

Activity 7

Closed Workshop on UPOV 1991

Drafting legislation in accordance with the
1991 Act of the UPOV Convention and
becoming a UPOV member

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December 7, 2023 (Bangkok, Thailand)



BENEFITS OF UPOV PLANT VARIETY PROTECTION SYSTEM

(a) Breeders

- Diversity of breeders
- Number of breeders
- Investment in breeding

(b) Improved varieties

(c) Farmers, Growers, Consumers

- Delivering improved varieties to farmers growers
- Delivering added value to consumers
- Income and Knowledge

(d) International dimension

- Development of new industry on foreign markets
- Access to foreign varieties and enhanced domestic programs

Cont. BENEFITS OF UPOV MEMBERSHIP

Internationally **accepted and harmonized** *sui generis* system

Protection for Breeders in other UPOV members

Benefit from **national treatment** and **priority**

Co-operation in examination, protection and enforcement

Legal and Technical **guidance**

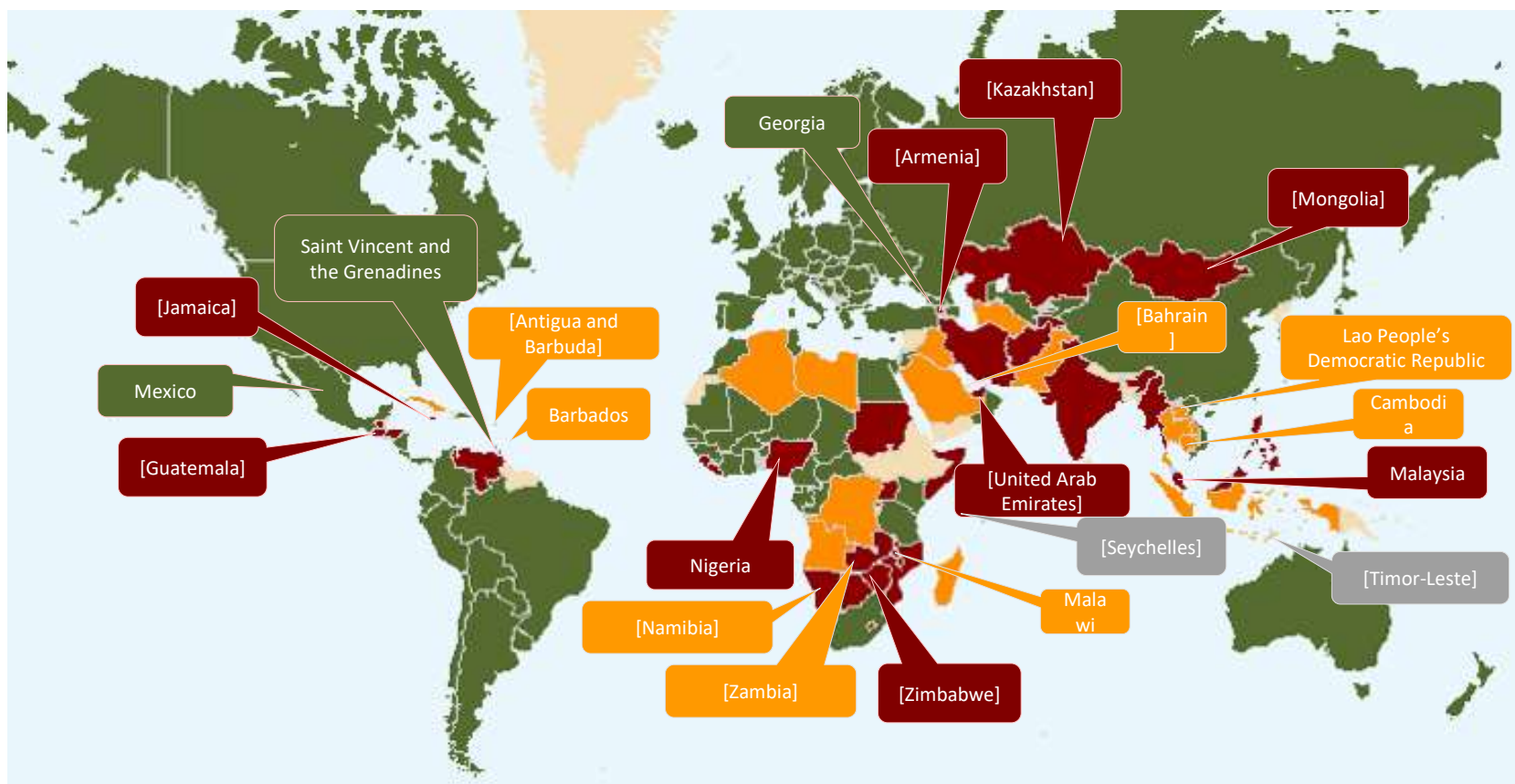
Training and assistance (UPOV distance learning courses and UPOV International Certificate)

Access and use of UPOV databases tools and services: **UPOV e-PVP, PLUTO, UPOV PRISMA**

Awareness / Influence of future developments

UPOV status and developments concerning legislative matters (2022-2023)

status as of May 23, 2023



The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory

- Members of UPOV (78) (covering 97 States)
- Initiating States (19) and Organization (1)
- States (25) and Organization (1) in contact with the UPOV Office – WIPO & UPOV Collaboration in ■

UPOV MEMBERSHIP PROCESS



UPOV



Policy decision to draft legislation in accordance with the 1991 Act of the UPOV Convention

Contact the Office of UPOV for assistance provision of the Drafting Guidance Document **INF/6** and consultations

Finalize the Draft Law for its examination by the Council of UPOV

Ask advice of the Council of UPOV

If **advice positive** and **Law in force** deposit instrument of accession to become a UPOV member

OVERVIEW

1. DRAFTING PVP LEGISLATION BASED ON THE 1991 ACT OF THE UPOV CONVENTION
 - OPTIONAL PROVISIONS UNDER THE UPOV CONVENTION
2. BECOMING A UPOV MEMBER



**DRAFTING PVP LEGISLATION
BASED ON THE 1991 ACT OF
THE UPOV CONVENTION**



UPOV



1 – Role of the Office of UPOV

2 – Guidance for drafting legislation

2 – Guidance for drafting legislation (UPOV/INF/6)

UPOV

International Union for the Protection of New Varieties of Plants

E

UPOV/INF/6/6

Original: English

Date: September 21, 2021

GUIDANCE FOR THE PREPARATION OF LAWS BASED ON THE 1991 ACT OF THE UPOV CONVENTION

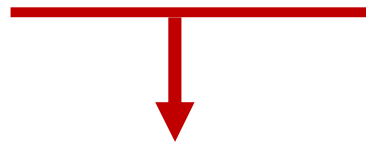
Document adopted by the Council
on September 21, 2021
by correspondence

UPOV

2 – Guidance for drafting legislation

Basis for Legislation = 1991 Act of the UPOV Convention

Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention (UPOV/INF/6)



Available in English, French, German, Spanish, Arabic, Chinese and Russian

UPOV/INF/6

Guidance for the Preparation of Laws based on the 1991 Act of the UPOV Convention

Purpose

to provide assistance to States/ intergovernmental organizations wishing to draft a law in accordance with the 1991 Act of the UPOV Convention

UPOV/INF/6



Part I: Example text for Articles

Part II: Notes based on information materials

UPOV/INF/6 Part I: Example text for Articles

Article 7 Distinctness

[NOTES – ARTICLE 7]

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

UPOV/INF/6 Part II: Notes based on information materials



NOTES ON ARTICLE 7 DISTINCTNESS

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

Guidance on the examination of distinctness can be found in the following documents:

- Document [TG/1/3](#) "General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants" ("General Introduction");
- Document [TGP/4/1](#) "Constitution and Maintenance of Variety Collections";
- Document [TGP/9/1](#) "Examining Distinctness".

UPOV/INF/6 Part I: Example text for Articles

highlighted text in square brackets for drafters involved in the preparation of laws (e.g. cross-references)

UPOV/INF/6 Part I: Example text for Articles



Article 6 Novelty

[NOTES – ARTICLE 6]

[(1)] *[Criteria]* 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 **[name of the State/Intergovernmental Organization]** earlier than one year before the date of filing of the application and

(ii) in a territory other than that of **[name of the State/Intergovernmental Organization]** earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

[(2)] *[Varieties of recent creation]* (optional provision - see **[NOTES – ARTICLE 6(2)]**)

[(3)] *["Territory" in certain cases]* (for members of UPOV which are member States of one and the same intergovernmental organization)

UPOV/INF/6 Part II: Notes based on information materials



Article 6(2) [optional provision]

(2) [*Varieties of recent creation*] Where a Contracting Party applies this Convention to a plant genus or species to which it did not previously apply this Convention or an earlier Act, it may consider a variety of recent creation existing at the date of such extension of protection to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place earlier than the time limits defined in that paragraph.

Varieties of recent creation

2.1 The "transitional" provision for varieties of recent creation is an optional provision. The aim of the transitional novelty provision is to enable the protection of varieties which have been created shortly before protection becomes available for the first time, but which do not fall within the period for novelty set out in Article 6(1)(i) of the 1991 Act. One approach taken by members of the Union which have chosen to introduce that provision, is to have the same time period, for selling or disposing of the variety for purposes of exploitation of the variety, in the territory of the member of the Union as for varieties in territories other than the member of the Union concerned, i.e. four years or, in the case of trees or of vines, six years. In cases where a transitional provision is introduced, it is appropriate to place a time limit for breeders to claim the benefits of the transitional provision.

2.2 The provisions on the transitional novelty regime for varieties of recent creation can be included in the law that provides for the first time plant variety protection in line with the UPOV Convention. For those members where protection is limited to a list of plant genera and species, it is possible to include a provision for a transitional novelty regime when protection becomes available to additional genera or species, or to all plant genera and species.

2.3 The following example provision is intended to provide assistance to States/ intergovernmental organizations wishing to incorporate the optional provision of Article 6(2) of the 1991 Act of the UPOV Convention "Varieties of recent creation" in their laws.

UPOV/INF/6 Part I: Example text for Articles



Article 15 Exceptions to the Breeder's Right

[NOTES – ARTICLE 15]

- [(1)]** *[Compulsory exceptions]* The breeder's right shall not extend to
- (i) acts done privately and for non-commercial purposes,
 - (ii) acts done for experimental purposes and
 - (iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Article **[14(5)]** apply, acts referred to in Article **[14(1) to (4)]** in respect of such other varieties.

- [(2)]** *[Optional exception]* (see **NOTES – ARTICLE 15(2)**)

UPOV/INF/6 Part II: Notes based on information materials

Article 15(2)

(2) [Optional exception] Notwithstanding Article 14⁸, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or (ii).

2.1 *Deciding on implementing the optional exception*

2.1.1 Article 15(2) is an "optional" provision as clarified by the wording "... each contracting Party may ...". Thus, it is a matter for each member to decide whether it would be appropriate to incorporate the option provided in Article 15(2). The purpose of the following paragraphs is to provide guidance to those members of the Union which decide to incorporate the optional exception into their legislation.

2.1.2 When considering the way in which the optional exception might be implemented, the Diplomatic Conference of 1991 (see page 63 of UPOV Publication No. 346(E) "Records of the Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants") developed the following recommendation:

"The Diplomatic Conference recommends that the provisions laid down in Article 15(2) of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 10, 1991, should not be used as a basis for

**HOW TO BECOME A
MEMBER OF UPOV**



UPOV

MEMBERSHIP

[Members](#)[Directory of PVP Offices](#)[Plant Variety Protection Laws](#)[About UPOV Members](#)[Status in relation to UPOV](#)[Becoming a UPOV Member](#)[Observers](#)[HOME](#) » [MEMBERSHIP](#) »

Becoming a UPOV Member

[Guidance on How to Become a Member of UPOV \(UPOV/INF/13\)](#)[Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention \(UPOV/INF/6\)](#)[Status in relation to UPOV](#)[▲ Top of page](#)

HOW TO BECOME A MEMBER OF UPOV

http://www.upov.int/members/en/upov_membership.html

State/Intergovernmental Organization must:

- Have a **law which conforms to the UPOV Convention**
- Ask **advice of the Council** of UPOV
- If **advice positive**: deposit instrument of accession



Becoming a UPOV member

1 – Potential Members

2 – Requirements

3 – Process



1 – Potential Members

- States
- Certain intergovernmental organizations



2 – Requirements

Have a law which conforms with the UPOV Convention (1991 Act)

Office of UPOV assistance:

raising awareness (seminars, consultations etc.)

advice in drafting legislation in accordance with UPOV Convention

(see PART I and INF/6 document)



3 – Process

- (a) Ask Council of UPOV to advise on conformity of its law (Article 34(3) of the Convention)
- (b) If the advice of the Council is positive: deposit the instrument of accession
- (c) Becomes a UPOV member one month after depositing the instrument of accession



3 – Process

- (a) Ask Council of UPOV to advise on conformity of its draft law/law (Article 34(3) of the Convention)
- Letter to Secretary-General of UPOV (model available)
 - Copy of the version of the Draft Law approved by the Government/ or adopted Law in one of the UPOV Languages (English, French, German or Spanish)

In 2024 – When to ask the advice of the Council?

- *Until April 24, 2024 (deadline for advice by correspondence if requirements are met)*
- *Until September 23, 2024 (deadline for advice at the Council session on October 25, 2024)*



3 – Process (Article 30)

- (1) [*Measures of implementation*] Each Contracting Party shall adopt all measures necessary for the **implementation of this Convention**; in particular, it shall:
- (i) provide for appropriate legal remedies for the **effective enforcement** of breeders' rights;
 - (ii) maintain an **authority** entrusted with the task of granting breeders' rights or entrust the said task to an authority maintained by another Contracting Party;
 - (iii) ensure that the **public is informed** through the regular publication of information concerning
 - applications for and grants of breeders' rights, and
 - proposed and approved denominations.
- (2) [*Conformity of laws*] It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organization **must be in a position, under its laws, to give effect to the provisions** of this Convention.



3 – Process

(b) If the advice of the Council **is positive**: deposit the **instrument of accession**

Requirements for the deposit:

- Copy of the Law in force
- Declaration of units of contributions
- Declaration of plant genera and species covered (all or list)

Office of UPOV assistance

Guidance and models for effective deposit of instrument



3 – Process

(c) Becomes UPOV member one month after depositing the instrument of accession

FINANCIAL ASPECTS

First payment of annual contribution- month of January following accession

The value of **one contribution** unit = **53,641 Swiss Francs**

A matter for each State to decide the level of contribution which it wishes to contribute

One-fifth (**0.2**) is the **minimum level** of annual contribution:
10,728 Swiss Francs

Payment to the Working Capital Fund of UPOV (one-time payment)

UPOV



3 – Process

(c) Becomes UPOV member one month after depositing the instrument of accession

FINANCIAL ASPECTS

- Annual contribution
- Working Capital Fund (one time payment only)



Annual Contribution

- A matter for each State to decide the level of contribution which it wishes to contribute
- Value of **one contribution unit = 53,641 Swiss Francs**
- One-fifth (0.2) is the **minimum level** of annual contribution:
10,728 Swiss Francs
- First payment of annual contribution = January following accession



MEMBERSHIP

Members

Plant Variety Protection Laws

About UPOV Members

Status in relation to UPOV

Becoming a UPOV Member

Members

[List of UPOV Members](#)

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

International Convention for the Protection of New Varieties of Plants* UPOV Convention (1961), as revised at Geneva (1972, 1978 and 1991)

Status on November 3, 2021

State/Organization	Date on which State/Organization became member of UPOV	Number of contribution units	Latest Act ¹ of the Convention to which State/Organization is party and date on which State/Organization became party to that Act
African Intellectual Property Organization ²	July 10, 2014	0.2	1991 Act July 10, 2014
Albania	October 15, 2005	0.2	1991 Act October 15, 2005
Argentina	December 25, 1994	0.5	1978 Act December 25, 1994
Australia	March 1, 1989	1.0	1991 Act January 20, 2000
Austria	July 14, 1994	0.75	1991 Act July 1, 2004
Azerbaijan	December 9, 2004	0.2	1991 Act December 9, 2004
Belarus	January 5, 2003	0.2	1991 Act January 5, 2003
Belgium ³	December 5, 1976	1.5	1991 Act June 2, 2019
Bolivia (Plurinational State of)	May 21, 1999	0.2	1978 Act May 21, 1999
Bosnia and Herzegovina	November 10, 2017	0.2	1991 Act November 10, 2017
Brazil	May 23, 1999	0.25	1978 Act May 23, 1999
Bulgaria	April 24, 1998	0.2	1991 Act April 24, 1998
Canada	March 4, 1991	1.0	1991 Act July 19, 2015
Chile	January 5, 1996	0.2	1978 Act January 5, 1996
China	April 23, 1999	2.0	1978 Act ⁴ April 23, 1999
Colombia	September 13, 1996	0.2	1978 Act September 13, 1996
Costa Rica	January 12, 2009	0.2	1991 Act January 12, 2009
Croatia	September 1, 2001	0.2	1991 Act September 1, 2001
Czech Republic	January 1, 1993	0.5	1991 Act November 24, 2002
Denmark ⁵	October 6, 1968	0.5	1991 Act April 24, 1998
Dominican Republic	June 16, 2007	0.2	1991 Act June 16, 2007
Ecuador	August 8, 1997	0.2	1978 Act August 8, 1997
Egypt	December 1, 2019	0.2	1991 Act December 1, 2019
Estonia	September 24, 2000	0.2	1991 Act September 24, 2000
European Union ⁶	July 29, 2005	5.0	1991 Act July 29, 2005
Finland	April 16, 1993	1.0	1991 Act July 20, 2001
France	October 3, 1971	5.0	1991 Act May 27, 2012
Georgia	November 29, 2008	0.2	1991 Act November 29, 2008
Germany	August 10, 1968	5.0	1991 Act July 25, 1998
Ghana	December 3, 2021	0.2	1991 Act December 3, 2021

Working Capital Fund (one time payment only)

The contribution towards the Working Capital Fund of new members joining the Union is fixed at **8,333 Swiss francs (fixed amount) multiplied by the number of contribution units applicable to the new member.**

e.g.

if 1 contribution unit = 8,333 Swiss Francs

if 0.2 contribution units = 1,667 Swiss Francs



SUMMARY

- **Policy decision** to draft legislation in accordance with the 1991 Act of the UPOV Convention
- **Contact the Office of UPOV** for assistance provision of the Drafting Guidance Document **INF/6** and consultations
- **Finalize the Draft Law** for its examination by the Council of UPOV
- **Ask advice** of the Council of UPOV
- **If advice positive** and **Law in force** deposit instrument of accession to become a UPOV member