



## **Updates on Plant Variety Protection**

***Issue #17, 24 October 2015***

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## **1. Editorial**

This issue of APBREBES updates highlights issues that will be discussed at UPOV's autumn session that begins on 26<sup>th</sup> October. The issues include Industry's proposal for a harmonized PVP filing mechanism; UPOV's policy on documents; Draft Program and Budget for the 2016-2017 Biennium; Interrelations with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), especially its Article 9 which concerns Farmers' Rights; and examination of conformity of Iran's legislation on Plant Variety Protection with the 1991 Act of UPOV.

## **2. UPOV's 2015 Autumn Session – Upcoming Issues**

UPOV will be meeting in Geneva for its Autumn session from 26<sup>th</sup> – 29<sup>th</sup> October 2015. Its Administrative and Legal Committee (CAJ) will meet on 26<sup>th</sup> October and 27<sup>th</sup> October while its main rule-making body, the Consultative Committee (CC) will meet on 28<sup>th</sup> October. UPOV's highest decision-making body, the UPOV Council will meet on 29<sup>th</sup> October. The proceedings of the CC are closed to observers.

### **Consultative Committee\***

The CC will be considering a number of important matters with significant implications for UPOV and non-UPOV members.

### ***International System of Cooperation (ISC) (CC/90/10)***

The ISC is a demand of the International Seed Federation (ISF), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants (CIOPORA) and CropLife International (CLI), facilitated by the UPOV Secretariat.

This proposal by the Industry concerns the establishment of a harmonized mechanism for the filing and examination of applications for plant breeders' rights (PBRs), with standardized requirements and forms which would then be assessed for compliance with formal requirements and novelty by selected preliminary examining office(s) as well as centralized testing of DUS (distinctness, uniformity and stability).

The proposal was first formally presented at the 2014 autumn meetings of UPOV. In March of this year, the UPOV Secretariat presented to the Consultative Committee a detailed paper (CC/89/6) highlighting 30 issues for the consideration of UPOV members.

However UPOV members were skeptical and unconvinced with several raising concerns over the need for such a mechanism. Thus the March session of the Consultative Committee concluded that the matter should be considered further at its 90<sup>th</sup> session (which takes place on 28<sup>th</sup> October) and that the UPOV Secretariat should produce a document with more information about the need for an international system, providing a business analysis and cost estimate.

In response to the Consultative Committee's request, the Secretariat has prepared CC/90/10, which contains a business analysis and cost estimate, international survey by ISF/CIOPORA/CLI and some information from its PLUTO database.

For a detailed analysis of CC/90/10, see [Vague Results Question the Need for Harmonized PVP Filing System in UPOV](#)

### ***Policy on Documents (CC/90/6)***

At this session, the Consultative Committee will be considering its policy on documents including communications provided by observers.

UPOV's current practice on documents is inconsistent with standards of transparency maintained by other international organizations such as its host organization the World Intellectual Property Organization (WIPO). With the aim of improving its transparency, APBEBES has formally submitted [proposals](#) for the consideration of UPOV members: These are:

- All documents of the Consultative Committee should be made publicly available on the UPOV website.
- Statements made by UPOV Members and observers should be reproduced *verbatim* in their entirety in the reports of the UPOV Council, the Consultative Committee and the Administrative and Legal Committee.
- Written Comments including those provided by observers should be promptly posted on

UPOV's website and circulated to UPOV Members in advance of consideration of the agenda item that is commented on or within a week of receipt by the Secretariat, whichever is earlier.

***Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) (CC/90/11CORR and CC/90/11ADD)***

The Consultative Committee has been invited to note developments that took place at the Sixth Session of the Governing Body (GB) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which met in Rome from 5<sup>th</sup> to 9<sup>th</sup> October 2015. The Governing Body adopted Resolution 5/2015 "Implementation of Article 9, Farmers' Rights" which states:

*"12. Requests the Secretary to continue engaging, in a mutually supportive manner with UPOV and WIPO to jointly, and including through a participatory and inclusive process, as appropriate and subject to availability of resources, finalize the process for identification of possible areas of interrelations between their respective instruments and the Treaty and report on the outcomes to the 7th Session of the Governing Body".*

For more information on adoption of Resolution 5/2015, see

Sangeeta Shashikant (14 October 2015) [Development: Contentious negotiations over Farmers' Rights resolution](#) In: SUNS #8112

Earlier this year, Mr. Francis Gurry, in his capacity as Secretary-General of UPOV, wrote to the Treaty Secretary Mr. Shakeel Bhatti on 27 April 2015, suggesting that it would be beneficial to:

- clarify the purpose of the "Preliminary list of issues on interrelations of the International Treaty and the relevant international instruments of UPOV and WIPO, as processed by the Ad Hoc Technical Committee on Sustainable Use at its second meeting in March 2015", as presented in Appendix II of Mr. Bhatti's letter of March 27; and
- elaborate on the proposal for "jointly a small team of 3-4 experts will be agreed and an initial outline for a joint report be prepared and made available for public comment by membership and stakeholders of the respective instruments".

For more background information as well as for the preliminary list of issues mentioned above see [APBEBES Updates Issue #14, May 8, 2015](#)

***Draft Program and Budget for the 2016-2017 Biennium (C/90/4)***

The Consultative Committee will also consider the Draft Program and Budget (Draft P&B) for the biennium of 2016-2017. The proposed P&B is split into four sub-programs:

1. Overall policy on Plant Variety Protection
2. Services to the Union for Enhancing the Effectiveness of the UPOV System

3. Assistance in the introduction and implementation of the UPOV System
4. External Relations.

Among the key objectives listed in the Draft P&B are expansion of UPOV's membership, facilitating the filing of more PVP applications and providing technical assistance to non-UPOV members in implementing a plant variety protection system in accordance with the UPOV Convention of 1991. The technical assistance activities will include assistance in drafting legislation, development and operation of distance learning courses, training of non-UPOV staff to act as trainers (training of trainers), supporting projects to introduce and implement the UPOV system and awareness raising activities.

The proposed expenditure for the 2016-2017 biennium is CHF 6,823,000 with a sum of CHF 687,000 allocated to sub-program 1; CHF 4,223,000 allocated to sub-program 2; CHF 1,477,000 allocated to sub-program 3 and CHF 436,000 allocated to sub-program 4.

Donors will further supplement the financing of technical assistance, which falls within sub-program 3, with voluntary extrabudgetary resources for example in the form of Funds-in-Trust and non-monetary in kind support.

In 2015, Funds-in-Trust were provided by the Japanese Government for activities in the Asian region; the Ministry of Economic Affairs of the Kingdom of the Netherlands and by the United States patent and Trademark Office (USPTO). For the 2016-2017 biennium, UPOV expects the proposed budget to be supplemented with Funds-in-Trust at a level of CHF 442,000. In addition, UPOV expects to receive non-monetary (support in kind) from its various donors.

To facilitate provision of technical assistance and more specifically to promote the adoption of the 1991 Act, the Consultative Committee will also consider a document on "UPOV Training and Assistance Strategy" (CC/90/7). This document highlights training activities that are to be organized or co-organized by UPOV and outlines UPOVs' strategies to promote UPOV 1991.

For instance it mentions that in June 2015, a framework for cooperation between UPOV and WIPO in relation to UPOV's "Train the Trainer" Program was established on the basis of common objectives and corresponding activities including "highlighting the role of intellectual property in the development of agriculture as an important priority for WIPO and UPOV. The "Train the Trainer" program explains the role of plant variety protection and other intellectual property rights in the development of agriculture" etc.

It further mentions that the above cooperation with WIPO will be implemented, for the first time, in relation to the Train the Trainer course (in French), to be held from November 30 to December 4, 2015, in Geneva, with the assistance of the USPTO (US Patent and Trademark Office). The majority of participants in this course will come from the Office of the African Intellectual Property Organization (OAPI) and OAPI Members States.

Apart from WIPO and the USPTO, other key partners that will be involved in promotion of UPOV 1991 particularly to non-UPOV members are: Ministry of Economic Affairs of the Netherlands; Naktuinbouw (Netherlands); the Japan International Cooperation Agency (JICA) and the Korean Seed & Variety Service (KSVS) / Korean International Cooperation Agency (KOICA).

UPOV's focus on providing technical assistance particularly to non-UPOV members is of great concern as its focus is on promotion of UPOV 1991. Many experts have concluded that UPOV 1991 is not an appropriate legal framework for plant variety protection for agricultural systems of developing countries and adversely impacts the informal seed sector.

Most recently the report of the UN Secretary General titled "Agriculture development, food security and development" (August 2015) has stated:

*"An additional challenge that has advanced to the forefront is the pressures exerted on small-scale farming stemming from the provisions of the 1991 Act of the International Union for the Protection of New Varieties of Plants. Restrictions on seed management systems can lead to a loss of biodiversity and in turn harm the livelihoods of small-scale farmers "as well as weaken the genetic base on which we all depend for our future supply of food". As smallholders rely predominantly on informal seed systems, the restriction imposed by the Act on the use of farm-saved seeds and the prohibitions on their exchange and sale cause considerable concern. Although only a handful of developing countries have implemented plant variety protection, small-scale farmers and other stakeholders are often excluded from participation in developing and reforming plant variety protection laws."*

There is also evidence that UPOV 1991 actually undermines effective implementation of the Convention of Biological Diversity, Nagoya Protocol on Access and Benefit Sharing and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

***Examination of the conformity of the "Act of Plant Varieties Registration, Control and Certification of Seeds and Plant Materials of 2003" of the Islamic Republic of Iran with the 1991 Act of the UPOV Convention (C(Extr.)/32/8)***

The CC will also take a decision on conformity of Iran's legislation on plant variety protection with the 1991 Act. UPOV Secretariat's analysis of Iran's legislation did not find the legislation to be in conformity and requires Iran's legislation to strictly follow the provisions of the 1991 Act.

The main legal framework in Iran for the protection of plant varieties is its "By-law on Registration of Plant Varieties. This by-law provides for exceptions that allow use of the protected material for non-commercial purposes, which should include exchange of seeds and propagating material, and for small farmers to save seed of the protected variety. UPOV Secretariat recommends that provisions of Article 15 of the 1991 Act be incorporated, effectively narrowing the scope of exceptions currently provided in Iran's by-law on PVP. UPOV's Guidance on Article 15 is restrictive, as it does not allow sale and exchange of seeds and propagating with regard to protected variety. Farmers are allowed to save seeds on farmers' own holding, however subject to certain limitations.

## **Other Issues**

The Consultative Committee will also discuss for adoption: Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention (Revision); Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention (Revision) and Explanatory Notes on Provisional Protection under the UPOV Convention (Revision).

*[\*\*The above note has been prepared by Sangeeta Shashikant from Third World Network\*\*]*

## **Administrative and Legal Committee (CAJ)\*\***

The CAJ will be discussing a rescheduling of its meetings in particular reducing its sessions to a single two-day session rather than its current practice of holding a one-day CAJ session in March/April and a two-day CAJ session in October/November (Doc. CAJ/72/8).

On the issue of "harvested material" the CAJ will hear presentations by Argentina, the European Union and the Russian Federation. At its earlier session, CAJ had agreed that for the time being it would not be appropriate to seek to develop a revision of the "Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention" (document UPOV/EXN/HRV/1).

The CAJ will also be considering revised drafts of Explanatory Notes on Essentially Derived Varieties, and on Propagating Material. It is important that these Notes do not include a prescriptive interpretation, as although the only binding text is that of the 1991 Act, the Explanatory Notes may have some interpretative value nationally.

For APBEBES comments on the Explanatory Notes made at CAJ 70 see [APBEBES statements on Explanatory Notes](#) .

*[\*\*The above note has been prepared by Susanne Gura with contributions from Sangeeta Shashikant, Third World Network\*\*]*

## **The Council**

The Council is UPOV's main decision-making body. However its main role is to formally approve decisions taken by the Consultative Committee.

## **Calendar of Events**

Autumn session of UPOV bodies, 26 to 29 October 2015

- Monday, 26 and Tuesday, 27 October [Administrative and Legal Committee](#)
- 5 to 9 October, Governing Body of the FAO Plant treaty in Rome.
- Wednesday, 28 October Consultative Committee (closed to observers)
- Thursday 29 October 2015 [Council](#)

See also the [Upcoming Events](#) on our website

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## **Feedback & Contact**

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