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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

## CONSULTATIVE COMMITTEE

### Eighty-Fifth Session Geneva, March 22, 2013

#### DEVELOPMENTS OF RELEVANCE TO UPOV IN OTHER INTERNATIONAL FORA

*Document prepared by the Office of the Union*

1. This document reports on developments of relevance to UPOV in other international fora since the eighty-third session of the Consultative Committee, held in Geneva on March 30, 2012, as follows:

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I. WORLD SEED PROJECT (WSP)

2. The background to the World Seed Project (WSP) is provided in document CC/84/9 Rev. "Developments of Relevance to UPOV in Other International Fora", paragraphs 2 to 4.

3. A report on new developments concerning the World Seed Project will be made to the Consultative Committee at its eighty-fifth session.

*4. The Consultative Committee is invited to note that a report on new developments concerning the World Seed Project will be made to the Consultative Committee at its eighty-fifth session.*

II. EAST ASIA PLANT VARIETY PROTECTION FORUM (EAPVP FORUM)

5. The background to the East Asia Plant Variety Protection Forum (EAPVP Forum) is provided in document CC/84/9 Rev. "Developments of Relevance to UPOV in Other International Fora", paragraphs 7 to 9.

6. The Office of the Union plans to attend the Sixth EAPVP Forum Meeting, which is planned to be held in Malaysia in 2013. The date of the meeting, if known, will be reported to the Consultative Committee at its eighty-fifth session.

*7. The Consultative Committee is invited to note the developments concerning the EAPVP Forum.*

III. DEVELOPMENTS UNDER THE AUSPICES OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

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

*Platform for the Co-Development and Transfer of Technologies*

8. The background to the "Platform for the Co-Development and Transfer of Technologies" (ITPGRFA Platform) within the context of the ITPGRFA is provided in document CC/84/9 Rev. "Developments of Relevance to UPOV in Other International Fora", paragraphs 28 to 30. The Consultative Committee, at its eighty-fourth session, held in Geneva, October 31, 2012, approved the participation of the Office of the Union in the ITPGRFA Platform (see document CC/84/13 "Report on the Conclusions", paragraph 66).

9. A report on new developments concerning the ITPGRFA Platform will be made to the Consultative Committee at its eighty-fifth session.

*10. The Consultative Committee is invited to note that a report on new developments concerning the ITPGRFA Platform will be made to the Consultative Committee at its eighty-fifth session.*

Commission on Genetic Resources for Food and Agriculture (CGRFA)

11. The Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture (WG-PGR) of the CGRFA held its sixth session in Rome, from November 14 to 16, 2012. The Office of the Union participated in that session.

12. The following sections report on certain matters considered under agenda item 3 of the sixth session of the WG-PGR "Implementation of The Second Global Plan of Action for Plant Genetic Resources for Food and Agriculture", that were of relevance for UPOV.

*Review of indicators, including higher-order indicators, reporting format and targets for monitoring the implementation of the Second Global Plan of Action*

13. The Provisional Annotated Agenda and Timetable (document CGRFA/WG-PGR-6/12/1/Add.1) provided the following information concerning agenda item 3.1:

“3.1 Review of indicators, including higher-order indicators, reporting format and targets for monitoring the implementation of the Second Global Plan of Action”

“With the adoption of *the Second Global Plan of Action for Plant Genetic Resources for Food and Agriculture* (Second GPA), the Commission at its Thirteenth Regular Session requested FAO to review the existing indicators and identify or develop higher-order indicators which could enable stakeholders at all levels to effectively monitor the implementation of the Second GPA. The document *Targets and indicators for plant genetic resources for food and agriculture* (CGRFA/WG-PGR-6/12/2) provides information on the review of existing indicators and reporting format and the development of targets and related, “higher-order” indicators. It contains the *Draft indicators for monitoring the implementation of the Second GPA* (Appendix I) and *Draft targets and indicators for plant genetic resources for food and agriculture* (Appendix II). The draft reporting format for monitoring the implementation of the Second GPA is given in *Reporting format for monitoring the implementation of the Second Global Plan of Action* (CGRFA/WG-PGR-6/12/Inf.1). The Working Group is requested to review these elements and provide recommendations to the Commission on their further development.”

14. The following indicators were included in document CGRFA/WG-PGR-6/12/2, Appendix I “Draft Indicators for Monitoring the Implementation of the Second Global Plan of Action for Plant Genetic Resources”:

“[...]  
Sustainable use  
[...]

“Priority Activity 9: Supporting plant breeding, genetic enhancement and base-broadening efforts

- Number of crops with active public pre-breeding and breeding programmes
- Number of active public crop breeders
- Number of new varieties released<sup>1</sup>”

[...]

“Priority Activity 12: Supporting seed production and distribution

- Number of new varieties released<sup>2</sup>
- Number of formal/registered seed enterprises
- Number of most popular varieties that together account for 80% of the total area for each of the five most widely cultivated crops
- Proportion of area supplied with seed by the formal seed sector for the five most widely cultivated crops
- Existence of a national seed policy and seed law”

*FAO activities in support of the implementation of the Second Global Plan of Action on Plant Genetic Resources for Food and Agriculture*

15. The Provisional Annotated Agenda and Timetable (document CGRFA/WG-PGR-6/12/1/Add.1) provided the following information concerning agenda item 3.2:

“3.2 *FAO activities in support of the implementation of the Second Global Plan of Action on Plant Genetic Resources for Food and Agriculture*

“At its Thirteenth Regular Session, the Commission agreed on *the Second Global Plan of Action on Plant and Genetic Resources for Food and Agriculture* (Second GPA) and requested the preparation of a Synthetic Account of the Second GPA. The Commission further encouraged follow-up activities on a number of priority activities including *in situ* conservation and on-farm management, plant breeding, diversification and use of underutilised crops, seeds systems, national strategy development, updating of the National Information Sharing Mechanisms and the GPA Facilitating Mechanism. The document

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<sup>1</sup> Also listed in Priority Activity 12: Supporting seed production and distribution.

<sup>2</sup> Also listed in Priority Activity 9: Supporting plant breeding, genetic enhancement and base-broadening efforts

FAO activities in support of the implementation of the Second Global Plan of Action on Plant Genetic Resources for Food and Agriculture (CGRFA/WG-PGR-6/12/3) provides information on the ongoing work in these areas, including country assistance, preparation of tools and guidelines, networks and collaboration. The *Draft Guide for National Seed Policy Formulation* is provided in CGRFA/WG-PGR-6/12/Inf.3. The Working Group is requested to provide guidance with regards to the implementation of the priority activities of the Second GPA, and call for necessary financial resources to ensure continuity of this work.”

16. Under agenda item 3, the WG-PGR considered document CGRFA/WG-PGR-6/12/Inf.3 “Draft Guide for National Seed Policy Formulation” (see [http://typo3.fao.org/fileadmin/templates/agphome/documents/PGR/ITWG/ITWG6/info\\_docs/CGRFA-WG-PGR-6-12-inf3.pdf](http://typo3.fao.org/fileadmin/templates/agphome/documents/PGR/ITWG/ITWG6/info_docs/CGRFA-WG-PGR-6-12-inf3.pdf)). The “Report of the 6th Session of the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture” (document CGRFA/WG-PGR-6/12/REPORT: see [http://typo3.fao.org/fileadmin/templates/agphome/documents/PGR/ITWG/ITWG6/FinalRep\\_Eng.pdf](http://typo3.fao.org/fileadmin/templates/agphome/documents/PGR/ITWG/ITWG6/FinalRep_Eng.pdf)) noted “that there was not sufficient time to review the Draft Guide for National Seed Policy Formulation, and agreed that Members of the WG-PGR and relevant organizations would submit written comments on the Draft Guide by 15 January 2013, for consideration by the Commission at its next session” (see document CGRFA/WG-PGR-6/12/REPORT, paragraph 19). On that basis, the Office of the Union provided written comments, a copy of which is reproduced in the Annex to this document (in English only).

17. The CGRFA will hold its Fourteenth regular session, in Rome from April 15 to 19, 2013, which the Office of the Union plans to attend.

18. *The Consultative Committee is invited to:*

*(a) note the report of certain matters considered under agenda item 3. “Implementation of The Second Global Plan of Action for Plant Genetic Resources for Food and Agriculture”, as set out in paragraphs 11 to 16; and*

*(b) note the comments provided by the Office of the Union to the CGRFA on document CGRFA/WG-PGR-6/12/Inf.3 “Draft Guide for National Seed Policy Formulation”, which are reproduced in the Annex to this document.*

#### IV. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

##### WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

19. The background to the IGC is provided in document CC/84/9 Rev. “Developments of Relevance to UPOV in Other International Fora”, paragraphs 44 to 51.

20. At its Forty-First (21<sup>st</sup> Extraordinary) Session, held in Geneva, from October 1 to 9, 2012, the WIPO General Assembly took note of the information contained in document WO/GA/41/15 ([http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=212283](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=212283)), and agreed as follows (see document WO/GA/41/18 “Report”, paragraph 196):

“In accordance with the mandate of the IGC for 2012/2013, the Assemblies of the Member States of WIPO agree to continue intensive negotiations and engagement in good faith, with appropriate representation, towards concluding the text(s) of an international legal instrument(s) which will ensure effective protection of GRs, TK and TCEs, and decide:

“(a) The work of the Committee will be carried out through three thematic IGC sessions as set out in the table below.

“(b) The work will build on the existing texts submitted by the IGC to the General Assembly (Annex A, Annex B, and Annex C of document WO/GA/41/15).

- “(c) The Committee is requested to submit to the 2013 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs. The General Assembly in 2013 will take stock of and consider the text(s), progress made and decide on convening a diplomatic conference.
- “(d) The work of the IGC shall follow the program set out below:

Provisional Date	Activity
February 2013	IGG 23 - Genetic Resources (5 days)
April/May 2013	IGC 24 – Traditional Knowledge. With a focus on, but not limited to, 4 key Articles viz Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions (5 days)
July 2013	IGC 25 – Traditional cultural expressions. With a focus on, but not limited to, 4 key Articles viz Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions (5 days)  Review and take stock of the text(s) of the International legal instrument(s) ensuring the effective protection of TCEs, TK, and GRs and make a recommendation to the General Assembly (3 days)
October 2013	WIPO General Assembly  Decide on convening a diplomatic conference”

21. The meeting dates of the IGC in 2013 are as follows:

- (a) IGC 23, from February 4 to 8, on the subject of genetic resources (GRs);
- (b) IGC 24, from April 22 to 26, on the subject of traditional knowledge (TK); and,
- (c) IGC 25, from July 15 to 24, on the subject of traditional cultural expressions (TCEs); and to review and take stock of the text(s) of the International legal instrument(s) ensuring the effective protection of TCEs, TK, and GRs, and to make a recommendation to the General Assembly.

*22. The Consultative Committee is invited to note the developments concerning the IGC, as set out in paragraphs 19 to 21.*

WIPO Questionnaire “A tool to assess the current status of the national intellectual property system, strategic objectives and needs in line with national development priorities”

23. The Consultative Committee, at its eighty-third session, held in Geneva on March 30, 2012, approved the contribution of the Office of the Union to the development of the WIPO Questionnaire “A tool to assess the current status of the national intellectual property system, strategic objectives and needs in line with national development priorities” (see document CC/83/7 “Report on the Conclusions”, paragraph 42). The background to this contribution is provided in document CC/84/9 Rev. “Developments of Relevance to UPOV in Other International Fora”, paragraphs 39 to 41.

24. Since the eighty-fourth session of the Consultative Committee, the Office of the Union has commented on a draft of the WIPO Questionnaire “Tool 2: Baseline Survey Questionnaire – Assessing the current state of the national intellectual property system and its links with national development priorities”, with regard to plant variety protection, which is planned to become a part of a tool kit for intellectual property policy makers. The tool kit will contain three elements: Tool 1: Methodology; Tool 2: Baseline Survey Questionnaire; and Tool 3: Benchmarking Indicators. The Office of the Union has also been invited to comment on the section on plant variety protection in “Tool 3: Benchmarking Indicators”.

25. *The Consultative Committee is invited to note the developments concerning the WIPO tool kit for intellectual property policy makers.*

## V. WORLD TRADE ORGANIZATION (WTO)

### Council for TRIPS (Trade-Related Aspects of Intellectual Property Rights)

26. The background to this item is provided in document CC/84/9 Rev. "Developments of Relevance to UPOV in Other International Fora", paragraphs 58 to 60.

#### *Meeting of the Council for TRIPS of November 6 and 7, 2012*

27. The Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS") met on November 6 and 7, 2012.

28. The meeting was opened by Ambassador Dacio Castillo (Honduras), Chair of the Council for TRIPS. The minutes of the meeting are contained in document IP/C/M/71, which is expected to become available by early 2013, at the following address of the WTO website: <http://docsonline.wto.org/?language=1>.

29. The Council for TRIPS dealt with the agenda items "Review of the Provisions of Article 27.3(b)", "Relationship between the TRIPS Agreement and the Convention on Biological Diversity" and "Protection of Traditional Knowledge and Folklore" simultaneously. The Council for TRIPS did not receive any new submissions in relation to these agenda items. The Council for TRIPS took note of the statements made by the delegations and agreed to continue discussions at its next meeting. The Chair of the Council for TRIPS will continue consultations on the suggestion that the Secretariat of the Convention on Biological Diversity (CBD) be invited to brief the Council for TRIPS on the outcome of the tenth meeting of the Conference of the Parties to the CBD held in Nagoya, Japan in October 2010.

30. The meeting of the Council for TRIPS of November 6 and 7, 2012, had a special focus on technical cooperation. The Chair of the Council for TRIPS had addressed an invitation on July 4, 2012, to the intergovernmental organization observers to the Council for TRIPS, including UPOV, to provide information on their technical and financial cooperation programs relevant to the implementation of TRIPS Agreement. As in most previous years, the Office of the Union submitted information on the services that UPOV provides for enhancing the effectiveness of the UPOV system and the assistance it has provided to States and organizations in the introduction and implementation of the UPOV system. The information provided by the Office of the Union was circulated to the Council for TRIPS in document IP/C/W/581/Add.3 and IP/C/W/581/Add.3/Corr.1.

#### *Future meeting*

31. The next meeting of the Council for TRIPS, which the Office of the Union plans to attend, is scheduled to take place on March 5 and 6, 2013.

32. *The Consultative Committee is invited to note the developments in relation to WTO.*

## VI. EXPO 2015

### Introduction

33. In November 2012, WIPO received a letter from the Italian Ambassador in Geneva, encouraging it to participate in a pool of Geneva-based international organizations active in the field of science, technology and innovation (e.g. World Health Organization (WHO), International Telecommunication Union (ITU), World Meteorological Organization (WMO) and the European Organization for Nuclear Research (CERN)), and to submit a coordinated contribution to EXPO 2015 (see "Background") under the auspices of the United Nations participation. UPOV was subsequently approached by WIPO to participate in the Geneva-based group contribution.

## Background

34. EXPO 2015 will take place in Milan, from May 1 to October 31, 2015. The theme of EXPO 2015 is "Feeding the Planet, Energy for Life" (see <http://en.expo2015.org/>). The subthemes of EXPO 2015 are: Science and technology for food safety, security and quality; Science and technology for agriculture and biodiversity; Innovation in the agro-food supply chain; Dietary education; Food for better lifestyles; Food and culture and Cooperation and development on food. The coordination of all United Nations participation in Expo 2015 will be led by the Rome-based agencies, under the leadership of Mr. Eduardo Rojas Briaies, Assistant Director General, Forestry Department, FAO.

35. The organizers anticipate exhibitions from around 140 countries, as well as from international organizations, civil society organizations and corporations. Physical attendance is anticipated from 20 million visitors (around one-third from outside Italy), with up to 1 billion people expected to participate in the virtual tour via the website. The cost of EXPO 2015 is anticipated at almost 3 billion Euros (1.3 billion euros by Italy, 1 billion euros by participating countries and 0.4 billion euros by corporations).

## Possible UPOV Participation

36. In order to retain the possibility for UPOV to participate in EXPO 2015, the Office of the Union has participated in two meetings of the Geneva-based organizations' group and has contributed potential concepts for the collective input of the project proposals for EXPO 2015. The UPOV contribution was based on the information presented in the trilogy of events (Seminar and Symposia) held in 2011 and 2012 (see document CC/84/13 "Report on the Conclusions", paragraph 32). Once all of the proposals have been reviewed by the Steering Group of the United Nations, at the end of January 2013, further consultations will take place on proposals which are selected to be developed into exhibits.

37. With regard to the resource implications and control of content of contributions from the participating organizations, the Coordinator, UN-Expo 2015 Team, FAO, has clarified that "EXPO 2015 will also cover the costs of developing agreed UN proposals into appropriate digital exhibits/presentations by contracting with suitable companies, while the UN will retain overall control over the content."

38. *The Consultative Committee is invited to:*

*(a) approve the Office of the Union's continued participation in discussions with WIPO and other Geneva-based international organizations, with a view to UPOV's possible participation in EXPO 2015; and*

*(b) note that the approval of the Consultative Committee would be sought before a commitment to UPOV's participation in EXPO 2015 is made.*

[Annex follows]

ANNEX

Letter dated January 15, 2013 to Director-General Graziano da Silva, FAO,  
enclosing the comments by the Office of the Union on the  
“Draft Guide for National Seed Policy Formulation” (document CGRFA/WG-PGR-6/12/Inf.3)  
(in English only)



INTERNATIONALER  
VERBAND  
ZUM SCHUTZ VON  
PFLANZENZÜCHTUNGEN  
  
GENÈVE, SCHWEIZ

UNION INTERNATIONALE  
POUR LA PROTECTION  
DES OBTENTIONS  
VÉGÉTALES  
  
GENÈVE, SUISSE

UNIÓN INTERNACIONAL  
PARA LA PROTECCIÓN  
DE LAS OBTENCIONES  
VEGETALES  
  
GINEBRA, SUIZA

INTERNATIONAL UNION  
FOR THE PROTECTION  
OF NEW VARIETIES  
OF PLANTS  
  
GENEVA, SWITZERLAND

Mr. José Graziano da Silva  
Director-General  
Food and Agriculture Organization of  
the United Nations (FAO)  
Viale delle Terme di Caracalla  
00153 Rome  
Italy

January 15, 2013

Dear Director-General Graziano da Silva,

I refer to the sixth session of the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture (Working Group) of the Commission on Genetic Resources for Food and Agriculture (Commission), held in Rome, November 14 to 16, 2012, and the document “Draft Guide for National Seed Policy Formulation” (Draft Guide) (document CGRFA/WG-PGR-6/12/Inf.3).

The Working Group noted that there was not sufficient time to review the Draft Guide, and agreed that Members of the Working Group and relevant organizations would submit written comments on the Draft Guide by January 15, 2013, for consideration by the Commission at its next session (see document CGRFA/WG-PGR-6/12/REPORT, paragraph 19).

On that basis, I have the pleasure to enclose the comments by the Office of the International Union for the Protection of New Varieties of Plants (UPOV) to the above-mentioned document. We remain at your disposal for any additional clarification you may need.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "P. Button".

Peter Button  
Vice Secretary-General



Comments UPOV Office  
*Draft Guide for National Seed Policy Formulation*  
(Document CGRFA/WG-PGR-6/12/Inf.3)

The following paragraphs were extracted from document CGRFA/WG-PGR-6/12/Inf.3.

*“95. Seed import and export provisions are also influenced by other countries’ legal instruments, particularly the phytosanitary import and export requirements included in phytosanitary legislation. Seed legislation may further be influenced by the Cartagena Bio-safety Protocol of the Convention on Biological Diversity, which provides a regulatory framework for the transboundary movement of living modified organisms (LMOs), resulting from modern biotechnology, that may have adverse effects on biological diversity, taking also into account risks to human health.*

*“Variety testing, release and registration. Prior to defining the scope and objective of legislation on variety control, it is important to clearly distinguish variety control systems and registration from Intellectual Property Rights (IPRs) systems and more specifically plant breeders’ rights (PBRs).*

*The process for registering a new variety for the purpose of protecting the intellectual property rights of the breeder requires a full description of the variety and confirmation that it is different from other varieties known in the country, has not been sold before, and that it is uniform and stable.”*

Proposed amendment to highlighted text:

The process for registering a new variety for the purpose of protecting the intellectual property rights of the breeder requires a full description of the variety and confirmation that it is different from other varieties known in the country, has not been sold before, and that it is uniform and stable. To be eligible for protection, varieties have to be (i) distinct from existing, commonly known varieties (common knowledge is not restricted to national or geographical borders), (ii) sufficiently uniform, (iii) stable and (iv) new in the sense that they must not have been commercialized prior to certain dates before the application for protection.

Comments:

Though the above highlighted paragraph relates to a general section on Intellectual Property Rights (IPR) and is not specific to the International Union for the Protection of New Plant Varieties (UPOV), it should be noted that, according to the UPOV Convention, to be eligible for protection, varieties have to be (i) distinct from existing, commonly known varieties, from any country, (ii) sufficiently uniform, (iii) stable and (iv) new in the sense that they must not have been commercialized prior to certain dates established by reference to the date of the application for protection.

Regarding the notion of novelty, the UPOV Convention foresees the possibility of sale prior to filing of an application for plant breeders’ rights, under certain conditions. The different periods for selling or disposing of the variety for purposes of exploitation of the variety in the territory of the member of the Union where the application is filed and in other territories without affecting the novelty have been established in recognition of the lengthy nature of the evaluation by the breeder of the variety in each territory in order to take a decision to seek protection. The longer period for trees and vines takes into consideration the slower growth and multiplication for these types of plants. Article 6 (1) of the 1991 Act of the UPOV Convention states:

“(1) The variety shall be deemed to be new if, at the date of filing of the application for a breeder’s right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety

- (i) in the territory of the Contracting Party in which the application has been filed earlier than one year before that date and
- (ii) in a territory other than that of the Contracting Party in which the application has been filed earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.”

*“97. Intellectual property: Intellectual property rights (IPRs) are legal rights granted by governmental authorities to control certain products of human intellectual effort and ingenuity (FAO, 2004a). To protect new plant varieties, countries may apply general IPR protection. They may also approve specific legislation to protect Plant Breeders Rights (PBRs), which protect new varieties of plants that are distinct, uniform and stable. The legal protection of PBRs means that the plant breeder is granted an exclusive, temporary IPR and the variety is considered to be a ‘protected variety’. The plant breeder gains control of the new protected variety and the right to collect royalties for a number of years. Sound legal frameworks protecting breeder’s rights can promote plant breeding as well as progress in agriculture.”*

Proposed amendment to highlighted text:

~~The legal protection of PBRs means that the plant breeder is granted an exclusive, temporary IPR and the variety is considered to be a ‘protected variety’. The plant breeder gains control of the new protected variety and the right to collect royalties for a number of years.~~ The breeders’ right means that, during the period of protection, the authorization of the breeder is required to propagate the variety for commercial purposes. The breeder may make his authorization subject to conditions and limitations, which can include the payment of a royalty.

Comments:

The mission of UPOV is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. The UPOV Convention provides the basis for UPOV members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeders’ right.

The UPOV Convention specifies the acts that require the breeders’ authorization in respect of the propagating material of a protected variety and, under certain conditions, in respect of the harvested material. The breeders’ right means that the authorization of the breeder is required to propagate the variety for commercial purposes. In this sense, Article 14 (1) (b) of the 1991 Act of the UPOV Convention establishes that “the breeder may make his authorization subject to conditions and limitations.”

*“99. The sui generis system that is more widely used is the UPOV system. Patents are granted normally on inventions that have fulfilled the three cumulative eligibility requirements for patentability (novelty, inventive step and industrial application). There are significant differences in approach between sui generis plant breeders’ rights systems and patents. In the case of plant breeders’ rights, the eligibility requirements for protection are not onerous, but the scope of protection granted is quite narrow, both in terms of exclusive rights and the various exceptions to and limitations on those rights. Patent laws strike a very different balance. Eligibility requirements are high and difficult to meet, but once granted a patent conveys broad rights to exclude third parties from exploiting the patented invention.”*

Proposed amendment to highlighted text:

~~In the case of plant breeders’ rights, the eligibility requirements for protection are not onerous, but the scope of protection granted is quite narrow, both in terms of exclusive rights and the various exceptions to and limitations on those rights. Patent laws strike a very different balance. Eligibility requirements are high and difficult to meet, but once granted a patent conveys broad rights to exclude third parties from exploiting the patented invention.~~ The legislation governing patents and plant breeders’ rights have different subject matter of protection, conditions for protection, scope and exceptions.

Comments:

Most countries and intergovernmental organizations which have introduced a plant variety protection system have chosen to base their system on the UPOV Convention in order to provide an effective, internationally recognized system. Since the legislation governing patents and plant breeders’ rights have different subject matter of protection, conditions for protection, scope and exceptions, it would not be appropriate to seek to compare the two systems.

*“100. Intellectual property rights in plant varieties must also take account of farmers’ rights and farmers’ privileges. Farmers’ rights are the rights that farmers have to benefit from varieties which have been developed from local landraces and which they have been using for long time. This point is defined in the International Treaty on Plant Genetic Resources (part III article 9), which recognizes the importance of local communities and farmers in conservation and development of plant genetic resources and gives governments the responsibility of sharing the benefits arising from the use of such resources. Farmers’ privilege refers to the right that small farmers may have to save and re-use IPR-protected seed without any obligation of payment. In fact, in the UPOV Act of 1991, Article 15 (2) incorporates an optional exception to breeders’ rights to permit the use of the product of the harvest by the farmer on his own holding. In national plant variety protection laws, the scope of this so-called farmers’ privilege varies widely, however. While some countries only permit farmers to replant saved seeds on their own land holdings, others allow them also to sell limited quantities of seeds for reproductive purposes.”*

Proposed amendment to highlighted text:

~~Intellectual property rights in plant varieties must also take account of farmers’ rights and farmers’ privileges. Farmers’ rights are the rights that farmers have to benefit from varieties which have been developed from local landraces and which they have been using for long time. This point is defined in the International Treaty on Plant Genetic Resources (part III article 9), which recognizes the importance of local communities and farmers in conservation and development of plant genetic resources and gives governments the responsibility of sharing the benefits arising from the use of such resources. Farmers’ privilege refers to the right that small farmers may have to save and re-use IPR-protected seed without any obligation of payment. In fact, in the UPOV Act of 1991, Article 15 (2) incorporates an optional exception to breeders’ rights to permit the use of the product of the harvest by the farmer on his own holding. In national plant variety protection laws, the scope of this so-called farmers’ privilege varies widely, however. While some countries only permit farmers to replant saved seeds~~ of protected varieties ~~on their own land holdings, others allow them also to sell limited quantities of seeds for reproductive purposes. Under the optional exception of Article 15(2) of the 1991 Act of the UPOV Convention, UPOV members may, within reasonable limits and subject to safeguarding the legitimate interest of breeders, permit farmers, on their own holdings, to use part of their harvest of a protected variety for the planting of a further crop. In addition, Article 15 (1) of the 1991 Act of the UPOV Convention provides for “compulsory” exceptions to the plant breeder’s right. Article 15 (1) states that the breeders’ right shall not extend to acts done privately and for non-commercial purposes. That exception suggests that, for example, the propagation of a variety by a farmer exclusively for the production of a food crop to be consumed entirely by that farmer and the dependents of the farmer living on that holding, may be considered to fall within the meaning of acts done privately and for non-commercial purposes. Therefore, activities, including for example “subsistence farming”, where these constitute acts done privately and for non-commercial purposes, may be considered to be excluded from the scope of the breeder’s right, and farmers who conduct these kinds of activities freely benefit from the availability of protected new varieties (see document “Explanatory Notes on Exceptions to the Breeder’s Right Under the 1991 Act of the UPOV Convention” (UPOV/EXN/EXC/1), available at [http://www.upov.int/edocs/expndocs/en/upov\\_exn\\_exc\\_1.pdf](http://www.upov.int/edocs/expndocs/en/upov_exn_exc_1.pdf)).~~

Comments:

Since farmers’ rights under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) are subject to national law, there is no conflict with national laws that are developed in conformity with the UPOV Convention. It is important to clarify that the notion of farmers’ rights under the ITPGRFA is not linked to the optional exception under Article 15(2) of the 1991 Act of the UPOV Convention, which refers only to varieties covered by the scope of the breeders’ right. Under the optional exception of Article 15(2) UPOV members may permit farmers, on their own farms, to use part of their harvest of a protected variety for the planting of a further crop. Under this provision, members of UPOV are able to adopt solutions, which are specifically adapted to their agricultural circumstances. However, this provision is subject to reasonable limits and requires that the legitimate interests of the breeder are safeguarded, to ensure there is a continued incentive for the development of new varieties of plants, for the benefit of society.

The 1991 Act of the UPOV Convention also establishes that the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder: (i) production or reproduction (multiplication); (ii) conditioning for the purpose of propagation; (iii) offering for sale; (iv) selling or other marketing; (v) exporting; (vi) importing; (vii) stocking for any of the purposes mentioned in (i) to (vi) above.