III to VII, respectively, to this document. In order to assist the Consultative Committee in its considerations, a summary of those contributions is presented below, and extracts from Article 9 “Farmers’ Rights” and Article 6 “Article 6 Sustainable Use of Plant Genetic Resources” of the ITPGRFA are presented in Annex VIII to this document.

<u>Member of the Union</u>	<u>Issue</u>	<u>Summary of comments and suggestions</u>
Denmark	Symposium	Supports the idea of a symposium in which the Contracting Parties would present information on their experiences in implementing the UPOV Convention and the ITPGRFA.
Denmark	ITPGRFA/ACSU ¹	Considers that the areas of interrelations identified by the Secretary of the ITPGRFA in document CC/90/11 Corr. Annex I, are all relevant to be further elaborated on as areas of interrelations.
Denmark	New issue	To consider the Conference Conclusions as contained in the Proceedings of the Second World Seed Conference – “Responding to the challenges of a changing world: The role of new plant varieties and high quality seed in agriculture”, held at FAO Headquarters, Rome, September 8-10, 2009, jointly organized by OECD, UPOV, ITPGRFA, ISTA and ISF.
Germany	Symposium	“We support the idea of a seminar or symposium together with the ITPGRFA to make aware experiences or possible problems when implementing UPOV in respect of Farmers’ Rights. We think it would be helpful for a fruitful and broad discussion not only to invite UPOV Member States but also States which are listed by UPOV on the Status List under point II [States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention] and maybe those under point III [States and intergovernmental organizations which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention], provided that they are Members of the ITPGRFA.”
Norway	ITPGRFA/ACSU ¹	(Farmers’ Rights) “Norway considers the preliminary list of issues on interrelations referred to in the Circular to address relevant topics in regard to the interrelations between the Acts of the UPOV Convention and the Plant Treaty. Several of the issues listed (from a) till q)) could be merged since some of them address the same issues. None of the issues in the list is explained in any detail. Thus, there is also a need for further analysis to explain the possible content and consequence of the interrelations. [...] Norway supports the usefulness of specifying the concrete relationship between the different acts of the UPOV convention and the Plant Treaty since the differences between the acts have impact on how to describe the relationships. [...]”
Norway	ITPGRFA/ACSU ¹	(Farmers’ Rights) <i>Protection of traditional knowledge:</i> “There is a need for clarification of how UPOV and the Plant Treaty use the term ‘protection’ in order to have a common understanding of the meaning of the term in different context. [...]”
Norway	ITPGRFA/ACSU ¹	(Farmers’ Rights) <i>Benefit sharing:</i> “The Plant Treaty highlight the need for both monetary and non-

¹ See document CC/90/11 Corr., Annex I: Letter from the Secretary of the ITPGRFA dated March 27, 2015; Appendix II: Preliminary list of issues on interrelations of the International Treaty and the relevant international instruments of UPOV and WIPO, as processed by the Ad Hoc Technical Committee on Sustainable Use at its second meeting in March 2015.

		monetary benefit sharing. The development of new plant varieties, particularly if included in the Multilateral system of access and benefit sharing of the Plant Treaty, are important examples of non-monetary benefit sharing. During a meeting in Oslo in March 2014, some participants suggested that the value of the non-monetary contribution of new varieties could be enhanced if breeders included protected varieties as well as expired varieties into the Multilateral system of access and benefit sharing of the Plant Treaty. Furthermore, the issue of user-based benefit-sharing was raised.”
Norway	ITPGRFA/ACSU ¹	(Farmers' Rights) <i>Benefit sharing:</i> “The genetic resources must be acquired in accordance with national legislation and policies that includes the need for prior informed consent and based on mutually agreed terms, or in line with the Standard Material Transfer Agreement (SMTA) of the Multilateral system on access and benefit sharing of the Plant Treaty. Norway has therefore included a duty to inform about the origin of the material that are included in the variety when applying for plant variety protection, unless the material are acquired in accordance with the SMTA.”
Norway	ITPGRFA/ACSU ¹	(Farmers' Rights) <i>Participation:</i> “The right of farmers to participate in decision making processes related to PGRFA at the national level is reflected in Article 9 of the Plant Treaty. It could also be of valuable contribution of this processes of identifying interrelationships to consider how participation of farmers are facilitated at the international level in sessions of the Plant Treaty and UPOV as well as in their working groups [...]”
Norway	ITPGRFA/ACSU ¹	(Farmers' Rights) <i>Farmed saved seeds:</i> “In 2005, Norway considered adhering to the 1991 Act, but the newly elected government later that year dropped these plans due to the consideration that the 1978 Act provides a better balance between plant breeders' rights and farmers' rights, particularly in regard to farmed-saved seeds.”
Norway	New issue	(Farmers' Rights) <i>Recognition:</i> “The list of issues does not address recognition of farmers, local communities and indigenous peoples' contribution for the conservation and development of plant genetic resources, as stated in Article 9.1 of the Plant Treaty. This should be looked further into.”
Norway	New issue	<i>Other articles of the Plant Treaty</i> “The list of issues is closely linked to Article 9 of the Plant Treaty. The identification of interrelations should also include analysis of the possible interrelations between other articles, such as article 6 on sustainable use, and the Acts of the UPOV Convention. Pre-breeding could be views as [an] example of complementarities between the Plant Treaty and UPOV. Pre-breeding aims at broadening the genetic base of crops as addressed in Article 6 of the Plant Treaty. Broader genetic base of crops is valuable for plant breeders. However, such activities could be challenging to give due attention when your main activity is the breeding of DUS-varieties.”
Norway	Symposium	“Norway supports the suggestion of organising a symposium where countries and other relevant stakeholders could present their views.”

Norway	New issue	"[...]In addition, Norway believes there is a need for further analysis of this subject matter [inter-relations]. After the decision on exploring these interrelations by the 5th session of the Governing Body of the Plant Treaty in 2013, a few studies have been compiled . Norway thinks that a study should be carried out by an independent expert committee and through a participatory and inclusive process."
Norway	New issue	<i>Complementarities between the Plant Treaty and UPOV:</i> "Norway regards these two instruments to be complementary systems with different roles in the governance of Plant Genetic Resources for Food and Agriculture (PGRFA). The Plant Treaty governs all PGRFA including crop diversity; variety diversity; intra-variety diversity and crop wild relatives, and establishes and encourages a wide set of activities in order to achieve its objectives of conservation and sustainable use of PGRFA, as well as equitable benefit sharing. The UPOV Convention, on the other hand, is a specific instrument for intellectual property rights of varieties fulfilling the DUS and novelty criteria."
Turkey	New issue	Turkey, in accordance with strengthening relations between UPOV and ITPGRFA, support, in principle, the exchange of information among relevant databases.
United States of America	ITPGRFA/ACSU'	"[...] At the last Consultative Committee session on October 28 and 29, 2015, we raised questions and concerns about the proposed possible areas of interrelations between the ITPGRFA and the UPOV Convention identified by the Secretary of ITPGRFA in documents CC/90/11 Corr. and CC/90/11/Add. We are pleased that the UPOV Office will invite the Secretary of ITPGRFA to make a presentation on the matter. We would reserve our comments and suggestions until after we review the Secretary's presentation and explanation."

MATTERS FOR CONSIDERATION BY THE CONSULTATIVE COMMITTEE

10. It is recalled that, as a first step with regard to exploring possible areas of interrelations among the international instruments of the ITPGRFA, the World Intellectual Property Organization (WIPO) and UPOV, the Consultative Committee, at its ninetieth session (see paragraph 5), agreed to:

- (a) invite the Secretary of the ITPGRFA to make a presentation at its ninety-first session on possible areas of interrelations between the ITPGRFA and the UPOV Convention;
- (b) invite members of the Union to comment on the areas of interrelations identified by the Secretary of the ITPGRFA in document CC/90/11 Corr., Annex I, Appendix II, and suggest any other areas of interrelations for discussion at the ninety-first session of the Consultative Committee in conjunction with the presentation by the Secretary of the ITPGRFA; and
- (c) discuss the idea of a symposium in which Contracting Parties would present information on their experiences in implementing the UPOV Convention and the ITPGRFA.

11. On the above basis, the Consultative Committee may wish to:

- (i) consider the areas of interrelations identified by the Secretary of the ITPGRFA in document CC/90/11 Corr., Annex I, Appendix II, in conjunction with the comments made by members of the Union, and other areas identified by members of the Union, as set out in paragraph 9 of this document;
- (ii) consider the idea of a symposium in which Contracting Parties would present information on their experiences in implementing the UPOV Convention and the ITPGRFA;
- (iii) consider the presentation by the Secretary of the ITPGRFA on possible areas of interrelations between the ITPGRFA and the UPOV Convention; and
- (iv) draw conclusions on how to proceed.

12. *The Consultative Committee is invited to consider:*

(a) *the areas of interrelations identified by the Secretary of the ITPGRFA in document CC/90/11 Corr., Annex I, Appendix II, in conjunction with the comments by members of the Union on those areas, as set out in paragraph 9 of this document;*

(b) *other areas of interrelations identified by members of the Union, as set out in paragraph 9 of this document;*

(c) *the idea of a symposium in which Contracting Parties would present information on their experiences in implementing the UPOV Convention and the ITPGRFA; and*

(d) *the presentation by the Secretary of the ITPGRFA on possible areas of interrelations between the ITPGRFA and the UPOV Convention.*

[Annexes follow]

Letter from the Secretary of the ITPGRFA dated March 27, 2015



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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www.fao.org

Our Ref.: ITPGRFA/ACSU-2 Outcomes

Your Ref.:

Rome, 27 March 2015

<http://www.planttreaty.org>

Dear Dr. Gurry,

Referring to my letter of 26 February 2015, I would like to bring to your attention the main outcomes of the successful second meeting of the *Ad Hoc* Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture (ACSU), which was held from 2 to 3 March 2015 in Rome, Italy.

At first I would like to thank you for sending a representative of the Office of the International Union for the Protection of New Varieties of Plants (UPOV) to attend this meeting and for his active and valuable participation.

The Committee in its discussions followed the steps advised by the Bureau of the Sixth Session of the Governing Body on 6 October 2014, as set out in [Notification GB6-028](#). The full Report of the ACSU is available on the [Treaty website](#). As you will see from the relevant passages of the Report (excerpted for your ease of reference at Appendix 1), the ACSU discussed possible issues of interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (International Treaty) and the relevant instruments of UPOV and the World Intellectual Property Organization (WIPO). It reviewed the tentative list of some of the issues that were mentioned in the submission that I had received before the meeting and recommended to forward the list in slightly amended form to UPOV and WIPO (see Appendix 2). It noted that the different instruments recognize and promote different forms of innovation in the use of plant genetic resources for food and agriculture by farmers and breeders, including formal and informal systems.

In accordance with the steps set out in the Notification GB6-028 for the identification of interrelations among our respective international instruments, I would now like to kindly suggest to have a meeting to have a preliminary discussion on the issues of interrelations that were processed by the ACSU, as well as further potential issues of interrelations, and on the possible team of experts which would draft the first outline of a joint report.

It would be a pleasure for me to have an initial meeting on these issues later this week or next week, as I will be in Geneva for the UPOV Council and the Seminar on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: Regional, National and Local Experiences, until coming Thursday, 2 April.

../..

Dr. Francis Gurry
Secretary-General
International Convention for the Protection of New
Varieties of Plants
Director-General
World Intellectual Property Organization
Geneva

I remain at your disposal for any further information you may require and I look forward to continuing our excellent cooperation on all matters of mutual interest to WIPO, the UPOV Convention and the International Treaty.

Please accept the assurance of my highest regards.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Shakeel T. Bhatti". The signature is fluid and cursive, with a prominent flourish at the end.

Dr. Shakeel T. Bhatti
Secretary
International Treaty on Plant Genetic Resources
for Food and Agriculture

[Annex II follows]

March 2015



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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SECOND MEETING OF THE *AD HOC* TECHNICAL COMMITTEE ON
SUSTAINABLE USE OF PLANT GENETIC RESOURCES FOR FOOD AND
AGRICULTURE

2-3 March 2015, Rome, Italy

REPORT

[...]

6. Identification of Interrelations Between the International Treaty, especially its Article 9, and Relevant Instruments of UPOV and WIPO

25. The Global Forum on Agricultural Research (GFAR) reported on its activities and collaboration with the Treaty Secretariat supporting the implementation of Articles 6 and 9 of the Treaty. The statement of GFAR is in *Appendix 12*. Subject to the availability of sufficient resources, GFAR stated its intention to possibly convene a workshop on farmers' rights in collaboration with the Treaty Secretariat, to discuss possible joint activities.

26. The Committee had a preliminary discussion on possible issues of interrelations between the International Treaty and the relevant instruments of UPOV and WIPO.

27. Following the advice by the Bureau, it reviewed the tentative list of some of the issues that were mentioned in the submissions received by the Secretary before this meeting, and recommended to forward the entire list in slightly amended form to UPOV and WIPO. It advised to group the issues under four elements of Article 9 of the Treaty, namely the rights mentioned in its subparagraphs 9.2a), 9.2b), 9.2c) and 9.3. It noted that the different instruments recognize and promote different forms of innovation in the use of PGRFA by farmers and breeders, including formal and informal systems.

[...]

Appendix II

Preliminary list of issues on interrelations of the International Treaty and the relevant international instruments of UPOV and WIPO, as processed by the *Ad Hoc* Technical Committee on Sustainable Use at its second meeting in March 2015:

Art. 9.2a of the International Treaty (protection of traditional knowledge relevant to plant genetic resources for food and agriculture):

- a) The protection of traditional knowledge relevant to plant genetic resources for food and agriculture (PGRFA) in relation to the UPOV Convention, as revised in 1978 and 1991.

Art. 9.2b of the International Treaty (the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture):

- b) The right of farmers to equitably participate in sharing benefits arising from the utilization of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- c) The concept of “Farmers’ Rights” as a collective right in comparison to the generally individual character of intellectual property rights in the instruments of UPOV and WIPO.
- d) The DUS (distinct, uniform, stable) and novelty criteria of UPOV and farmers’ varieties, farmers’ informal seed systems and farmers’ traditional knowledge.
- e) The “breeders’ exemption” under the UPOV Convention and the right of farmers to equitably participate in benefit sharing under Article 9 of the Treaty.

Art. 9.2c of the International Treaty (the rights to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture):

- f) The right of farmers to participate in making decisions on matters related to the conservation and sustainable use of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- g) The participation of farmers in decision making processes, at the regional level, on matters related to the conservation and sustainable use of PGRFA in relation to the UPOV Convention, as revised in 1978 and 1991.
- h) Impact of the technical assistance provided by WIPO relating to PGRFA on the implementation of farmers’ rights and the objectives of the Treaty.
- i) Impact of WIPO’s instruments and processes, including the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC), on the implementation of Farmers’ Rights.

Appendix II

Art. 9.3 of the International Treaty (rights to save, use, exchange and sell farm-saved seed/propagating material):

- j) The implementation of Farmers' Rights under the International Treaty in light of obligations that countries have under the International Convention for the Protection of New Varieties of Plants (UPOV Convention), as revised in 1978 and 1991.
- k) The implementation of rights of farmers to save, use, exchange and sell farm-saved seed/propagating material, in light of the UPOV Convention, as revised in 1978 and 1991.
- l) The implementation of rights of farmers to save, use, exchange and sell farm-saved seed/propagating material, in light of relevant sui generis national legislation.
- m) The "farmers' privilege" under UPOV 1991 in comparison to the concept of "Farmers' Rights" under the Treaty.
- n) The concept of "essentially derived varieties" under UPOV 1991 in relation to the concept of "Farmers' Rights" under the Treaty, especially with regard to farmer-breeders and to informal seed systems.
- o) Recognition of farmers as breeders under the Treaty and relevant instruments of UPOV and WIPO.
- p) Patents in plants or plant varieties and their possible impact on Farmers' Rights.
- q) The enforcement provisions and mechanisms in the three instruments, with special regard to the potential enforcement of Farmers' Rights.

COMMENTS OF DENMARK IN RESPONSE TO CIRCULAR E-15/264
“INTERRELATION WITH THE ITPGRFA: INVITATION FOR COMMENTS AND SUGGESTIONS”

Miljø- og Fødevareministeriet
NaturErhvervstyrelsen

To Mr. Peter Button
Vice Secretary-General
UPOV

Our ref: 15-30390-000007
Date: 17 december 2015
upov.mail@upov.int

**Comments of Denmark
Regarding
UPOV Circular E-15/264
interrelation between the ITPGRFA and UPOV Convention
document UPOV/CC/90/11 Corr. Annex I**

Denmark supports the identified main initiatives and areas regarding the interrelation between the ITPGRFA and UPOV Convention.

We would like to emphasize that we encourage an open, constructive and dynamic dialogue regarding the interfaces of these two instruments, in order to ensure a balanced co-existence between the protected interests in general and of the stakeholders.

Denmark supports the initiative taken as a first step for the Consultative Committee of UPOV to invite the Secretary of the ITPGRFA to make presentations at its ninety-first session on possible areas of interrelations between the ITPGRFA and the UPOV Convention. We also supports the idea of a symposium in which the Contracting Parties would present information on their experiences in implementing the UPOV Convention and the ITPGRFA.

The areas of interrelations identified by the ITPGRFA in document CC/90/11 Corr. Annex I, are all relevant to be further elaborated on as areas of interrelations.

As a final comment we would like to draw attention to *the Proceedings of the Second World Seed Conference – Responding to the challenges of a changing world: The role of new plant varieties and high quality seed in agriculture*, facilitated in the FOA Headquarters, Rome, from 8-10th September 2009, organized with the OECD, UPOV, ITPGRFA, ISTA and ISF - the five main stakeholders in the field of seed. The conclusions of the Conference back then were as followed¹:

- *Plant breeding has significantly contributed and will continue to be a major contributor to increased food security whilst reducing input costs, greenhouse gas emissions and deforestation. With that, plant breeding significantly mitigates the effects of population growth, climate change and other social and physical challenges.*
- *ITPGRFA is an innovative instrument that aims at providing food security through conservation, as well as facilitated access to genetic resources under its multilateral system of access and benefit-sharing. The multilateral system represents a*

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reservoir of genetic traits, and therefore constitutes a central element for the achievement of global food security.

- *Intellectual property protection is crucial for a sustainable contribution of plant breeding and seed supply. An effective system of plant variety protection is a key enabler for investment in breeding and the development of new varieties of plants. A country's membership of UPOV is an important global signal for breeders to have the confidence to introduce their new varieties in that country.*
- *Seed quality determination, as established by ISTA, on seed to be supplied to farmers is an important measure for achieving successful agricultural production. The establishment or maintenance of an appropriate infrastructure on the scientific as well as technical level in developed and developing countries is highly recommended.*
- *The development of reliable and internationally acceptable certificates, through close collaboration between all stakeholders along the supply chain for varietal certification, phytosanitary measures and laboratory testing, contributes substantially to the strong growth in international trade and development of seed markets to the benefit of farmers.*

We think that these main conclusions developed by experts during the Conference for more than 6 years ago still are significantly relevant in respect of the challenges that we are facing today; what we learned back then may well be applied in a comparative analysis of the present status.

Yours sincerely

Maria Lillie Sonne
Head of Legal
Planter & Landbrugslov
The Danish AgriFish Agency
maliso@naturerhverv.dk

¹ Cited from page 9 (see also page 275) of the report: http://www.upov.int/edocs/pubdocs/en/upov_pub_354.pdf

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ANNEX IV

COMMENTS OF GERMANY IN RESPONSE TO CIRCULAR E-15/264
“INTERRELATION WITH THE ITPGRFA: INVITATION FOR COMMENTS AND SUGGESTIONS”

We support the idea of a seminar or symposium together with the ITPGRFA to make aware experiences or possible problems when implementing UPOV in respect of Farmers' Rights. We think it would be helpful for a fruitful and broad discussion not only to invite UPOV Member States but also States which are listed by UPOV on the Status List under point II and maybe those under point III, provided that they are Members of the ITPGRFA.

[Annex V follows]

COMMENTS OF NORWAY IN RESPONSE TO CIRCULAR E-15/264
"INTERRELATION WITH THE ITPGRFA: INVITATION FOR COMMENTS AND SUGGESTIONS"

Submissions from Norway regarding the interrelations between the Acts of the UPOV Convention and the International Treaty on Plant Genetic Resources for Food and Agriculture (the Plant Treaty)

We refer to UPOV Circular E-15/264 dated November 18, 2015, regarding interrelations between the Acts of the UPOV Convention and the International Treaty on Plant Genetic Resources for Food and Agriculture (the Plant Treaty). The Consultative Committee, at its ninetieth session held in Geneva on October 28 and 29, 2015, agreed that members of the Union should be invited to comment on the areas of interrelations identified by the Plant Treaty. Norway would hereby provide a few comments on the subject matter.

Norway has been a member of UPOV since 1993 and became a Contracting Party to the Plant Treaty in 2004. Norway regards these two instruments to be complementary systems with different roles in the governance of Plant Genetic Resources for Food and Agriculture (PGRFA). The Plant Treaty governs all PGRFA including crop diversity; variety diversity; intra-variety diversity and crop wild relatives, and establishes and encourages a wide set of activities in order to achieve its objectives of conservation and sustainable use of PGRFA, as well as equitable benefit sharing. The UPOV Convention, on the other hand, is a specific instrument for intellectual property rights of varieties fulfilling the DUS and novelty criteria.

UPOV and the Plant Treaty share the same basic assumption that plant breeding is crucial for food security and that access to plant genetic resources is a prerequisite for plant breeding. This is recognized in the breeders' exemption in UPOV and by the facilitated access provided for by the Multilateral system of access and benefit sharing of the Plant Treaty.

Norway considers the preliminary list of issues on interrelations referred to in the Circular to address relevant topics in regard to the interrelations between the Acts of the UPOV Convention and the Plant Treaty. Several of the issues listed (from a) till q)) could be merged since some of them address the same issues. None of the issues in the list is explained in any detail. Thus, there is also a need for further analysis to explain the possible content and consequence of the interrelations. Several of the inputs at the list give specific reference to the 1978 Act and 1991 Act of the UPOV Convention. Furthermore, it would be useful to also refer to which of the specific articles in the different acts that are of relevance to various issues. Norway supports the usefulness of specifying the concrete relationship between the different acts of the UPOV convention and the Plant Treaty since the differences between the acts have impact on how to describe the relationships. Furthermore, it would be useful to also refer to which of the specific articles in the different acts that are of relevance to various issues.

Some specific comments to the various elements of Farmers' Rights, which provide the structure of the list of issues:

Protection of traditional knowledge

There is a need for clarification of how UPOV and the Plant Treaty use the term "protection" in order to have a common understanding of the meaning of the term in different context. Protecting farmers' traditional knowledge can mean different things. Based on an *ownership approach* it would mean offering ownership status to farmers with the right to act against misappropriation and decide over the use of their knowledge and related plant genetic resources. A *stewardship approach*, on the

other hand, is about ensuring that the knowledge does not die out, and for that purpose the broadest possible sharing of knowledge is necessary.¹ Such a clarification should also address the understanding of "protection" in the UPOV context, where it refers to the protection of new plant varieties.

Benefit sharing

The Plant Treaty highlights the need for both monetary and non-monetary benefit sharing. The development of new plant varieties, particularly if included in the Multilateral system of access and benefit sharing of the Plant Treaty, are important examples of non-monetary benefit sharing. During a meeting in Oslo in March 2014, some participants suggested that the value of the non-monetary contribution of new varieties could be enhanced if breeders included protected varieties as well as expired varieties into the Multilateral system of access and benefit sharing of the Plant Treaty. Furthermore, the issue of user-based benefit-sharing was raised.

The genetic resources must be acquired in accordance with national legislation and policies that includes the need for prior informed consent and based on mutually agreed terms, or in line with the Standard Material Transfer Agreement (SMTA) of the Multilateral system on access and benefit sharing of the Plant Treaty. Norway has therefore included a duty to inform about the origin of the material that are included in the variety when applying for plant variety protection, unless the material are acquired in accordance with the SMTA.

Participation

The right of farmers to participate in decision making processes related to PGRFA at the national level is reflected in Article 9 of the Plant Treaty. It could also be of valuable contribution of this processes of identifying interrelationships to consider how participation of farmers are facilitated at the international level in sessions of the Plant Treaty and UPOV as well as in their working groups. In addition, the right of farmers to participate may be relevant for the development of an International Cooperation System (ISC).

During discussions on participation of observers and access to documents in recent years in UPOV, Norway has advocated for wider participation and more transparency.

Farmed saved seeds

In 2005, Norway considered adhering to the 1991 Act, but the newly elected government later that year dropped these plans due to the consideration that the 1978 Act provides a better balance between plant breeders' rights and farmers' rights, particularly in regard to farmed-saved seeds.²

Recognition

The list of issues does not address recognition of farmers, local communities and indigenous peoples' contribution for the conservation and development of plant genetic resources, as stated in Article 9.1 of the Plant Treaty. This should be looked further into.

¹ Based on results from the Farmers' Rights project at the Fridtjof Nansen Institute: http://www.farmersrights.org/about/fr_contents_2.html

² Regine Andersen (2013): "Norway's path to ensuring Farmers' Rights in the European context", chapter 3 in Regine Andersen and Tone Winge (eds) (2013): *Realising Farmers' Rights to crop genetic resources. Success stories and best practices*, Routledge

Other articles of the Plant Treaty

The list of issues is closely linked to Article 9 of the Plant Treaty. The identification of interrelations should also include analysis of the possible interrelations between other articles, such as article 6 on sustainable use, and the Acts of the UPOV Convention. Pre-breeding could be viewed as an example of complementarities between the Plant Treaty and UPOV. Pre-breeding aims at broadening the genetic base of crops as addressed in Article 6 of the Plant Treaty. Broader genetic base of crops is valuable for plant breeders. However, such activities could be challenging to give due attention when your main activity is the breeding of DUS-varieties.

Complementarities between the Plant Treaty and UPOV

Norway regards these two instruments to be complementary systems with different roles in the governance of Plant Genetic Resources for Food and Agriculture (PGRFA). The Plant Treaty governs all PGRFA including crop diversity; variety diversity; intra-variety diversity and crop wild relatives, and establishes and encourages a wide set of activities in order to achieve its objectives of conservation and sustainable use of PGRFA, as well as equitable benefit sharing. The UPOV Convention, on the other hand, is a specific instrument for intellectual property rights of varieties fulfilling the DUS and novelty criteria.

Next steps

Norway supports the suggestion of organizing a symposium where countries and other relevant stakeholders could present their views. In addition, Norway believes there is a need for further analysis of this subject matter. After the decision on exploring these interrelations by the 5th session of the Governing Body of the Plant Treaty in 2013, a few studies have been compiled³. Norway thinks that a study should be carried out by an independent expert committee and through a participatory and inclusive process.

[Annex VI follows]

³ E.g. By Berne Declaration and Third World Network:
https://www.bernedecaration.ch/fileadmin/files/documents/Saatgut/2015_BD_Saatgut_EN_9-15_def.pdf and by GIZ:
<https://www.giz.de/fachexpertise/downloads/giz2015-en-upov-convention.pdf>

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ANNEX VI

COMMENTS OF TURKEY IN RESPONSE TO CIRCULAR E-15/264
“INTERRELATION WITH THE ITPGRFA: INVITATION FOR COMMENTS AND SUGGESTIONS”

Turkey, in accordance with strengthening relations between UPOV and ITPGRFA, support, in principle, the exchange of information among relevant databases.

[Annex VII follows]

ANNEX VII

COMMENTS OF THE UNITED STATES OF AMERICA IN RESPONSE TO CIRCULAR E-15/264
“INTERRELATION WITH THE ITPGRFA: INVITATION FOR COMMENTS AND SUGGESTIONS”

Dear Sir/Madam,

The United States Delegation thanks the UPOV Office for the invitation for comments and suggestions on “Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).” At the last Consultative Committee session on October 28 and 29, 2015, we raised questions and concerns about the proposed possible areas of interrelations between the ITPGRFA and the UPOV Convention identified by the Secretary of ITPGRFA in documents CC/90/11 Corr. and CC/90/11/Add. We are pleased that the UPOV Office will invite the Secretary of ITPGRFA to make a presentation on the matter. We would reserve our comments and suggestions until after we review the Secretary’s presentation and explanation.

Best regards,

Kitisri Sukhapinda, Ph.D., J.D.

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[Annex VIII follows]

ANNEX VIII

EXTRACTS FROM ARTICLE 9 "FARMERS' RIGHTS" AND
ARTICLE 6 "SUSTAINABLE USE OF PLANT GENETIC RESOURCES" OF THE ITPGRFA

Article 9 - Farmers' Rights

- 9.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.
- 9.2 The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:
- a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
 - b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and
 - c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.
- 9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

Article 6 - Sustainable Use of Plant Genetic Resources

- 6.1 The Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture.
- 6.2 The sustainable use of plant genetic resources for food and agriculture may include such measures as:
- a) pursuing fair agricultural policies that promote, as appropriate, the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources;
 - b) strengthening research which enhances and conserves biological diversity by maximizing intra- and inter-specific variation for the benefit of farmers, especially those who generate and use their own varieties and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and pests;
 - c) promoting, as appropriate, plant breeding efforts which, with the participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties particularly adapted to social, economic and ecological conditions, including in marginal areas;
 - d) broadening the genetic base of crops and increasing the range of genetic diversity available to farmers;
 - e) promoting, as appropriate, the expanded use of local and locally adapted crops, varieties and underutilized species;
 - f) supporting, as appropriate, the wider use of diversity of varieties and species in on-farm management, conservation and sustainable use of crops and creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion, and promote increased world food production compatible with sustainable development; and
 - g) reviewing, and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution.

[Annex IX follows]

ANNEX IX

TABLE AND MAP OF TERRITORIES TO WHICH THE UPOV CONVENTION/ITPGRFA APPLY

Contracting Parties to the UPOV Convention and ITPGRFA as of January 14, 2016

Country/Organization	UPOV Convention		ITPGRFA
	Latest Act to which the UPOV member is bound	UPOV member organization of which the State is a member	Contracting Party to the ITPGRFA
Afghanistan			✓
African Intellectual Property Organization (OAPI)	1991 Act		
Albania	1991 Act		✓
Algeria			✓
Angola			✓
Argentina	1978 Act		
Armenia			✓
Australia	1991 Act		✓
Austria	1991 Act	EU	✓
Azerbaijan	1991 Act		
Bangladesh			✓
Belarus	1991 Act		
Belgium	1961/1972 Act	EU	✓
Benin		OAPI	✓
Bhutan			✓
Bolivia (Plurinational State of)	1978 Act		
Brazil	1978 Act		✓
Bulgaria	1991 Act	EU	✓
Burkina Faso		OAPI	✓
Burundi			✓
Cambodia			✓
Cameroon		OAPI	✓
Canada	1991 Act		✓
Central African Republic		OAPI	✓
Chad		OAPI	✓
Chile	1978 Act		✓*
China	1978 Act		
Colombia	1978 Act		
Comoros		OAPI	
Congo		OAPI	✓
Cook Islands			✓
Costa Rica	1991 Act		✓
Cote d'Ivoire		OAPI	✓
Croatia	1991 Act	EU	✓
Cuba			✓
Cyprus		EU	✓
Czech Republic	1991 Act	EU	✓
Democratic People's Republic of Korea			✓
Democratic Republic of the Congo			✓
Denmark	1991 Act	EU	✓

* Chile will become bound by the ITPGRFA on April 13, 2016.

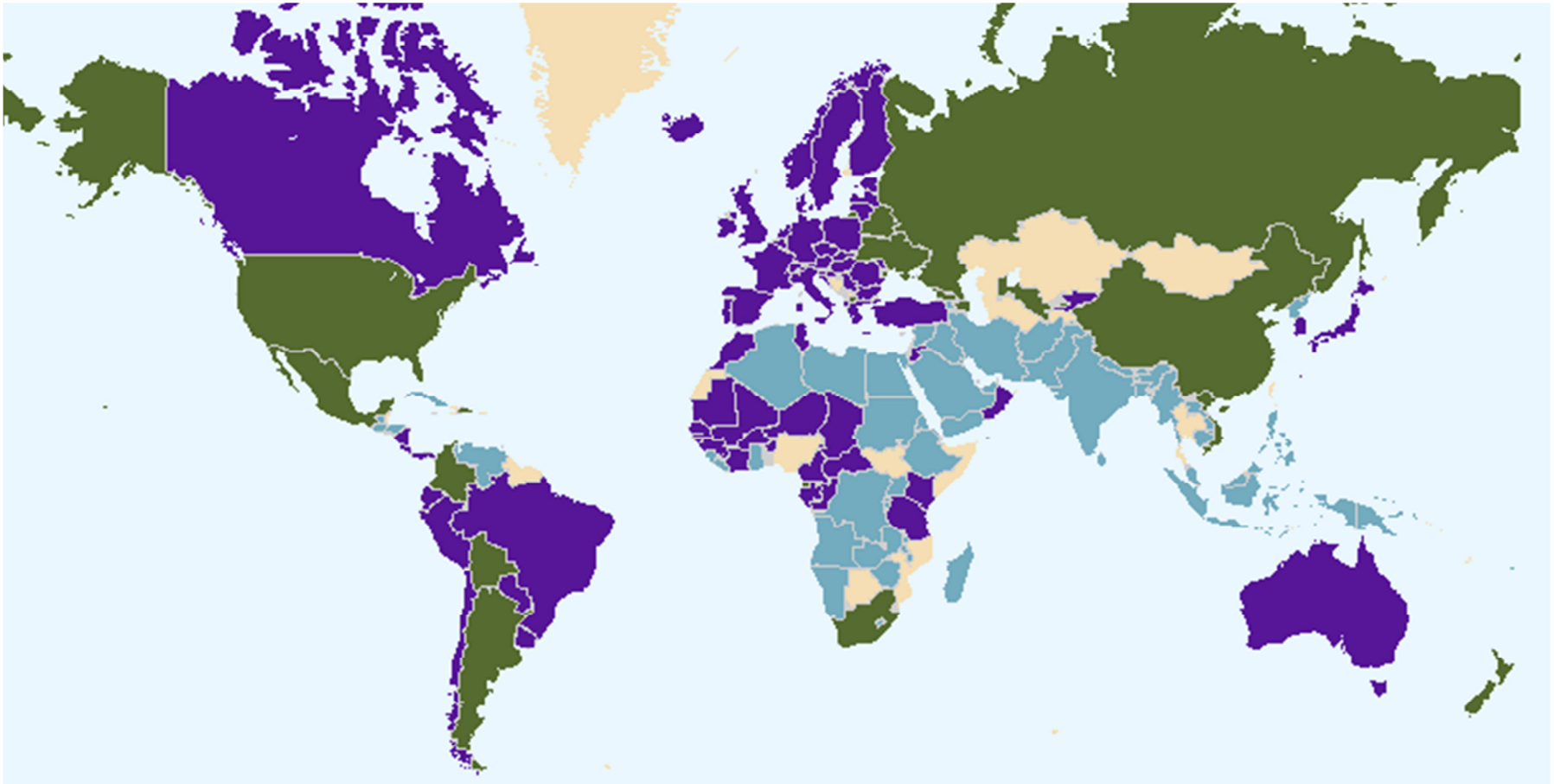
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Country/Organization	UPOV Convention		ITPGRFA
	Latest Act to which the UPOV member is bound	UPOV member organization of which the State is a member	Contracting Party to the ITPGRFA
Djibouti			✓
Dominican Republic	1991 Act		✓
Ecuador	1978 Act		✓
Egypt			✓
El Salvador			✓
Equatorial Guinea		OAPI	
Eritrea			✓
Estonia	1991 Act	EU	✓
Ethiopia			✓
European Union (EU)	1991 Act		✓
Fiji			✓
Finland	1991 Act	EU	✓
France	1991 Act	EU	✓
Gabon		OAPI	✓
Georgia	1991 Act		
Germany	1991 Act	EU	✓
Ghana			✓
Greece		EU	✓
Guatemala			✓
Guinea		OAPI	✓
Guinea-Bissau		OAPI	✓
Honduras			✓
Hungary	1991 Act	EU	✓
Iceland	1991 Act		✓
India			✓
Indonesia			✓
Iran (Islamic Republic of)			✓
Iraq			✓
Ireland	1991 Act	EU	✓
Israel	1991 Act		
Italy	1978 Act	EU	✓
Jamaica			✓
Japan	1991 Act		✓
Jordan	1991 Act		✓
Kenya	1978 Act		✓
Kiribati			✓
Kuwait			✓
Kyrgyzstan	1991 Act		✓
Lao People's Democratic Republic			✓
Latvia	1991 Act	EU	✓
Lebanon			✓
Lesotho			✓
Liberia			✓
Libya			✓
Lithuania	1991 Act	EU	✓
Luxembourg		EU	✓
Madagascar			✓
Malawi			✓
Malaysia			✓
Maldives			✓

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Country/Organization	UPOV Convention		ITPGRFA
	Latest Act to which the UPOV member is bound	UPOV member organization of which the State is a member	Contracting Party to the ITPGRFA
Mali		OAPI	✓
Malta		EU	
Marshall Islands			✓
Mauritania		OAPI	✓
Mauritius			✓
Mexico	1978 Act		
Montenegro	1991 Act		✓
Morocco	1991 Act		✓
Myanmar			✓
Namibia			✓
Nepal			✓
Netherlands	1991 Act	EU	✓
New Zealand	1978 Act		
Nicaragua	1978 Act		✓
Niger		OAPI	✓
Norway	1978 Act		✓
Oman	1991 Act		✓
Pakistan			✓
Palau			✓
Panama	1991 Act		✓
Papua New Guinea			✓
Paraguay	1978 Act		✓
Peru	1991 Act		✓
Philippines			✓
Poland	1991 Act	EU	✓
Portugal	1978 Act	EU	✓
Qatar			✓
Republic of Korea	1991 Act		✓
Republic of Moldova	1991 Act		✓
Romania	1991 Act	EU	✓
Russian Federation	1991 Act		
Rwanda			✓
Saint Lucia			✓
Samoa			✓
Sao Tome and Principe			✓
Saudi Arabia			✓
Senegal		OAPI	✓
Serbia	1991 Act		✓
Seychelles			✓
Sierra Leone			✓
Singapore	1991 Act		
Slovakia	1991 Act	EU	✓
Slovenia	1991 Act	EU	✓
South Africa	1978 Act		
Spain	1991 Act	EU	✓
Sri Lanka			✓
Sudan			✓
Swaziland			✓
Sweden	1991 Act	EU	✓
Switzerland	1991 Act		✓

Country/Organization	UPOV Convention		ITPGRFA
	Latest Act to which the UPOV member is bound	UPOV member organization of which the State is a member	Contracting Party to the ITPGRFA
Syrian Arab Republic			✓
The former Yugoslav Republic of Macedonia	1991 Act		
Togo		OAPI	✓
Tonga			✓
Trinidad and Tobago	1978 Act		✓
Tunisia	1991 Act		✓
Turkey	1991 Act		✓
Uganda			✓
Ukraine	1991 Act		
United Arab Emirates			✓
United Kingdom	1991 Act	EU	✓
United Republic of Tanzania	1991 Act		✓
United States of America	1991 Act		
Uruguay	1978 Act		✓
Uzbekistan	1991 Act		
Venezuela (Bolivarian Republic of)			✓
Viet Nam	1991 Act		
Yemen			✓
Zambia			✓
Zimbabwe			✓



- Territories to which only the UPOV Convention applies
- Territories to which only the ITPGRFA applies
- Territories to which the UPOV Convention and the ITPGRFA apply