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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

Geneva

**CONSULTATIVE COMMITTEE****Eighty-Fourth Session  
Geneva, October 31, 2012**

SITUATION CONCERNING THOSE STATES AND INTERGOVERNMENTAL ORGANIZATIONS  
WHICH HAVE INITIATED THE PROCEDURE FOR ACCEDING TO THE UPOV CONVENTION  
OR WHICH HAVE BEEN IN CONTACT WITH THE OFFICE OF THE UNION  
FOR ASSISTANCE IN THE DEVELOPMENT OF LAWS BASED  
ON THE UPOV CONVENTION

*Document prepared by the Office of the Union*

Introduction

1. At its seventy-seventh session, held in Geneva on April 3, 2009, the Consultative Committee agreed that the item "Status of the examination of laws of those States and organizations which have initiated the procedure for acceding to the UPOV Convention" should become a standard item for the October sessions of the Consultative Committee (see document CC/77/11 "Report", paragraph 56).
2. In order to provide the Consultative Committee with a full overview of developments concerning possible new members, the Consultative Committee, at its seventy-eighth session held in Geneva on October 21, 2009, agreed to broaden the scope of the document to include reports on 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. On that basis, it agreed that the title of future versions of the document should be changed to "Situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention or which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention" (see document CC/78/15 "Report", paragraph 71).
3. The structure of this document is as follows:
  - I. MATTERS FOR CONSIDERATION BY THE CONSULTATIVE COMMITTEE AT ITS EIGHTY-FOURTH SESSION
  - II. MATTERS FOR INFORMATION

I. MATTERS FOR CONSIDERATION BY THE CONSULTATIVE COMMITTEE AT ITS EIGHTY-FOURTH SESSION

- (a) Publication of the list of UPOV members, the list of States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention and the list of 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

4. It is proposed to publish a document on the UPOV website with the list of UPOV members, the list of States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention (see Section II(a) below) and the list of 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 (see Section II(b) below).

- (b) Comments on laws to the World Intellectual Property Organization

5. It is proposed to consider the inclusion of a new section in future versions of this document, if appropriate, in order to report to the Consultative Committee on comments on laws provided to the World Intellectual Property Organization (WIPO).

6. *The Consultative Committee is invited to:*

*(a) approve the publication of a document in the UPOV website with the list of UPOV members, list of States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention (see Section II(a) below) and the list of 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 (see Section II(b) below); and*

*(b) consider the inclusion of a new section in future versions of this document, if appropriate, of requests for comments on laws provided to WIPO.*

II. MATTERS FOR INFORMATION

- (a) Situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention

7. Annex I to this document provides a summary of the "Situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention". The request from a State or Intergovernmental Organization, addressed to the Secretary-General, for the advice of the Council in respect of the conformity of its law with the provisions of the UPOV Convention is the basis on which a State or Intergovernmental Organization is classified in Annex I.<sup>1</sup>

*States (17):*

Armenia, Bosnia and Herzegovina, Egypt, Ghana, Guatemala, Honduras, India, Kazakhstan, Malaysia, Mauritius, Montenegro, Philippines, Serbia, Tajikistan, United Republic of Tanzania, Venezuela and Zimbabwe.

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<sup>1</sup> Article 34(3) of the 1991 Act of the UPOV Convention and Article 32(3) of the 1978 Act of the UPOV Convention. Guidance on this matter is provided in document UPOV/INF/13/1 "Guidance on how to become a member of UPOV".

*Organization (1):*

African Intellectual Property Organization (OAPI)

*(member States of OAPI (16): Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, Togo).*

8. Any State or intergovernmental organization wishing to become a member of UPOV needs to obtain a positive advice of the Council of UPOV on the conformity of its laws with the provisions of the UPOV Convention prior to depositing its instrument of accession (relevant decisions of the Council are reproduced in Annex I).<sup>2</sup>

9. In relation to certain States which have initiated the procedure for acceding to the UPOV Convention, the Office of the Union has learnt that the laws, or draft laws, which provided the basis for a positive decision of the Council on accession to the UPOV Convention, are no longer applicable because other laws are in the process of being drafted or have been adopted. In such cases, those other laws or draft laws would need to be submitted to the Council for examination of their conformity with the UPOV Convention.

Situation concerning those 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

10. Annex II to this document provides a summary of the "Situation concerning those 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".

*States (21):*

Algeria, Bahrain, Barbados, Brunei Darussalam, Cambodia, Cuba, Cyprus, El Salvador, Indonesia, Iraq, Islamic Republic of Iran, Lao People's Democratic Republic, Libya, Mozambique, Pakistan, Saudi Arabia, Sudan, Thailand, Tonga, Turkmenistan and Zambia.

*Organizations (2):*

African Regional Intellectual Property Organization (ARIPO)

*(member States of ARIPO (18): Botswana, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, Somalia, Sudan, Swaziland, Uganda, United Republic of Tanzania, Zambia, Zimbabwe)*

Southern African Development Community (SADC)

*(member States of SADC (15): Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia, Zimbabwe).*

11. The request from a State or Intergovernmental Organization, addressed to the Office of the Union, for assistance in the development of a law based on the UPOV Convention is the basis on which a State or Intergovernmental Organization is classified in Annex II.

12. *The Consultative Committee is invited to note the contents of this document and its Annexes.*

[Annex follows]

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<sup>2</sup> With the exception of India and Zimbabwe, which might be permitted to deposit their instrument of accession to the 1978 Act of the UPOV Convention, all other States and intergovernmental organizations wishing to join UPOV would need to deposit their instrument of accession to the 1991 Act of the UPOV Convention.

**SITUATION CONCERNING THOSE STATES AND INTERGOVERNMENTAL  
ORGANIZATIONS WHICH HAVE INITIATED THE PROCEDURE  
FOR ACCEDING TO THE UPOV CONVENTION**

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## **AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)**

*Members States of OAPI (16): Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, Togo*

### **Council decision of 2000**

April 7, 2000 (document C(Extr.)/17/6)

The Council decided, on the basis of the recommendation of the Consultative Committee and of the conclusions drawn by the Office of the Union in paragraphs 33 and 34 of document C(Extr.)/17/3,

(a) that the Bangui Agreement on the Creation of an African Intellectual Property Organization (OAPI) was in conformity with the Convention;

(b) that, once the Bangui Agreement, in particular its Annex X, was in force, the member States of OAPI and OAPI itself might deposit instruments of accession to the Convention.

### **Comments**

The Office of the Union had been notified that Annex X of the Revised Bangui Agreement entered into force on January 1, 2006.

In September 2008, in response to a request for information from Mrs. Wéré Régine Gazaro, Director, Intellectual Property Protection, OAPI, which would provide a basis for a presentation to the Administrative Council of OAPI with the view of obtaining the authorization to accede to the UPOV Convention, relevant documents for OAPI on becoming member of the Union were provided.

### **OAPI Member States**

#### **Togo**

On August 19, 2010, His Excellency, Mr. El Hadj Bakalawa Fofana, Minister for Industry, Free Zone and Technological Innovations, invited the Secretary-General to participate in a mission to Togo in order to inform relevant authorities, including the Minister for Agriculture, on the advantages and procedure for Togo to become a member of UPOV.

On January 11 and 12, 2011, in Lomé, Togo, the Vice Secretary-General held consultations with the Government of Togo on legislative and accession procedures to become a member of UPOV.

From July 4 to 8, 2011, in Lomé, Togo, a seminar for information and creating awareness for experts from agricultural research institutions and policy makers for agriculture from Togo was organized by OAPI in collaboration with the Government of Togo. At the fringes of that Seminar, the Office of the Union met with Mr. El Hadj Bakalawa Fofana.

At the fringes of the fiftieth anniversary celebrations of OAPI, held on September 12 and 13, 2012, in Yaoundé, Cameroon, the Office of the Union met the new Minister for Industry, Free Zone and Technological Innovations, His Excellency, Mr. François Agbéviadé Galley. Mr. Agbéviadé Galley requested assistance in the procedure to become a member of UPOV. Relevant information on the elements required for the deposit of the instrument of accession of Togo to the 1991 Act of the UPOV Convention was provided on October 11, 2012.

## ARMENIA

### Council decision of 2004

April 2, 2004 (document C(Extr.)/21/5)

The Council decided to:

(a) advise the Government of Armenia that the Law of the Republic of Armenia on the Protection of Selection Achievements (the Law), in its main provisions, incorporates the substance of the 1991 Act, and that it may deposit an instrument of accession to the 1991 Act;

(b) further advise the Government of Armenia that it may wish to amend and supplement the texts of its legislation, as recommended in document C(Extr.)/21/2, so as to avoid recourse to the general principle in Article 2 of the Law.

### Comments

Between December 2008, and January 2009, the Office of the Union was in contact with Mr. Avetis Hovhannisyan, Permanent Representative to the World Trade Organization concerning the steps required for becoming a member of the Union.

During the Regional Training on Plant Variety Protection under the UPOV Convention for Certain Countries in the Eurasian Region which took place from June 9 to 11, 2009, in Chisinau, Republic of Moldova, the Office of the Union was informed that the Government of Armenia is drafting a new Law. The representatives of the Armenian Intellectual Property Agency and the Ministry of Agriculture were provided with a draft of document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention."

On June 24, 2010, the Permanent Mission of Armenia to the United Nations Office at Geneva and other International Organizations in Switzerland requested the Office of the Union to comment on the Draft Law of the Republic of Armenia on the Protection of New Varieties of Plants (Draft Law).

During a meeting on June 24, 2010, between Ms. Satenik Abgarian, Deputy Permanent Representative and the Office of the Union, Ms. Abgarian reported that the Law, that provided the basis for the positive decision of the Council of 2004 on accession to the UPOV Convention, was no longer relevant. On July 22, 2010, the Office of the Union provided comments on the Draft Law of 2010 and informed the relevant authorities that the Draft Law, or the adopted law, once modified on the basis of document UPOV/INF/6/1, would need to be submitted to the Council for examination of its conformity with the UPOV Convention.

## BOSNIA AND HERZEGOVINA

### Council decision of 2008

October 30, 2008 (document C/42/21)

The Council decided to:

- (a) take note of the analysis in document C/42/19;
- (b) recommend that Bosnia and Herzegovina incorporate the additional provisions and amendments in the Law, as provided in document C/42/19, and recommend that once the additional provisions and amendments have been incorporated in the Law, the amended Law should be submitted to the Council for examination in conformity with Article 34(3) of the 1991 Act;
- (c) request the Office of the Union to offer its assistance, at the earliest opportunity, to the Government of Bosnia and Herzegovina in drafting the necessary additional provisions and amendments to the Law; and
- (d) authorize the Secretary-General to inform the Government of Bosnia and Herzegovina of that decision.

### Comments

On January 15 and 16, 2009, in Sarajevo, the Office of the Union provided assistance to the Government of Bosnia and Herzegovina in establishing the preliminary version of the Draft Law on the Protection of New Varieties of Plants based on the 1991 Act of the UPOV Convention, taking into account the recommendations of the Council of 2008.

On March 20, 2010, Mrs. Mirjana Brzica, Head, Department of seeds, seedling and protection of new varieties of plants, Administration of Bosnia and Herzegovina for Plant Health Protection, Ministry of Foreign Trade and Economic Relations, provided a copy of the "Law on Protection of New Varieties of Plants in Bosnia and Herzegovina" (the Law), passed by the Parliamentary Assembly of Bosnia and Herzegovina on February 23, 2010, with a request for comments from the Office of the Union.

On May 28, 2010, the Office of the Union provided comments on the Law and noted that the majority of the recommendations in the decision of the Council of 2008 had been incorporated in the Law. Nevertheless, it was noted that, for correspondence with the UPOV Convention, certain modifications of, and verifications with, the original of the Law were necessary. The Office of the Union informed Mrs. Brzica that the Draft Law or the adopted law, once modified on the basis of the comments of May 28, 2010, would need to be submitted to the Council for examination of its conformity with the UPOV Convention.

On September 2, 2011, the Office of the Union was informed by Mrs. Mirjana Brzica that the Administration of Bosnia and Herzegovina for Plant Health Protection had started the preparation of a consolidated text taking into account the modifications of, and verifications with, the original of the Law which were proposed by the Office of the Union on May 28, 2010.

On April 24, 2012, Mrs. Mirjana Brzica requested comments of the Office of the Union on the individual proposed amendments to the Law and the consolidated text taking into account the modifications of, and verifications with, the original of the Law which were proposed by the Office of the Union on May 28, 2010. The Office of the Union provided comments on July 19, 2012, and on August 8, 2012.

## EGYPT

### Council decision of 1999

October 20, 1999 (document C/33/18)

The Council decided to:

- (a) advise the Government of Egypt that the Draft Ministerial Decree on the Protection of Plant Varieties (Draft Decree) when supplemented by provisions designed to satisfy the matters referred to in paragraphs 12 and 22 of document C/33/16 provides a basis for a law conforming with the 1991 Act;
- (b) request the Office of the Union to offer its assistance to the Government of Egypt in respect of the minor additional provisions that are necessary to achieve conformity;
- (c) further advise the Government of Egypt that after the making of a Decree based upon the Draft Decree and incorporating the suggestions set out in paragraphs 12 and 22 of document C/33/16, it may deposit an instrument of accession to the 1991 Act.

### Comments

The Office of the Union has been notified of the adoption of Law No. 82 of 2002 on the Protection of Intellectual Property Rights (Law of 2002), which contains Book IV "Plant Varieties". Therefore, the Draft Decree submitted to the Council in 1999 is no longer relevant.

The Law of 2002, or any possible amendments to it, will need to be submitted to the Council for examination. On April 25, 2005, the Government of Egypt was notified accordingly.

The Office of the Union has been informed by the Government of Egypt that amendments to the Law on the Protection of Intellectual Property Rights are under consideration and a draft revised Book IV has been prepared for that purpose.

Following the establishment of a Committee responsible for finalizing the amendments to Book IV, a consultation between the Committee and the Office of the Union on proposed changes to the draft revised Book IV took place from March 8 to 10, 2009, in Cairo. On March 16, 2009, a version of draft revised Book IV, incorporating the changes agreed during the Consultation, was sent by the Office of the Union to Mr. Saad Nassar, Advisor to the Minister for Agriculture and Land Reclamation.

On December 29, 2009, Mr. Salah Moawad, Under-Secretary of the Ministry of Agriculture, Head, Central Administration for Seed Testing and Certification (CASC), Ministry of Agriculture and Land Reclamation, requested comments on the version of the draft revised Book IV of December 21, 2009.

On January 15, 2010, the Office of the Union provided comments on the draft revised Book IV. The Office of the Union noted that the version of the draft revised Book IV of December 21, 2009 contained the essential provisions of the UPOV Convention, subject to certain drafting changes which were in the comments of the Office of the Union.

On September 1, 2010 the Office was informed that the draft revised Book IV had been approved by the Cabinet and would be submitted to the Egyptian People's Assembly in Spring 2011.



## **GHANA**

Since October 2000, the Office of the Union has provided assistance to the Government of Ghana with different drafts laws relating to plant variety protection on various occasions. The latest Draft of "Ghana Plant Breeder's Bill" (Draft Law) was discussed at a meeting in Geneva on September 29, 2010, with Mrs. Grace Issahaque, Principal State Attorney, Registrar-General's Department, Ministry of Justice of Ghana. The modifications to the Bill discussed at the meeting were sent by the Office of the Union on October 5, 2010. The Office of the Union noted that, once the modifications sent on October 5, 2010, were introduced in the Bill, that version would contain the essential provisions of the UPOV Convention.

From March 21 to 23, 2011, in Accra, Ghana, the Office of the Union participated in a consultative meeting on the Draft Law with the Council for Scientific and Industrial Research (CSIR).

On July 23, 2011, in Koforidua, Ghana, the Office of the Union participated in an information session for Parliamentarians on the Draft Law and the 1991 Act of the UPOV Convention. On July 27, 2011 the Office of the Union met with Ms. Mavis Amoa, Head of Legal Drafting in the Attorney General's Office. The additional information and comments of the Office of the Union on the Draft Law reflecting the discussions at the meetings on July 23 and 27, 2011, were sent on August 22, 2011.

The Draft Law was further discussed on a meeting on June 15, 2012, with Ms. Grace Issahaque, at the fringes of the "Expert Review Meeting on the ARIPO Draft Legal Framework on the Protection of New Varieties of Plants", which was held from June 12 to 14, in Harare, Zimbabwe. The comments of the Office of the Union on the Draft Law reflecting the discussions on June 15, 2012, were sent on July 5, 2012. The Office of the Union sent its latest comments on the version of the Draft Law of August 14, 2012, on September 11, 2012.

By letter dated September 25, 2012, addressed to the Secretary-General of UPOV, His Excellency Dr. Benjamin Kunbuor, Attorney General and Minister of Justice of Ghana requested the examination of the Plant Breeders' Bill for conformity with the 1991 Act of the UPOV Convention (see document C/46/14 and items 3 of the draft revised agendas of the Consultative Committee and the Council (document CC/84/1 rev. and C/46/1 Rev.)).

## GUATEMALA

### Council decisions of 2006 and 2009

October 19, 2006 (document C/40/19)

The Council decided to:

- (a) take note of the information given in document C/40/15, as modified by the Council;
- (b) take a positive decision, subject to the inclusion in Article 16(2) of the Draft Law of “within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder” after “using”, on the conformity of the Draft Law for the Protection of New Varieties of Plants (the Draft Law) with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, in accordance with Article 34(3) of that Act, which allows the Republic of Guatemala to deposit its instrument of accession once the Draft Law is enacted and in force; and
- (c) authorize the Secretary-General to inform the Government of Guatemala of that decision.

### Comments

On March 26, 2009, the Office of the Union was informed that the Draft Law which provided the basis for the positive decision of the Council of 2006 on accession to the UPOV Convention, was no longer relevant and that a different Draft Law (Draft Law of 2009) was being prepared by the Government.

At the request of the Government of Guatemala, on May 5, 2009, the Office of the Union provided comments on the Draft Law of 2009 and informed the relevant authorities that the Draft Law of 2009 or the adopted law would need to be submitted to the Council for examination of its conformity with the UPOV Convention.

October 22, 2009 (document C/43/17)

The Council decided to:

- (a) take note of the analysis in document C/43/15 and the information provided by the Delegation of Guatemala that it intends to delete the second sentence of paragraph 4 of Article 43 of the Draft Law No. 4013 on the Protection of New Varieties of Plants of 2009 (Draft Law) “[t]his obligation shall also apply to varieties covered by the breeder’s right under Article 15 of this Law”;
- (b) subject to the introduction in the Draft Law of the changes identified in document C/43/15 concerning the correction of cross references and the deletion of “[t]his obligation shall also apply to varieties covered by the breeder’s right under Article 15 of this Law” in paragraph 4 of Article 43 of the Draft Law, take a positive decision on the conformity of the Draft Law No. 4013 on the Protection of New Varieties of Plants of 2009 of Guatemala with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows that, once the changes recommended in document C/43/15 concerning the correction of cross references and the deletion of “[t]his obligation shall also apply to varieties covered by the breeder’s right under Article 15 of this Law” in paragraph 4 of Article 43 of the Draft Law, have been introduced in the Draft Law and the Draft Law is adopted and the Law in force, Guatemala may deposit its instrument of accession to the 1991 Act; and
- (c) authorize the Secretary-General to inform the Government of Guatemala of that decision.

### Comments

On August 27, 2010, the Permanent Mission of Guatemala to the World Trade Organization informed the Office of the Union that the Draft Law, which was the basis for the positive decision of the Council of 2009, was under a second reading by the Congress of the Republic of Guatemala.

At the fringes of the "Plant Variety Protection and DUS Testing" training course, organized by the Korea Seed & Variety Service (KSVS) and the Korean International Cooperation Agency (KOICA), which was held in Seoul, Republic of Korea, from July 10 to 12, the Office of the Union was informed by Mr. Carlos A. Montenegro Project Technician, Technical Office of Biodiversity, National Council of Protected Areas, that the Draft Law that had received the positive advice of the Council of UPOV had not yet been adopted.

## HONDURAS

### Council decision of 2000

April 7, 2000 (document C(Extr.)/17/6)

The Council decided on the basis of the recommendation of the Consultative Committee and of the conclusions drawn by the Office of the Union in paragraphs 41 and 42 of document C(Extr.)/17/5,

(a) to take a positive decision on the conformity of the Bill of Honduras on the Protection of New Plant Varieties (the Bill) with the provisions of the Convention, subject to its amendment as mentioned in paragraph 41 of document C(Extr.)/17/5;

(b) to request the Office of the Union to offer its assistance to the Government of Honduras in respect of the amendments to be made to the Bill;

(c) to further advise the Government of Honduras that

(i) after consultation with the Office of the Union as to whether its proposed amendments to the Bill are adequate, and

(ii) after adoption of the Bill with the incorporation of such amendments but without other substantial changes, and after making implementing regulations,

it may deposit an instrument of accession to the 1991 Act of the UPOV Convention.

### Comments

The Permanent Mission contacted the Office of the Union on April 11, 2006, to deposit the instrument of accession, but the Bill on the Protection of New Plant Varieties has not yet been adopted. The deposit can only take effect once the Bill is adopted.

On August 18, 2010, the Office of the Union received a copy of a letter of August 6, 2010, signed by Mr. Camilo Bendeck Perez, Director General of Intellectual Property, addressed to the World Intellectual Property Organization, requesting assistance from the Office of the Union in the legislative process. The requested assistance was to provide explanations to the members of the Agricultural Commission of the National Congress.

On February 23 and 24, 2011, in Tegucigalpa, Honduras, the Office of the Union held consultations with members of the Agricultural Commission of the National Congress and officials from the Government of Honduras on the Bill, which was examined by the Council in 2000, and the procedure to become a member of UPOV. The consultations were coordinated by Mr. Carlos Almendares, Chief, Seed Certification Department, National Secretary of Agriculture.

On July 4, 2012, Mr. Almendares transmitted to the Office of the Union the Decree no. 21-2012 "Law on Protection of New Plant Varieties" (Law 2012) which entered into force on May 23, 2012. The Office of the Union confirmed that the Law of 2012 was the adopted version of the draft law for which there was a positive decision of the Council in 2000 on accession to the UPOV Convention. On July 19, 2012, the Office of the Union provided guidance to the Permanent Mission of Honduras and Mr. Almendares on the elements required for the deposit of the instrument of accession.

## INDIA

### Council decision of 1999

October 20, 1999 (document C/33/18)

The Council decided to authorize the Secretary-General, after consultation with the President of the Council, to accept instruments of accession to the 1978 Act by India, Nicaragua<sup>3</sup>, and Zimbabwe provided that the depositing State had, in the opinion of the Secretary-General after consultation with the President of the Council, acted expeditiously to complete its legislation and any UPOV formalities and to effect the deposit.

[See below on this subject the Council decision of April 11, 2008]

### Consultative Committee [preliminary examination of 2002 and 2004]

October 23, 2002 (document CC/64/8)

The Consultative Committee concluded that further clarification of the requested items in paragraphs 12, 14, 16, 19, 23, 31, 33, 37, 40, 43, 46, 48, 50, 57, 59, 62, 64, 66, 69, 70, 72, 75, 76, 80 and 83 of document CC/64/2 concerning the Protection of Plant Varieties and Farmers' Rights Act of India (the Law) and its implementing regulations was required. This clarification and a review of any laws pertaining to these clarifications was required before the Council of UPOV would be able to decide if India provides the legal basis for the protection of new plant varieties in line with the 1978 Act; and pending such clarification:

(a) the Consultative Committee requested the Office of the Union to continue to provide legal and technical assistance to the Government of India in the development of the UPOV system of plant variety protection;

(b) the Consultative Committee considered those aspects of the Law, identified in Annex I to document CC/64/2, which, although not in direct conflict with the Articles of the 1978 Act, nevertheless might undermine the effectiveness of the plant variety protection system provided by the Law.

April 2, 2004 (document CC/67/8)

The Consultative Committee noted the contents of document CC/67/6 and its Annexes and

(a) proposed that a substantive analysis of the clarifications provided by the Government of India be prepared by the Office of the Union for consideration by the Consultative Committee at its sixty-eighth session in October 2004;

(b) requested the Office of the Union to inform the Government of India accordingly.

October 20, 2004 (document CC/68/9)

The Consultative Committee noted the contents of document CC/68/2 and its Annexes and considered the clarifications concerning the Law provided by the Government of India and the analysis contained in document CC/68/2 and decided to continue its preliminary examination of the Law of India. It was agreed that the Office of the Union should seek clarification of the issues raised with the Government of India and should report to the Consultative Committee at its seventieth session to be held in October 2005.

<sup>3</sup> Nicaragua acceded to the 1978 Act on September 6, 2001.

### **Council decision of 2008**

April 11, 2008 (document C(Extr.)/25/10)

With respect to any future opinion on whether India and Zimbabwe have acted expeditiously to complete their legislation and any UPOV formalities and to effect the deposit, the Council decided, based on the recommendation of the Consultative Committee, that the opinion on whether that condition had been fulfilled should be the responsibility of the Consultative Committee.

### **Comments**

Since the report in document CC/74/3 "Status of the Examination of Laws of those States and Organizations which have Initiated the Procedure for Acceding to the UPOV Convention", a meeting took place on November 12, 2008, in New Delhi, with Mr. G.C. Pati, Additional Secretary, Department of Agriculture and Cooperation, Ministry of Agriculture of India, wherein developments since June 2002 were reviewed and those sections of the Law of India, which appear to be difficult to be reconciled with the 1978 Act, were discussed. Mr. Pati confirmed India's intention to accede to the 1978 Act.

The Office of the Union indicated to Mr. G.C. Pati that no opinion had been expressed by the Consultative Committee as to whether India had "acted expeditiously to complete its legislation and to effect the deposit".

At the fringes of the third session of the Governing Body (GB 3) of the International Treaty on Plant Genetic Resources for Food and Agriculture, which was held in Tunis, Tunisia, from June 1 to 5, 2009, an informal exchange took place with Mrs. Upma Chaudry, Joint Secretary (Seeds), Department of Agriculture and Cooperation, Ministry of Agriculture of India, in which she confirmed India's intention to accede to the 1978 Act on the basis of the Law of India of 2001.

No reply on the request for clarification of certain issues concerning the Law of India has been received so far.

## KAZAKHSTAN

### Council decision of 2000

April 7, 2000 (document C(Extr.)/17/6)

The Council decided, on the basis of the recommendation of the Consultative Committee and on the basis of the conclusions drawn by the Office of the Union in paragraphs 28 and 29 of document C(Extr.)/17/4,

(a) to advise the Government of Kazakhstan that the Law on the Protection of Selection Achievements (the Law), after adoption of suitable regulations, provides the basis for a system of protection conforming with the Convention, and that it may deposit an instrument of accession to the Convention after making such regulations;

(b) to further advise the Government of Kazakhstan that it may wish to correct the (possible) deviations and inconsistencies at the earliest opportunity;

(c) to request the Office of the Union to offer its assistance to the Government of Kazakhstan for the drafting of any regulations and the preparation of translations into one or more of the official languages of UPOV.

### Comments

On March 14, 2008, in Almaty, the Office of the Union held a consultation meeting with Kazakh officials, organized by the Committee on Intellectual Property Rights of the Ministry of Justice of Kazakhstan where steps required for Kazakhstan's accession to the UPOV Convention were considered.

On November 28, 2008, at the request of the Government of Kazakhstan, the Office of the Union provided comments on the Law of the Republic of Kazakhstan on the Protection of Selection Achievements of 1999 (the Law) in relation to the UPOV Convention.

No reply to the comments provided on November 28, 2008 concerning the Law was received.

During the Regional Training on Plant Variety Protection under the UPOV Convention for Certain Countries in the Eurasian Region which took place from June 9 to 11, 2009, in Chisinau, Republic of Moldova, the representatives of the Committee for Intellectual Property Rights and the National Institute of Intellectual Property of Kazakhstan were provided with a draft of document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention."

## MALAYSIA

### Council decision of 2005

April 8, 2005 (document C(Extr.)/22/3)

The Council decided to:

- (a) take note of the information given in document C(Extr.)/22/2;
- (b) take note of the preliminary examination of the Consultative Committee on the conformity of the Protection of New Plant Varieties Act 2004 of Malaysia (the Act) with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants. It noted that the Act still required some additional provisions and amendments, as provided in document C(Extr.)/22/2, in order to fully conform with the 1991 Act; the Act would be re-submitted to the Consultative Committee once the additional provisions and amendments had been incorporated;
- (c) request the Office of the Union to offer its assistance to the Government of Malaysia in drafting the necessary additional provisions and amendments to the Act; and
- (d) authorize the Secretary-General to inform the Government of Malaysia accordingly.

### Comments

Concerning the decision of the Council on April 8, 2005, on the Act of 2004, the Office of the Union has offered its assistance to the Government of Malaysia in drafting the necessary additional provisions and amendments to the Act.

In that context, the Delegation of Malaysia informed the Office of the Union, on March 29, 2007, that the implementing regulations concerning the Act were under preparation. The Delegation further added that the Act could only be amended once it had been put into effect.

At an APSA Workshop on November 9, 2008, in Hyderabad, India, Mrs. Norma Othman, Director, Crop Quality Control Division, Department of Agriculture of Malaysia, reported that the Act had entered into force on January 1, 2007, and that the Protection of New Plant Varieties Regulations had been published on October 20, 2008.

At the Fourth East Asian Plant Variety Protection Forum (EAPVP Forum) held in Makassar, Indonesia from May 24 to 26, 2011, a proposal was made by the Delegation of Malaysia to "set a consultation session to harmonize PVP legislation between UPOV's and ASEAN countries laws". In response to that proposal, the Office of the Union hosted a "Workshop on Plant Variety Protection Law" (Law Workshop) in association with the EAPVP Forum in Geneva, from December 5 to 9, 2011. The Law Workshop included an explanation of UPOV's guidance materials on the development of legislation based on the UPOV Convention, in parallel with consultation meetings on legislative matters with individual countries. The following countries participated in the Workshop: Brunei Darussalam, Cambodia, Malaysia, Philippines, Lao People's Democratic Republic, Thailand, and Viet Nam.

The consultations with the Delegation of Malaysia were focused on the plans to amend the Act of 2004. The Delegation was provided with translations of the 1991 Act and of document UPOV/INF/6 "Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention" in Malay.



## MAURITIUS

### Council decision of 2004

October 21, 2004 (document C/38/16)

The Council decided to:

- (a) take note of the information given in document C/38/13;
- (b) take a positive decision on the conformity of the Plant Breeder's Right Bill (the Bill) of the Republic of Mauritius with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, in accordance with Article 34(3) of that Act, which allows the Republic of Mauritius to deposit its instrument of accession once the Bill is enacted and in force;
- (c) authorize the Secretary-General to inform the Government of Mauritius of that decision.

### Comments

A new Bill (Bill of 2005), different from the Bill considered in document C/38/13, which includes provisions that do not appear to correspond to the 1991 Act, was sent to the Office of the Union for comments on January 4, 2006, with a request for assistance in the final drafting of the Bill of 2005.

The Office of the Union is awaiting a reply to a letter of January 11, 2006, which provided comments on the Bill of 2005 and requested information on whether the Government of Mauritius was in a position to review those provisions that did not correspond to the 1991 Act, before agreeing to provide local drafting consultations.

On June 26, 2009, the Office of the Union met with Mrs. Tanya Prayag-Gujadhur, Second Secretary of the Permanent Mission of Mauritius in Geneva to discuss the procedure to become a member of the Union.

The Permanent Mission of Mauritius addressed a request to the World Intellectual Property Organization (WIPO) on December 7, 2009, modified on December 21, 2009, for comments on the Draft Law of Industrial Property of 2009 (Draft Law of 2009), which was intended to bring the Intellectual Property Legislation of the Republic of Mauritius in conformity with international obligations (Draft Law of 2009). The Office of the Union received, via WIPO, a copy of those communications with a request to submit comments directly to the Permanent Mission on Part VIII of the Draft Law of 2009 entitled "Plant Variety Rights Protection".

As a result of a WIPO expert mission to Mauritius in June 2010, the Office of the Union was informed by WIPO that the Draft Law of 2009 was no longer relevant and that the Government of Mauritius had expressed its wish that WIPO prepare the basis for a new Draft Law, with the exception of relevant Part for "Protection of New Varieties of Plants", which it requested to be prepared by the Office of the Union. The Office of the Union prepared a Draft Part "Protection of New Varieties of Plants" using document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention" and transmitted it to the Permanent Mission on October 25, 2010.

On January 19 and 20, 2011, at WIPO/UPOV headquarters, the Office of the Union participated in a working session between WIPO and Mauritius government officials on the draft industrial property and copyright laws of Mauritius. The Draft Part "Protection of New Varieties of Plants" of the draft industrial property law was not discussed because the government officials which participated did not represent the views of the Ministry of Agriculture. The Office of the Union made a presentation on the UPOV system of plant variety protection.

## **MONTENEGRO**

### **Council decision of 2001**

April 6, 2001 (document C(Extr.)/18/4)

The Council decided to:

(a) advise the Government of Yugoslavia (Serbia and Montenegro) that the Law on Protecting Agricultural and Forest Plant Cultivars (the Law) does not incorporate some important provisions of the Convention;

(b) request the Office of the Union to offer its assistance to the Government of Yugoslavia in drafting the necessary amendments to the Law, and the preparation of a more satisfactory translation into one or more of the official languages of UPOV;

(c) further advise the Government of Yugoslavia that, upon the adoption of the necessary amendments to the satisfaction of the Office of the Union and the making of implementing regulations, it may deposit an instrument of accession to the Convention.

### **Comments**

Because Montenegro has become an independent State, separate accession procedures have started for both Montenegro and Serbia.

### **Council decisions of 2007 and 2008**

October 25, 2007 (document C/41/17)

The Council decided to:

(a) take note of the information given in document C/41/14;

(b) recommend that Montenegro incorporate the additional provisions and amendments in the Law on Protection of Plant Varieties of the Republic of Montenegro, as provided in document C/41/14 and replace "30 days" by "60 days" in Article 12, paragraph 3 of the Law; once the additional provisions and amendments have been incorporated in the Law, the amended Law should be submitted to the Council for examination in conformity with Article 34(3) of the 1991 Act;

(c) request the Office of the Union to offer its assistance to the Government of Montenegro in drafting the necessary additional provisions and amendments to the Law; and

(d) authorize the Secretary-General to inform the Government of Montenegro of that decision.

April 11, 2008 (document C(Extr.)/25/10)

The Council decided to:

(a) take note of the analysis in document C(Extr.)/25/6 and the additional information provided by the Delegation of Montenegro that it intends to move Article 42(3) to Article 44 of the Draft Law;

(b) take a positive decision on the conformity of the Draft Law on Protection of Plant Varieties of Montenegro with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows that, subject to the replacement of "90 days" by "three months" in Article 19, once the Law is adopted and in force, Montenegro may deposit its instrument of accession to the 1991 Act; and

(c) authorize the Secretary-General to inform the Government of Montenegro of that decision.

### Comments

On April 15, 2008, the Secretary-General informed the Government of Montenegro of the decision of the Council. On April 17, 2008, the Office of the Union provided information on the requirements for the deposit of the instrument of accession.

On March 17, 2010, the Office of the Union was informed by Ms. Zorka Prljevic, Director, Phytosanitary Directorate, that the Draft Law on Protection of Plant Varieties, which provided the basis for the positive decision of the Council of 2008, had been adopted by the Parliament of Montenegro. The Law was published in the Official Gazette 48/07 and 48/08 on August 11, 2008 and entered into force on August 19, 2008. The Office of the Union has received a copy of the adopted Law from Ms. Prljevic.

On September 28, 2011, the Permanent Mission of Montenegro to the United Nations Office at Geneva and other International Organizations in Switzerland requested information on the requirements for the deposit of the instrument of accession of Montenegro to the 1991 Act of the UPOV Convention.

## PHILIPPINES

### Council decision of 2007

March 30, 2007 (document C(Extr.)/24/5)

The Council decided to:

- (a) take note of the information given in document C(Extr.)/24/2;
- (b) advise the Government of the Philippines that the Philippine Plant Variety Protection Act of 2002 (the Law) incorporated the majority of the provisions of the 1991 Act, but still needed some clarifications and amendments, as provided in document C(Extr.)/24/2, in order to conform with the 1991 Act; once the above clarifications and amendments were incorporated in the Law, the Government of the Philippines was invited to request the examination of the amended law as provided in Article 34(3) of the 1991 Act;
- (c) request the Office of the Union to offer its assistance to the Government of the Philippines in drafting the necessary clarifications and amendments to the Law; and
- (d) authorize the Secretary-General to inform the Government of the Philippines of that decision.

### Comments

On April 16, 2007, the Secretary-General informed the Government of the Philippines of the decision of the Council and offered the assistance of the Office of the Union in drafting the necessary clarifications and amendments to the Law.

At the "Workshop on Plant Variety Protection Law" (Law Workshop) which was held in Geneva, from December 5 to 9, 2011 (see above section concerning Malaysia) consultations took place with the Delegation of Philippines. The discussions were focused on the decision of the Council of UPOV concerning compliance with Article 15(2) of the UPOV Convention). The Delegation reported on the request of the National Plant Variety Board in October 2011 to undertake a National Survey in 2012 on the Law.

## SERBIA

### Council decision of 2001

April 6, 2001 (document C(Extr.)/18/4)

The Council decided to:

(a) advise the Government of Yugoslavia (Serbia and Montenegro) that the Law on Protecting Agricultural and Forest Plant Cultivars (the Law) does not incorporate some important provisions of the Convention;

(b) request the Office of the Union to offer its assistance to the Government of Yugoslavia in drafting the necessary amendments to the Law, and the preparation of a more satisfactory translation into one or more of the official languages of UPOV;

(c) further advise the Government of Yugoslavia that, upon the adoption of the necessary amendments to the satisfaction of the Office of the Union and the making of implementing regulations, it may deposit an instrument of accession to the Convention.

### Comments

Because Serbia has become an independent State, separate accession procedures have started for both Serbia and Montenegro.

### Council decision of 2008

April 11, 2008 (document C(Extr.)/25/10)

The Council decided to:

(a) take note of the analysis in document C(Extr.)/25/5 and the information provided by the Delegation of Serbia that it intends to

(i) amend paragraph 1 of Article 22 of the Draft Law on the Protection of Plant Breeder's Rights (Draft Law) on the duration of the breeder's right, to read as follows "The breeder's right to the protected variety shall expire 25 years after the grant thereof or 30 years after the grant thereof in case of trees and vines",

(ii) delete paragraph 3 of Article 29 of the Draft Law,

(iii) delete Article 35 of the Draft Law;

(b) subject to the introduction of the recommended changes in the Draft Law, as identified in document C(Extr.)/25/5 and the replacement of "90 days" by "three months" in paragraph 2 of Article 17, take a positive decision on the conformity of the Draft Law on the Protection of Plant Breeder's Rights of the Republic of Serbia with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants; which allows that, once the changes have been incorporated in the Draft Law and the Law is adopted and in force, the Republic of Serbia may deposit its instrument of accession to the 1991 Act;

(c) request the Office of the Union to offer its assistance to the Government of the Republic of Serbia in the incorporation of the changes in the Draft Law identified in document C(Extr.)/25/5; and

(d) authorize the Secretary-General to inform the Government of the Republic of Serbia of that decision.

## Comments

On April 15, 2008, the Secretary-General informed the Government of Serbia of the decision of the Council. The Office of the Union subsequently learnt that a Law on the Protection of Plant Breeder's Rights was adopted by the National Assembly on May 29, 2009 and entered into force on June 10, 2009 (Law of 2009).

On May 14, 2010, Ms. Jelisaveta Djurickovic-Tuvic, Minister Counsel, Deputy Permanent Representative Permanent Mission of the Republic of Serbia to the Office of the United Nations and other International Organizations in Geneva, requested the comments of the Office of the Union on the Law of 2009. The Office of the Union observed that the Law of 2009 was different from the Draft Law that provided the basis for the positive decision of the Council of 2008 on accession to the UPOV Convention.

On May 18, 2010, the Office of the Union sent its comments on the Law of 2009 to the Permanent Mission and, in particular, identified a small number of provisions that did not appear to correspond to the provisions of the UPOV Convention.

On June 29, 2010, His Excellency Mr. Sasa Dragin, Minister for Agriculture, Forestry and Water Management, informed the Secretary-General that the Ministry of Agriculture, Forestry and Water Management would take into consideration the comments of the Office of the Union and would submit a draft law for examination by the Council at the earliest opportunity.

## Council decision of 2011

April 8, 2011 (document C(Extr.)/28/3)

The Council decided to:

(a) note the analysis in document C(Extr.)/28/2 and the information provided by the Delegation of Serbia that it intended to amend Article 28 "Provisional Protection" of the Draft Law and paragraph 1 of Article 41 of the Draft Law on "Obsolescence of Lawsuit Due to Violation of Breeders' Rights", as provided in paragraph 1 of document C(Extr.)/28/2 Add.;

(b) take a positive decision on the conformity of the Draft Law on the Protection of Plant Breeders' Rights of the Republic of Serbia with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allowed the Republic of Serbia, once the Law of 2009 was amended as presented in the Draft Law in Annex II and in paragraph 1 of document C(Extr.)/28/2 Add., with no additional changes, and the amended Law was in force, to deposit its instrument of accession to the 1991 Act; and

(c) authorize the Secretary-General to inform the Government of the Republic of Serbia of that decision.

On January 10, 2012, Mr. Jovan Vujovic, Head of Plant Variety protection and Biosafety, Ministry of Agriculture, Forestry and Water Management reported that the Law on Changes and Amendments of the Law on Protection of Plant Breeders Rights was adopted by the Parliament of the Republic of Serbia on November 22, 2011 ("Official Gazette of RS", No 88/11). Mr. Vujovic informed the Office of the Union that Law No 88/11 was the adopted version of the Draft Law for which there was a positive decision of the Council in 2011 on accession to the UPOV Convention.

The Office of the Union participated as a speaker at the "Conference on Plant Breeders' Rights and UPOV Membership", organized by the Plant Protection Directorate of the Ministry of Agriculture, Trade, Forestry and Water Management (MATFWM) of Serbia, in cooperation with the Dutch Embassy in Belgrade and USAID Agribusiness Project, which was held in Belgrade, Serbia, on April 19, 2012. At the fringes of the Conference, Mr. Vujovic reported that the documents for the accession of Serbia to the UPOV Convention were almost complete.

## TAJIKISTAN

### Council decision of 1999

October 20, 1999 (document C/33/18)

The Council decided to:

(a) advise the Government of Tajikistan that the Law on Selection Achievements of Agricultural Crops (the Law), after the adoption of suitable regulations, provided the basis for an Act conforming with the Convention, and that it may deposit an instrument of accession to the Convention after making such regulations;

(b) further advise the Government of Tajikistan that it may wish to correct the minor deviations and inconsistencies described in document C/33/14 at the earliest opportunity;

(c) to request the Office of the Union to offer its assistance to the Government of Tajikistan for the drafting of any regulations and the correction of the Law.

### Comments

The Office of the Union was notified of the "Amendments and additions to the Law of the Republic of Tajikistan on Selection Achievements of Agricultural Crops" of December 2, 2002.

On May 9, 2005, the Office of the Union was further notified that the Government of Tajikistan was drafting a new Law.

Comments on the Draft Law were sent by the Office of the Union on March 7, 2006.

A new request for comments on an updated draft was received on December 13, 2006. The Office of the Union commented on December 21, 2006, and was informed that the draft would soon be submitted to Parliament for adoption.

During the Regional Training on Plant Variety Protection under the UPOV Convention for Certain Countries in the Eurasian Region which took place from June 9 to 11, 2009, in Chisinau, Republic of Moldova, the representatives of the Ministry of Agriculture, including, Mrs. Shirinbonu Tursun Zade, Legal Advisor, were provided with a draft of document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention."

On April 9, 2010, the Office of the Union received a letter from Mrs. Tursun Zade informing the Office of the Union that a new Draft Law (Draft Law of 2010), based on document UPOV/INF/6/1, was under preparation and requesting information on the accession procedure to the UPOV Convention. On April 23, 2010, the Office of the Union replied on the basis of document UPOV/INF/13/1 "Guidance on how to become a member of UPOV" and suggested that Tajikistan provide a copy of the latest version of the Draft Law of 2010. On April 28, 2010, the Secretary-General received a letter from His Excellency Mr. Kasym Kasymov, Minister for Agriculture, enclosing a copy of the Draft Law of 2010 with a request for comments. The Office of the Union sent its comments on the Draft Law on May 11, 2010, and in response to requests on August 3 and 23, respectively, provided further comments, most recently on August 26, 2010.

On August 27, 2010, the Government of Tajikistan submitted the Draft Law of 2010 for the examination of the Council (see document C/44/15).

**Council decision of 2010**

October 21, 2010 (document C/44/17)

The Council decided to:

- (a) take note of the analysis in document C/44/15;
- (b) take a positive decision on the conformity of the Draft Law on Plant Variety Protection of the Republic of Tajikistan with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows the Republic of Tajikistan, once the Draft Law is adopted, with no changes, and the Law in force, to deposit its instrument of accession to the 1991 Act; and
- (c) authorize the Secretary-General to inform the Government of the Republic of Tajikistan of that decision.

On August 29, 2011, the Permanent Mission of Tajikistan to the United Nations Office and other International Organizations at Geneva requested a certified copy of the 1991 Act of the UPOV Convention.



## **UNITED REPUBLIC OF TANZANIA**

Since 2007, the Office of the Union has, on various occasions, provided comments on proposed amendments to the "Protection of New Plant Varieties (Plant Breeders' Rights) Act 2002" in relation to the 1991 Act of the UPOV Convention. The Draft Amendment Act provided to the Office of the Union on March 24, 2010 appears to correspond to the essential provisions of the 1991 Act of the UPOV Convention. On September 6, 2010, in Dar es Salaam, at the fringes of a "National Seminar on Plant Breeder's Rights", the Office of the Union was informed that the Draft Amendment Act has been transformed into a consolidated Bill and that the Bill was at the Office of the Attorney General prior to its submission to the Parliament. On that occasion, Mr. Siraël Patrick Ngwediagi, Registrar of Plant Breeders Rights, Ministry of Agriculture Food Security and Cooperatives reported that the Government of Tanzania had the intention to submit the Bill approved by the Government or the adopted Law for examination by the Council of at its session in April, 2011. Mr. Ngwediagi explained that a separate piece of legislation would be enacted for Zanzibar in order to cover the whole territory of the United Republic of Tanzania.

On June 1 and 2, 2011, in Zanzibar, United Republic of Tanzania, the Office of the Union gave lectures at a Stakeholders' Workshop on Plant Breeders' Rights and met with governmental officials from Mainland Tanzania and from the Working Group responsible for drafting the plant breeders' rights legislation of Zanzibar. On July 20, 2011, the Office of the Union provided comments on the Draft Bill of Mainland Tanzania and the Draft Bill of Zanzibar reflecting the discussions and proposals at the meetings on June 1 and 2, 2011, in Zanzibar. The Office of the Union explained that, in order to become a member of the Union, both pieces of legislation would need to be submitted for examination by the Council.

On June 14, 2012, the Office of the Union was informed that the Government of the United Republic of Tanzania had the intention to submit, in the first instance, the Draft Law for Mainland Tanzania for examination by the Council and, at a later stage, the Draft Law or adopted Law for Zanzibar.

By letter dated October 1, 2012, addressed to the Secretary-General of UPOV, the Permanent Secretary, Ministry of Agriculture Food Security and Cooperatives, of the United Republic of Tanzania, requested the examination of the Plant Breeders' Bill which was read for the first time in the Parliament in April 2012 (hereinafter referred to as the "Draft Law"), for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act").

## VENEZUELA

### Council decision of 1998

April 3, 1998 (document C(Extr.)/15/7)

The Council decided, on the basis of the conclusions drawn by the Office of the Union in paragraphs 45 and 46 of document C(Extr.)/15/6,

(a) to take a positive decision on the conformity of the Decision 345 of the Commission of the Cartagena Agreement "Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties" and draft Regulations of Venezuela implementing Decision 345 (the draft Regulations), with the provisions of the 1978 Act and the 1991 Act, subject to some amendments being made to the draft Regulations;

(b) to request the Office of the Union to offer its assistance to the Government of Venezuela in respect of the amendments to be made to the draft Regulations;

(c) to further advise the Government of Venezuela that

(i) after consultation with the Office of the Union as to whether the amendments to the draft Regulations were adequate, and

(ii) after adoption of the draft Regulations incorporating such amendments, but without other substantial changes,

it would be able to deposit an instrument of accession to the 1978 Act prior to April 24, 1999, or to the 1991 Act at any time.

### Comments

On February 11, 2000, the Permanent Mission of Venezuela to the United Nations Office at Geneva and other International Organizations in Switzerland requested a certified copy of the 1991 Act of the UPOV Convention.

## ZIMBABWE

### Council decisions of 1998, 1999 and 2008

October 28, 1998 (document C/32/16)

The Council:

(i) decided that the Plant Breeders' Rights Act (the Law), after the incorporation of the substance of the changes suggested in document C/32/12, will conform with the 1978 Act;

(ii) requested the Secretary-General to advise the Government of Zimbabwe that after the incorporation into the Law of such suggested changes to the satisfaction of the Office of the Union it would be able, at any time prior to April 24, 1999, to deposit an instrument of accession to the 1978 Act.

October 20, 1999 (document C/33/18)

The Council decided to authorize the Secretary-General, after consultation with the President of the Council, to accept instruments of accession to the 1978 Act by India, Nicaragua<sup>4</sup>, and Zimbabwe provided that the depositing State had, in the opinion of the Secretary-General after consultation with the President of the Council, acted expeditiously to complete its legislation and any UPOV formalities and to effect the deposit.

April 11, 2008 (document C(Extr.)/25/10)

With respect to any future opinion on whether India and Zimbabwe have acted expeditiously to complete their legislation and any UPOV formalities and to effect the deposit, the Council decided, based on the recommendation of the Consultative Committee, that the opinion on whether that condition had been fulfilled should be the responsibility of the Consultative Committee.

### Comments

The Office of the Union requested, on November 23, 2001, clarifications of certain issues of the Plant Breeders' Rights Amendment Act of 2001 in relation to the decision of the Council of 1998.

On February 24, 2005, the Government of Zimbabwe was requested to confirm that it wished to pursue the procedure of accession and to reply to the letter of November 23, 2001.

No reply on the request for clarification of certain issues concerning the Act of 2001 has been received so far.

At the fringes of the Regional Training Course on Plant Variety Protection under the UPOV Convention, held in Johannesburg, South Africa, from July 9 to 11, 2008, Mr. Claid Mujaju, Head, Seed Services Institute, referred to the possibility that the Plant Breeders' Rights Act of 2001 might be amended.

During the WIPO/UPOV/ARIPO Regional Seminar on Plant Varieties and Breeders' Rights, which took place in Harare from July 14 to 16, 2009, Mr. Mujaju was provided with a draft of document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention."

From March 14, 2011, the Office of the Union has been in contact with Mr. Etiwell Gubunje, PBR Officer, Seed Services, Ministry of Agriculture, for the provision of advice in relation to the development of legislation in accordance with the 1991 Act of the UPOV Convention. A consultation meeting on the Breeders' Rights

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<sup>4</sup> Nicaragua acceded to the 1978 Act on September 6, 2001.

Act of Zimbabwe took place on June 21, 2011, between the Office of the Union and Mr. Etiwell at the fringes of the Plant Variety Protection Course in Wageningen, the Netherlands.

On July 5, 2011, the Office of the Union was contacted by the Permanent Mission of Zimbabwe to the United Nations Office at Geneva and other International Organizations in Switzerland in order to receive information on the procedure of Zimbabwe to become a UPOV member.

At the fringes of the Regional Workshop on the “ARIPO Framework on Plant Variety Protection under the UPOV Convention”, which was held from July 25 to 29, 2011, in Accra, Ghana, the Office of the Union held a consultation meeting with Mr. Claid Mujaju, Head, Seed Services, on the possibility to prepare a working electronic version of the consolidated text of the Breeders’ Rights Act as amended in 2001. The electronic consolidated version of the Act was received on August 26, 2011, with a request to provide comments on suggested modifications in order to incorporate the essential provisions of the 1991 Act of the UPOV Convention. On October 31, 2011, the Office of the Union transmitted its comments on the Act on the basis of document UPOV/INF/6 “Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention”.

At the fringes of the Expert Review Meeting on the ARIPO Draft Legal Framework for the Protection of New Varieties of Plants which was held in Harare, Zimbabwe from June 12 to 14, 2012, following the request of Mr. Mujaju, the Office of the Union met with the Principals of the Department of Agriculture of the Government of Zimbabwe. The Principal Director confirmed that Zimbabwe is in the process of amending the Act in order to introduce the provisions of the 1991 Act of the UPOV Convention.

[Annex II follows]

**SITUATION CONCERNING THOSE 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**

ALGERIA .....	2
AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO) .....	2
BAHRAIN .....	4
BARBADOS .....	4
BRUNEI DARUSSALAM .....	5
CAMBODIA .....	5
CUBA .....	5
CYPRUS .....	6
EL SALVADOR .....	6
INDONESIA .....	6
IRAQ .....	6
ISLAMIC REPUBLIC OF IRAN .....	7
LAO PEOPLE'S DEMOCRATIC REPUBLIC .....	7
LIBYA .....	7
MOZAMBIQUE .....	7
PAKISTAN .....	7
SAUDI ARABIA .....	8
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) .....	8
SUDAN .....	9
TONGA .....	9
THAILAND .....	9
TURKMENISTAN .....	10
ZAMBIA .....	10

## ALGERIA

During the consultations that took place in Algiers, on January 19 and 20, 2010, at the request of the Permanent Mission of Algeria to the United Nations Office at Geneva and other International Organizations in Switzerland, the Office of the Union provided legal assistance to the Government of Algeria in drafting legislation on plant variety protection in accordance with the UPOV Convention. The consultations in Algiers with the representatives from the Ministries of Foreign Affairs, Agriculture, Industry, Health and Environment provided an opportunity to explain that the Law concerning Seeds and Plant Variety Protection of February 6, 2005 needed to be amended to ensure that the breeder's right should be independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material. The administration of the Law 2005 falls under the responsibility of Ms. Nadia Hadjeres Director, Plant Protection and Technical Controls, Ministry of Agriculture and Rural Development (MARD).

## AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)

*Member States of ARIPO (18): Botswana, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe*

On November 27, 2009, the Council of Ministers of ARIPO took a decision on the need to develop a regional framework on the protection of new varieties of plants for ARIPO and its member States with a request addressed to the Secretariat of ARIPO to implement that decision as soon as possible. In that context, UPOV had assisted ARIPO in drafting an outline for the preparation of a policy framework for a regional instrument. The outline will be developed by ARIPO into a draft policy framework with assistance from UPOV.

In relation to the above decision of the Council of Ministers of ARIPO, discussions took place on September 30, 2010, between the Director General of ARIPO, Mr. Gift Sibanda, and the Vice Secretary-General on the provision of training and the organization of cooperation activities with a view to developing a system of plant variety protection in accordance with the UPOV Convention for ARIPO and its member States.

At the request of the ARIPO Office, the Office of the Union has provided its assistance in the development of a draft regional instrument on plant variety protection (draft regional instrument). The draft regional instrument has been developed on the basis of document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention".

From July 25 to 29, 2011, in Accra, Ghana, the Office of the Union was invited by ARIPO to participate in the "Regional Workshop on the ARIPO Framework on Plant Variety Protection", at which a draft regional instrument was discussed.

The ARIPO Council of Ministers, at its thirteenth session, held in Accra, Ghana, on December 1 and 2, 2011, considered document ARIPO/CM/XIII/8 "Draft Regional Policy and Legal Framework for Plant Variety Protection" of September 30, 2011.

Document ARIPO/CM/XIII/8, paragraphs 41 and 42 set out "policy options regarding the meaning of territory". The ARIPO Council of Ministers expressed a preference for the following option:

- "(iii) The third policy option is where an application for a breeder's right shall designate the contracting state to the regional instrument for which the breeder's right is requested to be granted. Under specific reasons, a designated state is entitled to make a written communication to the ARIPO Office that if a breeder's right is granted by the ARIPO Office, that breeder's right shall have no effect in its territory. This option is consistent with the current ARIPO Protocols."

The ARIPO Council of Ministers, at its thirteenth session, adopted the ARIPO Draft Legal Framework on the Protection of New Varieties of Plants (Draft Legal Framework) as the basis for the development of the ARIPO Protocol on Plant Variety Protection. The ARIPO Council adopted the above option of the proposed policy options regarding the interpretation of the term "territory" in the framework (see document ARIPO/CM/XIII/15 "Report", paragraph 60).

In the preparatory work for the thirteenth session of the ARIPO Council of Ministers, a request for clarification was sought in relation to Article 1(viii) and Article 34(1) of the 1991 Act of the UPOV Convention (reproduced below for ease of reference).

## Article 1

### Definitions

[...]

(viii) 'territory,' in relation to a Contracting Party, means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies; [...]"

## Article 34

### Ratification, Acceptance or Approval; Accession

(1) [States and certain intergovernmental organizations] (a) Any State may, as provided in this Article, become party to this Convention.

(b) Any intergovernmental organization may, as provided in this Article, become party to this Convention if it

(i) has competence in respect of matters governed by this Convention,

(ii) has its own legislation providing for the grant and protection of breeders' rights binding on all its member States and

(iii) has been duly authorized, in accordance with its internal procedures, to accede to this Convention. [...]"

The following drafting options were presented for consideration by the Consultative Committee, at its eighty-second session, which was held in Geneva on October 19 and on the morning of October 20, 2011, in relation to Article 1(viii) and Article 34(1) of the 1991 Act of the UPOV Convention, with regard to the "draft ARIPO regional instrument" (see document CC/82/10, paragraphs 9 to 11):

#### Option based on all ARIPO Member States

(a) "territory of ARIPO" means the territories of the Members States of ARIPO to which the [constituting treaty of ARIPO/Lusaka Agreement] applies;

(b) any application filed under this regional instrument with the ARIPO Office shall be valid in all the Members States of ARIPO; and

(c) pursuant to [insert Article on filing of applications], any grant made by the ARIPO Office shall be valid in all the Members States of ARIPO.

#### Option based on all Contracting States to the regional instrument

(a) "territory of ARIPO", for the purpose of this regional instrument, means the territories of the Contracting States to which this regional instrument applies;

(b) any application filed under this regional instrument with the ARIPO Office shall be valid in all the Contracting States; and

(c) pursuant to [insert Article on filing of applications], any grant made by the ARIPO Office shall be valid in all the Contracting States.

#### Option based on the Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Intellectual Property Organization (1982) (Harare Protocol)

(a) an application for a breeder's right shall designate the Contracting States to the regional instrument for which the breeder's right is requested to be granted; and

(b) under specific reasons, a designated State is entitled to make a written communication to the ARIPO Office that, if a breeder's right is granted by the ARIPO Office, that breeder's right shall have no effect in its territory."

The Consultative Committee concluded, on a preliminary basis, that the “Option based on all ARIPO Member States” and the “Option based on all Contracting States to the regional instrument” appeared to be acceptable, while noting that the “Option based on all Contracting States to the regional instrument” provided greater flexibility. The Consultative Committee also noted that the “Option based on the Harare Protocol” did not appear to correspond to the relevant provisions of the UPOV Convention (see document CC/82/15 “Report”, paragraph 76).

The conclusions of the Consultative Committee were communicated in a letter to Mr. Gift Sibanda, Director General of ARIPO, on November 4, 2011.

From June 12 to 14, in Harare, Zimbabwe, the Office of the Union participated in the “Expert Review Meeting on the ARIPO Draft Legal Framework on the Protection of New Varieties of Plants”, organized by the African Regional Intellectual Property Organization (ARIPO), in cooperation with UPOV and with the financial assistance of the United States Patent and Trademark Office (USPTO). At the Expert Meeting the conclusions on the notion of “territory” were as follows:

1. Experts indicated their preference for option 2 based on all Contracting States to the regional instrument.
2. Experts agreed that arrangements should be made to create an interactive system with the Contracting States to the regional instrument prior to the grant of a regional plant breeders’ right (in particular, in relation to cooperation with national centers that have competencies for undertaking DUS tests).
3. In relation to the entry into force of the regional instrument, an indication was that a minimum of [4] States will be appropriate.

The ARIPO Administrative Council, at its thirty-sixth session to be held in Zanzibar, United Republic of Tanzania, from November 26 to 30, 2012, will consider the Revised Draft Legal Framework on the Protection of New Varieties of Plants (document ARIPO/AC/XXXVI/9).

## **BAHRAIN**

Since June 2001, the Office of the Union has provided assistance to the Government of Bahrain with regard to different draft laws relating to plant variety protection on various occasions. The most recent comments on the “Draft Law on New Plant Varieties” (Draft Law) were sent by the Office of the Union on February 2, 2009. Several essential provisions of the 1991 Act of the UPOV Convention have not been incorporated in the Draft Law or differ from the corresponding provisions of the UPOV Convention. The most recent contact took place at the fringes of the “Sub-Regional Workshop on Geographical Indications and Plant Variety Protection for Gulf Cooperation Council (GCC) Countries”, which was held in Muscat, Sultanate of Oman, from April 26 to 28, 2009. The person responsible for matters concerning the development of the Draft Law is Mrs. Lona Abdulla Al Moataz, Director of Industrial Property, Ministry of Industry and Commerce.

On October 4, 2012, the Office of the Union met in Geneva with Mrs. Al Moataz and with Ms. Leena Zainal, Head of Patents, to discuss matters on the development of legislation in accordance with the 1991 Act of the UPOV Convention and on the procedure to become a UPOV member. Documents UPOV/INF/6 in English and Arabic “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention” and UPOV/INF/13 “Guidance on how to become a member of UPOV” were provided on that occasion.

## **BARBADOS**

On the occasion of the “National Seminar on Plant Variety Protection under the UPOV Convention”, which was held in Bridgetown on November 8 and 9, 2004, discussions took place with the Registrar of the Corporate Affairs and Intellectual Property Office of Barbados, Mrs. Maureen Crane-Scott, on the procedure to become a member of the Union and, in that context, the need to revise those provisions of the “Protection of New Varieties Act of 2001” which differed from the corresponding provisions of the UPOV Convention.



## **BRUNEI DARUSSALAM**

At the “Workshop on Plant Variety Protection Law” (Law Workshop) which was held in Geneva, from December 5 to 9, 2011 (see above section concerning Malaysia) consultations took place with the Delegation of Brunei Darussalam: Ms. Fuziah Haji Hamdan, Assistant Director of Agriculture, Department of Agriculture and Agrifood, Ministry of Industry and Primary Resources and Ms. Alice Khan, Legal Draftsman, Attorney General’s Chambers, Prime Minister’s Office. The discussions were focused on the Draft Plant Variety Protection Law (Draft Law).

On August 9, 2012, the Office of the Union received from Ms. Shahrinah Yusof Khan, Deputy Registrar, Head of Patents, Patent Registry Office a revised version of the Draft Law “ Draft Plant Varieties Protection Order (Order is equivalent to an Act) with a request for comments. The comments of the Office of the Union were provided on September 27, 2012, and consultation meetings were held in Geneva on October 5 and 9, 2012.

## **CAMBODIA**

Since November 2002, the Office of the Union has provided assistance to the Government of Cambodia in the development of legislation on plant variety protection on various occasions. The last comments on the “Draft Law on the Plant Breeder’s Right and Seed Management” (Draft Law) were provided at the fringes of a consultation on August 27 and 28, 2007, in Phnom Penh. On that occasion, several modifications were recommended to ensure that the breeder’s right should be independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material. On December 28, 2007, the Office of the Union was informed that it was difficult to reach agreement with the Ministry of Agriculture in relation to additional modifications of the Draft Law at that point of the legislative process. The Office of the Union was informed on September 16, 2008, by Mr. Ngeth Vibol, Director, Department of Industrial Property, Ministry of Industry, Mines and Energy, that the Draft Law had been adopted and that the comments of the Office of the Union of August 27 and 28, 2007, would be incorporated in a future revision of the Law. At that time, an English translation of the Law was not available. At the fringes of the Second World Seed Conference which was held in Rome from September 8 to 10, 2009, the Office of the Union was informed by Deputy Director General Khanrithykun So of the Ministry of Agriculture, Forestry and Fisheries that the Government of Cambodia is considering a revision of the Law.

At the “Workshop on Plant Variety Protection Law” (Law Workshop) which was held in Geneva, from December 5 to 9, 2011 (see above section concerning Malaysia) consultations took place with the Delegation of Cambodia: Mr. Monthivuth Ker, Acting Director, Department of Administration, Planning, Accounting and International Cooperation, General Directorate of Agriculture (GDA) and Mr. Chantravuth Phe, Deputy Director of Industrial Property, Plant Variety Protection, Ministry of Industry, Mines Energy. The discussions were focused on available UPOV guidance for the development of implementing regulations.

On October 3, 2012, the Office of the Union met with Mr. Vibol in Geneva to review the translation of the 1991 Act of the UPOV Convention in Cambodian. Mr. Vibol considered that the translation would be very useful in a future process for amending the Law.

## **CUBA**

From 1995 to 1999, the Office of the Union was in contact with the Industrial property Office of Cuba with respect to providing guidance on developing legislation on plant variety protection.

On September 21, 2010, the Office of the Union was informed by Mrs. América Santos Rivera, Vice-Minister, Ministry of Science, Technology and Environment, that Cuba was in the process of revising its seed legislation and consideration would be given in that context to the protection of new varieties of plants. The Office of the Union recommended the use of document UPOV/INF/6/1 “Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention” in the development of legislation on plant variety protection.

By letter of June 21, 2012, the Office of the Union was informed by Ms. María de los Ángeles Sánchez Torres, Director General, Cuban Office of Industrial Property (OCPI), that the Law Decree No. 291 for the Protection of Plant Varieties had been published on February 2, 2012. The Office of the Union has not seen the Law.

## **CYPRUS**

On June 16, 2004, the Office of the Union received a copy in Greek of the “Law on the Protection of Plant Varieties (Law 21(I)/2003)” with a request for comments by the Office of the Union. On June 29, 2004, the Office of the Union, requested a translation of the Law in one of the UPOV languages. No reply to that request has been received so far.

On September 2, 2011, the Office of the Union received an inquiry from Mr. Christos Nicolaou, Department of Registrar of Companies and Official Receiver, Ministry of Commerce, Industry and Tourism, for the provision of information on the procedure to become a UPOV member. On September 22, 2011, the Office of the Union replied on the basis of document UPOV/INF/13/1 “Guidance on how to become a member of UPOV”.

## **EL SALVADOR**

On November 25 and 26, 2009, the Office of Union participated in a “Seminar on the Protection of New Varieties of Plants”, in El Salvador, which primary purpose was to provide assistance in the development of legislation on plant variety protection. The Seminar was organized by the National Center of Registers (CNR), which is the national authority responsible for intellectual property, including plant breeders’ rights. A proposal for a draft legislation for plant breeders’ rights was presented at the Seminar; however it was clarified that the draft legislation had not been developed by the national authority and that further discussions and consultations were required.

## **INDONESIA**

Since December 1998, the Office of the Union has provided assistance to the Government of Indonesia in the development of legislation on plant variety protection on various occasions. The last comments on the “Law No. 29 of 2000 on Plant Variety Protection” were provided on July 6, 2009. Several essential provisions of the 1991 Act of the UPOV Convention had not been incorporated in the Law or differ from the corresponding provisions of the 1991 Act of the UPOV Convention.

At the fringes of consultation meetings, which took place in Jakarta, on June 1 and 2, 2010, concerning the translation of the 1991 Act of the UPOV Convention into Indonesian, a group of experts considered relevant aspects of the revision of the Law based on the comments of the Office of the Union of July 6, 2009.

On July 20, 2010, Mrs. Ir. Hindarwati, Director, Centre for Plant Variety Protection, Ministry of Agriculture, reported that a recommendation to revise the Law had been submitted to the Minister of Agriculture.

## **IRAQ**

Ms. Traiza J. Ridha, Director of the Industrial Property Office of Iraq, addressed a request to the World Intellectual Property Organization (WIPO) on January 14, 2010, for comments on the Draft Law of Intellectual Property of August 12, 2009. The Office of the Union received, via WIPO on February 15, 2010, a copy of that communication with a request to submit comments on Chapter Five “Plant Varieties” directly to Ms. Traiza J. Ridha.

The Office of the Union has made an initial analysis of the Draft Law and noted that while its Chapter Five contains several provisions of the 1991 Act of the UPOV Convention, other provisions are missing or, for linguistic or conceptual reasons, do not appear to correspond to the 1991 Act of the UPOV Convention. The comments of the Office of the Union on the Draft Law, with the recommendation to use document UPOV/INF/6/1 “Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention”, will be sent shortly.

## **ISLAMIC REPUBLIC OF IRAN**

On August 9, 2003, the Office of the Union was informed that the Parliament of the Islamic Republic of Iran had approved a proposal concerning membership of UPOV and received a request for the provision of assistance with a view to introducing a system for plant variety protection in the Islamic Republic of Iran. Since August 13, 2003, the Office of the Union has, on various occasions, provided assistance to the Islamic Republic of Iran in the development of legislation. The most recent comments were provided on November 4, 2004 on the "Plant Breeder's Rights Bill" and on May 10, 2005 on the "Draft Act Amending the Act of Plant Varieties Registration, Control and Certification of Seeds and Seedling". No reply was received to those comments. On November 27, 2007, the Office of the Union learned informally that the Plant Breeder's Rights Bill had been adopted by the Parliament and that several provisions of the adopted Act appear not to correspond to the 1991 Act of the UPOV Convention. The Office of the Union has not received a copy of the Act.

## **LAO PEOPLE'S DEMOCRATIC REPUBLIC**

On February 14, and 15, 2008, at the fringes of a "National Workshop on Plant Variety Protection under the UPOV Convention" held in Vientiane, the Office of the Union held a consultation meeting with officials from the Ministry of Agriculture and Forestry, Ministry of Justice, National Assembly, Intellectual Property Application Agencies and the Department of Intellectual Property, Standard, Technology and Metrology, Science, Technology and Environment Agency, in order to assist in the development of legislation. That consultation meeting provided an opportunity to explain that the "plant variety protection" section of the Intellectual Property Law adopted on December 26, 2007 should be amended in order to incorporate the essential provisions of the 1991 Act of the UPOV Convention.

At the "Workshop on Plant Variety Protection Law" (Law Workshop) which was held in Geneva, from December 5 to 9, 2011 (see above section concerning Malaysia) consultations took place with the Delegation of the Lao People's Democratic Republic. On that occasion, Mr. Vanthieng Phommasoulin, Senior Official, Agronomy Management Division, Department of Agriculture, reported to the Office of the Union his Government's plans to amend the Intellectual Property Law before the end of 2012. Guidance on how to amend the Law was provided based on UPOV/INF/6.

## **LIBYA**

On February 27, 2006, the World Intellectual Property Organization (WIPO) requested, on behalf of the Government of Libya, the provision of comments on the Draft Law on the Protection of New Varieties of Plants. On July 20, 2006, the Office of the Union transmitted the comments on the Draft Law and noted that several provisions of the Draft Law did not appear to correspond to the relevant provisions of the 1991 Act of the UPOV Convention.

## **MOZAMBIQUE**

The Office of the Union was invited to give a presentation at the "National Seminar on the Role of the International Patent System and the Patent Cooperation Treaty (PCT) in Research" organized by the World Intellectual Property Organization (WIPO) in collaboration with the Industrial Property Institute (IPI) of Mozambique, which will take place in Maputo, from October 22 to 24, 2012. At the fringes of the National Seminar, the local organizers requested the Office of the Union to meet with a group, comprising representatives from IPI, Ministry of Agriculture, Ministry of Science and Technology, which is working on developing a framework for plant variety protection in Mozambique including eventual membership of UPOV.

## **PAKISTAN**

On December 14, 2009, the Office of the Union received the visit of Mr. Muhammad Ismail, Deputy Director, Intellectual Property Organisation of Pakistan and Mr. Saeed Iqbal, Seed Certification Officer, Senior

Examiner (IPR), Federal Seed Certification & Registration Department, Pakistan. Discussions took place on the "Draft Plant Breeders Rights Bill of 2009" (Bill of 2009), in relation to the 1991 Act of UPOV Convention, and on the procedure to become a member of the Union. On that occasion, particular reference was made to those provisions of the Bill of 2009 that did not appear to correspond to the provisions of Article 5(2) and Article 18 of the 1991 Act of the UPOV Convention. On June 9, 2010, the Office of the Union received from the Director General of IPO-Pakistan, Mr. Syed Khalid Mehmood Bokhari, a copy of the "Draft Plant Breeders Rights Bill of 2010" (Bill of 2010). The Office of the Union had made an initial analysis of the Bill of 2010 and noted that the same provisions of the Bill of 2009 that did not appear to correspond to the provisions of Article 5(2) and Article 18 of the 1991 Act of the UPOV Convention were contained in the Bill of 2010.

On September 22, 2011, at UPOV/WIPO headquarters, the Office of the Union met with a delegation from the Intellectual Property Organization of Pakistan composed of Mr. Hameedullah Jan Afridi, Chairman, Mr. Sajjad Ahmad, Director General, and Mr. Meesaq Arif, Director, Admin/Human Resources. At the meeting it was reported that the Bill had been considered by the Provincial Departments and after consideration by the Ministry of Law would be submitted to the National Assembly. The Office of the Union explained the procedure to become a UPOV member on the basis of document UPOV/INF/13/1 "Guidance on how to become a member of UPOV" and suggested using, in the process of developing the Bill, document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention".

On June 5, 2012, Mr. Ahmad requested comments of the Office of the Union on the Plant Breeder's Rights Bill of 2010. On July 19, 2012, the Office of the Union informed Mr. Ahmad that, after an initial analysis of the Bill of 2010, certain provisions of the Bill, for instance the provisions dealing with access to genetic resources and benefit sharing, did not appear to relate to plant variety protection and, therefore, did not appear to correspond to the provisions of Article 5(2) and Article 18 of the 1991 Act of the UPOV Convention. Before proceeding with the incorporation of detailed comments in the Bill of 2010, the Office of the Union requested Mr. Ahmad's advice of the possibility to place the provisions of the Bill concerning access to genetic resources and benefit sharing, production, certification and marketing of material of varieties or the importing or exporting of such material in separate legislation or, a separate Chapter of the Bill.

On September 12, 2012, the Office of the Union met in Geneva with a Delegation from the Intellectual Property Organization of Pakistan and discussed the procedure for becoming a member of the Union and relevant matters on the development of legislation in accordance with the UPOV Convention.

## **SAUDI ARABIA**

From July 10 to 12, 2010, in Riyadh, Saudi Arabia, the Office of the Union provided advice to the Government of Saudi Arabia for the development of legislation in accordance with the UPOV Convention in view of the country's wish to become a member of the Union. The consultations in Riyadh provided an opportunity to explain that the "Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs of 2005" (Law of 2005) should be amended in order to incorporate the essential provisions of the 1991 Act of the UPOV Convention. Chapter Four of the Law of 2005 "Provisions Governing Protection of New Plant Varieties" contains only five articles with certain provisions that do not correspond to the 1991 Act of the UPOV Convention. In that context, the Office of the Union provided assistance in the drafting of a new piece of legislation based on document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention".

The implementation of the Law of 2005 and its future revision falls under the responsibility of Dr. Khalid Al-Akeel, Director General, General Directorate of Industrial Property (GDIP).

## **SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)**

*Member States of SADC (15): Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia, Zimbabwe*

Since January 2006, the Office of the Union has, on various occasions, provided assistance to SADC with a view to developing a system of plant variety protection in accordance with the UPOV Convention for SADC and its member States. Comments on the “Draft Protocol for the Protection of New Varieties of Plants (Plant Breeders’ Rights) in the Southern African Development Community (SADC) Region” (Draft Protocol) have been provided by the Office of the Union, most recently at the fringes of the “Regional Training Course on Plant Variety Protection under the UPOV Convention” which took place in Johannesburg, from July 9 to 11, 2008. On that occasion, the conclusion reflected in its Report provided that “[t]here was common agreement among the delegates of the SADC member states that the implementation of plant breeders’ rights in the Region has very high priority. All measures possible must be taken to facilitate and finalize the SADC Regional PBR legislation as soon as possible.” Since the Seminar in Johannesburg, the Office of the Union has been in contact with several member States of SADC in order to provide assistance in the development of legislation (see developments concerning Mauritius, United Republic of Tanzania and Zambia reported in this document).

## **SUDAN**

On October 22, 2003, the World Intellectual Property Organization (WIPO) requested, on behalf of the Government of Sudan, the provision of comments on the “Draft Law of 2003 on Seeds”. On December 2, 2003, the Office of the Union sent its comments on the Draft Law and noted that several provisions of the 1991 Act of the UPOV Convention should be incorporated in the Draft Law.

On August 17, 2011, the Office of the Union was notified by Rabie Rizgalla, Seed Administration, Ministry of Agriculture, that the Law had been adopted. The Office of the Union has not received a copy of the Law.

## **TONGA**

On February 9, 2004, Mr. Penisimani L. Latu, Deputy Registrar, Ministry of Labour, Commerce and Industries, made a request addressed to WIPO, for assistance on the development of legislation on plant variety protection. On March 15, 2004, the Office of the Union replied by sending relevant documents and information to assist Tonga in its process of drafting of legislation.

## **THAILAND**

On May 4, 2006 the Office of the Union provided comments on the “Plant Varieties Protection Act, B.E. 2542 (1999)” (Act of 1999), particular reference was made to those provisions of the Act of 1999 that did not appear to correspond to the provisions of Article 5(2) and Article 18 of the 1991 Act of the UPOV Convention. On November 11, 2009, at the fringes of the Asian Seed Congress 2009 which was held in Bangkok, the Office of the Union met with Thai officials to discuss the requirements for an effective system of plant variety protection in the context of a possible revision of the Act of 1999.

A proposal for amending the Act of 1999 was approved by the Cabinet in 2010 and submitted to the Council of State. A Committee was established to consider the proposal submitted to the Council of State and a recommendation was made in 2011 to separate matters from genetic resources from matters concerning plant variety protection. At the Workshop on PVP Laws, held in Geneva in November 2011, consultations took place with the Delegation of Thailand (Ms. Sopida Haemakom, Secretary of DOA, Ms. Chutima Ratanasatien, Senior Agricultural Scientist, and Mr. Pratchaya Wongsa, Legal Officer) on amendments to the Act of 1999.

On July 16 and 17, 2012, the Office of the Union held consultations in Bangkok with relevant officials of the Department of Agriculture and provided assistance in drafting relevant provisions for the revision of the Act of 1999.

## **TURKMENISTAN**

Since May 2006, the Office of the Union has provided assistance to the Government of Turkmenistan in the development of legislation on plant variety protection. The most recent comments on the Draft Law of Turkmenistan on the Legal Protection of Selection Achievements were sent by the Office of the Union on February 13, 2009. Several essential provisions of the 1991 Act of the UPOV Convention have not been incorporated in the Draft Law or differ from the corresponding provisions of the UPOV Convention. The Office of the Union has recommended using, in the process of developing the Draft Law, document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention." Mr. Rustemmyrat Payzullaev, Head, Turkmen Patent Office, Ministry of Economy and Finance is responsible for the development of legislation on plant variety protection.

## **ZAMBIA**

In March 2009, Mr. Francisco Miti, Chief Seeds Officer, Seed Control and Certification Institute, at the fringes of the Annual Congress of the African Seed Trade Association (AFSTA), in Cape Town, South Africa, transmitted a copy of the "Plant Breeder's Rights Act, 2007" (Act of 2007) to the Office of the Union with an informal request for comments. On June 8, 2010, the Office of the Union informed Mr. Miti that several essential provisions of the Act of 2007 did not appear to correspond to the relevant provisions of the 1991 Act of the UPOV Convention and recommended to use, in the process of amending the Act of 2007, document UPOV/INF/6/1 "Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention." On June 17 and 18, 2010, in Lusaka, the Office of the Union participated in a "Plant Breeder's Rights Workshop" and explained the comments of June 8, 2010.

At the fringes of the "Regional Workshop on the ARIPO Framework on Plant Variety Protection under the UPOV Convention", which was held from July 25 to 29, 2011, in Accra, Ghana, the Office of the Union held a consultation meeting with Mr. Edward D. Zulu, Chief Seeds Officer. At that meeting a discussion took place on the best approach to follow for the amendment of the Act of 2007 in order to incorporate the essential provisions of the 1991 Act of the UPOV Convention and how the Office the Union could assist in that process.

[End of Annex II and of document]